

MODEL AGREEMENT

FOR

CONSTRUCTION, OPERATION AND MAINTENANCE OF

A NON-GOVERNMENT RAIL SYSTEM FOR

FIRST MILE/LAST MILE CONNECTIVITY

INDEX

DEFINITIONS AND INTERPRETATION	7
1.1 DEFINITIONS	7
1.2 INTERPRETATION.....	7
1.3 MEASUREMENTS AND ARITHMETIC CONVENTIONS	10
1.4 PRIORITY OF AGREEMENTS, CLAUSES AND SCHEDULES	10
SCOPE OF THE PROJECT	12
2.1 TERM OF THE AGREEMENT.....	12
2.2 SCOPE OF THE PROJECT	12
CONSTRUCTION, OPERATION AND MAINTENANCE	13
3.1 RIGHT TO CONSTRUCTION, OPERATION AND MAINTENANCE.....	13
3.2 NON GOVERNMENT RAILWAY	13
OBLIGATIONS OF THE DEVELOPER	14
4.1 OBLIGATIONS OF THE DEVELOPER	14
4.2 OBLIGATIONS RELATING TO PROJECT AGREEMENTS.....	15
4.3 OBLIGATIONS RELATING TO EMPLOYMENT OF TRAINED PERSONNEL.....	15
4.4 OBLIGATIONS RELATING TO MEDICAL AID	16
4.5 OBLIGATIONS RELATING TO AESTHETIC QUALITY OF THE RAIL SYSTEM.....	16
4.6 OBLIGATIONS RELATING TO NOISE CONTROL	16
4.7 FACILITIES FOR PHYSICALLY CHALLENGED AND ELDERLY PERSONS	16
OBLIGATIONS OF MOR	17
5.1 OBLIGATIONS OF MOR	17
5.2 OBLIGATIONS RELATING TO INTER-CONNECTION	17
5.3 OBLIGATIONS RELATING TO RESERVED SERVICES.....	18
REPRESENTATIONS AND WARRANTIES.....	19
6.1 REPRESENTATIONS AND WARRANTIES OF THE DEVELOPER	19
6.2 REPRESENTATIONS AND WARRANTIES OF MOR	20
6.3 DISCLOSURE	21
CONSTRUCTION OF THE RAIL SYSTEM.....	22
7.1 OBLIGATIONS PRIOR TO COMMENCEMENT OF CONSTRUCTION	22
7.2 DRAWINGS.....	22
7.3 CONSTRUCTION OF THE RAIL SYSTEM	24
NEW UTILITIES AND SIDINGS	25
8.1 New Utilities.....	25
8.2 Sidings.....	25
MONITORING OF CONSTRUCTION.....	26
9.1 QUARTERLY PROGRESS REPORTS	26
9.2 INSPECTION	26
9.3 DELAYS DURING CONSTRUCTION	26
COMPLETION CERTIFICATE AND ENTRY INTO COMMERCIAL SERVICE.....	27
10.1 TESTS	27
10.2 COMPLETION CERTIFICATE	27
10.3 RESCHEDULING OF TESTS	27

