

Draft Documents for discussion on Private Participation in Passenger Trains

7 January 2020

Ministry of Railways and National Institution for Transforming India (NITI) Aayog, Government of India are spearheading participation of private entities in operation of passenger trains on 100 routes. In this respect, a draft of Request for Qualification (RFQ) document, Concession Agreement Guiding Principles, Project Information Memorandum (PIM) along with a Presentation on the salient features of the Project (**Draft Documents**) have been uploaded on the Ministry of Railways website (<http://www.indianrailways.gov.in/railwayboard>).

All stakeholders are requested to review the Draft Documents and provide written comments (if any) by or before January 17, 2020. The comments can be sent in the enclosed format, preferably in electronic form, on the email alokkumar@rites.com.

It is clarified that the Draft Documents are solely for the purposes of discussion with stakeholders on the proposed project. These are not to be construed as an offer or invitation to the prospective applicants or any other person. Further, the information contained herein is neither exhaustive nor final and is subject to change.

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Comments on Draft Documents for discussion on Private Participation in Passenger Trains

Name of the comments/ suggestion provider: _____

Designation: _____ **Organization:** _____

S.No	Item	Document	Term/Article/Clause	Observations

Public Private Partnership

in

Passenger Train Operations

CONCESSION AGREEMENT – GUIDING PRINCIPLES

Draft

Contents

PART I	
Preliminary	15
Recitals	17
1. Definitions and interpretation	19
1.1. Definitions	19
1.2. Interpretation	19
1.3. Measurements and arithmetic convention	22
1.4. Priority of agreements, clauses and schedules	22
PART II	
The Concession	25
2. Scope of the project	26
2.1. Scope of the project	26
3. Grant of Concession	27
3.1. The Concession	27
3.2. Exclusivity of the Concession	27
3.3. Concession Period	28
4. Condition Precedent	29
4.1. Condition Precedent	29
4.2. Damages for the delay by the Government	30
4.3. Damages for the delay by the Concessionaire	30
4.4. Commencement of Concession Period	31
4.5. Deemed Termination upon delay	31
5. Obligations of the Concessionaire	32
5.1. General Obligations of the Concessionaire	32
5.2. Obligations relating to Project Agreements	33
5.3. Obligations relation to Change in Ownership	35
5.4. Obligations relating to employment of foreign nationals	36
5.5. Obligations relating to employment of trained personnel	36
5.6. Obligations relating to non-discriminatory access	36
5.7. Obligations relating to medical aid	37
5.8. Obligations relating to branding and aesthetic quality of the Trains	37
5.9. Sole purpose of the Concessionaire	37
5.10. Obligations relating to noise control	37
5.11. Clean Development Mechanism	37
5.12. Facilities for differently abled and elderly persons	37
5.13. Obligations relating to ticketing	38

5.14. Obligations relating to Taxes	38
5.15. Obligations relating to information	38
5.16. Obligations relating to the User information	38
6. Obligation of the Government	39
6.1. Obligations of the Government	39
6.2. Application of Railway Schemes to Concessionaires	40
7. Representations and warranties	41
7.1. Representations and warranties of the Concessionaire	41
7.2. Representations and warranties of the Government	43
7.3. Disclosure	44
8. Disclaimer	45
8.1. Disclaimer	45
PART III	
Procurement and Operation	47
9. Performance Security	48
9.1. Performance Security	48
9.2. Appropriation of Performance Security	48
9.3. Release of Performance Security	49
10. Right of Use and Access to the Depot Site	50
10.1. License and access to the Depot Site	50
10.2. Depot Site and Washing Line to be free from Encumbrances	51
10.3. Protection of Depot Site and Washing Line from encroachments	51
10.4. Special or temporary right of way	51
10.5. Access to the Government and Independent Engineer	52
10.6. Geological and archaeological finds	52
10.7. Permitted Use	52
10.8. Site for Ancillary Facilities	52
10.9. Site for ticketing booth/counter	52
11. Utilities, Associated Roads and Trees	54
11.1. Existing utilities and roads	54
11.2. Shifting of obstructing utilities	54
11.3. New utilities and transport systems	54
11.4. Felling of trees	55
12. Train Operation Plan	56
12.1. Train Operation Plan	56
12.2. Modifications to the Train Operation Plan	56

13. Trains	57
13.1. Trains	57
13.2. Procured Trains	57
13.3. Delivery of Prototype	57
13.4. Testing of Prototype	58
13.5. Acceptance of Prototype	58
13.6. Delivery of Procured Trains	59
13.7. Safety Inspection	59
13.8. Damages for delay in the Project Schedule	59
14. Training and Deputation of Crew	60
14.1. Provision of Crew	60
14.2. Content and duration of Training	60
14.3. Location of training	60
14.4. Annual training programme	61
14.5. Costs of training and certification	61
14.6. Training throughout the Concession Period	61
14.7. Deputation	62
14.8. Terms of deputation	62
15. Entry into commercial service	63
15.1. Commercial Operation Date	63
16. Change of Scope	64
16.1. Change of Scope	64
16.2. Procedure for Change of Scope	64
16.3. Restrictions on certain works	65
17. Operation and maintenance	66
17.1. Maintenance of Trains	66
17.2. Visits to the Depot Site	66
17.3. Maintenance Manual	66
17.4. Spare Trains	66
17.5. Travel-Worthiness	66
17.6. Unscheduled Maintenance	67
17.7. Maintenance Requirements	68
17.8. Prompt Response	68
17.9. Damages for breach of maintenance obligations	68
17.10. De-commissioning due to Emergency	69
17.11. Government's right to take remedial measures	69
17.12. Overriding powers of the Government	69
17.13. Restoration of loss or damage to the Trains	70
17.14. Modifications to the Trains	70
17.15. Washing Lines	71
17.16. Operations by the Government	71

17.17. Excuse from performance of obligations	72
17.18. Maintenance Report	72
17.19. Safety, breakdowns and accidents	73
18. Safety Requirements	74
18.1. Safety requirements	74
18.2. Guiding Principles	74
18.3. Obligations of the Concessionaire	74
18.4. Annual Safety Report	75
19. Monitoring of operation and maintenance	76
19.1. Monthly status reports	76
19.2. Reports of unusual occurrence	76
19.3. Inspection	76
19.4. Tests	77
19.5. Remedial measures	77
19.6. Responsibility of the Concessionaire	77
19.7. Monthly Fare Statement	78
20. Key Performance Indicators	79
20.1. Key Performance Indicators	79
20.2. Punctuality	79
20.3. Reliability	80
20.4. Upkeep of the Trains	80
20.5. ISO certification	81
20.6. Monthly report	81
20.7. Passenger Charter	81
21. Traffic Regulation and Security	82
21.1. Traffic regulation by the Concessionaire	82
21.2. Security	82
22. Traffic Census and Sampling	84
22.1. Traffic census and Train operations	84
22.2. Traffic survey	84
22.3. Traffic sampling	84
22.4. Computer systems and network	84
23. Independent Engineer	86
23.1. Appointment of Independent Engineer	86
23.2. Duties and functions	86
23.3. Remuneration	86
23.4. Termination of appointment	86
23.5. Authorized signatories	87
23.6. Dispute resolution	87

23.7. Interim arrangement	87
PART IV	
Financial Covenants	89
24. Concession Fee	90
24.1. Concession Fee	90
24.2. Additional Concession Fee	90
24.3. Haulage Charges	90
24.4. Payment of Concession Fee	90
24.5. Verification of Gross Revenue	91
25. User Fare	92
25.1. Collection and appropriation of Fare	92
25.2. Determination and revision of Fare	92
25.3. Additional charge for evasion of Fare	92
25.4. Discounted Fare for frequent users	92
25.5. Display of Fare	93
26. Escrow Account	94
26.1. Escrow Account	94
26.2. Deposits into Escrow Account	94
26.3. Withdrawals during Concession Period	94
26.4. Withdrawals upon Termination	95
27. Insurance	96
27.1. Insurance during Concession Period	96
27.2. Insurance Cover	96
27.3. Notice to the Government	97
27.4. Evidence of Insurance Cover	97
27.5. Remedy for failure to insure	97
27.6. Waiver of subrogation	97
27.7. Concessionaire's waiver	98
27.8. Application of insurance proceeds	98
27.9. Compliance with conditions of insurance policies	98
28. Accounts and audit	99
28.1. Audited accounts	99
28.2. Appointment of auditors	99
28.3. Certification of claims by Statutory Auditors	100
28.4. Set-off	100
28.5. Dispute resolution	100

PART V	101
---------------	-----

Force Majeure and Termination

29. Force Majeure	102
29.1. Force Majeure	102
29.2. Non-Political Event	102
29.3. Indirect Political Event	103
29.4. Political Event	104
29.5. Duty to report Force Majeure Event	104
29.6. Effect of Force Majeure Event on the Concession	105
29.7. Allocation of costs arising out of Force Majeure	106
29.8. Termination Notice for Force Majeure Event	106
29.9. Termination Payment for Force Majeure Event	107
29.10. Dispute resolution	107
29.11. Excuse from performance of obligations	107
29.12. Relief for Unforeseen Events	108
30. Compensation for breach of Agreement	110
30.1. Compensation for default by the Concessionaire	110
30.2. Compensation for default by the Government	110
30.3. Extension of Concession Period	110
30.4. Compensation to be in addition	111
30.5. Mitigation of costs and damage	111
31. Suspension of Concessionaire's rights	112
31.1. Suspension upon Concessionaire Default	112
31.2. Government to act on behalf of Concessionaire	112
31.3. Revocation of Suspension	113
31.4. Termination	113
32. Termination	114
32.1. Termination for Concessionaire Default	114
32.2. Termination for Government Default	116
32.3. Termination Payment	117
32.4. Other rights and obligations of the Government	118
32.5. Survival of rights	118
32.6. Step-in right of Senior Lenders	118
33. Divestment of Rights and Interest	120
33.1. Divestment Requirements	120
33.2. Inspection and cure	121
33.3. Cooperation and assistance on transfer of Project	121
33.4. Vesting Certificate	122
33.5. Divestment costs	122
34. Defects Liability after Termination	123

34.1. Liability for defects after Termination	123
34.2. Retention in Escrow Account	123
PART VI	
Other Provisions	125
35. Assignment and Charges	126
35.1. Restrictions on assignment and charges	126
35.2. Permitted assignment and charges	126
35.3. Assignment by the Government	126
36. Change in Law	127
36.1. Increase in costs	127
36.2. Reduction in costs	127
36.3. Protection of NPV	128
36.4. Restriction on cash compensation	128
36.5. No claim in the event of recovery from Users	128
37. Liability and Indemnity	129
37.1. General indemnity	129
37.2. Indemnity by the Concessionaire	129
37.3. Notice and contest of claims	130
37.4. Defence of claims	130
37.5. No consequential claims	132
37.6. Limitation of liability	132
37.7. Survival on Termination	132
38. Rights and title over the Depot Site and the Washing Line	133
38.1. Licensee rights	133
38.2. Access rights of the Government and others	133
38.3. Property taxes	133
38.4. Restriction on sub-letting	133
39. Dispute resolution	134
39.1. Dispute resolution	134
39.2. Conciliation	134
39.3. Arbitration	134
39.4. Adjudication by a tribunal	135
40. Disclosure	136
40.1. Disclosure of Specified Documents	136
40.2. Disclosure of Documents relation to safety	136
40.3. Withholding disclosure of Protected Documents	136
41. Redressal of public grievances	137

41.1. Complaints Register	137
41.2. Redressal of complaints	137
42. Miscellaneous	138
42.1. Governing law and jurisdiction	138
42.2. Waiver of immunity	138
42.3. Depreciation	138
42.4. Delayed payments	138
42.5. Waiver	139
42.6. Liability for review of Documents and Drawings	139
42.7. Exclusion of implies warranties etc.	140
42.8. Survival	140
42.9. Entire agreement	140
42.10. Severability	140
42.11. No partnership	141
42.12. Third parties	141
42.13. Successors and assigns	141
42.14. Notices	141
42.15. Language	142
42.16. Counterparts	142
43. Definitions	143
43.1. Definitions	143
Schedules	161
A. Specifications and Standards	162
B. Depot Site	163
C. Performance Security	164
D. License Agreement	168
E. Haulage Charges	180
F. Project Schedule	181
G. Tests	182
H. Maintenance Requirements	183
I. Safety Requirements	187
J. Monthly Fare Statement	188

K. Passenger Charter	189
L. Traffic Census and Sampling	190
M. Selection of Independent Engineer	191
N. Terms of Reference for Independent Engineer	193
O. Escrow Agreement	197
P. Panel of Chartered Accountants	212
Q. Vesting Certificate	214

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Concession Agreement

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Part I Preliminary

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CONCESSION AGREEMENT

This Concession Agreement (the “**Agreement**”) is entered into on this the [] day of [] 20.... at [].

BY AND BETWEEN

1. **THE PRESIDENT OF INDIA**, represented by Principal Executive Director (Coaching), Ministry of Railways (Railway Board), Government of India and having its offices at Rail Bhawan, Raisina Road, New Delhi – 110001 (hereinafter referred to as the “**Government**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of the One Part;

AND

2. [], a company incorporated under the Companies Act, 2013 with its registered office at [], India (hereinafter referred to as the “**Concessionaire**”, which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of the Other Part.

The Government and the Concessionaire shall be collectively referred to as “**Parties**” and individually as a “**Party**”.

WHEREAS:

- (A) The Government has resolved to permit operation of passenger trains on selected routes of the Indian Railways in accordance with the terms and conditions to be set forth in this Agreement, on a public private partnership basis.
- (B) The Government had accordingly invited proposals by its Request for Qualification No. [] dated *** (the “**Request for Qualification**” or “**RFQ**”) for shortlisting of bidders to make available, operate and maintain passenger trains and had shortlisted certain bidders including, *inter-alia*, the {the Selected Bidder/Consortium (as defined hereinafter) comprising and (collectively the “**Consortium**”) with as its lead member (the “**Lead Member**”)}.¹
- (C) The Government had prescribed the technical and commercial terms and conditions, and invited bids (the “**Request for Proposals**” or “**RFP**”) from the bidders shortlisted pursuant to the RFQ for undertaking the Project.
- (D) After evaluation of the bids received, the Government has accepted the bid of the {Selected Bidder/Consortium} and issued its letter of award no..... dated

¹ This will be suitably modified in case the bidder being a single entity.

(hereinafter called the “**Letter of Award**” or “**LOA**”) to the {Selected Bidder/Consortium}, *inter-alia*, requiring it to incorporate a private limited company under the Companies Act, (*as defined* hereinafter) and the execution of this Agreement within [45 (forty five) days] of the date of issue thereof.

- (E) {The Selected Bidder/ Consortium} has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act, 2013 and has requested the Government to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the {Selected Bidder/ Consortium} under the LOA including the obligation to enter into this Agreement pursuant to the LOA for executing the Project.
- (F) By its letter dated [____], the Concessionaire has also joined in the said request of the {Selected Bidder/Consortium} to the Government to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the {Selected Bidder/Consortium} including the obligation to enter into this Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the {Selected Bidder/Consortium} for the purposes hereof.
- (G) The Government has agreed to the request of the {Selected Bidder/ Consortium} and the Concessionaire has accordingly agreed to enter into this Agreement with the Concessionaire for the implementation 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 sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 43) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “**without limitation**” or “**but not limited to**” whether or not they are followed by such phrases;
- (f) references to “**construction**” or “**building**” include, unless the context otherwise requires, investigation, design, 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) references to “**procurement**” mean, unless the context otherwise requires, the Concessionaire making available the Trains during the Concession Period for Operations in accordance with the provisions of this Agreement, and “**procure**” shall be construed accordingly;
- (i) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (j) 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;
- (k) any reference to a day shall mean a reference to a calendar day;
- (l) reference to a “**business day**” shall be construed as reference to a day (other than a Sunday) on which banks in the State are generally open for business;
- (m) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (n) references to any date, period or project milestone shall mean and include such date, period or project milestone as may be extended pursuant to this Agreement;
- (o) 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;
- (p) the words importing singular shall include plural and vice versa;
- (q) references to any gender shall include the other and the neutral gender;
- (r) “**lakh**” means a hundred thousand (100,000) and “**crore**” means ten million (10,000,000);

- (s) **“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;
- (t) 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;
- (u) 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 (u) shall not operate so as to increase liabilities or obligations of the Government hereunder or pursuant hereto in any manner whatsoever;
- (v) 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;
- (w) 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;
- (x) references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of or to this Agreement; reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;
- (y) 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**”);

- (z) Any and all capitalised terms used, but not defined, herein shall have the meaning ascribed to the term under the Railways Act, if any; and
- (aa) 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.

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to the Government and/ or the Independent Engineer shall be provided free of cost and in 3 (three) copies, and if the Government 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; and
- (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.

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Part II

The Concession

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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) procuring and making available new and fit for purpose trains in conformity with the Specifications and Standards set forth in Schedule – A (“**Trains**”) in accordance with the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice;
- (b) operation and maintenance of the Trains in accordance with the provisions of this Agreement;
- (c) development and maintenance of the Ancillary Facilities in accordance with the provisions of this Agreement; and
- (d) 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 Concession

3.1.1 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits, the Government hereby grants to the Concessionaire, the concession set forth herein including a non-exclusive right, licence and authority to procure, make available and Operate the Trains (the “**Concession**”) for the Concession Period, and the Concessionaire hereby accepts the Concession and agrees to implement the same subject to and in accordance with the terms and conditions set forth herein.

3.1.2 Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:

- (a) procure, operate and maintain the Trains in accordance with the provisions of this Agreement;
- (b) demand, collect and appropriate Fare from Users liable for payment of Fare for using the Trains or any part thereof and refuse entry to any User if the Fare due is not paid;
- (c) Right of Use, access and license to the Depot Site and the Washing Line for the purpose of and to the extent conferred by the provisions of this Agreement;
- (d) perform and fulfil all of the Concessionaire’s obligations under and in accordance with this Agreement;
- (e) save as otherwise expressly provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and
- (f) 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 Train nor sell, exchange, transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement.

3.2 Exclusivity of the Concession

The Parties hereby expressly acknowledge and agree that the aforesaid Concession is on a non-exclusive basis and that the Government expressly reserves the right to give to any third party, the concession to operate trains on the Route, through international competitive bidding. Provided that, the Concessionaire shall have the right to participate in such competitive bidding. Provided further that, the Government, notwithstanding the selection of any third party as mentioned above, shall ensure that the Concessionaire shall have an exclusive right to operate the Trains on the Path and no new train shall originate from the originating Railway Station within [30 (thirty)]

minutes from the departure of the Train(s) on the respective Path for a period of [3 (three)] years.

Illustration:

If the Path granted to the Concessionaire is from Railway Station A at 1000 hours to Railway Station B, then no new train shall commence its journey from Railway Station A between 0930 hours to 1030 hours to Railway Station B on the same Route for a period of 3 (three) years.

3.3 Concession Period

Subject to early termination of this Agreement in accordance with its terms, the term of this Agreement is [35 (thirty five)] years starting from the Appointed Date (the “**Concession Period**”).

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ARTICLE 4

CONDITIONS PRECEDENT

4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in Articles [4, 5, 6, 7, 8, 9, 10, 29, 32, 42] 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**”). Provided, however, that a Party may grant waiver from satisfaction of any Condition Precedent by the other Party in accordance with the provisions of Clauses 4.1.2 and 4.1.3, as the case may be, and to the extent of such waiver, that Condition Precedent shall be deemed to be fulfilled for the purposes of this Clause 4.1.1.

4.1.2 The Concessionaire may, upon providing the Performance Security to the Government in accordance with Article 9, at any time after [90 (ninety)] days from the date of this Agreement or on an earlier day acceptable to the Government, by notice require the Government to satisfy the Condition Precedent set forth in this Clause 4.1.2 within a period of [30 (thirty)] days of the notice, or such longer period not exceeding [60 (sixty)] days as may be specified therein, and the Condition Precedent required to be satisfied by the Government shall be deemed to have been fulfilled when the Government shall have:

- (a) provided the Concessionaire, Right of Use and access to the Depot Site and the Washing Line in accordance with Article 10; and
- (b) provided the Concessionaire, the train operation plan, in accordance with Article 12.

Provided that upon request in writing by the Government, the Concessionaire may, in its discretion, grant extension of time, not exceeding [180 (one hundred and eighty)] days, for fulfilment of the Conditions Precedent set forth in this Clause 4.1.2.

4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire within a period of [180 (one hundred and eighty)] days from the date of this Agreement shall be deemed to have been fulfilled when the Concessionaire shall have:

- (a) provided Performance Security to the Government;
- (b) executed and procured execution of the Escrow Agreement;
- (c) delivered to the Government, {from the selected bidder/Consortium Members, their respective} confirmation of the correctness of the representations and warranties set forth in Sub-clauses (k), (l) and (m) of Clause 7.1 of this Agreement; and
- (d) delivered to the Government, 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.

Provided that upon request in writing by the Concessionaire, the Government may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3. For the avoidance of doubt, the Government 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 Damages for delay by the Government

In the event that: (i) the Government does not procure fulfilment or waiver of the Condition Precedent set forth in Clause 4.1.2 within the period specified in respect thereof; and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Government shall pay to the Concessionaire Damages in an amount calculated at the rate of [0.05% (zero point zero five per cent)] of the Performance Security for each day's delay until the fulfilment of such Condition Precedent, subject to a maximum of [20% (twenty per cent)] of the Performance Security.

4.3 Damages for delay by the Concessionaire

In the event that: (i) the Concessionaire does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in that Clause; and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Government or due to Force Majeure, the Concessionaire shall pay to the Government Damages in an amount calculated at the rate of [0.25% (zero point two five per cent)] of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent subject to a maximum amount equal to the Bid Security, and upon reaching the maximum, the Government may, in its sole discretion and subject to the provisions of Clause 9.2, terminate the Agreement. Provided that in the event of delay by the Government in procuring fulfilment of the Condition Precedent specified in Clause 4.1.2, no Damages shall be due or payable by the Concessionaire under this Clause 4.3 until the date on which the Government shall have procured fulfilment of the Condition Precedent specified in Clause 4.1.2.

4.4 Commencement of Concession Period

The date on which all the Conditions Precedent specified in Clause 4.1 are satisfied or waived, as the case may be, shall be the Appointed Date which shall be the date of commencement of the Concession Period. For the avoidance of doubt, the Parties agree that the Concessionaire may, upon occurrence of the Appointed Date hereunder, by notice convey the particulars thereof to the Government, and shall thereupon be entitled to commence the implementation on the Project.

4.5 Deemed Termination upon delay

Without prejudice to the provisions of Clause 4.2 and 4.3, and subject to the provisions of Clause 9.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, before the [1st (first)] anniversary of the date of this Agreement or the extended period provided in accordance with this Agreement, 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 the Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Concessionaire, the Performance Security of the Concessionaire shall be encashed and appropriated by the Government as Damages thereof.

ARTICLE 5

OBLIGATIONS OF THE CONCESSIONAIRE

5.1 General 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, undertake the procurement, Operation and maintenance of the Trains 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 Save an except as otherwise provided in this Agreement or Applicable Laws, as the case may be, the Concessionaire shall, in discharge of all of its obligations under this Agreement, conform with and adhere to Good Industry Practice at all times.
- 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 Applicable Laws;
 - (b) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Trains;
 - (c) 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;
 - (d) 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;
 - (e) always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violative of any of the provisions of this Agreement;
 - (f) procure that all facilities and amenities within the Trains are operated and maintained in accordance with Good Industry Practice and the Users have non-discriminatory access for use of the same;
 - (g) ensure that Users are treated with due courtesy and consideration and provided with ready access to services and information;

- (h) support, cooperate with and facilitate the Government in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- (i) take all reasonable precautions for prevention of accidents while the Trains are in Operation or under maintenance at the Depot Site and the Washing Line, and assist the Government in providing all reasonable assistance and emergency medical aid to accident victims and liaison with emergency services of the Government Instrumentality;
- (j) 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;
- (k) draw and maintain adequate insurance cover throughout the Concession Period for the office area, Users and the Trains in accordance with the provisions of this Agreement;
- (l) procure and install all machinery and plants required for the maintenance of the Trains at the Depot Site and the Washing Line and employ trained personnel with adequate skills at the Depot Site and the Washing Line for undertaking the maintenance of the Project Assets;
- (m) provide security on the Train through employment of trained security personnel, at its own cost and expense;
- (n) collect and appropriate the Fare in accordance with the provisions of this Agreements; and
- (o) maintain a public relations unit to interface with and attend to suggestions from the Users, Government Instrumentality, media and other agencies.