10.4	SAFETY CERTIFICATION PRIOR TO COD AND COMMERCIAL SERVICE CERTIFICATE	28
10.5	COMMERCIAL OPERATION DATE (COD).....	28
RESERVED SERVICES		29
11.1	OBLIGATIONS OF MOR RELATING TO RESERVED SERVICES	29
11.2	COST OF UNDERTAKING RESERVED SERVICES.....	29
11.3	CLAIMS AND LIABILITIES	30
11.4	LIABILITY ARISING OUT OF ACCIDENTS AND INDEMNITY	30
11.5	TRAFFIC MANAGEMENT	30
11.6	OPERATING PROCEDURES	30
11.7	OBLIGATIONS OF THE DEVELOPER IN RESPECT OF RESERVED SERVICES	31
11.8	PROVISION OF SPACE AND ACCESS FOR RESERVED SERVICES	31
OPERATION & MAINTENANCE		32
12.1	O&M OBLIGATIONS OF THE DEVELOPER.....	32
12.2	MAINTENANCE REQUIREMENTS	33
12.3	MAINTENANCE MANUAL	33
12.4	SAFETY, BREAKDOWNS AND ACCIDENTS	34
12.6	SECTION CLOSURE.....	35
12.7	MOR'S RIGHT TO TAKE REMEDIAL MEASURES	36
12.8	OVERRIDING POWERS OF MOR	36
12.9	RESTORATION OF LOSS OR DAMAGE TO THE RAIL SYSTEM	36
12.10	MODIFICATIONS TO THE RAIL SYSTEM.....	37
12.11	EXCUSE FROM PERFORMANCE OF OBLIGATIONS	37
12.12	REPORTS OF UNUSUAL OCCURRENCE	378
12.13	SUPERVISION OF MAINTENANCE	379
KEY PERFORMANCE INDICATORS		40
13.1	KEY PERFORMANCE INDICATORS.....	40
13.2	MONTHLY STATUS REPORT	40
13.3	DAMAGES FOR SHORTFALL IN PERFORMANCE	40
SECURITY		41
INDEPENDENT ENGINEER.....		42
15.1	APPOINTMENT OF INDEPENDENT ENGINEER.....	42
15.2	DUTIES AND FUNCTIONS.....	42
15.3	REMUNERATION	42
15.4	TERMINATION OF APPOINTMENT	42
15.5	AUTHORISED SIGNATORIES	43
USER FEES		44
16.1	USER FEES	44
16.2	TAXES AND DUTIES.....	44
16.3	PAYMENT.....	44
16.4	DISPUTED AMOUNT	44
16.5	DELAYED PAYMENTS.....	44
FORCE MAJEURE		446
17.1	FORCE MAJEURE.....	46
17.2	NON-POLITICAL EVENT	46
17.3	INDIRECT POLITICAL EVENT	47
17.4	POLITICAL EVENT	47
17.5	DUTY TO REPORT FORCE MAJEURE EVENT	48
17.6	ALLOCATION OF COSTS ARISING OUT OF FORCE MAJEURE.....	49
17.7	DISPUTE RESOLUTION	49
17.8	EXCUSE FROM PERFORMANCE OF OBLIGATIONS	49

SUSPENSION OF DEVELOPER’S RIGHTS	50
18.1 SUSPENSION UPON DEVELOPER DEFAULT	50
18.2 MOR TO ACT ON BEHALF OF DEVELOPER	50
18.3 REVOCAION OF SUSPENSION	51
DEFAULT, COMPENSATION AND TERMINATION.....	52
19.1 DEVELOPER DEFAULT	54
19.2 CONSEQUENCES OF MOR DEFAULT	54
19.3 TRANSFER OF PROJECT ASSETS.....	55
19.4 SURVIVAL OF RIGHTS	55
ASSIGNMENT.....	56
20.1 RESTRICTIONS ON ASSIGNMENT	56
20.2 ASSIGNMENT BY MOR.....	56
LIABILITY AND INDEMNITY	57
21.1 GENERAL INDEMNITY.....	57
21.2 INDEMNITY BY THE DEVELOPER	57
21.3 NOTICE AND CONTEST OF CLAIMS	58
21.4 DEFENCE OF CLAIMS	58
21.5 NO CONSEQUENTIAL CLAIMS.....	60
21.6 SURVIVAL ON TERMINATION.....	60
DISPUTE RESOLUTION	61
22.1 DISPUTE RESOLUTION	61
22.2 CONCILIATION	61
22.3 ARBITRATION.....	61
22.4 ADJUDICATION BY REGULATORY AUTHORITY OR COMMISSION	62
MISCELLANEOUS	63
23.1 GOVERNING LAW AND JURISDICTION	63
23.2 WAIVER OF IMMUNITY	63
23.3 DEPRECIATION AND INTEREST.....	63
23.4 DELAYED PAYMENTS AND DAMAGES.....	64
23.5 WAIVER	64
23.6 EXCLUSION OF IMPLIED WARRANTIES ETC.	64
23.7 SURVIVAL	65
23.8 ENTIRE AGREEMENT	65
23.9 SEVERABILITY.....	65
23.10 NO PARTNERSHIP	66
23.11 THIRD PARTIES	66
23.12 SUCCESSORS AND ASSIGNS.....	66
23.13 NOTICES	66
23.14 LANGUAGE	67
23.15 COUNTERPARTS	67
DEFINITIONS.....	68
SCHEDULES.....	78
A DEVELOPMENT OF RAIL SYSTEM.....	80
B PROJECT COMPLETION SCHEDULE.....	81
C DRAWINGS.....	82
D RAILWAY STAFF.....	84
E COST OF RESERVED SERVICES.....	85
F MAINTENANCE REQUIREMENTS.....	92
G TOR FOR INDEPENDENT ENGINEER.....	96
H USER FEES.....	100

AGREEMENT FOR NON-GOVERNMENT RAIL SYSTEM FOR FIRST MILE/LAST MILE CONNECTIVITY

THIS AGREEMENT¹ is entered into on this the [***²] day of [***], 20**

BETWEEN

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

AND

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

WHEREAS:

- (A) [*Name of the applicant/Developer*] had submitted its proposal, including the project report to MOR to construct, own and maintain a [rail system for ** km from *** to ***] (“**Proposal**”).
- (B) MOR has accepted the Proposal and has agreed to grant permission to the [*name of the applicant/Developer*] for construction, operation and maintenance of the Rail System in accordance with the terms and conditions set forth in this Agreement and in accordance with the Railways Act, 1989.
- {(C) [*Name of the applicant*] has since promoted and incorporated the Developer as a limited liability company under the Companies Act 2013, and has requested MOR

¹ Serially numbered footnotes in this Model Agreement are for guidance of the MOR and should be omitted from the project specific Agreement.

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

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

⁴ The provisions in curly parenthesis and the blank spaces shall be suitably modified / filled after acceptance of the Proposal to reflect the particulars relating to the private developer.

to accept the Developer as the entity which shall undertake and perform the obligations and exercise the rights under this Agreement. }⁵

- (D) The Developer has delivered to MOR a legal opinion from the legal counsel of the Developer with respect to the authority of the Developer to enter into this Agreement and the enforceability of the provisions thereof. MOR {has agreed to the said request of the {*name of the applicant*, and} has accordingly agreed to enter into this Agreement with the Developer for execution of the Project, subject to and on the terms and conditions set forth hereinafter.

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

⁵ This clause shall be deleted in the event the applicant and the Developer are the same entities and recital (D) should be accordingly renumbered as (C).

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 24) 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, unless the context otherwise requires, 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 a separate legal personality) of two or more of the above and shall include its successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “**without limitation**” or “**but not limited to**” whether or not they are followed by such phrases;
- (f) references to “**construction**” or “**building**” include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “**construct**” or “**build**” shall be construed accordingly;

- (g) references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, up-gradation and other activities incidental thereto, and “**develop**” shall be construed accordingly;
- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (i) any reference to “hour” shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30 (five thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on being hours on the half hour of the clock;
- (j) any reference to day shall mean a reference to a calendar day;
- (k) references to a “**business day**” shall be construed as a reference to a day (other than a Sunday) on which banks in [Delhi] are generally open for business;
- (l) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (m) references to any date, period or Project Milestones shall mean and include such date, period or Project Milestones as may be extended pursuant to this Agreement;
- (n) any reference to any period commencing “**from**” a specified day or date and “**till**” or “**until**” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (o) the words importing singular shall include plural and vice versa;
- (p) references to any gender shall include the other and the neutral gender;
- (q) “**lakh**” means a hundred thousand (100,000) and “**crore**” means ten million (10,000,000);
- (r) “**indebtedness**” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (s) references to the “**winding-up**”, “**dissolution**”, “**insolvency**”, or “**reorganisation**” of a company or corporation shall be construed so as to include

any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;

- (t) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of MOR hereunder or pursuant hereto in any manner whatsoever;
- (u) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;
- (v) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (w) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
- (x) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on *per diem* basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”);
- (y) time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence; and
- (z) unless the context otherwise requires, words or expressions used in this Agreement, but not defined, shall bear the same meaning as in the Railways Act, 1989 or other policies and manuals as issued by MOR from time to time or any statutory modification thereof in force at the date of this Agreement.

- 1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Developer to MOR and/ or the Independent Engineer shall be provided free of cost and in 3 (three) copies, and if MOR and/or the Independent Engineer is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain 2 (two) copies thereof.
- 1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
- 1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply.

1.3 Measurements and arithmetic conventions

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

1.4 Priority of agreements, clauses and schedules

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

- (a) this Agreement; and
- (b) all other agreements and documents forming part hereof or referred to herein;
i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

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

- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;

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

ARTICLE 2
SCOPE OF THE PROJECT

2.1 Term of the Agreement

The Parties agree that this Agreement shall come into force on the Effective Date and shall remain in force unless, terminated in accordance with the terms and conditions of this Agreement.