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 the Government, the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Government shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within [15 (fifteen)] days of the receipt of such drafts. Within [7 (seven)] days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Government a true copy thereof, duly attested by a director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Government to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Government. No review and/ or observation of the Government 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 the Government be liable for the same in any manner whatsoever.

- 5.2.3 Subject to Article 35, the Concessionaire shall not sub-lease, sub-license, assign or in any manner create an Encumbrance on any of the Project Assets as the case may be, without prior written approval of the Government, which approval the Government may, in its discretion, deny if such sub-lease, sub-license, assignment or Encumbrance has or may have a Material Adverse Effect on the rights and obligations of the Government under this Agreement or Applicable Laws.
- 5.2.4 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Government to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the “**Covenant**”). For the avoidance of doubt, it is expressly agreed that in the event the Government does not exercise such rights of substitution within a period not exceeding [90 (ninety)] days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Government and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Government an acknowledgment and undertaking, in a form acceptable to the Government, from the counter party(ies) of each of the Project Agreements, whereunder such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Government in the event of Termination or Suspension.
- 5.2.5 The Concessionaire shall procure that an agreement for the lease of the Procured Trains with a third party, if any, contains provisions that recognize the Government’s right over the Procured Trains, as provided under this Agreement, and allow for the transfer of the Procured Trains from the lessor to the Government upon Termination, in accordance with the provisions of this Agreement. The Concessionaire expressly agrees to include the above provision in its lease agreement, if any, and undertakes that it shall, in respect of such lease agreement, procure and deliver to the Government an acknowledgment and undertaking, in a form acceptable to the Government, from the lessor, whereunder such lessor shall acknowledge and accept the above provision and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Government in the event of Termination or Suspension.
- 5.2.6 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of the O&M Contractor and execution of the O&M Contract shall be subject to the prior approval of the Government from national security and public interest perspective, the decision of the Government in this behalf being final, conclusive and binding on the

Concessionaire, and undertakes that it shall not give effect to any such selection or contract without such prior approval of the Government. For the avoidance of doubt, it is expressly agreed that approval of the Government hereunder shall be limited to national security and public interest perspective, and the Government shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Government 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 or its Contractors from any liability or obligation under this Agreement.

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 approval of the Government.

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 [15% (fifteen 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 the Government from national security and public interest perspective, the decision of the Government 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 the Government. For the avoidance of doubt, it is expressly agreed that approval of the Government hereunder shall be limited to national security and public interest perspective, and the Government shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Government 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 [15% (fifteen 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 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 obligation to apply for and obtain the same shall and will always be of the Concessionaire and notwithstanding 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.

5.5 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.

5.6 Obligations relating to non-discriminatory access

The Concessionaire shall manage and Operate the Trains on a common user basis and provide non-discriminatory access to all persons in accordance with the provisions of this Agreement and shall refrain from indulging in any unfair or discriminatory practice against any User or potential user thereof.

5.7 Obligations relating to medical aid

For providing emergency medical aid to Users, the Concessionaire shall set up and operate a medical aid post in each Train (the “**Medical Aid Post**”) equipped to render first aid and to assist in accessing emergency medical aid from hospital in the vicinity.

5.8 Obligations relating to branding and aesthetic quality of the Trains

The Concessionaire shall maintain a high standard in the appearance and aesthetic quality of the Trains through both appropriate design and sensitive management of all visible elements.

The Trains or any part thereof are permitted to be branded to advertise, display or reflect the name or identity of the Concessionaire or any other entity, as it deems fit.

5.9 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 the Government, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein. Provided that, the Concessionaire shall not be required to obtain previous written consent of the Government to participate in the bidding process conducted by the Government pursuant to Clause 3.2.

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 Trains and its impact on Users and the neighbourhood.

5.11 Clean Development Mechanism

The Concessionaire shall endeavour to earn revenues or other benefits, in relation to or arising out of this Project, under the Clean Development Mechanism (CDM) of Kyoto Protocol of United Nations Framework Convention on Climate Change (UNFCCC) or any other such mechanism. The Concessionaire expressly agrees and undertakes to transfer forthwith to the Government one-half of all revenues, credits or other benefits accruing to it from such mechanism.

5.12 Facilities for differently abled 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 differently abled and for elderly persons using the Trains.

5.13 Obligations relating to ticketing

- (a) The Concessionaire shall permit only Users having a reserved ticket to travel on the Train(s).
- (b) The Concessionaire shall operate and maintain a ticketing booth/counter for the Trains at the relevant Railway Stations in accordance with provisions of this Agreement, Applicable Laws and Applicable Permits.
- (c) The Concessionaire shall maintain web-based ticketing services for the Trains, either on its own website or through third party travel websites, at its own cost and expense. The Concessionaire shall provide the Government access to the website at all times.
- (d) The Concessionaire shall ensure that the booking of tickets for the Trains shall be done in accordance with Applicable Laws.

5.14 Obligations relating to Taxes

The Concessionaire shall pay, at all times during the subsistence of this Agreement, all Taxes, levies, duties, cesses and all other statutory charges payable in respect of the Project.

5.15 Obligations relating to information

- 5.15.1 Without prejudice to the provisions of the Applicable Laws and this Agreement, upon receiving a notice from the Government for any information that it may reasonably require or that it considers may be necessary to enable it to perform any of its functions, the Concessionaire shall provide such information to the Government forthwith and in the manner and form required by the Government.
- 5.15.2 After receiving a notice from the Government for reasoned comments on the accuracy and text of any information relating to the Concessionaire's activities under or pursuant to this Agreement which the Government proposes to publish, the Concessionaire shall provide such comments to the Government in the manner and form required by the Government.

5.16 Obligations relating to the User information

The Concessionaire shall provide to the Government the information regarding the Users and the Fares charged for each User prior to each Operation of the Train(s).

ARTICLE 6 OBLIGATIONS OF THE GOVERNMENT

6.1 Obligations of the Government

- 6.1.1 The Government shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in this Agreement.
- 6.1.2 The Government agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and Applicable Laws, the following:
- (a) maintain a level playing field for all concessionaires who undertake train operations on the Railway Network and implement a transparent and non-discriminatory system for dispatch and movement of Trains on the Railway Network;
 - (b) provide access to the Railway Network for Operations of the Trains in accordance with the Train Operation Plan;
 - (c) provide access to the Depot Site and Washing Line for carrying out the Maintenance Requirements in accordance with the provisions of this Agreement;
 - (d) ensure fitness of the Railway Network for smooth Operation of the Trains;
 - (e) upon receiving a request from the Concessionaire, make available, from time to time, all relevant circulars, notifications and like documents to the Concessionaire pertaining to the performance of this Agreement or the rights and obligations of the Parties hereto;
 - (f) ensure that the Trains are run through to their destination as per the Train Operation Plan without undue detention en route;
 - (g) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide all reasonable support and assistance to the Concessionaire in procuring Applicable Permits, required from any Governmental Instrumentality for implementation and operation of the Trains;
 - (h) 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 commercial customers receiving substantially equivalent services;
 - (i) procure that no barriers are erected or placed on or about the Railway Network by any Government Instrumentality or persons claiming through or under it, except for reasons of Safety Requirements, Emergency, national security, or law and order;
 - (j) make best endeavours to procure that no local Tax, toll or charge is levied or imposed on the use of whole or any part of the Trains;

- (k) subject to and in accordance with Applicable Laws, grant to the Concessionaire the authority to regulate traffic on the Trains;
- (l) reasonably assist the Concessionaire in arranging for police assistance for regulation of traffic, removal of trespassers and security on or at the Railway Network;
- (m) 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;
- (n) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- (o) upon written request from the Concessionaire and subject to the provisions of Clause 5.4, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for discharging their obligations under this Agreement and the Project Agreements;
- (p) provide electrified traction lines in the Depot Site for maintenance of the Trains;
- (q) provide, or cause to be provided, road connectivity at any location on the Depot Site;
- (r) provide, or cause to be provided, electric supply within the Depot Site; and
- (s) provide a safety certificate for the Operation of the Trains, in accordance with the provisions of this Agreement and Applicable Laws.

6.2 Application of Railway schemes to Concessionaires

- 6.2.1 The existing incentives/schemes extended to Users or that may be introduced in future shall not *ipso facto* apply to the Concessionaire. Upon request of the Concessionaire(s), the Government may consider extending such schemes to the Concessionaire to the extent possible in a non-discriminatory manner.
- 6.2.2 Any and all commercial rules of the Government and as applicable to other passenger traffic moving on the Railway Network, shall apply to the Trains, except rules specially covered in this Agreement in a non-discriminatory manner amongst similarly placed entities.

ARTICLE 7

REPRESENTATIONS AND WARRANTIES

7.1 Representations and warranties of the Concessionaire

The Concessionaire represents and warrants to the Government that:

- (a) it is duly organised and validly existing under the laws of India and it 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) along with its Associates, 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 shall 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 thereunder including any obligation, liability or responsibility hereunder;
- (f) the information furnished in the Bid and as updated on or before the date of this Agreement are true and accurate in all respects as on the date of this Agreement;
- (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 those of any member of the Consortium} 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, Government Instrumentality 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 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) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3; and that the [Selected Bidder or Consortium Members], together with {its or their} Associates, hold not less than [51% (fifty one per cent)] of its issued and paid up Equity as on the date of this Agreement; and that no Member of the Consortium whose technical and financial capacity was evaluated for the purpose of pre-qualification and short-listing in response to the [Request for Qualification]² shall, during [5 (five)] years commencing from the date of commercial operations of all the Procured Trains, in accordance with Clause 15.1, hold less than [26% (twenty six per cent)] of such Equity;
 - (l) the {Selected Bidder/Consortium Members} and {its/their} Associates have the financial standing and capacity to undertake and implement the Project in accordance with this Agreement;
 - (m) the {Selected Bidder/Consortium Members} is duly organised and validly existing under the laws of the jurisdiction of its incorporation or registration, as the case may be, and has requested the Government to enter into this Agreement with {itself/ the Concessionaire} pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
 - (n) all its rights and interests in the Depot Site, Washing Line and the Site for Ancillary Facilities shall pass to and vest in the Government 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 the Government, 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;
 - (o) no representation or warranty given by it contained herein or in any other document furnished by it to the Government, 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;
 - (p) 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

² In case of single-stage bidding, to be replaced with Request for Proposal.

to influence any officer or employee of the Government in connection therewith;

- (q) all information provided by the Selected Bidder in response to the Request for Qualification and Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects;
- (r) all undertakings and obligations of the Concessionaire arising from the Request for Qualification and Request for Proposals or otherwise shall be binding on the Concessionaire as if they form part of this Agreement; and
- (s) it owns or possesses/will own or possess all Intellectual Property or proprietary rights to perform its obligations regarding the Project and to carry on its business as presently conducted and presently planned to be conducted without conflict with the rights of any third party.

7.2 Representations and warranties of the Government

The Government represents and warrants to the Concessionaire that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under this Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Government's ability to perform its obligations under this Agreement;
- (f) it has good and valid title or right over the Depot Site, Washing Line and the Site for Ancillary Facilities and has power and authority to grant a license, in respect thereto to the Concessionaire;
- (g) it has complied with Applicable Laws in all material respects; and
- (h) upon the Concessionaire submitting the Performance Security and complying with the covenants herein, it shall not at any time during the term hereof, interfere with peaceful exercise of the rights and discharge of the obligations by the Concessionaire, subject to and in accordance with the provisions of this Agreement.

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.

Draft

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 Request for Qualification, Request for Proposal, Scope of the Project, Specifications and Standards, Railway Network, Path, Depot Site, Washing Line, Railway Stations, passenger trains, existing structures, local conditions, physical qualities of ground, subsoil and geology, traffic volumes and all information provided by the Government 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. The Government 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 the Government 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 the Government shall not be liable for the same in any manner whatsoever to the Concessionaire, {the Consortium Members and their} 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 the Government to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Government contained in Clause 8.1.1 and shall not in any manner shift to the Government 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 the Government shall not be liable in any manner for such risks or the consequences thereof.

Draft

Part III

Procurement and Operation

ARTICLE 9 PERFORMANCE SECURITY

9.1 Performance Security

- 9.1.1 The Concessionaire shall, for the performance of its obligations hereunder provide to the Government no later than [180 (one hundred and eighty)] days from the date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to [Rs. 100 crore (Rupees one hundred crore)] in the form set forth in Schedule - C (the “**Performance Security**”). Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Government shall release the Bid Security to the Concessionaire.
- 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 date of this Agreement, the Government may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the 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, the Government shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate from the Performance Security, the amounts due to it for and in respect of such Concessionaire Default or for failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within [15 (fifteen)] days thereof, replenish, in case of partial appropriation, to the original level of the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, failing which the Government shall be entitled to terminate this Agreement in accordance with Article 32. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Concessionaire shall be entitled to an additional Cure Period of [120 (one hundred and twenty)] days for remedying the Concessionaire Default or for satisfying any Condition Precedent, and in the event of the Concessionaire not curing its default or meeting such Condition Precedent within such Cure Period, the Government shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 32.

9.3 Release of Performance Security

- 9.3.1 The Performance Security shall remain in force and effect till the Transfer Date (the “**Performance Security Period**”); provided, however, that the Performance Security shall not be released if the Concessionaire is in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars which establish satisfaction of the requirements specified in this Clause 9.3, the Government shall release the Performance Security forthwith.
- 9.3.2 The Parties expressly agree that the Concessionaire may furnish Performance Security valid for a period of [2 (two)] years and shall no later than [2 (two)] months prior to the expiry thereof, be substituted by a fresh Performance Security for a further period of [2 (two)] years, and such substitution shall continue and remain in force and effect until the date of Vesting Certificate.

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ARTICLE 10

RIGHT OF USE AND ACCESS TO DEPOT SITE

10.1 License and access to the Depot Site

- 10.1.1 The depot site shall comprise an office area of at least [50 (fifty)] square meters, the coaching depot and the overhauling depot, as earmarked in Schedule - B (the “**Depot Site**”). Provided that the Concessionaire shall have the exclusive possession of the office area and a non-exclusive Right of Use, on common user basis, with respect to the coaching depot, the overhauling depot and the Washing Line, which shall be provided and granted by the Government to the Concessionaire as a non-exclusive licence under a license agreement in the format set out in Schedule - D and in accordance with this Article 10.
- 10.1.2 The Government shall make available traction energy required for testing and movement of the Trains at the Depot Site, to the Concessionaire, free of cost. Provided that the Concessionaire shall be entitled to use any non-traction energy at its sole cost and expense. Further, the Government shall, on a best efforts basis, make water available at the Depot Site to the Concessionaire at the Concessionaire’s cost and expense.
- 10.1.3 In consideration of the Concession Fee, this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Government, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Appointed Date, leave and license rights in respect of the Depot Site and the Washing Line. The Right to Use for the Depot Site and the Washing Line shall be provided to the Concessionaire on an 'as is where is' basis, free of any Encumbrances, to develop, operate and maintain the Project, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the Depot Site and the Washing Line, 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.
- 10.1.4 The license, access, Right of Use and all other rights to the Depot Site and the Washing Line granted under this Agreement by the Government to the Concessionaire shall always be subject to existing rights of way.
- 10.1.5 It is expressly agreed that the license granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Government to terminate the license, upon the Termination of this Agreement for any reason whatsoever. For avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Depot Site or the Washing Line by the Concessionaire or its sub-licensees, the license in respect of the Depot Site or

the Washing Line shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.

- 10.1.6 The Concessionaire hereby irrevocably appoints the Government (acting directly or through a nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the rights 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 the Government, and the Concessionaire consents to it being registered for this purpose.

10.2 Depot Site and Washing Line to be free from Encumbrances

The Depot Site and the Washing Line shall be made available by the Government to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to the Government on account of any costs, compensation, expenses and charges for the acquisition and use of such Depot Site and Washing Line for the duration of the Concession Period, except insofar as otherwise expressly provided in this Agreement. For avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the Depot Site or the Washing Line shall not be deemed to be Encumbrances. It is further agreed that the Concessionaire accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Depot Site or the Washing Line.

10.3 Protection of Depot Site and Washing Line from encroachments

During the Concession Period, the Concessionaire shall protect the Depot Site and the Washing Line 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 Depot Site or the Washing Line 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 or 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 Depot Site and the Washing Line. The Concessionaire shall obtain at its own cost such facilities on or outside the Depot Site and the Washing Line as may be required by it for the purposes of the Project and the performance of its obligations under this Agreement.

10.5 Access to the Government, Independent Engineer

The license, Right of Use and right to the Depot Site or the Washing Line granted to the Concessionaire hereunder shall always be subject to the right of access of the Government, its representatives or authorised personnel, 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 Depot Site or the Washing Line shall vest in and belong to the Government or the concerned Government Instrumentality. The Concessionaire shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Government forthwith of the discovery thereof and comply with such instructions as the Government or the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Concessionaire hereunder shall be reimbursed by the Government. It is also agreed that the Government shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period so as to enable the Concessionaire to continue Operations with such modifications as may be deemed necessary.

10.7 Permitted Use

The Concessionaire shall use or cause to be used any or all part of the Depot Site or the Washing Line for operating, managing and maintaining the Project in accordance with the provisions of the Agreement. Any use of the Depot Site or the Washing Line in violation thereof shall constitute a Concessionaire Default under this Agreement.

10.8 Site for Ancillary Facilities

The access to the Site for Ancillary Facilities may be made available by the Government to the Concessionaire on a best efforts basis.

10.9 Site for ticketing booth/counter

The Government shall provide area admeasuring [5 (five) x 5 (five)] feet to the Concessionaire on a licence under a license agreement in the format set out in

Schedule - D, in the ticketing area of each of the relevant Railway Stations for the purpose of setting up the ticketing booth/counter for the Train(s).

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ARTICLE 11

UTILITIES, ASSOCIATED ROADS 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 Depot 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 the Government 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

- 11.2.1 The Concessionaire shall, subject to Applicable Laws and with assistance of the Government, undertake shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Depot Site if and only if such utility causes or shall cause a material adverse effect on the construction, operation or maintenance of the Railway Network. The cost of such shifting shall be borne by the Government or by the entity owning such utility, if the Government 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.
- 11.2.2 The Concessionaire agrees and undertakes that upon receipt of a notice from the Government to this effect, it shall transfer the amount specified therein to the entity owning the relevant utility for meeting the expenditure on the specified shifting of utility on behalf of the Government. The Parties further agree that any expenditure in excess of the aforesaid amount shall be borne entirely by the Government.

11.3 New utilities and transport systems

The Concessionaire shall allow, subject to such conditions as the Government may specify, access to, and use of the Depot 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 Depot Site to pay compensation or damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Depot Site under this Clause 11.3 shall not in any manner relieve the Concessionaire of its obligation to maintain the Railway Network in accordance with this Agreement and any damage caused by such use shall be restored forthwith.

11.4 Felling of trees

The Government shall assist the Concessionaire in obtaining the Applicable Permits for felling of trees to be identified by the Government for this purpose if and only if such trees cause a material adverse effect on the construction, operation or maintenance of the Railway Network. 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 costs and expense in respect of felling of trees shall be borne by the Concessionaire and any revenues thereof shall be paid to the Government.

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ARTICLE 12 TRAIN OPERATION PLAN

12.1 Train Operation Plan

- 12.1.1 The Government shall provide to the Concessionaire, the train operation plan which shall contain the originating and destination Railway Stations and the time in and time out at the originating and destination Railway Stations.
- 12.1.2 The Concessionaire shall submit to the Government, the intermediary Railway Stations on the Path on which the Concessionaire proposes to halt the Train(s) and the time in and time out at the intermediary Railway Stations, which shall form part of the train operation plan.
- 12.1.3 The Government shall ensure, on a best efforts basis, to adhere to the train operation plan submitted by the Concessionaire, including the originating and destination Railway Stations as well as the intermediary Railway Stations. The Concessionaire may also be permitted to stop at Railway Station(s) not forming part of the train operation plan, if made necessary due to operational exigencies.
- 12.1.4 The train operation plan, once finalized, shall become the final train operation plan which shall be adhered to by the Concessionaire ("**Train Operation Plan**") in Operating the Trains during the relevant year.

12.2 Modifications to the Train Operation Plan

- 12.2.1 The Government shall annually revise the Train Operation Plan and shall share the revised Train Operation Plan with the Concessionaire, at least [3 (three)] months prior to the start of the month of [July] of each year. Provided that, any revision to the Train Operation Plan shall not modify the total travel time for the Path and shall not modify the time in or time out at the originating or destination Railway Station by more than +/- [15 (fifteen)] minutes.
- 12.2.3 The Train Operation Plan may also be modified by the Parties, through mutual agreement. Either Party may propose a modification to the Train Operation Plan, by giving a [3 (three)] month advance notice to the other Party. Provided that, if the Parties are unable to agree to the modification(s) to the Train Operation Plan, then the Train Operation Plan as it stood prior to the proposed modification shall continue to be adhered to for Operating the Trains.

ARTICLE 13 TRAINS

13.1 Trains

- 13.1.1 The Concessionaire shall be required to commence Operations on at least [2 (two) Paths] on the Railway Network within [6 (six) months] from Appointed Date and the remaining Paths on the Railway Network within [1 (one)] year from the Appointed Date. Provided that, the Concessionaire may commence commercial operations by procuring trains on lease from any third party.
- 13.1.2 The lease of the Trains from a third party shall be in accordance with Good Industry Practice. Provided that, any Trains taken on lease from a third party shall be required to comply with the provisions of Clause 13.4, 13.5 and 13.7.

13.2 Procured Trains

The Concessionaire shall adhere to the Project Schedule, as set out in Schedule – F such that the Procured Trains are procured, tested and ready for Operations on or before the dates set out in the Project Schedule.

13.3 Delivery of the Prototype

- 13.3.1 Prior to the delivery of a sample Procured Train that conforms to the Specifications and Standards (“the **Prototype**”), the Concessionaire shall carry out, or cause to be carried out, at its own cost and expense, all Tests in accordance with Schedule - G and such other Tests that the Concessionaire may consider necessary to demonstrate that the Procured Trains comply in all respects with the Specifications and Standards. The Concessionaire shall provide to the Government forthwith, a copy of the Concessionaire’s report on each test containing the results of each test and the action, if any, that it proposes to take for compliance with the Specifications and Standards.
- 13.3.2 The Concessionaire shall, with at least [4 (four)] weeks’ notice to the Government, convey the date, schedule and type of tests that shall be conducted on the Prototype and the Government shall have the right, but not the obligation, to nominate its representative to witness the tests.
- 13.3.3 In the event of failure of any Test specified in Clause 13.3.1, the Concessionaire shall rectify the defect and conduct repeat Tests, and the procedure specified in this Clause 13.3 shall apply *mutatis mutandis* to such repeat Tests.
- 13.3.4 The Concessionaire shall, no later than [730 (seven hundred and thirty)] days from the Appointed Date, deliver a Prototype for each type of Procured Train to the Government for tests and trials to be conducted in accordance with the provisions of Clause 13.4.