2.2 Scope of the Project

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

- (a) construction of the Rail System on the Site and as set forth in Schedule-A, in conformity with the Specifications and Standards;
- (b) operation and maintenance of the Rail System in accordance with the provisions of this Agreement; and
- (c) performance and fulfilment of all other obligations of the Developer 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 Developer under this Agreement.

ARTICLE 3
CONSTRUCTION, OPERATION AND MAINTENANCE

3.1 Right to Construction, Operation and Maintenance

Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, MOR hereby grants to the Developer the right, permission and authority to construct, operate and maintain the Rail System, excluding the performance of Reserved Services, and the Developer hereby agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.

3.2 Non-Government Railway

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

ARTICLE 4

OBLIGATIONS OF THE DEVELOPER

4.1 Obligations of the Developer

- 4.1.1 Subject to and on the terms and conditions of this Agreement, the Developer shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Rail System and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 4.1.2 The Developer shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 4.1.3 Subject to the provisions of Clauses 4.1.1 and 4.1.2, the Developer shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 4.1.4 The Developer shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- (a) acquire the land required for the Rail System (“**Site**”) either through purchase or through long term lease;
 - (b) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits, and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
 - (c) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the Rail System;
 - (d) perform and fulfil its obligations under the Financing Agreements;
 - (e) appoint the Independent Engineer and pay the remuneration, cost and expenses of the Independent Engineer in accordance with the provisions of this Agreement;
 - (f) 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;

- (g) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Developer's obligations under this Agreement;
- (h) 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;
- (i) procure and ensure that all facilities and amenities within the Rail System are maintained in accordance with Good Industry Practice and the Users have non-discriminatory access for use of the same;
- (j) provide assistance and support to MOR, as may be necessary and required for the provision of Reserved Services at the Rail System in accordance with the provisions of this Agreement; and
- (k) support, cooperate with and facilitate MOR in the implementation and operation of the Project in accordance with the provisions of this Agreement.
- (l) pay the Directional and General (D&G) charges to the Zonal Railways for a sum of ***6.

4.2 Obligations relating to Project Agreements

It is expressly agreed that the Developer 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 any other agreement shall excuse the Developer from its obligations or liability hereunder.

4.3 Obligations relating to employment of trained personnel

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

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

4.4 Obligations relating to medical aid

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

4.5 Obligations relating to aesthetic quality of the Rail System

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

4.6 Obligations relating to noise control

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

4.7 Facilities for physically challenged and elderly persons

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

ARTICLE 5
OBLIGATIONS OF MOR

5.1 Obligations of MOR

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

5.1.2 MOR agrees to provide support to the Developer and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:

- (a) upon written request from the Developer, and subject to the Developer complying with Applicable Laws, provide reasonable support and assistance to the Developer in procuring Applicable Permits required from any Government Instrumentality for implementation and construction of the Rail System;
- (b) provide Railway Land in accordance with Clause 5.2;
- (c) undertake interconnection of the Rail System with the rail network of Indian Railways, in accordance with this Agreement;
- (d) pay the User Fees to the Developer;
- (e) 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;
- (f) on a best effort basis, provide a timely supply of sufficient number of rakes, wagons, locomotives and other rolling stock for the efficient movement of trains on the Rail System; and
- (g) support, cooperate with and facilitate the Developer in the implementation and operation of the Project.

5.2 Obligations relating to Inter-connection

5.2.1 In consideration of this Agreement and the applicable charges, the covenants and warranties on the part of the Developer herein contained, MOR, in accordance with the terms and conditions set forth herein, hereby grants to the Developer, commencing from the Effective Date, leave and licence rights, Right of Way in respect of the land owned by MOR for the purpose of connecting the Rail System to [nearest existing Station or existing rail head] ("**Railway Land**"), and for no other purpose whatsoever. In consideration of the grant of leave and licence rights

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

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

5.3 Obligations relating to Reserved Services

- 5.3.1 Subject to the provisions of Article 11, MOR shall perform, or cause to be performed, all the Reserved Services in accordance with the provisions of this Agreement and Applicable Laws.
- 5.3.2 MOR agrees and undertakes that in order to enable the Developer to discharge its obligations under this Agreement and Applicable Laws, MOR shall discharge its own functions efficiently and in accordance with Good Industry Practice.

ARTICLE 6
REPRESENTATIONS AND WARRANTIES

6.1 Representations and warranties of the Developer

The Developer represents and warrants to MOR that:

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

which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;

- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- (k) no representation or warranty by it contained herein or in any other document furnished by it to MOR or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
- (l) 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 entering into this Agreement or for influencing or attempting to influence any officer or employee of MOR in connection therewith.