13.4 Testing of Prototype

- 13.4.1 For determining that the Prototype conforms to Specifications and Standards, the Government shall, within [3 (three)] months of the delivery of the Prototype, conduct, or cause to be conducted, on the Railway Network, the Tests specified in Schedule-G. If the Concessionaire is unable to successfully commission the Prototype within [3 (three)] months of delivery, then the testing period may be extended by a maximum period of [3 (three) months] subject to payment of Damages in accordance with Clause 13.8 below. Provided that, if the Concessionaire is unable to commission the Prototype within [6 (six) months] of the delivery of the Prototype, then this Agreement shall be terminated in accordance with Article 32.
- 13.4.2 In the event of failure of any Test specified in Clause 13.4.1, the Concessionaire shall rectify the defect and present the Prototype for repeat Tests and the procedure specified in this Clause 13.4 shall apply *mutatis mutandis* to such Tests.
- 13.4.3 The Parties agree that the Tests pursuant to Clauses 13.4.1 and 13.4.2, as the case may be, shall be conducted at the cost and expense of the Government. Provided that, the cost for any test after the first retest shall be borne by the Concessionaire.
- 13.4.4 In the event the Concessionaire is not satisfied with the Tests conducted by the Government, it may cause such Tests to be carried out by an independent agency and submit the results thereof to the Government. The Parties expressly agree that if the Government does not accept the results of such independent agency, the Dispute Resolution Procedure shall apply.
- 13.4.5 The Parties expressly agree that either Party shall notify the other Party of the date, time and place of Tests so as to afford sufficient opportunity to the other Party to witness the Tests.

13.5 Acceptance of the Prototype

- 13.5.1 The Government and/or the Relevant Railway Authority shall, no later than [15 (fifteen)] days after the successful completion of all the Tests, communicate its acceptance of the Prototype to the Concessionaire.
- 13.5.2 The Parties expressly agree that conducting of Tests by the Government or the Relevant Railway Authority, shall not relieve or absolve the Concessionaire of its obligations and liabilities under this Agreement in any manner whatsoever.

13.6 Delivery of the Procured Trains

The Concessionaire shall, at its own cost and expense, subject each Procured Train and its sub-systems to the Tests specified in Schedule - G and shall provide a copy of the results of such Tests along with the delivery of that Procured Train.

13.7 Safety Inspection

The Trains shall be subject to a safety inspection in accordance with the provisions of Article 18. In the event that the Government or the Relevant Railway Authority is satisfied that the Train does not conform with the Specifications and Standards, and is, therefore, not safe for entry into service, it shall convey to the Concessionaire forthwith, a report stating in detail the reasons for its findings. The Concessionaire shall, notwithstanding anything to the contrary contained in this Article 13, withdraw the Train for rectification thereof and present it to the Government for inspection after the defects or deficiencies have been rectified.

13.8 Damages for delay in the Project Schedule

If the Concessionaire is unable to achieve the milestones set out in the Project Schedule, unless the delay is on account of reasons attributable to the Government or due to Force Majeure, the Concessionaire shall pay damages to the Government in a sum calculated at the rate of [5% (five per cent)] of the Haulage Charges [for the first 1000 kilometres] for the relevant year for delay of each day until the milestone is achieved.

ARTICLE 14

TRAINING AND DEPUTATION OF CREW

14.1 Provision of Crew

- 14.1.1 The Crew for the Trains may either be provided by the Concessionaire or may be taken on seconded from the Government on deputation.
- 14.1.2 If the Concessionaire requires Crew on deputation from the Government, it shall, within [30 (thirty)] days of the Appointed Date by way of written notice, request the Government to provide Crew for the Operation of the Trains. The notice shall set out the number of Crew required by the Concessionaire, for the Operation of the Trains.
- 14.1.3 If the Government agrees to the request of the Concessionaire, it shall within [30 (thirty)] days of receipt of notice under Clause 14.1.2, identify the Crew to the Concessionaire and shall depute the Crew for training in accordance with Clause 14.2. The terms of deputation of the Crew shall be governed by the provisions of Clauses 14.7 and 14.8 below.

14.2 Content and duration of training

- 14.2.1 The Concessionaire shall provide training to the Crew and the Safety Certification Officer whether engaged by the Concessionaire itself or provided on deputation by the Government, in accordance with the provisions of this Clause 14.2.
- 14.2.2 The content of training shall comprise transfer of knowledge and skills required for Operation of Trains and shall be developed by the Concessionaire in consultation with the Government.
- 14.2.3 The duration of training courses shall normally be for a minimum period of [3 (three)] days and a maximum of [24 (twenty four)] days.
- 14.2.4 The number of trainees participating in training at any time shall normally be a minimum of [10 (ten)] and a maximum of [20 (twenty)].

14.3 Location of training

- 14.3.1 The Concessionaire may develop a training facility for undertaking training obligations in accordance with this Article or the Concessionaire may request the Government to provide non-exclusive access to the Government's training facilities, for the training of the Crew and the Safety Certification Officer. Should the Government, in its sole discretion, permit such use, the Concessionaire shall make payment of an amount of [Re.1 (Rupee one)] as charges for the use of the training facility. If the Concessionaire is unable to obtain access to the training facility of the

Government, it shall set up its own training facility, within [60 (sixty) days] from the Appointed Date.

- 14.3.2 The Concessionaire shall ensure provision of the following for providing training:
- (a) qualified instructors;
 - (b) one driving simulator, as specified in Clause 14.3.3;
 - (c) one computer-based training module, as specified in Clause 14.3.4;
 - (d) lecture halls and boarding facilities for the trainees; and
 - (d) any other facilities and infrastructure required for conducting the training in accordance with the provisions of this Agreement.

- 14.3.3 A simulator to be provided by the Concessionaire shall be a computer controlled visual system showing the track and signals ahead and interfaced with the driver's controls. The simulator shall include:
- (a) a driver's desk mounted within a simulated driving cab;
 - (b) a driver instructor's console for inputting information and observing the driver's technique along with printing facilities for recording the proceedings;
 - (c) a design that shall accommodate track/signalling/OHE features of the section for at least 200 (two hundred) kms; and
 - (d) other features in accordance with Good Industry Practice.

- 14.3.4 A computer based training (CBT) module to be provided by the Concessionaire shall simulate fault finding steps required to be taken in accordance with Good Industry Practice.

14.4 Annual training programme

The Concessionaire shall prepare an annual training programme in consultation with the Government and convey the same to the Government, at least [3 (three)] months prior to the commencement of the Accounting Year.

14.5 Costs of Training and certification

All costs in respect of the training of the Crew and the Safety Certification Officer for the Operations of the Trains, shall be borne by the Concessionaire. The Concessionaire shall certify the trainees at the end of the training course.

14.6 Training throughout the Concession Period

The provisions of this Article 14 shall apply *mutatis mutandis* to the training of the Crew and the Safety Certification Officer for the Operations of the Trains, at any time during the Concession Period.

14.7 Deputation

- 14.7.1 The Government may, in accordance with the provisions of this Clause 14.7, and at the request of the Concessionaire under the provisions of Clause 14.1.2, second its Crew on deputation to the Concessionaire for Operations of the Trains, in accordance with Applicable Laws.
- 14.7.2 The tenure of deputation under this Article 14 shall be for a minimum period of [2 (two)] years and a maximum of [5 (five)] years.
- 14.7.3 Save and except as otherwise provided herein, the conditions of service of the staff on deputation with the Concessionaire, including their promotions and emoluments, shall be governed by the applicable rules of the Government.

14.8 Terms of deputation

- 14.8.1 The Government shall pay the salary and allowances to the staff seconded to the Concessionaire as though such staff was still on the rolls of the Government.
- 14.8.2 The Concessionaire shall reimburse to the Government the salary, allowances and bonus paid by the Government to the staff on deputation; provided that the medical expenses, if any, shall be borne solely by the Government.
- 14.8.3 The Concessionaire shall pay to each staff on deputation, a deputation-cum-performance allowance, in accordance with the applicable rules of the Government. Travel allowance of such staff shall be paid by the Concessionaire in accordance with its norms. No other incentive or payment shall be made by the Concessionaire to the Crew.
- 14.8.4 The Concessionaire may make available to the Crew on deputation, all facilities as may be required.

ARTICLE 15

ENTRY INTO COMMERCIAL SERVICE

15.1 Commercial Operation

Subject to Clause 13.1, the Trains leased by the Concessionaire shall enter into commercial service upon achieving successful completion of the safety inspection in accordance with Clause 13.7 and upon certification of the Crew for the Train in accordance with Clause 14.5, whereupon the Concessionaire shall be entitled to undertake Operation of the Trains which have been leased and demand and collect Fare and charges for the use of the Ancillary Facilities, in accordance with the provisions of Article 25.

The Procured Trains shall enter into commercial service upon achieving successful completion of the safety inspection in accordance with Clause 13.7 and upon certification of the Crew for the Train in accordance with Clause 14.5, whereupon the Concessionaire shall be entitled to undertake Operations of the Procured Trains and demand and collect Fare and charges for the use of the Ancillary Facilities, in accordance with the provisions of Article 25.

ARTICLE 16 CHANGE OF SCOPE

16.1 Change of Scope

- 16.1.1 The Government may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services, including upgradation of technology for the signalling system or the communication system, 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 made in accordance with the provisions of this Article 16 and the costs thereof shall be borne by the Concessionaire.
- 16.1.3 Any works or services which are provided under and in accordance with this Article 16 shall form part of the Project and the provisions of this Agreement shall apply *mutatis mutandis* to such works or services.

16.2 Procedure for Change of Scope

- 16.2.1 In the event of the Government determining that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (the “**Change of Scope Notice**”).
- 16.2.2 Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Government such information as is necessary, together with preliminary Documentation in support of:
- (a) the impact, if any, which the Change of Scope is likely to have on the Project Schedule, the Operations, the services or the requirements of the Specifications and Standards; and
 - (b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Government to its contractors, along with the proposed premium/discount on such rates and the requirement of any tests; provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed by the Government to the extent such cost is certified by the Independent Engineer as reasonable.
- 16.2.3 Upon receipt of information set forth in Clause 16.2.2, the Parties shall mutually agree on the Change of Scope which the Concessionaire is required to carry out. Upon reaching an agreement, the Government shall issue an order (the “**Change of Scope Order**”) requiring the Concessionaire to proceed with the performance thereof. In the event that the Parties are unable to agree, the Government may, by issuing a

Change of Scope Order, require the Concessionaire to proceed with the performance thereof pending resolution of the Dispute.

- 16.2.4 The provisions of this Agreement, insofar as they relate to Tests, shall apply *mutatis mutandis* to the works undertaken by the Concessionaire under this Article 16.

16.3 Restrictions on certain works

Notwithstanding anything to the contrary contained in this Article 16, the Government shall not require the Concessionaire to undertake any works or services if such works or services are likely to delay completion the Project Schedule or adversely affect the Operations of the Trains or the provision of services; provided that in the event that the Government considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such order shall not be reckoned for purposes of determining adherence to the Project Schedule.

ARTICLE 17

OPERATION AND MAINTENANCE

17.1 Maintenance of Trains

The Concessionaire shall maintain the Trains supplied in accordance with the provisions of this Article 17, the Specifications and Standards, the Maintenance Manual and the Maintenance Requirements (the “**Maintenance Obligations**”).

17.2 Visits to the Depot Site

The Concessionaire shall ordinarily perform maintenance for each Train after travel of [40,000 (forty)] thousand kilometres.

17.3 Maintenance Manual

The Concessionaire shall prepare a repair and maintenance manual (the “**Maintenance Manual**”) for the predictive, preventive and curative maintenance of Trains in conformity with Good Industry Practice and the provisions of this Article 17. The Concessionaire shall provide [10 (ten)] copies of a provisional maintenance manual (the “**Provisional Maintenance Manual**”) to the Government no later than [60 (sixty)] days from the Appointed Date. The Government may review the Provisional Maintenance Manual and convey its comments to the Concessionaire within a period of [60 (sixty)] days from the date of receipt thereof. The Concessionaire shall revise the Provisional Maintenance Manual, as may be necessary, and provide [100 (one hundred)] copies of the Maintenance Manual, accompanied by an electronic copy thereof, no later than [6 (six)] months from the Appointed Date. The Maintenance Manual shall be revised and updated once every [3 (three)] years and the provisions of this Clause 17.3 shall apply, *mutatis mutandis*, to such revision. For the avoidance of doubt, the Parties expressly agree that until the Maintenance Manual is provided hereunder, the Provisional Maintenance Manual shall apply.

17.4 Spare Train

During the Concession Period, the Concessionaire shall, at its own cost and expense, procure and maintain spare Train(s) to meet any operational exigencies. The Government shall provide the Concessionaire, stabling space for the spare Train(s), provided that, the number of the spare Train(s) shall not exceed [10% (ten per cent)] of the total number of Trains required for the Project.

17.5 Travel-Worthiness

The Concessionaire shall, before commencement of every Operation, undertake an examination of its compliance with Safety Requirements and the availability of all

passenger amenities in the Train (the “**Travel-Worthiness**”) and shall furnish a certificate of Travel-Worthiness to the Government prior to each Operation. Provided, however, that such examination of safety compliance and certification thereof shall not be required more than once in a day.

17.6 Unscheduled Maintenance

17.6.1 Any maintenance or repair of a Train, not being scheduled maintenance, and arising during the Concession Period out of any reason including Failure, unsatisfactory performance, defects, deficiencies, accident, vandalism, natural calamity, fire, riots, arson or negligence, shall be undertaken by the Concessionaire as unscheduled maintenance (the “**Unscheduled Maintenance**”). The Parties expressly agree that any and all Unscheduled Maintenance shall be undertaken promptly to procure efficient, safe and reliable operation of the Train.

17.6.2 For the purposes of Maintenance Obligations, failure of a Train, save and except when it occurs solely as a result of any breach of this Agreement by the Government including the negligence of its staff or due to Force Majeure shall mean any of the following events (the “**Failure**”), namely:

- (a) detention of a Train at any railway station for more than [15 (fifteen) minutes] on account of a malfunction;
- (b) detention of a Train at any place, not being a railway station, for more than [15 (fifteen) minutes] on account of a malfunction;
- (c) inability to achieve at least [75% (seventy five per cent)] of the maximum speed it is ordinarily required to achieve during a scheduled service in accordance with Specifications and Standards;
- (d) delay of more than [15 (fifteen) minutes] in commencing the scheduled service of a Train due to a malfunction therein;
- (e) cumulative loss of [15 (fifteen) minutes] or more, due to malfunction in a Train, causing a delay exceeding [15 (fifteen) minutes] in reaching the destination of a scheduled service; or
- (f) cancellation of a scheduled service of a Train due to malfunction.

17.6.3 Any and all Unscheduled Maintenance, shall form part of Maintenance Obligations and shall be undertaken by the Concessionaire at its own cost and expense.

17.6.4 The Parties agree that the Concessionaire shall be entitled to undertake Unscheduled Maintenance of a Train at a railway yard, at a Government depot or at the Depot Site and the Government hereby agrees and undertakes to provide the Concessionaire and its representatives access for such maintenance, subject to any operational or safety constraints. The Parties also agree that on the request of the Concessionaire, the Government shall, on a best effort basis, provide its lifting facility (crane / jacks) to the Concessionaire on payment of [Rs. 10,000 (Rupees ten thousand) per hour], and in the event of such facility not being available at the Government’s depot, the

Concessionaire may, in its discretion, require the Government to move the Train to the Depot Site. The Parties further agree that the aforesaid amount of [Rs. 10,000 (Rupees ten thousand)] shall be indexed to WPI as on the Base Index Date and revised on the Reference Index Date for the relevant Year.

- 17.6.5 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire shall, upon arrival of a Train at the Depot Site for carrying out Unscheduled Maintenance, commence the repair thereof as soon as may be.

17.7 Maintenance Requirements

The Concessionaire shall procure that at all times during the Concession Period, each and every Train conforms to the maintenance requirements set forth in Schedule - H (the “**Maintenance Requirements**”).

17.8 Prompt response

- 17.8.1 The Concessionaire shall engage trained personnel and constitute teams comprising of at least [1 (one)] such personnel to provide a prompt response for Unscheduled Maintenance and for conforming with the Maintenance Requirements (the “**PR Teams**”). The Concessionaire shall procure that one PR Team is available, along with a suitable maintenance kit, on every Train during the course of its scheduled service. For the avoidance of doubt, the Parties expressly agree that the Concessionaire may, with the consent of the Government, employ other forms of prompt response which can be demonstrated as equivalent to or better than the prompt response specified herein.
- 17.8.2 The PR Team shall, to the extent possible, repair and rectify the defects and deficiencies, including those specified in the Maintenance Requirements, and notify the Government of further repairs, if any, required to be taken for safe and reliable operation of the Train. Upon receiving such report, the Parties agree to take action as may be necessary to procure safe and reliable operation of the Train.
- 17.8.3 To provide maintenance support in accordance with the provisions of this Agreement, the Concessionaire shall, without prejudice to its Maintenance Obligations, set up and operate, round-the-clock, a control centre (the “**Helpline**”) connected to the operation control centres of the Government (the “**Operation Control Centres**”) and the PR Teams of the Concessionaire. The Helpline shall provide such advice and guidance to the Operation Control Centres and PR Teams as may be necessary for performance of the Maintenance Obligations hereunder.

17.9 Damages for breach of Maintenance Obligations

- 17.9.1 In the event that the Concessionaire fails to repair or rectify any defect or deficiency in a Train, as set forth in the Maintenance Requirements and within the period

specified therein, it shall be deemed to be in breach of this Agreement and the Government shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the rate of [5% five per cent]] of the Haulage Charges [for the first 1000 kilometres] for the relevant year. Recovery of such Damages shall be without prejudice to the rights of the Government under this Agreement, including the right of Termination thereof.

- 17.9.2 The Damages set forth in Clause 17.9.1 may be assessed and specified forthwith by the Government; provided that the Government may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Concessionaire is otherwise in compliance with its Maintenance Obligations. The Concessionaire shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

17.10 De-commissioning due to Emergency

- 17.10.1 If, in the reasonable opinion of the Government, there exists an Emergency which warrants de-commissioning of a Train, the Government shall be entitled to de-commission the Train for so long as such Emergency and the consequences thereof warrant; provided that such de-commissioning and particulars thereof shall be notified by the Government to the Concessionaire without any delay, and the Concessionaire shall diligently carry out and abide by any reasonable directions that the Government may give for dealing with such Emergency.
- 17.10.2 The Concessionaire shall re-commission the Train as quickly as practicable after the circumstances leading to its de-commissioning have ceased to exist or have so abated as to enable the Concessionaire to re-commission the Train and shall notify the Government of the same without any delay.

17.11 Government's right to take remedial measures

In the event the Concessionaire does not maintain and/or repair the Trains in conformity with the provisions of this Agreement and the Maintenance Manual, and fails to commence remedial works within [15 (fifteen)] days of receipt of a notice in this regard from the Government, the Government shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to [20% (twenty per cent)] of such cost shall be paid by the Concessionaire to the Government as Damages.

17.12 Overriding powers of the Government

- 17.12.1 If in the reasonable opinion of the Government, the Concessionaire is in material breach of its obligations under this Agreement and, in particular, the Maintenance

Obligations, and such breach is causing or is likely to cause material hardship to the Government or render the use of a Train unsafe for operation, the Government 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 unsafe condition, as the case may be.

- 17.12.2 In the event that the Concessionaire, upon notice under the provisions of this Clause 17.12, fails to rectify or remove any hardship or unsafe situation affecting the operation of any Train, within [15 (fifteen)] days from the date of the notice, the Government may exercise overriding powers under this Clause 17.12 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or unsafe situation; provided that the exercise of such overriding powers by the Government shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that for any costs and expenses incurred by the Government in discharge of such obligations, the Government shall be entitled to recover them from the Concessionaire in accordance with the provisions of Clause 17.12 along with the Damages specified therein.
- 17.12.3 In the event of a national emergency, civil commotion or any such other event, the Government 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 Depot Site or Trains or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Government 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 the Government. It is agreed that the Concessionaire shall comply with such instructions as the Government may issue in pursuance of the provisions of this Clause 17.12, and shall provide assistance and cooperation to the Government, on a best effort basis, for performance of its obligations hereunder.

17.13 Restoration of loss or damage to the Trains

Save and except as otherwise expressly provided in this Agreement, in the event that the Train 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 Train conforms to the provisions of this Agreement.

17.14 Modifications to the Trains

The Concessionaire shall not carry out any material modifications to the Trains save and except where such modifications are necessary for the Trains to operate in conformity with the Specifications and Standards, Maintenance Obligations, Good

Industry Practice and Applicable Laws; provided that the Concessionaire shall notify the Government of the proposed modifications along with particulars thereof at least [15 (fifteen)] days before commencing work on such modifications and shall reasonably consider any suggestions that the Government may make within [15 (fifteen)] days of receiving the Concessionaire's proposal. For the avoidance of doubt, the Parties agree that the cost of any modifications hereunder shall be borne by the Concessionaire.

17.15 Washing Lines

- 17.15.1 The Government shall, for enabling the Concessionaire to undertake washing and cleaning of a Train once every day, provide the use of a Washing Line equipped with electricity and water supply. Provided that, the Concessionaire shall be permitted to conduct pit examination at the Washing Line only after travel of [7,000 (seven thousand) kilometres].
- 17.15.2 The Government shall, upon request from the Concessionaire to this effect, provide covered space of at least [20 (twenty) square meters] at each Washing Line to facilitate the Concessionaire in performing its Maintenance Obligations.
- 17.15.3 In discharge of its Maintenance Obligations, the Concessionaire shall, in accordance with Good Industry Practice, undertake inspection of Trains upon their arrival at the Washing Lines.
- 17.15.4 At least once every day, the Concessionaire shall undertake washing and cleaning of each Train, in accordance with the Good Industry Practice, within [3 (three)] hours from the time of arrival of the Train at the Washing Line.

17.16 Operation by the Government

- 17.16.1 The Concessionaire shall, at all times, operate the Trains in accordance with Good Industry Practice.
- 17.16.2 The Concessionaire shall provide an operation manual, to the Government (the "**Operation Manual**") for Trains. The Concessionaire shall provide [10 (ten)] copies of a provisional operation manual (the "**Provisional Operation Manual**") to the Government within [60 (sixty)] days of the Appointed Date. The Government may review the Provisional Operation Manual and convey its comments to the Concessionaire within a period of [60 (sixty)] days from the date of receipt thereof. The Concessionaire shall revise the Provisional Operation Manual, as may be necessary, and provide [100 (one hundred)] copies of the Operation Manual, in English and Hindi, no later than [6 (six)] months from the Appointed Date. The Operation Manual shall be revised and updated once every [3 (three)] years and the provisions of this Clause 17.16.2 shall apply, *mutatis mutandis*, to such revision.

17.16.3 The Operation Manual shall include:

- (a) instructions to drivers for operation of the Train;
- (b) instructions for troubleshooting;
- (c) dos and don'ts for drivers;
- (d) safety precautions to be taken by the driver;
- (e) rating and layout of equipment;
- (f) operating limits of installed systems;
- (g) control and safety features of the Train; and
- (h) instructions to drivers to retrieve the Train in case of axle lock.

17.17 Excuse from performance of obligations

The Concessionaire shall not be considered in breach of its obligations under this Agreement if any Train is not available for operation on account of any of the following:

- (a) an event of Force Majeure;
- (b) measures taken to ensure the safe operation of Trains except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or
- (c) compliance with a request from the Government or the directions of any Government Instrumentality.

Provided, that any such non-availability and particulars thereof shall be notified by the Concessionaire to the Government without any delay:

Notwithstanding the above, the Concessionaire shall keep all unaffected Trains available for operations.

17.18 Maintenance Report

No later than [7 (seven)] days after a scheduled maintenance, Unscheduled Maintenance or any maintenance carried out by the PR Team, as the case may be, the Concessionaire shall submit, in such form as the Government may specify, a report containing the particulars of maintenance carried out by the Concessionaire including:

- (a) an analysis of the defects and deficiencies affecting the performance or safe operation of the Train;
- (b) time of arrival of the Train in the Depot Site or the arrival of the PR Team at the site of Failure, as the case may be, and the time of departure of the Train from the Depot Site or the time of rectification of malfunction by the PR Team at the site of Failure, as the case may be, counter signed by the driver of the Train or by any other railway official in the event the driver is not available; and

- (c) details of Failure including date and time of such Failure, counter signed by the Government's representative.

17.19 Safety, breakdowns and accidents

- 17.19.1 The Concessionaire shall ensure safe conditions for the Users, and in the event of unsafe conditions, track damage, rolling stock damage, breakdown and accidents, it shall follow the relevant operating procedures. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.
- 17.19.2 The Concessionaire's responsibility for rescue operations on the Project shall include safe evacuation of all Users and Crew from the affected area as an initial response to any particular incident.
- 17.19.3 Upon occurrence of an accident, the Concessionaire shall follow all standard operating procedures as required under Applicable Laws. The Concessionaire shall be solely responsible for remedying any damage to the Train(s) or compensating any Users for injury or loss of life, on account of an accident, breakdown etc, in accordance with Applicable Laws.
- 17.19.4 Without prejudice to Clause 17.19.3, in the event that the Government is required to make payment of compensation, in accordance with Applicable Laws, to any User on account of an accident, the Concessionaire shall indemnify the Government for any compensation paid.
- 17.19.5 In the event of an accident on the Railway Network affecting Operations, the Operations of the Trains shall be according to the priority schedule prepared by the Government from time to time. It is clarified that the priority of the Trains shall be at par with the Specified Trains.

ARTICLE 18 SAFETY REQUIREMENTS

18.1 Safety Requirements

The Concessionaire shall develop, implement and administer a safety programme for providing a safe environment on or about the Trains, and the Depot Site, and shall comply with the safety requirements set forth in this Article 18 and Schedule – I (the “**Safety Requirements**”).

18.2 Guiding principles

- 18.2.1 Safety Requirements aim at reduction in injuries, loss of human life and damage to property resulting from accidents on account of the Trains or at the Depot Site, irrespective of the person(s) at fault.
- 18.2.2 Safety Requirements shall apply to all phases of supply, construction, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.

18.3 Obligations of the Concessionaire

- 18.3.1 The Concessionaire shall abide by the following to ensure safety of the Trains, Depot Site, human life and property:
 - (a) instructions issued by Commissioner of Railway Safety or the Government;
 - (b) Applicable Laws and Applicable Permits;
 - (c) A.C. Traction Manual, General Rules and Subsidiary Rules issued by the Government;
 - (d) provisions of this Agreement;
 - (e) relevant standards/guidelines contained in internationally accepted codes; and
 - (f) Good Industry Practice.
- 18.3.2 The Concessionaire shall impart safety training to its employees and shall at all times be responsible for observance of safety procedures by its staff, contractors and agents.
- 18.3.3 The Concessionaire shall be responsible for undertaking all the measures under its control to ensure safe operation of Trains.
- 18.3.4 The Concessionaire agrees that the Government shall be entitled to inspect any Train to verify adherence to Safety Requirements and the Concessionaire shall be obliged to facilitate such inspection and implement the corrective measures identified in such inspection.

- 18.3.5 Prior to each Operation, the Government shall provide safety certification for each Train through the Safety Certification Officer. The safety certification shall be conducted in accordance with Applicable Laws and the prevalent practices of the Government. The Parties expressly agree that notwithstanding anything to the contrary contained herein, the safety certification conducted by the Government shall not relieve or absolve the Concessionaire of its obligations and liabilities under this Agreement in any manner whatsoever. In the event that the Concessionaire contests the safety certification, the Dispute Resolution Procedure shall apply.

18.4 Annual Safety Report

- 18.4.1 The Concessionaire shall submit to the Government before the [31st (thirty first)] May of each Accounting Year, an annual report in [10 (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 for averting or minimizing such accidents in future (“**Annual Safety Report**”).
- 18.4.2 Once in every Accounting Year, a safety audit shall be carried out by the Government. It shall review and analyse the Annual Safety Report and accident data of the preceding Accounting Year and undertake an inspection of the Trains and Project Assets. The Government shall provide a safety report recommending specific improvements, if any, required to be made in the Trains and Project Assets. Such recommendations shall be implemented by the Concessionaire in accordance with Safety Requirements, Specifications and Standards and Applicable Laws.

ARTICLE 19

MONITORING OF MAINTENANCE

19.1 Monthly status reports

- 19.1.1 During the Concession Period, the Concessionaire shall, no later than [7 (seven)] days after the end of each month, furnish to the Government a monthly report stating in reasonable detail the maintenance services performed by the Concessionaire on the Trains and the defects and deficiencies that require rectification. The report shall also include Key Performance Indicators achieved by the Trains and the compliance or otherwise with the Maintenance Requirements and Maintenance Manual. The Concessionaire shall promptly give such other relevant information as may be required by the Government.
- 19.1.2 The monthly report specified in Clause 19.1.1 shall also include a summary of the key operational hurdles and deliverables expected in the succeeding month along with strategies for addressing the same and for otherwise improving the Concessionaire's operational performance.

19.2 Reports of unusual occurrence

The Concessionaire shall, prior to the close of each day, send to the Government, by facsimile or e-mail, a report stating the Failures, accidents and unusual occurrences relating to the Trains. 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. For the purposes of this Clause 19.2, unusual occurrences on the Trains shall include:

- (a) Failure of Trains;
- (b) accidents involving malfunction of Trains;
- (c) trouble on Trains during operation; and
- (d) Unscheduled Maintenance performed on Trains.

19.3 Inspection

The Government shall be entitled to inspect the Trains after any scheduled or Unscheduled Maintenance, as the case may be, for evaluating the compliance of Trains with the Maintenance Obligations. It shall make a report of such inspection (the "**Maintenance Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Obligations and notify the Concessionaire of the same for taking remedial measures in accordance with the provisions of Clause 19.5.

19.4 Tests

For determining that the maintenance of Trains conforms to the Maintenance Obligations, the Government may require the Concessionaire to carry out, or cause to be carried out, the tests specified by it in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Government and furnish the results of such tests to the Government within [15 (fifteen)] days of such tests being conducted. One half of the costs incurred on such tests shall be reimbursed by the Government to the Concessionaire. Provided, however, that the Government shall not bear any costs hereunder for and in respect of Tests which have failed.

19.5 Remedial measures

- 19.5.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the Maintenance Inspection Report or in the test results referred to in Clause 19.4 and furnish a report in respect thereof to the Government within [15 (fifteen)] days of receiving the Maintenance Inspection Report or the test results, as the case may be.
- 19.5.2 The Government shall require the Concessionaire to carry out or cause to be carried out tests, at the cost of the Concessionaire, to determine whether the remedial measures have brought the Trains into compliance with the Maintenance Obligations and Safety Requirements, and the procedure set forth in this Clause 19.5 shall be repeated until the maintenance of Trains conforms to the Maintenance Obligations and Safety Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Government shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 17.9. For the avoidance of doubt, the remedial measures hereunder and the tests relating thereto shall be deemed as part of Unscheduled Maintenance.

19.6 Responsibility of the Concessionaire

- 19.6.1 It is expressly agreed between the Parties that any inspection carried out by the Government or the submission of any Maintenance Inspection Report by the Government as per the provisions of this Article 19 shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.
- 19.6.2 It is further agreed that the Concessionaire shall be solely responsible for adherence to the Key Performance Indicators specified in Article 20.

19.7 Monthly Fare Statement

During the Concession Period, the Concessionaire shall furnish to the Government, within [7 (seven)] days of completion of each month, a statement of Fare substantially in the form set forth in Schedule - J (the “**Monthly Fare Statement**”). The Concessionaire shall also furnish to the Government such other information as the Government may reasonably require, at specified intervals, in discharge of its statutory functions.

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ARTICLE 20

KEY PERFORMANCE INDICATORS

20.1 Key Performance Indicators

Without prejudice to the obligations specified in this Agreement, the Concessionaire shall maintain the Trains such that each Train achieves the performance indicators comprising Punctuality, Reliability, upkeep of Trains and conformity with ISO certification, as specified in this Article 20 (the “**Key Performance Indicators**”).

The Concessionaire shall ensure and procure compliance of each of the Key Performance Indicators specified in this Article 20 and for any shortfall in average performance during a quarter, it shall pay Damages, as applicable under this Article, within [30 (thirty)] days of the quarter in which the shortfall occurred.

20.2 Punctuality

- 20.2.1 The Concessionaire shall ensure that the Train is available at the originating Railway Station at least [30 (thirty) minutes] prior to the scheduled departure time and shall be Operated in accordance with the Train Operation Plan. A Train will be considered ready for departure only if the Concessionaire has informed the Government of the availability of the Train at the originating Railway Station, if the Certificate for Travel-Worthiness has been issued for the Train in accordance with Clause 17.5 and a safety certificate has been issued in accordance with Clause 18.3.5.
- 20.2.2 The punctuality for the Trains shall be calculated at the destination Railway Stations and shall be [100% (one hundred per cent)] for each Operation (“**Guaranteed Punctuality**”). For the avoidance of doubt, if the departure of a Train or the arrival of a Train is delayed for more than [15 (fifteen) minutes], it will be deemed to have lost punctuality.
- 20.2.3 The Concessionaire agrees that for any failure to meet the Guaranteed Punctuality for each Operation, for reasons which are not attributable to the Government or on account of Force Majeure, it shall pay to the Government [5% (five per cent)] of the Haulage Charges [for the first 1000 kilometres] for the relevant year as Damages for such failure.
- 20.2.4 If the Operation of a Train is cancelled on account of a Failure or for any other reasons, the Concessionaire shall make appropriate announcement to the Users and shall ensure refund of Fare to the Users in accordance with the Applicable Laws.
- 20.2.5 Subject to the provisions of Clause 20.2.2, if the Operation of a Train is delayed on account of the reasons attributable to the Government and the Concessionaire loses its slot for Operations then, the Government shall provide the next available slot to the Concessionaire for the affected Operation. The Government shall also pay

damages for the delay caused if such delay exceeds [1 (one) hour] at the rate of [5% (five per cent)] of the Haulage Charges [for the first 1000 kilometres] for the relevant year for each affected Operation.

20.3 Reliability

20.3.1 The reliability of each Train shall be calculated in terms of the mean distance travelled between two Failures, for the Train, in an Accounting Year. The Concessionaire shall ensure that the reliability of each Train shall be [200,000 km (two hundred thousand kilometres)] ("**Guaranteed Reliability**").

20.3.2 The Concessionaire agrees that for every reduction of [10,000 (ten thousand)] kilometres in the Guaranteed Reliability for each Train, it shall pay to the Government [5% (five per cent)] of the Haulage Charges [for the first 1000 kilometres] for the relevant year, in an Accounting Year, as Damages for such failure.

20.4 Upkeep of the Trains

20.4.1 The Concessionaire shall at all times procure that:

- (a) the toilets in the Train are clean, hygienic and free of odour;
- (b) there are adequate fire safety systems in the Train;
- (c) there is adequate security personnel present in the Train;
- (d) the interiors of the Trains are clean, hygienic and free of odour;
- (e) there are no rodents or pests on the Train;
- (f) there is adequate lighting inside the Trains, in conformity with the Specifications and Standards;
- (g) the temperature inside the Trains is maintained in accordance with Maintenance Requirements;
- (h) the food served in the Trains is clean, hygienic and of good quality;
- (i) the drinking water served in the Trains is clean and potable;
- (j) the linen and bed rolls provided in the Train are clean;
- (k) all train information systems, public address systems and lighting systems function efficiently; and
- (l) complaints relating to the Trains are addressed promptly.

20.4.2 The Concessionaire shall ensure and procure compliance of each of the Key Performance Indicators specified in this Clause 20.4 and for repeated shortfall in performance during a quarter, as may be determined by the Government for reasons to be recorded in writing based on passenger feedback and inspections by the Government, it shall pay Damages equal to [5% (five per cent)] of the Haulage Charges [for the first 1000 kilometres] for the relevant year, for such shortfall in any such performance indicator.

20.5 ISO certification

- 20.5.1 The Concessionaire shall within [2 (two) years and 6 (six) months] from the Appointed Date, achieve and thereafter maintain throughout the Concession Period, [ISO 9000:2005, ISO 14000:2004, ISO 18000:2007 and ISO 50000:2011] certification or a substitute thereof for the Trains, and shall provide a certified copy thereof to the Government forthwith.
- 20.5.2 In the event of default in obtaining the certification specified in Clause 20.5.1, the Concessionaire shall, within [15 (fifteen)] days thereof, submit to the Government an action plan that sets out the actions proposed to be taken by the Concessionaire for rectifying its deficiencies and obtaining such certification for all facilities in the Trains.
- 20.5.3 If the period of default in obtaining the ISO certification under this Clause 20.5 shall exceed a continuous period of [3 (three)] months, the Concessionaire shall pay Damages to the Government in an amount equal to [5% five per cent] of the Haulage Charges [for the first 1000 kilometres] for the relevant year for every [1 (one)] month of default beyond the aforementioned period of [3 (three)] months.

20.6 Monthly Report

The Concessionaire shall, no later than [7 (seven)] days after the end of each month, furnish to the Government a report stating the Key Performance Indicators of each Train as measured on a daily basis. The Concessionaire shall promptly give such other relevant information as may be required by the Government.

20.7 Passenger Charter

The Concessionaire shall publish and implement a charter articulating the rights and expectations of Users (the “**Passenger Charter**”) substantially in the form specified in Schedule - K. The Concessionaire shall at all times be accountable and liable to Users in accordance with the provisions of the Passenger Charter and Applicable Laws.

ARTICLE 21

TRAFFIC REGULATION AND SECURITY

21.1 Traffic regulation by the Concessionaire

- 21.1.1 The Concessionaire shall regulate the User traffic on the Trains in accordance with Applicable Laws and subject to the supervision and control of the Government.
- 21.1.2 The Concessionaire shall, in consultation with the Government and representatives of Users, evolve and publicise a system based on Good Industry Practice such that no User or category of Users is discriminated against or unduly favoured, as the case may be, in the use of the Trains.
- 21.1.3 The Concessionaire shall have the right and obligation to manage, operate and regulate the Trains on a common carrier basis providing non-discriminatory services to all persons.

21.2 Security

- 21.2.1 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 within the limits of the Trains for the prevention of theft, robbery, dacoity, terrorism, hijacking, sabotage and/or similar acts or occurrences; provided that the Government and the Concessionaire may at any time mutually enter into an agreement to jointly provide security services in the Trains.
- 21.2.2 The Concessionaire shall abide by and implement any instructions of the Government for enhancing the security within the Trains. The Concessionaire shall not be entitled to any compensation for disruption of its operations or loss or damage resulting from the Government's actions or the actions of any organisation authorised by the Government other than those resulting from wilful or grossly negligent acts or omissions of such organisation. The Government agrees that it shall cause the relevant organisations to take such actions as reasonably deemed necessary by them, without unduly or unreasonably disrupting the operations of the Trains or interfering with the exercise of rights or fulfilment of obligations by the Concessionaire under this Agreement. The Concessionaire agrees that it shall extend its full support and cooperation to the Government and to the other organisations authorised by the Government in the discharge of their obligations thereunder.
- 21.2.3 Subject to the rights of the Concessionaire under this Clause 21.2, the Government or any agency duly authorised by it shall be entitled to inspect and search all Trains and to search any person or vehicle entering the Depot Site or departing there from, without unduly or unreasonably disrupting the operations of the Trains.

- 21.2.4 The Government agrees that it shall, at the request of the Concessionaire, procure and provide the services of security forces of the Government on a best efforts basis.
- 21.2.5 The Government shall ensure and procure that the personnel of the Concessionaire and all its contractors, suppliers, sub-contractors and agents and the Users of the Trains are allowed free ingress and egress from the limits of the Railway Network without any unreasonable interference by the personnel of the Government, including the security personnel employed by or on behalf of the Government.
- 21.2.6 The Government and the Concessionaire shall jointly make best endeavours to ensure that the security of the Trains is maintained such that the level of risk premium under insurance covers (if any) that is to be borne by the Concessionaire shall be at the lowest possible rate. The Parties hereto agree that in the event of a significant rise in such risk premium arising out of a change in the security environment, the Concessionaire shall, notwithstanding anything to the contrary contained in this Agreement, be entitled to pass on [80% (eighty per cent)] of such increase to the Users by means of a corresponding increase in Fares.

ARTICLE 22

TRAFFIC CENSUS AND SAMPLING

22.1 Traffic census and Train operations

The Concessionaire shall install, maintain and operate a train monitoring system, and collect data relating to PKM, the number of Users, distance travelled, frequency and capacity of Trains, travel time and Fare breakdown and Fare collected. A statement of such data shall be compiled and furnished forthwith by the Concessionaire to the Government substantially in the forms specified in Schedule - L.

22.2 Traffic survey

The Government may require the Concessionaire to conduct, during each year of the Concession Period, a detailed traffic survey at such frequency and on such days as the Government may specify, provided that the cumulative period of such survey shall not exceed [7 (seven)] days in a year. The Concessionaire shall, at its own cost, carry out or cause to be carried out, the survey in the form and manner reasonably specified by the Government and furnish a detailed report thereof within [15 (fifteen)] days of the completion of each survey. For the avoidance of doubt, the Government may also conduct traffic surveys, in such manner as it deems fit and at its own cost, through any agency designated by it for this purpose.

22.3 Traffic sampling

- 22.3.1 For determining the actual traffic on the Project, the Government shall be entitled to inspect the relevant records of the Concessionaire, and may, at its own cost, undertake traffic sampling substantially in the manner set forth in Schedule - L or in such manner as the Parties may agree upon. The Concessionaire shall provide such assistance as the Government may reasonably require for such User traffic sampling.
- 22.3.2 If the traffic sampling pursuant to this Clause 22.2 demonstrates that the actual traffic is more than the traffic reported by the Concessionaire, the traffic determined by the traffic sampling shall be deemed to be the traffic for purposes of this Agreement and in the event of any Dispute relating to the traffic sampling, the Dispute Resolution Procedure shall apply.

22.4 Computer systems and network

The Concessionaire shall install, operate and maintain a computer system with round-the-clock connections to the networks of the Government and other related entities for exchange of data and information useful or necessary for efficient and transparent regulation and management of traffic. For this purpose, it shall follow such protocol for Electronic Data Interchange (the “**EDI**”) as the Government may specify. For the avoidance of doubt, it is agreed that the form specified in Schedule - L may be

modified by the Government from time to time for conforming to the requirements and output of EDI.

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ARTICLE 23 INDEPENDENT ENGINEER

23.1 Appointment of Independent Engineer

The Government shall appoint a consulting engineering firm substantially in accordance with the selection criteria set forth in Schedule - M, to be the independent consultant under this Agreement (the “**Independent Engineer**”). The appointment shall be made no later than [90 (ninety)] days from the date of this Agreement and shall be for a period of [3 (three)] years. On expiry or termination of the aforesaid appointment, the Government shall appoint an Independent Engineer for a further term of [3 (three)] years in accordance with the provisions of Schedule - M, and such procedure shall be repeated after expiry of each appointment.

23.2 Duties and functions

- 23.2.1 The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule - N.
- 23.2.2 The Independent Engineer shall submit regular periodic reports (at least once every month) to the Government in respect of its duties and functions set forth in Schedule - N.
- 23.2.3 A true copy of all communications sent by the Government to the Independent Engineer and by the Independent Engineer to the Government shall be sent forthwith by the Independent Engineer to the Concessionaire.
- 23.2.4 A true copy of all communications sent by the Independent Engineer to the Concessionaire and by the Concessionaire to the Independent Engineer shall be sent forthwith by the Independent Engineer to the Government.

23.3 Remuneration

The remuneration, cost and expenses of the Independent Engineer shall be paid by the Government and subject to the limits set forth in Schedule - N, one-half of such remuneration, cost and expenses shall be reimbursed by the Concessionaire to the Government within [15 (fifteen)] days of receiving a statement of expenditure from the Government.

23.4 Termination of appointment

- 23.4.1 The Government 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 23.1.

- 23.4.2 If the Concessionaire 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 Government and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Government shall hold a tripartite meeting with the Concessionaire and Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Government and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Engineer is terminated hereunder, the Government shall appoint forthwith another Independent Engineer in accordance with Clause 23.1.

23.5 Authorised signatories

The Government shall require the Independent Engineer to designate and notify to the Government 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.

23.6 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.

23.7 Interim arrangement

In the event that the Government does not appoint an Independent Engineer, or the Independent Engineer so appointed has relinquished its functions or defaulted in discharge thereof, the Government may, in the interim, designate and authorise any person to discharge the functions of the Independent Engineer in accordance with the provisions of this Agreement, save and except that such person shall not exercise any functions relating to review, comment, approval or inspection as specified in this Agreement for and in respect of the Independent Engineer, and such functions shall be discharged as and when an Independent Engineer is appointed in accordance with the provisions of this Agreement. Provided, however, that nothing contained in this Clause 23.7 shall in any manner restrict the rights of the Government to enforce compliance of the provisions of this Agreement.

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Part IV

Financial Covenants

ARTICLE 24 CONCESSION FEE

24.1 Concession Fee

In consideration of the grant of Concession, the Concessionaire shall pay to the Government by way of concession fee a sum of Re.1 (Rupee one) per annum and the Revenue Share specified in Clause 24.2 (the “**Concession Fee**”).

24.2 Additional Concession Fee

24.2.1 Without prejudice to the provisions of Clause 24.1, on and from the date of commencement of Operations of the Trains, in accordance with Clause 15.1, the Concessionaire agrees to pay to the Government, revenue share (the “**Revenue Share**”) in the form of an additional Concession Fee equal to {%(per cent)}³ of the Gross Revenue during that year throughout the Concession Period.

24.2.2 The Revenue Share payable under Clause 24.2.1 shall be deemed to be part of the Concession Fee for the purposes of this Agreement.

24.3 Haulage Charges

24.3.1 The Concessionaire shall pay to the Government, in accordance with Clause 24.4, Haulage Charges from the date of commencement of Operations of the Trains in accordance with Clause 15.1, at the rate set out in Schedule – E and the same shall be revised annually in accordance with Clause 24.3.2.

24.3.2 The Haulage Charges shall be indexed to [60% (sixty per cent)] of the WPI as on the Base Index Date and revised every [2 (two)] years.

24.4 Payment of Concession Fee

24.4.1 The Concession Fee payable under the provisions of this Article 24 shall be due and payable in monthly instalments. Within [7 (seven)] days of the close of each month, the Concessionaire shall pay to the Government against the Concession Fee, a provisional amount calculated on the basis of the Gross Revenue of the immediately preceding month, and final settlement thereof, based on audited accounts of the Concessionaire, shall be made within [120 (one hundred and twenty)] days of completion of the respective Accounting Year.

24.4.2 The Haulage Charges shall be payable each [month], within [7 (seven)] days of the end of each month.

³ As provided in the bid.

24.5 Verification of Gross Revenue

- 24.5.1 The Government may, in order to satisfy itself that the Concessionaire is reporting its Gross Revenue honestly and faithfully, depute its representatives to the Project and the offices of the Concessionaire, and undertake such other measures and actions as it may deem necessary, to ascertain the actual Revenues.
- 24.5.2 If the verification of Revenues pursuant to this Clause 24.5 demonstrates that the Gross Revenue is more than the amount reported by the Concessionaire, the Government shall, for the purpose of determining the average daily Revenues, be entitled to undertake traffic sampling for a continuous period of [15 (fifteen)] days in accordance with Clause 22.3. The Parties hereto agree that if the average daily Revenue determined under this Clause 24.5.2 exceeds the average daily Revenue reported by the Concessionaire during the preceding month by [1% (one per cent)] thereof, the difference between such daily Revenue and the daily Gross Revenue shall be multiplied by [180 (one hundred and eighty)] and the product thereof shall be paid as Damages by the Concessionaire to the Government, and in the event of any Dispute relating to the traffic sampling, the Dispute Resolution Procedure shall apply. For the avoidance of doubt, it is agreed that seasonal variations in traffic volume shall be determined by the Independent Engineer on the basis of past trends and other relevant information, and due weightage shall be assigned to such variations in computing the Gross Revenue payable under this Clause 24.5.2.

ARTICLE 25

USER FARE

25.1 Collection and appropriation of Fare

- 25.1.1 The Concessionaire shall have the sole and exclusive right to demand, collect and appropriate Fare from the Users for the use of the Trains in accordance with this Agreement, on and from the date of commencement of Operations of the Trains, in accordance with Clause 15.1, till the Transfer Date.
- 25.1.2 The Concessionaire acknowledges and agrees that upon payment of Fare, any User shall be entitled to use the Trains and the Concessionaire shall not place, or cause to be placed, any restriction on such use, except to the extent specified in any Applicable Law, Applicable Permit or the provisions of this Agreement.