6.2 Representations and warranties of MOR

MOR represents and warrants to the Developer that:

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

- (c) it has the financial standing and capacity to perform its obligations under this Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on MOR's ability to perform its obligations under this Agreement;
- (f) it has complied with Applicable Laws in all material respects; and
- (g) it has good and valid right to the Site, and has power and authority to grant a licence in respect thereto to the Developer.

6.3 Disclosure

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

ARTICLE 7
CONSTRUCTION OF THE RAIL SYSTEM

7.1 Obligations prior to commencement of construction

Prior to commencement of Construction Works, the Developer shall:

- (a) submit to MOR and the Independent Engineer its detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule-B;
- (b) appoint its representative duly authorised to deal with MOR in respect of all matters under or arising out of or relating to this Agreement;
- (c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, Applicable Laws and Applicable Permits;
- (d) make its own arrangements for quarrying of materials needed for the Rail System under and in accordance with the Applicable Laws and Applicable Permits; and
- (e) pay the Directional and General (DNG) Charges to the Zonal Railways for a sum of ***⁷

7.2 Drawings

In respect of the Developer's obligations relating to the Drawings of the Rail System as set forth in Schedule-C, the following shall apply:

- (a) the Developer shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, 3 (three) copies each of all Drawings to MOR and the Independent Engineer for review;
- (b) by submitting the Drawings to MOR and the Independent Engineer, the Developer shall be deemed to have represented that it has determined and verified that the design and engineering, including field construction

⁷ This amount shall equal to 0.25% (zero point two five percent) of the capital cost as reflected in the Detailed Project Report.

criteria related thereto, are in conformity with the Scope of the Project and the Specifications and Standards;

- (c) within 15 (fifteen) days of the receipt of the Drawings, the Independent Engineer shall review the same and convey its observations to MOR and the Developer with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. Within 15 (fifteen) days of the receipt of the comments from the Independent Engineer, MOR may review the same and convey its observations to the Developer and the Independent Engineer with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Developer shall not be obliged to await the observations of MOR on the Drawings submitted pursuant hereto beyond the said 30 (thirty) days period and may begin or continue Construction Works at its own discretion and risk;
- (d) if the aforesaid observations of MOR and/or the Independent Engineer indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Developer and resubmitted to the Independent Engineer and MOR for review, with 7 (seven) days of receipt of the observations of MOR and/or the Independent Engineer. The Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings, and within 15 (fifteen) days of the receipt of the comments from the Independent Engineer, if any, MOR may review the same and convey its observations, if any, to the Developer and the Independent Engineer;
- (e) no review and/or observation of the Independent Engineer and/or MOR and/or its failure to review and/or convey its observations on any Drawings shall relieve the Developer of its obligations and liabilities under this Agreement in any manner nor shall MOR be liable for the same in any manner;
- (f) without prejudice to the foregoing provisions of this Clause 7.2, the Developer shall submit to MOR for review, comments and approval, its Drawings relating to [alignment of the Rail System, ***]⁸, and MOR shall have the right but not the obligation to undertake such review and provide its approvals and/or comments, if any, within 60 (sixty) days of the receipt of such Drawings. The provisions of this Clause 7.2 shall apply *mutatis mutandis* to the review and comments hereunder. For the avoidance of doubt, it is agreed that if MOR does not deny the approval or convey its

⁸ Please insert all the relevant particulars forming part of the Drawings, which MOR will approve, such as design for interconnection, integration of signalling system etc.

comments/observations within a period of [60 (sixty)] days of the receipt of such Drawings, the approval shall be deemed to have been granted; and

- (g) Within 90 (ninety) days of the COD, the Developer shall furnish to MOR and the Independent Engineer a complete set of as-built Drawings, in 2 (two) hard copies and in electronic form or in such other medium as may be acceptable to MOR, reflecting the Rail System as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Rail System and setback lines, if any, of the buildings and structures forming part of Project Facilities.