25.2 Determination and Revision of Fare

- 25.2.1 The Parties hereto acknowledge and agree that the Fare and the charges for the use of the Ancillary Facilities from the Users shall be determined and/or revised by the Concessionaire, at its sole discretion on a non-discriminatory basis.
- 25.2.2 The Concessionaire shall include as part of the Fare, charges for the use of the Railway Station, as notified by the Government. Notwithstanding anything contained in this Agreement, the charges so collected from the Users shall be transferred every month into an account designated for such charges by the Government and shall not be counted towards the Gross Revenue.

25.3 Additional charge for evasion of Fare

In the event that any person uses the Trains without payment of Fare due, the Concessionaire shall, subject to Applicable Law and Applicable Permits, be entitled to determine and collect from such person the Fare due and the amount thereof towards predetermined liquidated damages for attempting to make unauthorised use of the Trains; provided that the determination and collection of such Fare and liquidated damages shall be at the risk and cost of the Concessionaire and the Government shall not in any manner be liable on account thereof.

25.4 Discounted Fare for frequent Users

The Concessionaire may allow for a discount of up to [20% (twenty per cent)] on the Fare if a User undertakes a return trip on the Train.

25.5 Display of Fare

The Concessionaire shall, at all entry points of the Railways Stations, on the websites where it sells tickets for the Trains and near the ticketing booth/counters at Railway Stations, prominently display the applicable rates of Fare for information of the Users.

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ARTICLE 26

ESCROW ACCOUNT

26.1 Escrow Account

- 26.1.1 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.
- 26.1.2 The nature and scope of the Escrow Account are fully described in the agreement (the “**Escrow Agreement**”) to be entered into amongst the Concessionaire, the Government, the Escrow Bank and the Senior Lenders through the Lenders’ Representative, which shall be substantially in the form set forth in Schedule - O.

26.2 Deposits into Escrow Account

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

- (a) all Revenues from or in respect of the Project, including the proceeds of any rentals, deposits, capital receipts or insurance claims; and
- (b) all payments by the Government, if any, after deduction of any outstanding Concession Fee.

26.3 Withdrawals during Concession Period

- 26.3.1 The Concessionaire shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, *inter alia*, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due:
- (a) statutory payments, all Taxes due and payable by the Concessionaire for and in respect of the Project;
 - (b) Concession Fee due and payable to the Government;
 - (c) all payments as may be due and payable to the Government pursuant to this Agreement and/ or the Damages certified by the Government as due and payable to it by the Concessionaire under this Agreement;
 - (d) balance, if any, in accordance with the instructions of the Concessionaire.
- 26.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 26.3.1, except with the prior written approval of the Government.

26.4 Withdrawals upon Termination

- 26.4.1 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) payroll dues and related statutory payments thereof, all Taxes due and payable by the Concessionaire for and in respect of the Project;
 - (b) outstanding Concession Fee;
 - (c) all other amounts which are outstanding to be paid by the Concessionaire to the Government, as on the date of the Termination;
 - (d) all payments as may be due and payable to the Government pursuant to this Agreement and/ or the Damages certified by the Government as due and payable to it by the Concessionaire; and
 - (e) balance, if any, in accordance with the instructions of the Concessionaire.
- 26.4.2 The provisions of this Article 26 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 26.4.1 have been discharged.

ARTICLE 27 INSURANCE

27.1 Insurance during Concession Period

The Concessionaire shall effect and maintain at its own cost, during the Concession 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 Practices. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Government as a consequence of any act or omission of the Concessionaire during the Concession Period. The Concessionaire shall procure that in each insurance policy, the Government shall be a co-insured and that the insurer shall pay the proceeds of insurance into the Escrow Account. For 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.

The Government shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Government, during the Concession Period.

27.2 Insurance Cover

Without prejudice to the provisions contained in Clause 27.1, the Concessionaire shall, during the Concession Period, procure and maintain Insurance Cover including but not limited to the following:

- (a) Claims and losses suffered by the Users including claims in respect of loss of life, bodily injury, luggage and goods;
- (b) Loss, damage or destruction of the Project Assets, including assets handed over by the Government to the Concessionaire, at replacement value;
- (c) comprehensive third party liability insurance including injury to or death of personnel of the Government;
- (d) the Concessionaire's general liability arising out of the Concession;
- (e) liability to third parties for goods or property damage; and
- (f) 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 (a) to (d) above.

27.3 Notice to the Government

No later than [45 (forty five)] days prior to commencement of the Concession Period, as the case may be, the Concessionaire shall by notice furnish to the Government, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 27. Within [30 (thirty)] days of receipt of such notice, the Government 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.

27.4 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 27 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 the Government, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least [45 (forty five)] days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Government.

27.5 Remedy for failure to insure

If the Concessionaire fails to effect and keep in force all insurances which it is required to obtain pursuant hereto, the Government 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.

27.6 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 27 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Government, 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.

27.7 Concessionaire's waiver

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

27.8 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 26.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement or delivery of the Project and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

27.9 Compliance with conditions of insurance policies

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

ARTICLE 28

ACCOUNTS AND AUDIT

28.1 Audited accounts

- 28.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including all Revenues derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with the provisions of 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. The Government 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 the Government 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.
- 28.1.2 The Concessionaire shall, within [30 (thirty)] days of the close of each quarter of an Accounting Year, furnish to the Government 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.
- 28.1.3 On or before the [31st (thirty-first)] day of May each year, the Concessionaire shall provide to the Government, 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 Trains and liable for payment of Fare therefor, (b) Fare charged and received and Revenues derived from the Operations of the Trains, and (c) such other information as the Government may reasonably require.

28.2 Appointment of Auditors

- 28.2.1 The Concessionaire shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of [5 (five)] reputable firms of chartered accountants (the “**Panel of Chartered Accountants**”), such list to be prepared substantially in accordance with the criteria set forth in Schedule - P. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.

28.2.2 The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of [45 (forty five)] days to the Government, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.

28.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Government shall have the right but not the obligation, to appoint at its cost from time to time and at any time, another firm from the Panel of Chartered Accountants (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.

28.3 Certification of claims by Statutory Auditors

Any claim or document provided by the Concessionaire to the Government 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. For avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business including submission of Monthly Fare Statements in accordance with Clause 19.7.

28.4 Set-off

In the event any amount is due and payable by the Government to the Concessionaire, it may set-off any sums payable to it by the Concessionaire and pay the balance remaining. Any exercise by the Government of its rights under this Clause 28.4 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

28.5 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 the Government by recourse to the Dispute Resolution Procedure.

Part V

Force Majeure and Termination

ARTICLE 29

FORCE MAJEURE

29.1 Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 29.2, 29.3 and 29.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (c) has Material Adverse Effect on the Affected Party.

29.2 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 Railway Network);
- (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 Project 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 29.3;
- (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 the Government;

- (f) the discovery of geological conditions, toxic contamination or archaeological remains on the Depot 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.

29.3 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) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or Operation of the Project to be financially unviable or otherwise not feasible;
- (c) 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;
- (d) any civil commotion, boycott or political agitation which prevents collection of Fare by the Concessionaire for an aggregate period exceeding [7 (seven)] days in an Accounting Year;
- (e) failure of the Government to permit the Concessionaire to continue the Operation of the Project, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds or for any other reason;
- (f) 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;
- (g) any Indirect Political Event that causes a Non-Political Event; or
- (h) any event or circumstances of a nature analogous to any of the foregoing.

29.4 Political Event

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

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 36 and its effect, in financial terms, exceeds the sum specified in Clause 36.1;
- (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.

29.5 Duty to report Force Majeure Event

29.5.1 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 29 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.

29.5.2 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.

29.5.3 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 29.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

29.6 Effect of Force Majeure Event on the Concession

29.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 4.1 for fulfilment of Conditions Precedent shall be extended by a period equal in length to the duration of the Force Majeure Event.

29.6.2 At any time after the Appointed Date, if any Force Majeure Event occurs:

- (a) before the date of commencement of Operations of the Trains, in accordance with Clause 15.1, the Concession Period shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
- (b) after the date of commencement of Operations of the Trains, in accordance with Clause 15.1, whereupon the Concessionaire is unable to Operate the Trains despite making best efforts or it is directed by the Government to suspend the Operations during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was prevented from Operating the Trains; provided that in the event of prevention of Operations of the Trains on account of partial inability or suspension, as the case may be, which causes the Gross Revenue to decline below [75% (seventy five per cent)] of the Average Daily Gross Revenue for the corresponding period over the preceding [2 (two) years], the Government shall extend the Concession Period in proportion to the loss of such Gross Revenue due to Force Majeure. For the avoidance of doubt, loss of [25% (twenty five per cent)] in Gross Revenue for [4 (four)] days as compared to the Average Daily Gross Revenue for the corresponding period during the preceding [2 (two) years] shall entitle the Concessionaire to the extension of [1 (one)] day in the Concession Period.

29.7 Allocation of costs arising out of Force Majeure

- 29.7.1 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.
- 29.7.2 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 the Government to the Concessionaire; and
 - (c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Government to the Concessionaire.

For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Revenues or 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.

- 29.7.3 Save and except as expressly provided in this Article 29, 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.

29.8 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 29, 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)] day period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

29.9 Termination Payment for Force Majeure Event

- 29.9.1 The Concessionaire shall not be entitled to any Termination Payment if the Agreement is Terminated on account of occurrence of a Force Majeure Event prior to the date of commencement of Operations of the Trains, in accordance with Clause 15.1.
- 29.9.2 If Termination is on account of a Non-Political Event, the Government shall not make any Termination Payment to the Concessionaire.
- 29.9.3 If Termination is on account of an Indirect Political Event, the Government shall pay to the Concessionaire an amount equal to [100% (one hundred percent)] of the Adjusted Depreciated Value of the Procured Trains, 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 Termination Payment.
- 29.9.4 If Termination is on account of a Political Event, the Government shall pay to the Concessionaire the same amount as would be payable on account of Termination due to a Government Default.

29.10 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.

29.11 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.

29.12 Relief for Unforeseen Events

2.12.1 Upon occurrence of an unforeseen event, situation or similar circumstances not contemplated or referred to in this Agreement, and which could not have been foreseen by a prudent and diligent person (the “**Unforeseen Event**”), any Party may by notice inform the other Party of the occurrence of such Unforeseen Event with the particulars thereof and its effects on the costs, expense and revenues of the Project. Within [15 (fifteen)] days of such notice, the Parties shall meet and make efforts in good faith to determine if such Unforeseen Event has occurred, and upon reaching agreement on occurrence thereof deal with it in accordance with the provisions of this Clause 29.12.

29.12.2 Upon determination of the occurrence of an Unforeseen Event, the Parties shall make a reference to a conciliation tribunal which shall comprise one member each to be nominated by both Parties from among persons who have been Judges of a High Court and the conciliators so nominated shall choose a chairperson who has been a Judge of the Supreme Court or Chief Justice of a High Court.

29.12.3 The conciliation tribunal referred to in Clause 29.12.2 shall conduct its proceedings in accordance with the provisions of Article 39 as if it is an arbitration proceeding under that Article, save and except as provided in this Clause 29.12.

29.12.4 The conciliation tribunal referred to in this Clause 29.12 shall conduct preliminary proceedings to satisfy itself that –

- (a) an Unforeseen Event has occurred;
- (b) the effects of such Unforeseen Event cannot be mitigated without a remedy or relief which is not contemplated in the Agreement; and
- (c) the Unforeseen Event or its effects have not been caused by any Party by any act or omission or its part,

and if the conciliation tribunal is satisfied that each of the conditions specified hereinabove is fulfilled, it shall issue an order to this effect and conduct further proceedings under this Clause 29.12.

29.12.5 Upon completion of the conciliation proceedings referred to in this Clause 29.12, the conciliation tribunal may by a reasoned order make recommendations which shall be:

- (a) based on a fair and transparent justification;

- (b) no greater in scope than is necessary for mitigating the effects of the Unforeseen Event;
- (c) of no greater duration than is necessary for mitigating the effects of the Unforeseen Event; and
- (d) quantified and restricted in terms of relief or remedy.

29.12.6 Within [15 (fifteen)] days of receiving the order referred to in Clause 29.12.5, the Parties shall meet and make efforts in good faith to accept, in whole or in part, the relief or remedy recommended by the conciliation tribunal for mitigating the effects of the Unforeseen Event and to procure implementation of the Project in accordance with the provisions of this Agreement. In pursuance hereof, the Parties may enter into a Memorandum of Understanding (the “**MoU**”) setting forth the agreement reached hereunder, and the terms of such MoU shall have force and effect as if they form part of the Agreement.

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ARTICLE 30

COMPENSATION FOR BREACH OF AGREEMENT

30.1 Compensation for default by the Concessionaire

Subject to the provisions of Clause 30.5, in the event of the Concessionaire being in material breach or default of this Agreement, it shall pay to the Government by way of compensation, all direct costs suffered or incurred by the Government as a consequence of such material breach or default, within [30 (thirty)] days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 30.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Government.

30.2 Compensation for default by the Government

Subject to the provisions of Clause 30.5, in the event of the Government being in material breach or default 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 breach or default 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, O&M Expenses, 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 Revenues, debt repayment obligations or other consequential losses, and for determining such compensation, information contained in the Financial Package may be relied upon to the extent it is relevant.

30.3 Extension of Concession Period

Subject to the provisions of Clause 30.5, in the event that a material breach or default of this Agreement set forth in Clause 30.2 causes delay in achieving commencement of Operations of the Trains, in accordance with Clause 15.1, or leads to suspension of or reduction in the realisation of Gross Revenues, as the case may be, the Government shall, in addition to payment of compensation under Clause 30.2, extend the Concession Period, such extension being equal in duration to the period by which the commencement of Operations of the Trains, in accordance with Clause 15.1, was delayed or the Gross Revenue was reduced on account thereof, as the case may be; and in the event of reduction in Gross Revenue to decline below [75% (seventy five per cent)] of the Average Daily Gross Revenue for the corresponding period during the preceding [2 (two)] years, the Government shall, in addition to payment of compensation hereunder, extend the Concession Period in proportion to the loss of Gross Revenue. For the avoidance of doubt, loss of [25% (twenty five per cent)] in

realisation of Gross Revenue for [4 (four)] days, as compared to the Average Daily Gross Revenue for the corresponding period during the preceding [2 (two)] years shall entitle the Concessionaire to extension of [1 (one)] day in the Concession Period.

30.4 Compensation to be in addition

Compensation payable under this Article 30 shall be in addition to, and without prejudice to, the other rights and remedies of the Parties under this Agreement including Termination thereof.

30.5 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.

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ARTICLE 31

SUSPENSION OF CONCESSIONAIRE'S RIGHTS

31.1 Suspension upon Concessionaire Default

Upon occurrence of a Concessionaire Default, the Government shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (a) suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right to collect Fare, and other Revenues pursuant hereto, and (b) exercise such rights itself and perform the obligations hereunder or authorise any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Government to the Concessionaire and may extend up to a period not exceeding [180 (one hundred and eighty)] days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lenders' Representative, the Government shall extend the aforesaid period of [180 (one hundred and eighty)] days by a further period not exceeding [90 (ninety)] days.

31.2 Government to act on behalf of Concessionaire

- 31.2.1 During the period of Suspension, the Government shall, on behalf of the Concessionaire, collect all Revenues under and in accordance with this Agreement and deposit the same in the Escrow Account. The Government shall be entitled to make withdrawals from the Escrow Account for meeting the O&M Expenses and for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Clause 26.3.
- 31.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest in the Concessionaire and all things done or actions taken, including expenditure incurred by the Government for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Government for all costs incurred during such period. The Concessionaire hereby licences and sub-licences respectively, the Government or any other person authorised by it under Clause 31.1 to use during Suspension, all Intellectual Property belonging to or licenced to the Concessionaire with respect to the Project and its design, engineering, construction, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

31.3 Revocation of Suspension

- 31.3.1 In the event that the Government shall have rectified or removed the cause of Suspension within a period not exceeding [90 (ninety)] days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Government may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.
- 31.3.2 Upon the Concessionaire having cured the Concessionaire Default within a period not exceeding [90 (ninety)] days from the date of Suspension, the Government shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

31.4 Termination

- 31.4.1 At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to step-in in accordance with the Agreement, and upon receipt of notice there under from the Lenders' Representative, the Government shall withhold Termination for a period not exceeding [180 (one hundred and eighty)] days from the date of Suspension, and any extension thereof under Clause 31.1, for enabling the Lenders' Representative to exercise its step-in right on behalf of Senior Lenders.
- 31.4.2 At any time during the period of Suspension under this Article 31, the Concessionaire may by notice require the Government to revoke the Suspension and issue a Termination Notice. The Government shall, within [15 (fifteen)] days of receipt of such notice, terminate this Agreement under and in accordance with Article 31.
- 31.4.3 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within [180 (one hundred and eighty)] days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 31.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, mutatis mutandis, to such Termination as if a Termination Notice had been issued by the Government upon occurrence of a Concessionaire Default.

ARTICLE 32 TERMINATION

32.1 Termination for Concessionaire Default

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

- (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) the Concessionaire abandons or manifests intention to abandon the Project without the prior written consent of the Government;
- (c) 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;
- (d) the Concessionaire does not achieve any Project milestone due in accordance with the Project Schedule and continues to be in default for [90 (ninety)] days;
- (e) the Concessionaire has failed to make any payment to the Government within the period specified in this Agreement;
- (f) an Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of [15 (fifteen)] days;
- (g) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- (h) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (i) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (j) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- (k) 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;
- (l) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- (m) 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;

- (n) the Concessionaire has been, or is in the process of being amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Government, a Material Adverse Effect; 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;
- (o) occurrence of any Insolvency Event;
- (p) 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;
- (q) the Concessionaire submits to the Government any statement, notice or other document, in written or electronic form, which has a material effect on the Government's rights, obligations or interests and which is false in material particulars;
- (r) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;
- (s) the Concessionaire issues a Termination Notice in violation of the provisions of this Agreement; or
- (t) the Concessionaire commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Government.

32.1.2 Without prejudice to any other rights or remedies which the Government may have under this Agreement, upon occurrence of a Concessionaire Default, the Government shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Government 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 32.1.3.

32.1.3 The Government shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 32.1.2 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 exercise its step-in rights in accordance with Clause 32.6. In the event the Government 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' step-in right in accordance with Clause 32.6.

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, the Government shall withdraw its notice referred to above and restore all the rights of the Concessionaire:

Provided further that upon written request from the Lenders' Representative and the Concessionaire, the Government shall extend the aforesaid period of [180 (one hundred and eighty)] days by such further period not exceeding [90 (ninety)] days, as the Government may deem appropriate.

32.2 Termination for Government Default

32.2.1 In the event that any of the defaults specified below shall have occurred, and the Government fails to cure such default within a Cure Period of [90 (ninety)] days or such longer period as has been expressly provided in this Agreement, the Government shall be deemed to be in default of this Agreement (the "**Government 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 the following:

- (a) the Government commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;
- (b) the Government has failed to make any payment to the Concessionaire within the period specified in this Agreement;
- (c) the Government fails to provide access to the Depot Site or the Washing Line, within a period of [180 (one hundred and eighty) days] from the Appointed Date;
- (d) the Government fails to provide access to the Railway Network for the Operations of the Trains, within a period of [180 (one hundred and eighty) days] from the Appointed Date; or
- (e) the Government repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

- 32.2.2 Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of a Government Default, the Concessionaire shall be entitled to terminate this Agreement by issuing a Termination Notice to the Government; provided that before issuing the Termination Notice, the Concessionaire shall by a notice inform the Government of its intention to issue the Termination Notice and grant [15 (fifteen)] days to the Government 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.

32.3 Termination Payment

- 32.3.1 The Concessionaire shall not be entitled to any Termination Payment if the Agreement is Terminated on account of occurrence of a Concessionaire Default, prior to the date of commencement of Operations of the Trains, in accordance with Clause 15.1.
- 32.3.2 Upon Termination on account of a Concessionaire Default, after the date of commencement of Operations of the Trains, in accordance with Clause 15.1, the Government shall pay to the Concessionaire, by way of Termination Payment, an amount equal to an amount equal to [70% (seventy percent)] of the Adjusted Depreciated Value of the Procured Trains less Insurance Cover.
- 32.3.2 Upon Termination on account of a Government Default, after the date of commencement of Operations of the Trains, in accordance with Clause 15.1, the Government shall pay to the Concessionaire, by way of Termination Payment, an amount equal to [130% (one hundred and thirty percent)] of the Adjusted Depreciated Value of the Procured Trains.
- 32.3.3 Termination Payment shall become due and payable to the Concessionaire within [15 (fifteen)] days of a demand being made by the Concessionaire to the Government with the necessary particulars, and in the event of any delay, the Government shall pay interest at a rate equal to [3% (three per cent)] above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed [90 (ninety)] days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Government of its payment obligations in respect thereof hereunder.
- 32.3.4 Upon Termination on expiry of the Concession Period by efflux of time, no Termination Payment shall be due and payable to the Concessionaire.
- 32.3.5 The Concessionaire expressly agrees that Termination Payment under this Article 32 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.

32.4 Other rights and obligations of the Government

Upon Termination for any reason whatsoever, the Government shall:

- (a) take possession and control of the Trains and the Depot Site;
- (b) take possession and control of all materials, stores, implements, plants and equipment on or about the Depot Site;
- (c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Depot Site or any part of the Government premises;
- (d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 33.1; and
- (e) succeed upon election by the Government, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Government 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 the Government elects to succeed to the interests of the Concessionaire. For 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 the Government shall not in any manner be liable for such sums. It is further agreed that in the event the Government elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Government for this purpose shall be deducted from the Termination Payment.

32.5 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 32.4, 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.

32.6 Step-in rights of Senior Lenders

Upon occurrence of a Concessionaire Default, the Senior Lenders shall be entitled to exercise step-in rights in accordance with their Financing Agreements, and upon receipt of a notice from the Senior Lenders in pursuance thereof, the Government shall withhold Termination for a period not exceeding [180 (one hundred and eighty)] days from such occurrence, for enabling the Senior Lenders to exercise such step-in rights. The Parties further agree that any entity substituted by the Senior Lenders in exercise of such step-in rights may be rejected by the Government in the event it does not fulfil the eligibility criteria specified in the Request for Qualification.

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ARTICLE 33

DIVESTMENT OF RIGHTS AND INTEREST

33.1 Divestment Requirements

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

- (a) notify to the Government forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of the Trains, free and clear of all Encumbrances;
- (c) deliver forthwith the actual or constructive possession of the Depot Site and the Washing Line, free and clear of all Encumbrances;
- (d) cure all Project Assets of all defects and deficiencies;
- (e) cure all defects and deficiencies so that the Trains are compliant with the Maintenance Requirements;
- (f) deliver and transfer relevant records, reports, Intellectual Property and other licenses pertaining to the Project and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto. 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, operation and maintenance of the Project and shall be assigned to the Government free of any encumbrance;
- (g) transfer and/or deliver all Applicable Permits to the extent permissible;
- (h) execute such deeds of conveyance, documents and other writings as the Government may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project Assets, 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 the Government, absolutely unto the Government or its nominee; and
- (i) 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 Project, free from all Encumbrances, absolutely unto the Government or to its nominee.

- 33.1.2 Subject to the exercise by the Government 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.
- 33.1.3 Upon termination on expiry of the Concession Period by efflux of time, the Concessionaire shall withdraw the Trains from the Railway Network.

33.2 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 34 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 33.

33.3 Cooperation and assistance on transfer of Project

- (a) 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, other members of the public or the lawful occupiers of any part of the Depot Site.
- (b) The Parties shall provide to each other, 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 the Government, its concessionaire or agent may reasonably require for operation of the Project until the expiry of [6 (six) months] after the Transfer Date.
- (c) The Government shall have the option to purchase or hire from the Concessionaire at a fair market value, determined by a reputed firm mutually agreed upon and appointed by the Parties, and free from any encumbrance all or any part of Project but which does not form part of the assets specified in Clause 33.1.1 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.

33.4 Vesting Certificate

The divestment of all rights, title and interest in the Project shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Government shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule – Q (the “**Vesting Certificate**”), which shall have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project, and their vesting in the Government 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 the Government or its nominee on, or in respect of, the Project on the footing that all Divestment Requirements have been complied with by the Concessionaire.

33.5 Divestment costs

- (a) The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project Assets in favour of the Government 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 the Government.
- (b) In the event of any dispute relating to matters covered by and under this Article 33, the Dispute Resolution Procedure shall apply.

ARTICLE 34

DEFECTS LIABILITY AFTER TERMINATION

34.1 Liability for Defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Project 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 Project 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 the Government in this behalf, the Government shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Project conform to the Maintenance Requirements. All costs incurred by the Government hereunder shall be reimbursed by the Concessionaire to the Government within [15 (fifteen)] days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Government shall be entitled to recover the same from the funds retained in the Escrow Account under the provisions of Clause 34.2 or from the Performance Guarantee provided thereunder. For the avoidance of doubt, the provisions of this Article 34 shall not apply if Termination occurs prior to the commencement of Operations of the Trains, in accordance with Clause 15.1.

34.2 Retention in Escrow Account

- 34.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 34.2.3, a sum equal to [5% (five percent)] of the Gross Revenue 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 34.1.
- 34.2.2 Without prejudice to the provisions of Clause 34.2.1, the Independent Engineer shall carry out an inspection of the Project at any time between [210 (two hundred and ten)] and [180 (one hundred and eighty)] days prior to the Termination and if it recommends that the status of the Project is such that the sum larger than the amount stipulated in Clause 34.2.1 should be retained in Escrow Account and for a period longer than the aforesaid [120 (one hundred and twenty)] days, the amount recommended by the Independent Engineer shall be retained in the Escrow Account for the period specified by it.
- 34.2.3 The Concessionaire may, for the performance of its obligations under this Article 34, provide to the Government a guarantee from a Bank for a sum equivalent to the amount determined under Clause 34.2.1 or Clause 34.2.2. as the case may be, and for the period specified therein, substantially in the form set forth in Schedule - C (the "**Performance Guarantee**"), to be modified, *mutatis mutandis*, for this purpose, and

the Government 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 33. Upon furnishing of the Performance Guarantee under this Clause 34.2.3, the retention of funds in Escrow Agreement in terms of Clauses 34.2.1 or 34.2.2, as the case may be, shall be dispensed with.

Draft

Part VI

Other Provisions

ARTICLE 35 ASSIGNMENT AND CHARGES

35.1 Restrictions on assignment and charges

- 35.1.1 Subject to Clauses 35.2 and 35.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Government, which consent the Government shall be entitled to decline without assigning any reason.
- 35.1.2 Subject to the provisions of Clause 35.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party except with prior consent in writing of the Government, which consent the Government shall be entitled to decline without assigning any reason.

35.2 Permitted assignment and charges

The restraints set forth in Clause 35.1 shall not apply to:

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

35.4 Assignment by the Government

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

ARTICLE 36 CHANGE IN LAW

36.1 Increase in costs

If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds Rs. 5 crore (Rupees five crore) in any Accounting Year, the Concessionaire may so notify the Government and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in increased cost, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable but no later than [30 (thirty)] days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within [90 (ninety)] days of the aforesaid notice, the Concessionaire may by notice require the Government to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within [15 (fifteen)] days of receipt of such notice, along with particulars thereof, the Government shall pay the amount specified therein; provided that if the Government shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 36.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

36.2 Reduction in costs

If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds Rs. 5 crore (Rupees five crore) in any Accounting Year, the Government may so notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Government, the Parties shall meet, as soon as reasonably practicable but no later than [30 (thirty)] days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within [90 (ninety)] days of the aforesaid notice, the Government may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within [15 (fifteen)] days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the

amount specified therein to the Government; provided that if the Concessionaire shall dispute such claim of the Government, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 36.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

36.3 Protection of NPV

Pursuant to the provisions of Clauses 36.1 and 36.2 and for the purposes of placing the Concessionaire in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall endeavour to establish a net present value (the "NPV") of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred. For the avoidance of doubt, the Parties expressly agree that for determination of NPV, the discount rate shall be equal to the Bank Rate.

36.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 36 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than [1 (one)] year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than [2 (two)] years from the close of such Accounting Year.

36.5 No claim in the event of recovery from Users

Notwithstanding anything to the contrary contained in this Agreement, the Government shall not in any manner be liable to reimburse to the Concessionaire any sums on account of a Change in Law if the same are recoverable from the Users.

ARTICLE 37

LIABILITY AND INDEMNITY

37.1 General indemnity

- 37.1.1 The Concessionaire shall indemnify, defend, save and hold harmless the Government and its officers, servants, agents, Government Instrumentalities and Government owned and/or controlled entities/enterprises, (the “**Government 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 the Government or to any User 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 the Government Indemnified Persons.
- 37.1.2 The Government shall 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 (a) defect in title and/or the rights of the Government in the land comprised in the Depot Site and/or the Washing Line, and/or (b) breach by the Government 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.

37.2 Indemnity by the Concessionaire

- 37.2.1 Without limiting the generality of Clause 37.1, the Concessionaire shall fully indemnify, hold harmless and defend the Government and the Government 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.

37.2.2 Without limiting the generality of the provisions of this Article 37, the Concessionaire shall fully indemnify, hold harmless and defend the Government Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Government 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 Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Government a licence, at no cost to the Government, 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.

37.3 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 37 (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.

37.4 Defence of claims

37.4.1 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 37, 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.

- 36.4.2 If the Indemnifying Party has exercised its rights under Clause 37.3, 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).
- 37.4.3 If the Indemnifying Party exercises its rights under Clause 37.3, 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;
 - (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;
 - (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 37.4.3 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.

37.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 37, 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.

37.6 Limitation of Liability

Notwithstanding anything to the contrary in this Agreement, the liability of one Party towards the other Party for any damages or compensation of any nature whatsoever under this Agreement, shall not exceed [Rs. 200 (Rupees two hundred) crore]. For the avoidance of doubt, the limitation hereunder shall not apply to any or all liabilities in respect of third parties.

37.7 Survival on Termination

The provisions of this Article 37 shall survive Termination.

ARTICLE 38

RIGHTS AND TITLE OVER THE DEPOT SITE AND WASHING LINE

38.1 Licensee rights

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

38.2 Access rights of the Government and others

The Concessionaire shall allow free access to the Depot Site and the Washing Line at all times for the authorised representatives of the Government, Senior Lenders, and the Independent Engineer, and for the persons duly authorised by any Government Instrumentality to inspect the Trains 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.

38.3 Property taxes

All property taxes on the Site shall be payable by the Government as owner of the Depot Site and the Washing Line; provided, however, that any such taxes payable by the Concessionaire under Applicable Laws for use of the Depot Site and the Washing Line shall not be reimbursed or payable by the Government. For the avoidance of doubt, the Parties agree that stamp duties, if any, due and payable on the grant of licence comprising this Agreement shall be paid by the Government. Provided, however, that the Government may require the Concessionaire to pay such stamp duties, which shall be reimbursed by the Government to the Concessionaire within [15 (fifteen)] days of receiving the demand therefor.

38.4 Restriction on sub-letting

The Concessionaire shall not sub-license or sub-let the whole or any part of the Depot Site and the Washing Line, 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 Trains.

ARTICLE 39 DISPUTE RESOLUTION

39.1 Dispute Resolution

- 39.1.1 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 39.2.
- 39.1.2 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.

39.2 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 [●] 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 39.1.1 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 39.3.

39.3 Arbitration

- 39.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 39.2, shall be finally decided by reference to arbitration by an arbitral tribunal constituted in accordance with Clause 39.3.2. 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 and Conciliation Act, 1996. The place of such arbitration shall be the capital of the State and the language of arbitration proceedings shall be English.
- 39.3.2 There shall be an arbitral tribunal comprising three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so

selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.

- 39.3.3 The arbitral tribunal shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 39 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Government agree and undertake to carry out such Award without delay.
- 39.3.4 The Concessionaire and the Government agree that an Award may be enforced against the Concessionaire and/or the Government, as the case may be, and their respective assets wherever situated.
- 39.3.5 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.

39.4 Adjudication by a tribunal

In the event of constitution of a statutory tribunal or other forum with powers to adjudicate upon disputes between the Concessionaire and the Government, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 39.3, be adjudicated upon by such tribunal or other forum in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly.

ARTICLE 40 DISCLOSURE

40.1 Disclosure of Specified Documents

The Concessionaire shall make available for inspection by any person, copies of this Concession Agreement, the Maintenance Manual, the Maintenance Programme, Maintenance Requirements and the Safety Requirements (hereinafter collectively referred to as the “**Specified Documents**”), free of charge, during normal business hours on all working days at the Concessionaire’s Registered Office and relevant Railway Stations. The Concessionaire shall prominently display at every relevant Railway Station, public notices stating the availability of the Specified Documents for such inspection and shall provide copies of the same to any person upon payment of copying charges on a ‘no profit no loss’ basis.

40.2 Disclosure of Documents relating to safety

The Concessionaire shall make available for inspection by any person copies of all Documents and data relating to safety of the Project, free of charge, during normal business hours on all working days, at the Concessionaire’s Registered Office. The Concessionaire shall make copies of the same available to any person upon payment of copying charges on a ‘no profit no loss’ basis.

40.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 40.1 and 40.2, the Government shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Articles.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 40.1 and 40.2, or portions thereof, the disclosure of which the Government is entitled to withhold under the provisions of the Right to Information Act, 2005.

ARTICLE 41

REDRESSAL OF PUBLIC GRIEVANCES

41.1 Complaints Register

- 41.1.1 The Concessionaire shall maintain a public relations office at every Railway Station where it shall keep a register (the “**Complaint Register**”) open to public access at all times for recording of complaints by any person (the “**Complainant**”). The Concessionaire shall also maintain a complaints portal at any website where it sells tickets (“**Complaint Portal**”). Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at every Railway Station so as to bring it to the attention of all Users and shall also be displayed on the website where the ticketing services are being provided.
- 41.1.2 The Complaint Register shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Concessionaire. Immediately after a complaint is registered, the Concessionaire shall give a receipt to the Complainant stating the date and complaint number. The Complaint Portal shall have appropriate functions including generating a complaint number, allowing the Complainant to put date, name and address and substance of the complaint. Immediately after a complaint is registered, the Complaint Portal shall give a receipt to the Complainant stating the date and complaint number.

41.2 Redressal of complaints

- 41.2.1 The Concessionaire shall inspect the Complaint Register and Complaint Portal every day and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly noted in the Complaint Register and Complaint Portal and a reply stating the particulars thereof shall be sent by the Concessionaire to the Complainant under a certificate of posting/through electronic mail.
- 41.2.2 Within [7 (seven)] days of the close of each month, the Concessionaire shall send to the Government and to the Independent Engineer a true photocopy each of all the pages of the Complaint Register and a scan of the pages of the Complaint Portal on which any entry has been recorded during the course of such month, and upon perusal thereof, the Government may, in its discretion, advise the Concessionaire to take such further action as the Government may deem appropriate for a fair and just redressal of any grievance. The Concessionaire shall consider such advice and inform the Government of its decision thereon, and if the Government is of the opinion that the Complainant is entitled to further relief, it may refer the matter to the competent forum for its disposal under the Consumer Protection Act, 1986, and advise the Complainant to pursue the complaint at his own risk and cost.

ARTICLE 42 MISCELLANEOUS

42.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in the State shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

42.2 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).

42.3 Depreciation

For the purposes of depreciation under 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, the Government shall not in any manner be liable in respect of any claims for depreciation to be made by the Concessionaire under Applicable Laws.

42.4 Delayed payments

- 42.4.1 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. Unless otherwise specified in this Agreement,

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 [4% (four 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.

- 42.4.2 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.

42.5 Waiver

- 42.5.1 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.

- 42.5.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to 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.

42.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

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

42.7 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.

42.8 Survival

42.8.1 Termination shall:

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

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

42.9 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. For the avoidance of doubt, the Parties hereto agree that any obligations of the Concessionaire arising from the Request for Qualification or Request for Proposals, as the case may be, shall be deemed to form part of this Agreement and treated as such.

42.10 Severability

If for any reason whatsoever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable

provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

42.11 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.

42.12 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.

42.13 Successors and Assigns

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

42.14 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 the Government; provided that notices or other communications to be given to an address outside the capital of the State 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 the Government.

{Attention:

Designation:

Address: Fax No:

Email:}

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

{Name:
Designation:
Address:
Fax No:
Email:}; 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.

42.15 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.

42.16 Counterparts

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

ARTICLE 43 DEFINITIONS

43.1 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**” shall mean 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 Auditors**” shall have the meaning set forth in Clause 28.2.3;

“**Adjusted Depreciated Value**” for each Procured Train shall be limited to a lower of:

- (a) a sum of [Rs. 150 crores (Rupees one hundred and fifty crores)]; or
- (b) the actual value of the Train (as stated in the books of account of the Concessionaire);

depreciated by an annual depreciation rate of [3% (three per cent)];

“**Affected Party**” shall have the meaning set forth in Clause 29.1;

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

“**Ancillary Facilities**” shall mean the additional facilities provided by the Concessionaire in respect of the Project, as more particularly set out in Schedule - B;

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

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

“**Applicable Permits**” shall mean 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 development, construction, operation and maintenance of the Project during the subsistence of this Agreement;

“Appointed Date” shall mean the date on which the Conditions Precedent are either satisfied and/or waived in accordance with the terms of this Agreement, and shall be deemed to be the date of commencement of the Concession Period;

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

“Average Daily Gross Revenue” shall mean the average daily Gross Revenue determined upon division of the annual Gross Revenue of the preceding Accounting Year by 365 (three hundred and sixty five), and increasing the quotient thereof by [5% (five per cent)]; provided that the Average Daily Gross Revenue for any period prior to completion of the first Accounting Year following the date of commencement of Operations of the Trains, in accordance with Clause 15.1, shall be simple average of the Gross Revenue realised with respect to every day during the period between the date of commencement of Operations of the Trains, in accordance with Clause 15.1 and the last day of the month preceding the date on which the event requiring calculation hereof occurred;

“Award” shall have the meaning set forth in Clause 39.3;

“Bank” shall mean a bank incorporated in India and having a minimum net worth of [Rs 1,000 crore (Rupees one thousand crore)] or any other bank acceptable to the senior Lenders, but does not include a bank in which the Senior Lender has an interest;

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

“Base Index Date” means the last date of the month which shall have closed no later than 30 (thirty) days prior to the Bid Date;

“Bid” shall mean the documents in their entirety comprised in the bid submitted by the {Selected Bidder/Consortium} in response to the Request for Proposal in accordance with the provisions thereof;

“Bid Date” shall mean the last date on which the Bid may have been submitted in accordance with the provisions of the Request for Proposal;

“Bid Security” shall mean the security provided by the Selected Bidder to the Government along with the Bid in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;

“Change in Law” shall mean the occurrence of any of the following after the date of Bid:

- (a) the enactment of any new Indian law as applicable to the Project;
- (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 Bid Date;
- (d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of Bid; or
- (e) any change in the rates of any of the Taxes that have a direct effect on the Project;

“Change in Ownership” shall mean 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 {existing promoters/selected bidder/Consortium Members}, together with {its/their} Associates in the total equity to decline below (i) [51% (fifty one per cent)] at any time until the expiry of the 5th (fifth) anniversary of date of commercial operations of all the Procured Trains, in accordance with Clause 15.1; (ii) the shareholding of each of the technical member and the financial member of the Consortium declines below [26% (twenty six per cent)] until the expiry of the 5th (fifth) anniversary of the date of commercial operations of all the Procured Trains, in accordance with Clause 15.1; and (iii) [26% (twenty six per cent)] thereof, or such lower proportion as may be permitted by the Government 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 application or Bid, as the case may be) in the proportion of the equity holding of {existing promoters/Selected Bidder/ any Consortium Member} to the total equity, if it occurs prior to the 5th (fifth) anniversary of the date of commercial operations of all the Procured Trains, in accordance with Clause 15.1, shall constitute Change in Ownership;

“Change of Scope” shall have the meaning set forth in Clause 16.1;

“Change of Scope Notice” shall have the meaning set forth in Clause 16.2;

“Change of Scope Order” shall have the meaning set forth in Clause 16.2;

“Companies Act” shall mean, as applicable, the Companies Act, 1956 and the Companies Act, 2013 as amended from time to time;

“Complainant” shall have the meaning set forth in Clause 41.1;

“Complaint Portal” shall have the meaning set forth in Clause 41.1;

“Complaint Register” shall have the meaning set forth in Clause 41.1;

“Concession” shall have the meaning set forth in Clause 3.1;

“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 32.1.1;

“Concession Fee” shall have the meaning set forth in Clause 24.1;

“Concession Period” shall have the meaning set forth in Clause 3.3;

“Conditions Precedent” shall have the meaning set forth in Clause 4.1;

“Consortium” shall have the meaning as set forth in Recital (B);

{**“Consortium Member or Member”** shall mean a company specified in Recital (B) as a member of the Consortium;}

“Contractor” shall mean the person or persons, as the case may be, with whom the Concessionaire has entered into any of the contracts for supply, the O&M Contracts, or any other material agreement for the construction, operation and/or maintenance of the Project and for provision of the services 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 5.2.4;

“Crew” shall mean the locomotive pilot and the guard;

“Cure Period” shall mean the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- (b) not relieve any Party from liability to pay damages or compensation under the provisions of this Agreement; and
- (c) not in any way be extended by any period of Suspension under this Agreement;

provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Government or the Independent Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the Government or the Independent Engineer after the receipt of the relevant information to accord their approval;

“Damages” shall have the meaning set forth in Clause 1.2.1 (y);

“Depot Site” shall have the meaning set forth in Clause 10.1.1;

“Dispute” shall have the meaning set forth in Clause 39.1;

“Dispute Resolution Procedure” shall mean the procedure for resolution of Disputes set forth in Article 39;

“Divestment Requirements” shall mean the obligations of the Concessionaire for and in respect of Termination as set forth in Article 33;

“Document” or **“Documentation”** shall mean 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” shall mean all of the drawings, calculations and documents pertaining to the Project;

“EDI” shall have the meaning set forth in Clause 22.4;

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

“Encumbrances” shall mean, in relation to the Project, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and

shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project where applicable herein;

“Equity” shall mean the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire, 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 Concessionaire, and any interest-free loans advanced by any shareholder of the Concessionaire for meeting such equity component;

“Escrow Account” shall mean 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 26.1.2;

“Escrow Bank” shall have the meaning set forth in Clause 26.1.1;

“Failure” shall have the meaning set forth in Clause 17.6.2;

“Fare” shall mean the charge(s) levied on and payable by a User for the use of the Trains and includes charges for any services offered on the Trains;

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

“Financial Year” shall mean a year commencing on 1st April of a calendar year and ending on 31st March of the immediately succeeding calendar year;

“Financing Agreements” shall mean 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 notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Project, 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 29.1;

“Force Majeure Costs” shall have the meaning as set forth in Clause 29.7.2;

“Good Industry Practice” shall mean 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” shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

“Government Default” shall have the meaning set forth in Clause 32.2.1;

“Government Indemnified Persons” shall have the meaning set forth in Clause 37.1.1;

“Government Instrumentality” shall mean any department, division or sub-division of the Government of India or the [UT Administration/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 [UT Administration/State Government], as the case may be, and having jurisdiction over the Project or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

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

“Gross Revenue” of the Project for and in respect of any Accounting Year shall mean the total amount of gross Revenues and receipts of every kind (from both cash and credit transactions computed prior to payment of any commission or service charge or fee thereon) derived by the Concessionaire from the operation of the Trains and provision of services, and/or any other activity related to the Project including Ancillary Facilities, if any, as certified by the statutory auditors of the Concessionaire, and shall include Revenues and receipts from and on account of Fare, food, beverages, linen, infotainment, use of commercial or other spaces for rent or fee of every description and kind, and any other services or facility provided by the Concessionaire, but shall exclude the following:

- (a) All statutory applicable indirect Taxes such as luxury tax, GST, entertainment tax, expenditure tax, and the like by whatever name called now or in future, which the Concessionaire is bound to pay;

- (b) Any revenue earned by the Concessionaire on sale of assets of a capital nature which are owned by the Concessionaire; and
- (c) Interest income from investment made;

For the avoidance of doubt, Gross Revenue shall also include any amount received by the Affiliate to whom the Concessionaire has contracted any services, and/or any other activity related to the Project, and any amount received by the Concessionaire from a third party to whom it has contracted any services, and/or any other activity related to the Project;

“Guaranteed Punctuality” shall have the meaning set forth in Clause 20.2.2;

“Guaranteed Reliability” shall have the meaning set forth in Clause 20.3.1;

“Haulage Charges” shall mean the charges payable to the Government in respect of the terminal, traction energy, transportation, track maintenance and signalling costs and shall be escalated in accordance with Clause 24.3.2;

“Helpline” shall have the meaning set forth in Clause 17.8.3;

“Indemnified Party” shall mean the Party entitled to the benefit of an indemnity pursuant to Article 37;

“Indemnifying Party” shall mean the Party obligated to indemnify the other Party pursuant to Article 37;

“Independent Engineer” shall have the meaning set forth in Article 23.1;

“Indirect Political Event” shall have the meaning set forth in Clause 29.3;

“Insolvency Event” in respect of a Party shall mean:

- (a) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee, administrator, liquidator or the like of itself or of all or a substantial part of its assets or business; (B) been unable to pay its debts as such debts become due; (C) enters into a compromise arrangement with its creditors ; (D) an attachment or restraint has been levied on the assets of such entity Party which materially affects such Party’s ability to perform its obligations under this Agreement; (E) commenced proceedings under the (Indian) Insolvency and Bankruptcy Code, 2016 (the **“Code”**); (F) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or

- (b) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking: (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts; (B) the appointment of an insolvency resolution professional, a trustee, receiver, custodian, administrator, liquidator or the like of such Party under the Code and an order admitting the insolvency petition has been passed in such proceeding and such order has not been stayed or dismissed within a period of 90 (ninety) days; or (C) directions with the same or similar effect happen under the provisions of the Companies Act or the Code in relation to the winding up of the company;

“Insurance Cover” shall mean the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 27, and includes all insurances required to be taken out by the Concessionaire under Clause 27.1 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” shall mean all patents, trademarks, 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, 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 Indicators” shall have the meaning set forth in Clause 20.1;

“Lead Member” shall have the meaning as set forth in Recital (B);

“Lenders' Representative” shall mean 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;

“LOA or Letter of Award” shall mean the letter of award referred to in Recital (D);

“Maintenance Inspection Report” shall have the meaning set forth in Clause 19.3;

“Maintenance Manual” shall have the meaning set forth in Clause 17.3.1;

“Maintenance Obligations” shall have the meaning set forth in Clause 17.1;

“Maintenance Requirements” shall have the meaning set forth in Clause 17.7;

“Material Adverse Effect” shall mean 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;

“Medical Aid Post” shall have the meaning set forth in Clause 5.7;

“Monthly Fare Statement” shall have the meaning set forth in Clause 19.7;

“MoU” shall have the meaning as set forth in Clause 29.12.6;

“Non-Political Event” shall have the meaning set forth in Clause 29.2;

“NPV” shall have the meaning set forth in Clause 36.3;

“O&M” shall mean the operation and maintenance of the Project and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities, and collection of Fare in accordance with the provisions of this Agreement;

“O&M Contract” shall mean the operation and maintenance contract that may be entered into between the Concessionaire and an O&M Contractor for performance of the O&M obligations in accordance with this Agreement;

“O&M Contractor” shall mean a contractor with whom the Concessionaire has entered into an O&M Contract, if any;

“O&M Expenses” shall mean expenses incurred by or on behalf of the Concessionaire or by the Government, 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;

“Operate” shall mean the operation of the Train according to the Path on the Railway Network, in accordance with the Train Operation Plan and the word **“Operations”** shall be construed accordingly.

“Operation Control Centres” shall have the meaning set forth in Clause 17.8.3;

“Operation Manual” shall have the meaning set forth in Clause 17.16.2;

“Panel of Chartered Accountants” shall have the meaning as set forth in Clause 28.2.1;

“Path” shall mean the specific route, time slots between the originating Railway Station to the destination Railway Station on the Railway Network on which the Concessionaire is permitted to Operate the Trains under this Agreement, as set out in the RFP;

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

“Passenger Charter” shall have the meaning set forth in Clause 20.7;

“Performance Guarantee” shall have the meaning set forth in Clause 34.2.3;

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

“Performance Security Period” shall have the meaning set forth in Clause 9.3;

“PKM” shall mean the cumulative distance travelled by Users of the Trains in a day;

“Political Event” shall have the meaning set forth in Clause 29.4;

“Project” shall mean the Operation of the Trains on the Railway Network and the maintenance of the Trains at the Depot Site and the Washing Lines, 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” shall mean this Agreement, the Financing Agreements, O&M Contract, and any other material agreements or contracts including any contract for lease of the Trains 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 any agreement for procurement of goods and services involving a consideration of up to [Rs. 1,00,00,000 (Rupees one crore)];

“Project Assets” shall mean all physical and other assets relating to and forming part of the Project including:

- (a) rights over the Depot Site in the form of Right of Use;
- (b) Trains;
- (c) all rights of the Concessionaire under the Project Agreements;
- (d) financial assets, such as receivables, security deposits etc.;
- (e) insurance proceeds; and
- (f) Applicable Permits and authorisations relating to or in respect of the Project.

“Project Schedule” shall mean the schedule prepared in accordance with Article 13, as set out in Schedule - F;

“PR Teams” shall have the meaning set forth in Clause 17.8.1;

“Procured Trains” shall mean the Trains procured by the Concessionaire solely for the purpose of this Agreement for Operations on the Path for the Concession Period and shall not have run more than [100 (one hundred) kilometres];

“Prototype” shall have the meaning set forth in Clause 13.3.1;

“Protected Documents” shall have the meaning set forth in Clause 40.3;

“Provisional Maintenance Manual” shall have the meaning set forth in Clause 17.3.1;

“Provisional Operation Manual” shall have the meaning set forth in Clause 17.16.2;

“Railway Network” shall mean the railway network of the Government and shall include the track, traction system, communication system, overhead equipment and signalling equipment;⁴

“Railway Station” shall mean a place on the Railway Network where Trains stop for the purposes of transporting Users;

“Reference Index Date” for and in respect of an Year, means the last date of the month which shall have closed no later than 30 (thirty) days prior to commencement of that Year;

“Relevant Railway Authority” shall mean the authority prescribed by the Ministry of Railways and includes RDSO, CRS and such other authorities as may be prescribed by the Government of India or the State Government from time to time which have jurisdiction on the Depot Site, Washing Line, Path, Project, Railway Network etc.;

“Request for Proposals” or **“RFP”** shall have the meaning set forth in Recital (C);

“Request for Qualification” or **“RFQ”** shall have the meaning set forth in Recital (B);

“Revenue” shall mean all amounts charged and recovered by the Concessionaire from the Users on mutually agreed terms and shall include user charges for use of the Trains and services by the Users, charges for the use of the Ancillary Facilities and

⁴ To be confirmed with MoR.

shall also include but not be limited to all charges, rent, license fees, tariff, fee, compensation, benefits, deposits (whether long term or short term and whether refundable or not), capital receipts, insurance claims, or any other similar payment by whatever name called, received by or paid to the Concessionaire or receivable by the Concessionaire or payable to the Concessionaire or due and realisable by the Concessionaire, for or with respect to use of the Trains and any of the services;

“Revenue Share” shall have the meaning set forth in Clause 24.2;

“Right of Use” shall mean the constructive possession of the Depot Site, together with all way leaves, easements, unrestricted access and other rights of use howsoever described, necessary for the operation and maintenance of the Project in accordance with this Agreement;

“Route” shall mean the specific route on the Railway Network including the originating Railway Station, the destination Railway Station and the intermediate Railway Station, on which the Concessionaire is permitted to Operate the Trains under this Agreement;

“Rs.” or “Rupees” or “Indian Rupees” shall mean the lawful currency of the Republic of India;

“Rules” shall have the meaning set forth in Clause 39.3.1;

“Safety Certification Officer” shall mean the officer of the Indian Railways who shall certify the safety of the Train prior to each Operation;

“Safety Requirements” shall have the meaning set forth in Clause 18.1;

“Schedule” shall mean a schedule under this Agreement;

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

“Selected Bidder” shall mean the Bidder selected by the Government to award the Project following the completion of the Bidding Process (as defined under the RFP);

“Senior Lenders” shall mean 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 and who hold *pari passu* charge on the assets, rights, title and interests of the Concessionaire;

“Site for Ancillary Facilities” shall mean the site where the Ancillary Facilities shall be provided as may be earmarked by the Government, as more particularly set out in Schedule - B;

“Specifications and Standards” shall mean the specifications and standards relating to the quality, details, technology, capacity and other requirements for the Trains, as set forth in Schedule - A, and any modifications thereof;

“Specified Documents” shall have the meaning set forth in Clause 40.1;

“Specified Trains” shall mean the trains specified by the Government in the priority schedule, from time to time;

“Statutory Auditors” shall mean 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 28.2;

“Suspension” shall have the meaning set forth in Clause 31.1;

“Taxes” shall mean any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess, GST, CST, Entry Tax, Octroi or 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 Project charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

“Tests” means the tests as set forth in Schedule – G, prescribed by the Independent Engineer, the Government, or the Relevant Railway Authority to be performed by the Concessionaire or his representative or any agency acting under its direction to determine the conformity of Trains with the provisions of this Agreement;

“Termination” shall mean the expiry or termination of this Agreement and the Concession hereunder;

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

“Termination Payment” shall mean the amount payable by the Government to the Concessionaire, under and in accordance with this Agreement, upon Termination;

“Train” shall have the meaning set forth in Clause 2.1(a) and shall mean both, the Trains leased by the Concessionaire in accordance with Article 13 and the Procured Trains;

“Train Operation Plan” shall have the meaning set forth in Clause 12.1.4;

“Transfer Date” shall mean 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;

“Travel-Worthiness” shall have the meaning set forth in Clause 17.5;

“Unforeseen Event” shall have the meaning as set forth in Clause 29.12.1;

“Unscheduled Maintenance” shall have the meaning set forth in Clause 17.6.1;

“User” shall mean a person who uses or intends to use the Trains or any part thereof on payment of Fare or in accordance with the provisions of this Agreement and Applicable Laws;

“Vesting Certificate” shall have the meaning set forth in Clause 36.4;

“Washing Line” shall mean the site and infrastructure designated by the Government for the washing, maintenance and inspection of Trains after completion of each journey; and

“WPI” 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.

SIGNATORIES

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 ____

I, _____, hereunto affixed the common seal 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 CONCESSIONAIRE** by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

In the presence of:

1. _____, Director
2. _____, Company Secretary

SIGNED, SEALED AND DELIVERED For and on behalf of **THE GOVERNMENT** by:

(Signature)

(Name)

(Designation)

(Address)

For and on behalf of _____ by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

For and on behalf of _____ by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

Draft

Schedules

SCHEDULE – A
(See Clause 2.1)

SPECIFICATIONS AND STANDARDS

To be provided

Draft

SCHEDULE – B
(See Clause 10.1)

DEPOT SITE

To be provided

Draft

SCHEDULE – C

(See Clause 9.1)

PERFORMANCE SECURITY

WHEREAS:

- (A), (the “**Concessionaire**”) and the []⁵ (“**Government**”) having its principal offices athave entered into a Concession Agreement dated (the “**Agreement**”) whereby the Government has agreed to the Concessionaire undertaking the operation of passenger trains on selected routes of the Indian Railways, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Concessionaire to furnish a Performance Security to the Government 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 period of 1 (one) year from the Appointed Date.
- (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 and undertakes to pay to the Government upon occurrence of any failure or default in due and faithful performance of all or any of the Concessionaire’s obligations, under and in accordance with the provisions of the Agreement, on its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums up to an aggregate sum of the Guarantee Amount as the Government shall claim, without the Government being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Government, under the hand of an Officer not below the rank of a Secretary or equivalent, that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Government 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 the Government and the Concessionaire, or any dispute between them pending before

⁵ The name of the authority issuing the Concession to be inserted.

any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.

3. In order to give effect to this Guarantee, the Government shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Government to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. The Government shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Government against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Government, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Government of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Government or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Government 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 for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Government on the Bank under this Guarantee, no later than [6 (six) months] from the date of expiry of this Guarantee, all rights of the Government 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 after expiry of the Concession Period 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, the Government shall release the Performance Security forthwith.

9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Government in writing and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Government that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of [____] ⁶ from the date hereof or until it is released earlier by the Government pursuant to the provisions of the Agreement.

Signed and sealed thisday of 201.... 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.

⁶ Number of years and months to be included.

- (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.

Draft

SCHEDULE – D

(See Clause 10.1)

LICENSE AGREEMENT

This License Agreement (“**License Agreement**”) together with its Annexes is made and executed on thisday of[●] by and between:

THE PRESIDENT OF INDIA, represented by Principal Executive Director (Coaching), Ministry of Railways (Railway Board), Government of India and having its offices at Rail Bhawan, Raisina Road, New Delhi – 110001 (hereinafter referred to as the “**Licensor**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of the One Part;

AND

[_____], a company incorporated under the Companies Act, 2013 with its registered office at [_____], India (hereinafter referred to as the “**Licensee**”, which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of the Other Part.

The Licensor and the Licensee are hereinafter collectively referred to as the “**Parties**” and individually as a “**Party**”.

WHEREAS:

- (A) The Licensor and the Licensee have entered into a Concession Agreement dated ---- (the “**Agreement**”) wherein the Licensee has been permitted to permitted to operate passenger trains on selected routes of the Indian Railways the Licensor has agreed to provide the depot for the maintenance of the trains.
- (B) The Licensor has acquired the land as described in the Annex-I hereunder (the “**Site**”) and is thus owner of the land and now desires to license the Site to the Licensee and the Licensee desires to take on license from the Licensor, the Site for the purposes of maintenance of the trains and for the implementation of the Project.

NOW THEREFORE, in consideration of the promises and covenants herein set forth and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the Parties mutually agree as hereunder.

1. Definitions and Interpretation

1.1 Definitions

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

“Applicable Permits” means all clearances, permits, authorizations, consents and approvals required to be obtained or maintained under applicable laws in connection with the Site and the Project during the subsistence of the License Agreement;

“Encumbrance” means any encumbrance such as an easement, right of way, licence, mortgage, charge, pledge, lien, hypothecation, pre-emptive right or security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, whether or not registered and howsoever arising, including by statute or common law;

“Force Majeure” shall have the meaning set forth in Clause 1.1;

“License Fee” shall have the meaning set forth in Clause 5.1;

“Site” shall have the meaning set forth in Recital (B); and

“Term” shall have the meaning set forth in Clause 3.

1.2. Interpretations

In this License Agreement, except to the extent that the context requires otherwise:

- (a) the Annexes to this License Agreement forms part of this License Agreement and will be of full force and effect as though it is expressly set out in the body of this License Agreement;
- (b) the terms of this License Agreement should be read in consonance with and not in derogation with the terms of Agreement;
- (c) the rules of interpretation in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, mutatis mutandis, to this License Agreement; and
- (d) the words and expressions beginning with capital letters and defined in this License Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this License Agreement and not defined herein but defined in the Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Agreement.

2. Grant of license and possession

2.1.1 The provisions of this License Agreement shall take effect and become binding on the Parties on the date first above written (**“Effective Date”**).

2.1.2 In consideration of the License Fee and subject to Clause 2.1.3, the Licensor grants on license to the Licensee and the Licensee agrees to accept the license from the Licensor, free from Encumbrances and/or encroachments, of all that piece and parcel of land particularly described and identified (including the survey/khata numbers thereof) in the Annex-I hereto together with all and singular rights, liberties,

privileges, easements, benefits, rights of way, paths, passages whatsoever in or appurtenant to the Site or any part thereof, and to hold, possess, use and enjoy the Site and/or any part thereof, in accordance with the provisions of this License Agreement.

- 2.1.3 The Licensor hereby grants and transfers physical possession of the land, specified in Annex-I. Provided that, access to and possession of the office area shall be on an exclusive basis and access to and possession of the coaching depot and the overhauling depot shall be on a non-exclusive basis.

3. Term

The license granted in pursuance of this License Agreement shall be for a period of 20 (twenty) years from the Effective Date (the “**Term**”) unless the License Agreement is determined prematurely in accordance with Clause 7 or renewed in accordance with Clause 4.

4. Renewal

- 4.1 The Parties shall have the right to extend the Term for a period of 10 (ten) years, on mutually agreed terms and conditions and in the manner set out below, unless no later than 2 (two) years prior to the expiration of the Term of the License Agreement, the Licensor or Licensee, as the case may be, serves upon the other Party a written notice, stating its intention of not renewing the License Agreement.
- 4.2 The Licensee may, no later than 2 (two) years prior to the expiration of the Term of License Agreement, submit a request to the Licensor for extension of the Term of the License Agreement.
- 4.3 Upon receipt of notice of renewal of the License Agreement, the Licensor may, no later than 9 (nine) months prior to the expiration of the License Period, execute an addendum to the License Agreement which shall reflect the mutually agreed terms and conditions for the extension of the Term of License Agreement.

5. License Fee

- 5.1 Upon execution of the License Agreement and in consideration of the Licensor licensing the Site to the Licensee and granting the rights, privileges and benefits set forth in this License Agreement, the Licensee shall pay to the Licensor, subject to Clause 5.4, an annual license fee (“**License Fee**”) of Rs. []⁷ per [] during the Concession Period.

⁷ To be provided.

- 5.2 The License Fee shall be due and payable within 60 (sixty) days from the commencement of the year for which the License Fee is to be paid. The Licensor shall not be obliged to demand payment of License Fee by notice or otherwise, and it shall be incumbent upon the Licensee to pay the License Fee as and when it falls due.
- 5.3 The Licensee shall pay the License Fee into such account as may be designated by the Licensor from time to time.
- 5.4 If the Licensee fails to pay the License Fee as aforesaid, the Licensee shall be liable to pay interest for the period of delay calculated at a rate equal to 5% (five per cent) above the Bank Rate.

6. Use of Site

- 6.1 During the Term of this License Agreement, the Licensee agrees to use the Site for the carrying out the following:
- (a) implementing the Project;
 - (b) maintaining the Trains; and
 - (f) any other purpose incidental or consequential to the operation and maintenance of the Project.

7. Determination of License Agreement

- 7.1 This License Agreement may be determined earlier by mutual agreement between the Parties in writing.
- 7.2 In the event that the Agreement is terminated, then this License Agreement may be determined by the Licensor by giving a 90 (ninety) day notice to the Licensee and upon such termination, the Licensor shall be at full liberty to deal with the Site in such manner as it deems fit in its sole discretion.
- 7.3 The Licensor shall have the right to determine this License Agreement on occurrence of any one or more default(s) by the Licensee as enlisted hereunder:
- (a) the Licensee 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;
 - (b) the Licensee has been, or is in the process of being amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Licensor, a Material Adverse Effect; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Licensee are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally

assumed the obligations of the Licensee under this License Agreement and the Agreement; and provided that:

- (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this License Agreement and the Agreement;
- (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this License Agreement and the Agreement and has a credit worthiness at least as good as that of the Licensee; and
- (iii) the Agreement remains in full force and effect;
- (c) occurrence of any Insolvency Event;
- (d) failure of the Licensee to make payments to the Licensor in accordance with the provisions hereof, where such failure continues for a period of 30 (thirty) days after a written notice from the Licensor;
- (e) material failure by Licensee to perform any of the covenants, conditions, or obligations imposed on it by this License Agreement where the failure continues for a period of 60 (sixty) days after notice from the Licensor;
- (f) transfer or assignment of this License Agreement or creation of any Encumbrance on the Site, without securing prior written approval of the Licensor;
- (g) use of the Site for any purpose other than the purposes stated under Clause 6 of this License Agreement and such breach is not remedied within a period of 60 (sixty) days after a notice from the Licensor in this behalf; and
- (h) voluntary abandonment by the Licensee of its operations at the Site for a continuous period of 90 (ninety) days or more.

7.4 Upon determination under Clause 7.1, Clause 7.2 and Clause 7.3, the Licensor shall have the following additional rights:

- (a) the recovery of any unpaid License Fee due and payable at the time of termination;
- (b) the recovery of any damages, costs, fees and expenses incurred by the Licensor as a result of the breach of the License Agreement by the Licensee; and
- (c) any other right or remedy, legal or equitable, that the Licensor is entitled to under applicable laws.

7.5 The Licensee shall have the right to determine this License Agreement on account of the occurrence of any of the following events:

- (a) any material breach of the terms and conditions of the License Agreement by the Licensor, which material breach is not remedied by the Licensor within 90 (ninety) days of receipt of notice regarding such breach;
- (b) any interference with the peaceful possession of the Site by the Licensor due to which the Licensee is not able to carry on its business for a continuous

period of 60 (sixty) days or more, which interference is not rectified by the Licensor within a period of 60 (sixty) days from the date on which the Licensee notifies the same to the Licensor; or

- (c) Termination of the Agreement.

8. Licensor's obligations and covenants

The Licensor hereby agrees and warrants that:

- (a) subject to the terms of the License Agreement, the Licensee shall be entitled to possess, hold, use and enjoy the Site and every part thereof during the Term of the License Agreement, without any interruption by the Licensor;
- (b) the Licensee shall, during the Term of the License Agreement, enjoy free ingress and egress to and from the Site without any hindrance;
- (c) subject to timely payment of the License Fee and performance of the covenants and conditions of the License Agreement, the Licensee shall peacefully hold and enjoy the Site during the Term of the License Agreement;
- (d) upon execution of the License Agreement and subject to the terms thereof, the Licensor shall deliver, or cause to be delivered, to the Licensee vacant possession of the Site. The Licensor shall, at its cost and expense clear any Encumbrances, including possession or occupation, if any, by third parties prior to delivery of vacant possession of the Site to the Licensee;
- (e) the Licensor shall pay and discharge all property taxes, land revenues, levies, cesses and other payments/dues in respect of the Site relating to the period up to the commencement of the License Agreement. For the avoidance of doubt, all property taxes, land revenues, service tax, levies, cesses and other payments/dues in respect of the Site shall be borne by the Licensee during the Term of the License Agreement;
- (f) upon execution of the License Agreement, the Licensor shall provide the Licensee with any consent(s) or no objection(s) of the Licensor in obtaining power, water, telephone and such other facilities that the Licensee may require, to use and enjoy the Site effectively for the purposes stated in Clause 6 of this License Agreement. Such consents or no objection(s) shall be provided by the Licensor within a reasonable time; and
- (g) the Licensor shall not create any Encumbrances on the Site otherwise part with or alienate any of its rights, title or interest in or to the Site except as provided in Clause 9 of this License Agreement.

9. Sale, transfer or disposal of the Site

- 9.1 The Licensor may sell, transfer or otherwise dispose of the Site to any Government Instrumentality or any other entity owned or controlled by the Government of India.

- 9.2 The Parties agree that any sale, transfer or other disposal of the Site or any part thereof as provided in this Clause 9 shall always be subject to the license rights of the Licensee set out in this License Agreement and the Licensors shall ensure that simultaneously with the sale, transfer or other disposal of the Site or any part thereof, the transferee thereof shall acknowledge the license rights of the Licensee therein and shall execute an agreement on terms and conditions that are identical or not less favourable than the terms and conditions of this License Agreement.

10. Licensee's obligations and covenants

Licensee hereby covenants, agrees and represents that:

- (a) upon execution of this License Agreement and subject to the terms thereof, the Licensee shall accept the Site in the condition it is handed over and undertakes to use the same only for the purposes as enlisted in Clause 6 of this License Agreement;
- (b) this License Agreement has been duly authorized, executed, and delivered by the Licensee after fulfilling all legal formalities and constitutes its legal, valid and binding obligation;
- (c) during the Term of the License Agreement, the Licensee shall pay the License Fee in accordance with terms and conditions set out in this License Agreement and shall observe and fulfill each of its obligations and covenants set forth herein;
- (d) during the Term of the License Agreement, the Licensee shall undertake the development of the Site, and other works which in the reasonable opinion of the Licensee would be required for and in relation to the Project, and obtain necessary approvals/clearances from the appropriate authorities for the same;
- (e) at its own cost and expense, the Licensee shall obtain all utilities from the appropriate authorities other than Traction Energy and water, if provided;
- (f) it shall obtain and keep current all Applicable Permits that may be required under the applicable laws;
- (g) it shall pay all taxes, service tax, cesses, assessments and levies in respect of the Site, which are leviable at any time during the Term of the License Agreement;
- (h) it shall not create any lien, charge or Encumbrance on the Site, except as permitted in this License Agreement, without prior approval of the Licensors;
- (i) it shall, indemnify the Licensors in respect of any charges, deposits and other monies levied by third parties for and in relation to the provision by such third parties to the Licensee of water, electricity, telephone, communication and other facilities and in relation to any and all third party claims made with respect to the Site;
- (j) it shall (i) keep and maintain the Site and the buildings and structures thereon in good and habitable condition at all times, and (ii) shall ensure that the Site shall be free from encroachments at all times and to the extent

- that there occur any encroachments on the Site, it shall make diligent efforts to remove such encroachments from the Site, as soon as practicable;
- (k) it shall take all necessary care to keep the premises neat and clean and in sanitary conditions consistent with the environment and cleanliness of a modern Factory; and
 - (l) it shall, after expiry or termination of the License Agreement, forthwith hand over possession of the Site to the Government.

11. Inspection by the Licensor

- 11.1 The Licensee agrees and covenants that during the Term of the License Agreement, the Licensee shall not restrict or obstruct the Licensor and its authorised agents to enter upon and inspect the Site at all reasonable hours on any working day.
- 11.2 The Licensee undertakes that the Licensee shall notify the Licensor of any material breach by the Licensee of any Applicable Permits acquired in relation to the Site.

12. Stamp duty and registration charges

Subject to the exemption or waiver, if any, granted by Government or any other authority, the Parties agree that all stamp duties and registration charges payable in respect of the license contemplated herein shall be to the account of and borne by the Licensee.

13. Indemnities and limitation of liability

The Licensee shall fully indemnify, defend and hold harmless the Licensor, its officers, servants, agents, against any and all suits, proceedings, actions, demands, claims and liabilities, which may be incurred or suffered by the Licensor and which may arise out of or as a result of any of the following causes:

- (a) any breach by the Licensee of any of its obligations, covenants, agreements, representations or warranties set forth in this License Agreement;
- (b) any loss of property, damage to property, personal injury or death occasioned to or suffered by any person, to the extent that the damage to or loss of property or the personal injury or death is caused wilfully or negligently by the Licensee; and
- (c) any breach, violation or non-compliance by the Licensee of any applicable laws and/or Applicable Permits.

14. Assignment

The Licensee shall not, without the Licensor's prior written consent, transfer, assign, or grant any form of security over any of its rights or obligations under this License Agreement.

15. Force Majeure

- 15.1 Neither Party shall be liable to the other for non-performance of its obligations under this License Agreement (other than the obligation to make payments when due) on account of any event of Force Majeure including but not limited to fire, flood, act of God or irresistible force, civil disobedience, riots, terrorism, strikes, lock-out, act of government, or any other event beyond the reasonable control of such Party.
- 15.2 Where the event of Force Majeure exists for a continuous period of 6 (six) months, the Parties shall mutually decide on the course of action to be adopted, which may include the determination of this License Agreement.
- 15.3 Notwithstanding anything to the contrary in this License Agreement, if the License Agreement is determined in accordance with Clause 15.2 above, neither Party shall be liable to pay any compensation to the other for such termination.

16. Dispute Resolution

- 16.1 The Parties shall use their respective reasonable endeavours to settle any dispute, difference, claim, question or controversy between the Parties arising out of, in connection with or in relation to this License Agreement (“**Dispute**”) amicably between themselves through negotiation.
- 16.2 Any Dispute which the Parties are unable to resolve pursuant to Clause 16.1, within 60 (sixty) days (or such longer period as the Parties may agree) of notice by one Party to the other of the existence of a Dispute, shall be resolved in accordance with the provisions of Article 41 of the Agreement.

17. Governing Law

This License Agreement is governed by and shall be construed in accordance with the laws of India.

18. General Provisions

18.1 Entire Agreement

This License Agreement together with the Annexes constitutes the entire agreement between the Parties with respect to the subject matter and the transaction envisaged in this License Agreement but shall be subject to the provisions of the Agreement at all times.

18.2 Waiver

18.2.1 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 License 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 License 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 License Agreement in any manner.

18.2.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this License 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.

18.3 Severability

If for any reason whatever, any provision of this License 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 License Agreement or otherwise.

18.4 Specific Performance

In the event of default or breach in performance of obligations by any Party, the Party not in default or breach shall be entitled, without prejudice to its other rights and remedies, to seek and enforce specific performance of this License Agreement.

18.5 Expenses

Each Party shall pay its own costs and expenses (including, without limitation, the fees and expenses of its agents, authorised representatives, advisors, counsel and accountants) necessary for the negotiation, preparation, execution, delivery, performance of and compliance with this License Agreement.

19. 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 License Agreement shall be in writing and shall:

- (a) in the case of the Licensee, 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 Licensee may from time to time designate by notice to the Licensor; 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 Licensee may from time to time designate by notice to the Licensor;
Attention:
Designation:
Address:
Fax No:
Email:
- (b) in the case of the Licensor, be given by facsimile or e-mail and by letter delivered by hand to the address given below and be addressed to [] with a copy delivered to the Licensor's Representative or such other person as the Licensor may from time to time designate by notice to the Licensee; provided that if the Licensee does not have an office in Delhi, it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier;
Attention:
Designation:
Address:
Fax No:
Email:
- (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.

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

SIGNED, SEALED AND

DELIVERED

For and on behalf of THE PRESIDENT
OF INDIA by:

(Signature)

(Name)

(Designation)

SIGNED, SEALED AND
DELIVERED

For and on behalf of
by LICENSEE:

(Signature)

(Name)

(Designation)

In the presence of:

- 1.
- 2.

Draft

SCHEDULE – E
(See Clause 24.3.1)

HAULAGE CHARGES
(For 16 coaches Train)

Description	Haulage charge (Rs. pkm)
Terminal Cost	152
Traction (includes energy)	158
Transportation	123
Track Maintenance	74
Signalling	27
Overheads	134
Total Cost	668

SCHEDULE – F*(See Clause 13.2)***PROJECT SCHEDULE**

Particulars	Timelines (from the Appointed Date)
Commencement of commercial Operations on at least [2 Paths]	[6 months]
Commencement of commercial Operations on the remaining Paths	[1 year]
Delivery of Prototype	[2 years]
Testing of Prototype	[3 months]
Commencement of commercial Operations of not less than [20%] of the total number of Procured Trains required for the Project	[●]
Commencement of commercial Operations of not less than [60%] of the total number of Procured Trains required for the Project	[●]
Commencement of commercial Operations of not less than [100%] of the total number of Procured Trains required for the Project	[5 years and 6 months]

SCHEDULE – G
(See Clause 13.3.1)

TESTS

To be provided

Draft

SCHEDULE – H
(See Clause 17.7)

MAINTENANCE REQUIREMENTS

To be provided

Draft

Annex - I
(Schedule-H)

Repair/Rectification of Defects and Deficiencies

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

S. No.	Nature of defect or deficiency	Time limit for repair/rectification
I.	Damage to Train	
(i)	Damage to battery / box of the battery	4 hours
(ii)	Damage or breakage of cattle guard	8 hours
(iii)	Damage or breakage of look-out glass and window glass	4 hours
(iv)	Damage or breakage of bogie/ bogie part/ brake rigging part	12 hours
(v)	Damage or breakage of driver seat, passenger seat/ berths	4 hours
(vi)	Damage or breakage of door	4 hours
(vii)	Damage to brake pads	4 hours
(viii)	Damage or breakage of blinds	4 hours
(ix)	Damage or breakage of brake pipe and feed pipe/ hose leakage or other defects	4 hours
(x)	Damage to bio-toilets	8 hours
(xi)	Damage to door mechanism	8 hours
(xii)	Damage to gangways	8 hours
II.	Electrical Equipment	
(i)	Malfunction of Head Light	4 hours
(ii)	Malfunction of flasher light unit	4 hours
(iii)	Malfunction of flasher light roof unit	4 hours
(iv)	Malfunction of Speedo-meter	4 hours
(v)	Malfunction of Independent brake/Automatic brake/Emergency brake controller/ EP brakes	4 hours
(vi)	Malfunction of vigilance control device	4 hours
(vii)	Non-activation of Train cab	4 hours
(viii)	Malfunction of pantograph	4 hours
(ix)	Failure or breakage of roof insulator	4 hours
(x)	Malfunction of constant speed mode	4 hours
(xi)	Failure of traction motor	12 hours
(xii)	Failure of compressor	8 hours
(xiii)	Malfunction of air conditioner	4 hours
(xiv)	Failure of auxiliary rotating machine	4 hours

S. No.	Nature of defect or deficiency	Time limit for repair/rectification
(xv)	Failure of traction converter	12 hours
(xvi)	Failure of transformer	36 hours
(xvii)	Malfunction of master cum brake controller	4 hours
(xviii)	Malfunction of main circuit breaker	4 hours
(xix)	Malfunction of vehicle control unit	4 hours
(xx)	Malfunction of cab equipment	4 hours
(xxi)	Malfunction of voice recorder	4 hours
(xxii)	Malfunction of event recorder	4 hours
(xxiii)	Malfunction of fire detection system	4 hours
(xxiv)	Any fault in power circuit that inhibits Train movement	4 hours
(xxv)	Fault in cables	12 hours
(xxvi)	Failure of auxiliary converter	12 hours
(xxvii)	Malfunction of electromagnetic and electro-pneumatic contactors	4 hours
(xxviii)	Malfunction of any electronic card	4 hours
(xxix)	Malfunction of Passenger Information System	4 hours
(xxx)	Malfunction of air conditioning system	4 hours
(xxxi)	Malfunction of lighting system	4 hours
(xxxii)	Malfunction of inter-vehicular couplers	4 hours
(xxxiii)	Malfunction of HVAC system	4 hours
III.	Mechanical Equipment	
(i)	Poor brake power of Train	4 hours
(ii)	Malfunction of central buffer coupling	10 hours
(iii)	Malfunction of buffer	4 hours
(iv)	Water leakage in Train during monsoon	8 hours
(v)	Skidding of Train wheels	12 hours
(vi)	Over heating or failure of axle box	12 hours
(vii)	Abnormal sounds from under-gear	10 hours
(viii)	Malfunction of wheel	12 hours
(ix)	Malfunction of gear case	10 hours
(x)	Malfunction of traction link / traction transfer mechanism	8 hours
(xi)	Malfunction of washers and wipers	4 hours
(xii)	Malfunction of bogie suspension (including dampers)	8 hours
(xiii)	Malfunction of fire extinguishers	4 hours
IV.	Pneumatic Equipment	
(i)	Malfunction of horn switch	4 hours
(ii)	Malfunction of air drier	4 hours
(iii)	Malfunction of break system	4 hours
(iv)	Malfunction of cab gauge	4 hours

S. No.	Nature of defect or deficiency	Time limit for repair/rectification
V.	Upkeep of Train	
(i)	Damage to upholstery & curtains	48 hours
(ii)	Infestation of rodents & pests	24 hours
(iii)	Stains & dirt on exteriors	24 hours
(iv)	Stains & dirt in interiors	4 hours
(v)	Temperature inside a Train exceeding 25°C when ambient temperature is 35°C or less	1 hour
(vi)	Difference between the external ambient temperature and the temperature inside the Train exceeding 10°C when the ambient temperature is more than 35°C.	1 hour
(vii)	Temperature inside a Train falling below 15°C	1 hour
(viii)	Damage to signage	48 hours
(ix)	Damage to Train furniture	48 hours
(x)	Damage to Train flooring	48 hours

SCHEDULE – I
(See Clause 18.1)

SAFETY REQUIREMENTS

To be provided

Draft

SCHEDULE – J*(See Clause 19.7)***MONTHLY FARE STATEMENT****Train:****Month:**

Distance (in km)	For the month of previous year		For the preceding month		For the month reported on		
	No. of users	Fare collected (in lakh Rs.)	No. of users	Fare collected (in lakh Rs.)	Fare per User	No. of users	Fare collected (in lakh Rs.)

SCHEDULE – K
(See Clause 20.7)

PASSENGER CHARTER

To be provided

Draft

SCHEDULE – L*(See Clause 22.1)***TRAFFIC CENSUS AND SAMPLING****WEEKLY TRAFFIC CENSUS****Train:****Week ending:**

Distance (in km)	PKM and total no. of Users using the Train during the week (in thousand)					
	Corresponding week/last year		Preceding week		Week being reported on	
	PKM	No. of Users	PKM	No. of Users	PKM	No. of Users

TRAFFIC SAMPLING

To be provided

SCHEDULE – M

(See Clause 23.1)

SELECTION OF INDEPENDENT ENGINEER

1. Selection of Independent Engineer

- 1.1 The provisions of the Model Request for Proposals for Selection of Technical Consultants, issued by the Ministry of Finance, Government of India vide OM 24(23)/PF-II/2008 dated 21 May, 2009, or any substitute thereof shall apply for selection of an experienced firm to discharge the functions and duties of an Independent Engineer. Provided, however, that no entity which is owned or controlled by the Government shall be eligible for appointment as the Independent Engineer.
- 1.2 In the event of termination of the appointment of an Independent Engineer appointed in accordance with the provisions of paragraph 1.1, the Government shall appoint another firm of Technical Consultants forthwith or may engage a government-owned entity in accordance with the provisions of paragraph 5 of this Schedule – M.
- 1.3 The Concessionaire may, in its discretion, nominate a representative to participate in the process of selection to be undertaken by the Government under this Schedule – M.

2. Terms of Reference

The Terms of Reference for the Independent Engineer shall substantially conform with Schedule – N.

3. Fee and Expenses

- 3.1 In determining the nature and quantum of duties and services to be performed by the Independent Engineer during the Concession Period, the Government shall endeavour that payments to the Independent Engineer on account of fee and expenses do not exceed [10% (ten percent)] of the Performance Security. Payments not exceeding such [10% (ten percent)] of the Performance Security shall be borne equally by the Government and the Concessionaire in accordance with the provisions of the Agreement.
- 3.2 The nature and quantum of duties to be performed by the Independent Engineer during the Concession Period shall be determined by the Government in conformity with the provisions of the Agreement with due regard for economy in expenditure. All payments made to the Independent Engineer on account of fee and expenses during the Concession Period, shall be borne equally by the Government and the Concessionaire.

4. Selection every 3 years

No later than 3 (three) years from the date of appointment of the Independent Engineer pursuant to the provisions of paragraph 1 of this Schedule – M, and every 3 (three) years thereafter, the Government shall engage another firm in accordance with the criteria set forth in this Schedule – M.

5. Appointment of government entity as Independent Engineer

[Notwithstanding anything to the contrary contained in this Schedule, the Government may in its discretion appoint a government-owned entity as the Independent Engineer; provided that such entity shall be a body corporate as one of its primary function the provision of consulting, advisory and supervisory services for engineering projects; provided further that a government-owned entity which is owned and controlled by the State Government shall not be eligible for appointment as the Independent Engineer.]

SCHEDULE – N
(See Clause 23.2)

TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

1. Role and functions of the Independent Engineer

The role and functions of the Independent Engineer shall include the following:

- (i) review inspection and testing of the Project as set forth in Paragraph 2;
- (ii) review inspection and monitoring of O&M as set forth in Paragraph 3;
- (iii) review inspection and monitoring of Divestment Requirements in accordance with the Agreement;
- (iv) assisting the Parties in resolution of Disputes as set forth in Paragraph 4; and
- (v) undertaking all other duties and functions in accordance with the Agreement.

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.

2. Testing

- 2.1 For determining that the Trains conform to Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance.
- 2.1 The sample size of the tests, to be specified by the Independent Engineer under Paragraph 2.1, shall comprise [10% (ten per cent)] of the quantity or number of tests prescribed for each category or type of tests in accordance with Good Industry Practice; provided that the Independent Engineer may, for reasons to be recorded in writing, increase the aforesaid sample size by up to [10% (ten per cent)] for certain categories or types of tests.
- 2.3 The timing of tests referred to in Paragraph 2.2, and the criteria for acceptance rejection of their results shall be determined by the Independent Engineer in accordance with Good Industry Practice. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.

- 2.4 In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Train into conformity with the Specifications and Standards, and the provisions of this Paragraph 2 shall apply to such tests.
- 2.5 Upon reference from the Government, the Independent Engineer shall make a fair and reasonable assessment of the costs of providing information, works and services and certify the reasonableness of such costs for payment by the Government to the Concessionaire.

3. Operation

- 3.1 The Independent Engineer shall review the annual status report furnished by the Concessionaire and send its comments thereon to the Government and the Concessionaire within [7 (seven)] days of receipt of such report.
- 3.2 The Independent Engineer shall inspect the Project, at least once every year, preferably after receipt of the yearly status report for the relevant year from the Concessionaire, but before the [30th (thirtieth) day] after the close of each year in any case, and make out an O&M Inspection Report setting forth an overview of the safety of operations and their conformity with the Maintenance Requirements and Safety Requirements. In a separate section of the O&M Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Project. The Independent Engineer shall send a copy of its O&M Inspection Report to the Government and the Concessionaire within [7 (seven)] days of the inspection.
- 3.3 The Independent Engineer may inspect the Project more than once a year.
- 3.4 The Independent Engineer shall in its O&M Inspection Report specify the tests, if any, that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the Project is in conformity with the Maintenance Requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Concessionaire in this behalf.
- 3.5 In respect of any defect or deficiency, the Independent Engineer shall, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards and shall also specify the time limit for repair or rectification of any deviation or deterioration beyond the permissible limit.
- 3.6 The Independent Engineer shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the Damages, if any, payable by the Concessionaire to the Government for such delay.

The Independent Engineer shall monitor and review the curing of defects and deficiencies by the Concessionaire as set forth in Article 13.

- 3.7 In the event that the Concessionaire notifies the Independent Engineer of any modifications that it proposes to make to the Project, the Independent Engineer shall review the same and send its comments to the Government and the Concessionaire within [15 (fifteen)] days.
- 3.8 The Independent Engineer shall also carry out the following obligations in relation to the Project:
- (a) shall monitor the testing of the Train and the Operations of the Trains;
 - (b) shall prepare and submit periodic reports to the Government in respect of its duties and functions.

4. Assistance in Dispute resolution

- 4.1. 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.
- 4.2. 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.

5. Other duties and functions

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

6. Miscellaneous

- 6.1. The Independent Engineer shall notify its programme of inspection to the Government and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.
- 6.2. A copy of all communications, comments, instructions, Documents sent by the Independent Engineer to the Concessionaire pursuant to this Schedule, and a copy of all the test results with comments of the Independent Engineer thereon shall be furnished by the Independent Engineer to the Government forthwith.
- 6.3. 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 Government along with its comments thereon.

- 6.4. Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all communications, comments, instructions, Documents, results of tests and other relevant records, and hand them over to the Government or such other person as the Government 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 Government.

Draft

SCHEDULE – O

(See Clause 26.1.2)

ESCROW AGREEMENT

THIS ESCROW AGREEMENT is entered into on this the day of20...

AMONGST

....., 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);

....., (insert 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);

..... (insert 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

The [.....]⁸ hereinafter referred to as the “**Government**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns);

WHEREAS:

- A. The Government has entered into an agreement dated with the Concessionaire (the “**Concession Agreement**”) for operating trains on select route of the Indian Railways, 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:

⁸ Name of the authority issuing the Concession agreement to be inserted

1. **DEFINITIONS AND INTERPRETATION**

1.1. **Definitions**

Unless contrary to the provisions of this Agreement, the capitalised terms used in the Agreement but not defined in this Agreement, shall have meaning assigned to it under the Concession Agreement. 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” shall mean this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

“Concession Agreement” shall mean 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” shall mean the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Concessionaire, and shall commence from the date on which a notice is delivered by the Government 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” shall mean 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 Article 6.1;

“Lenders’ Representative” shall mean the person referred to as the Lenders’ Representative in the foregoing Recitals;

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

“Payment Date” shall mean, in relation to any payment specified in clause 4.1, the date(s) specified for such payment; and

“Sub-Accounts” shall mean 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 therefrom 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 Articles 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2. ESCROW ACCOUNT

2.1. Escrow Bank to act as trustee

- 2.1.1. The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Government, the Lenders' Representative and the Concessionaire in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.
- 2.1.2. The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Government, the Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Government, the Lenders' Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

2.2. Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Senior Lenders or the Government with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Government,

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

Save and except as otherwise provided in the Concession Agreement, the rights of the Government, the Lenders' Representative and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Government, the Lenders' Representative and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

2.6. Substitution of the Concessionaire

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this

Agreement on and with effect from the date of substitution of the Concessionaire with the Nominated Company.

3. DEPOSITS INTO ESCROW ACCOUNT

3.1. Deposits by the Concessionaire

3.1.1. The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

- (a) all monies received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt and the Government;
- (b) all funds received by the Concessionaire from its share-holders, in any manner or form;
- (c) all Fare, Revenues from the Project;
- (d) any other Revenues, rentals, deposits or capital receipts, as the case may be, from or in respect of the Project; and
- (e) all proceeds received pursuant to any insurance claims.

3.1.2. The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

3.2. Deposits by the Government

The Government agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

- (a) all Revenues from or in respect of the Project, including the proceeds of any rentals, deposits, capital receipts or insurance claims; and
- (b) all payments by the Government, if any, after deduction of any outstanding Concession Fee.

Provided that, notwithstanding the provisions of clause 4.1.1, the Government shall be entitled to appropriate from the aforesaid amounts, any Concession Fee due and payable to it by the Concessionaire and the balance remaining shall be deposited into the Escrow Account.

3.3. Deposits by Senior Lenders

The Lenders' Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Agreement, the Senior Lenders shall be entitled to make direct payments to the EPC Contractor under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

3.4. Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom 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 therefrom on the Payment Date(s):

- (a) statutory payments, all Taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) Concession Fee due and payable to the Government;
- (c) all payments as may be due and payable to the Government pursuant to this Agreement and/ or the Damages certified by the Government as due and payable to it by the Concessionaire under this Agreement;
- (d) 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) payroll dues and related statutory payments thereof, all Taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) outstanding Concession Fee;

- (c) all other amounts which are outstanding to be paid by the Concessionaire to the Government, as on the date of the Termination;
- (d) all payments as may be due and payable to the Government pursuant to this Agreement and/ or the Damages certified by the Government as due and payable to it by the Concessionaire; and
- (e) balance, if any, in accordance with the instructions of the Concessionaire.

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

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 Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

4.5. Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Government may exercise all or any of the rights of the Concessionaire during the period of Suspension under the Concession Agreement. Any instructions given by the Government to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Government hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

5. OBLIGATIONS OF THE ESCROW BANK

5.1. Segregation of funds

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank,

5.2. Notification of balances

[7 (seven)] business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

5.3. Communications and notices

In discharge of its duties and obligations hereunder, the Escrow Bank:

- (a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;
- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- (c) shall, within [5 (five)] business days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and
- (d) shall, within [5 (five)] business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders' Representative in connection herewith.

5.4. No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

5.5. Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6. ESCROW DEFAULT

6.1. Escrow Default

6.1.1. Following events shall constitute an event of default by the Concessionaire (an “**Escrow Default**”) unless such event of default has occurred as a result of Force Majeure or any act or omission of the Government or the Lenders’ Representative:

- (a) the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of [5 (five)] business days;
- (b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub- Account in which such transfer should have been made, within a Cure Period of [5 (five)] business days; or
- (c) the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of [5 (five)] business days.

6.1.2. Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Concession Agreement.

7. TERMINATION OF ESCROW AGREEMENT

7.1. Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Senior Lenders, or any of its obligations to the Government remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.2. Substitution of Escrow Bank

The Concessionaire may, by not less than [45 (forty five)] days prior notice to the Escrow Bank, the Government 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 therefrom, 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 shall indemnify, defend and hold the Government, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

9.1.2. The Government shall 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 Government to fulfil any of its

obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Government, its officers, servants and agents.

- 9.1.3. The Escrow Bank shall 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**

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.

- 10.2. The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

11. MISCELLANEOUS PROVISIONS

11.1. Governing law and jurisdiction

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

11.2. Waiver of sovereign immunity

The Government unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Government with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any 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 a 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

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.

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
- (c) 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 are set out under its name on the signing page 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:

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

SIGNED, SEALED AND
DELIVERED

For and on behalf of ESCROW BANK
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 No.)
(e-mail address)

SIGNED, SEALED AND
DELIVERED
For and on behalf of
THE GOVERNMENT by:
(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SCHEDULE – P
(See Clause 28.2.1)

PANEL OF CHARTERED ACCOUNTANTS

1. Panel of Chartered Accountants

Pursuant to the provisions of Clause 38.2.1 of the Agreement, the Government and the Concessionaire shall prepare a mutually agreed panel of 5 (five) reputable firms of Chartered Accountants having their registered offices in India (the “**Panel of Chartered Accountants**”). The criteria for preparing such Panel and the procedure to be adopted in this behalf shall be as set forth in this Schedule - P.

2. Invitation for empanelment

2.1. The Government shall invite offers from all reputed firms of Chartered Accountants who fulfil the following eligibility criteria, namely:

- (a) the firm should have conducted statutory audit of the annual accounts of at least one hundred companies registered under the Companies Act, 2013, including any re-enactment or amendment thereof, of which at least ten should have been public sector undertakings;
- (b) the firm should have at least 5 (five) practising 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 the Government; and
- (d) the firm should have an office in the State or in an adjacent State with at least 2 (two) practising Chartered Accountants on its rolls in such State.

2.2 Interested firms meeting the eligibility criteria shall be required to submit a statement of their capability including the bio data of all the practising Chartered Accountants on its rolls. In particular, each firm shall be required to furnish year-wise information relating to the names of all the companies with an annual turnover exceeding Rs. 25,00,00,000 (Rupees Twenty five crores) whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years.

3. Evaluation and selection

3.1 The information furnished by each firm shall be scrutinised and evaluated by the Government and 1 (one) point shall be awarded for each annual audit of the companies specified in Paragraph 2.2 above. (For the avoidance of doubt and by way of illustration, a firm which has conducted audit of the annual accounts of any such company for 5 (five) years shall be awarded 5 (five) points).

- 3.2 The Government shall prepare a list of all the eligible firms along with the points scored by each such firm and 5 (five) firms scoring the highest points shall be identified and included in the draft Panel of Chartered Accountants.

4. Consultation with the Concessionaire

The Government shall convey the aforesaid panel of firms to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinise the relevant records of the Government to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Government within 15 (fifteen) days of receiving the aforesaid panel.

5. Mutually agreed panel

- 5.1 The Government shall, after considering all relevant factors including the comments, if any, of the Concessionaire, finalise and constitute a panel of 5 (five) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants.
- 5.2 After completion of every 5 (five) years from the date of preparing the mutually agreed Panel of Chartered Accountants, or such earlier period as may be agreed between the Government and the Concessionaire, a new panel shall be prepared in accordance with the provisions of this Schedule - P.

SCHEDULE – Q
(See Clause 33.4)

VESTING CERTIFICATE

[The _____] ⁹ represented by (the “**Government**”) refers to the Concession Agreement dated (the “**Agreement**”) entered into between the Government and (the “**Concessionaire**”) for a Project, at in on (.....) basis.

The Government hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 35.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Government shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Project shall be deemed to have vested unto the Government, free from any encumbrances, charges and liens whatsoever.

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 For and on behalf of Concessionaire by: (Signature) (Name) (Designation) (Address)	SIGNED, SEALED AND DELIVERED For and on behalf of Government by: (Signature) (Name) (Designation) (Address)
---	--

In the presence of:

1.

2.

⁹ Name of the authority issuing the Concession agreement to be inserted