7.3 Construction of the Rail System

- 7.3.1 On or after the Effective Date, the Developer shall undertake construction of the Rail System as set forth in Schedule-A, and in conformity with the Specifications and Standards. The date falling on [730th] day from the Effective Date shall be the scheduled date for completion of the Project (the “**Scheduled Completion Date**”) and the Developer agrees and undertakes that construction of the Rail System shall be completed on or before the Scheduled Completion Date.
- 7.3.2 The Developer shall construct the Rail System in accordance with the Project Completion Schedule as set forth in Schedule-B. In the event that the Rail System is not completed within [90 (ninety)]⁹ days from the Scheduled Completion Date, unless the delay is on account of reasons solely attributable to MOR or due to Force Majeure, MOR may, subject to the provisions of Clause 7.3.3, terminate this Agreement. In the event the delay is on account of occurrence of any Force Majeure Event, the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists.
- 7.3.3 Notwithstanding anything to the contrary contained in this Agreement, if the Rail System is not completed on the Scheduled Completion Date, MOR may upon request of the Developer, if in the reasonable opinion of MOR the delay has occurred due to an event beyond the reasonable control of the Developer, extend the Scheduled Completion Date by a period not exceeding [90(ninety)]⁹ days at a time.

⁹ 10% of Project Completion Period

ARTICLE 8 NEW UTILITIES AND SIDINGS

8.1 New utilities

The Developer shall allow, subject to such conditions as MOR may specify, access to, and use of the Site for laying telephone lines, water pipes, electric cables or other public utilities. Where such access or use causes any financial loss to the Developer, it may require the [user of the Site/relevant authority] to pay compensation or damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Site under this Clause shall not in any manner relieve the Developer of its obligation to maintain the Rail System in accordance with this Agreement and any damage caused by such use shall be restored forthwith.

8.2 Sidings

8.2.1 MOR shall, at any time after the COD, be entitled in its discretion to undertake or cause to be undertaken, construction of any new rail line or siding taking off from the Rail System (“**Sidings**”). Upon its completion, MOR shall have the right to operate the Sidings and regulate the use thereof. For the avoidance of doubt, the Developer shall not bear any cost in relation to construction of Sidings. MOR may, at its discretion, share revenues from use of such Sidings with the Developer in such proportion as may be determined by MOR.

8.2.2 The licence, access and right of way granted by the Developer to MOR or MOR Nominee, as the case may be, shall always be subject to the existing rights of way and MOR or any nominee of MOR, as the case may be, shall perform its obligations in a manner that the Rail System is open to freight traffic for the Users at all times during the construction of Sidings.

ARTICLE 9

MONITORING OF CONSTRUCTION

9.1 Quarterly progress reports

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

9.2 Inspection

During the Construction Period, the Independent Engineer shall inspect the Rail System at least once a quarter and make a report of such inspection (the “**Inspection Report**”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Scope of the Project and Specifications and Standards. It shall send a copy of the Inspection Report to MOR and the Developer within 7 (seven) days of such inspection and upon receipt thereof, the Developer shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Independent Engineer shall not relieve or absolve the Developer of its obligations and liabilities hereunder in any manner whatsoever. Without prejudice to the above, MOR may undertake inspection of the Construction Works at any time.

9.3 Delays during construction

Without prejudice to the provisions of Clause 7.3.2, if the Developer does not achieve any of the Project Milestones or the Independent Engineer shall have reasonably determined that the rate of progress of Construction Works is such that the Rail System is not likely to be completed by the Scheduled Completion Date, it shall notify the Developer and MOR to this effect, and the Developer shall, within 15 (fifteen) days of such notice, by a communication inform the Independent Engineer and MOR in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve COD.

ARTICLE 10
COMPLETION CERTIFICATE AND ENTRY INTO COMMERCIAL SERVICE

10.1 Tests

- 10.1.1 The Developer shall prepare and submit, to the Independent Engineer, for examination and approval, a list of all Tests required and proposed to be conducted during the Construction Period to determine commissioning of the Rail System, along with a tentative schedule of the same. Within 15 (fifteen) days of the receipt of the list of Tests, the Independent Engineer shall review and approve the same and convey its observations to the Developer with a copy to MOR.
- 10.1.2 At least [60 (sixty)] days prior to the likely completion of the Rail System, the Developer shall notify the Independent Engineer of its intent to subject the Rail System to Tests. The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Developer, and notified to MOR, who may designate its representative to witness the Tests. The Developer shall provide such assistance as the Independent Engineer may require for conducting the Tests.
- 10.1.3 The Independent Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Rail System with Specifications and Standards and if it is reasonably anticipated or determined by the Independent Engineer during the course of any Test that the performance of the Rail System or any part thereof does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Developer to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Engineer shall provide to the Developer and MOR copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer may require the Developer to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Rail System with Specifications and Standards.

10.2 Completion Certificate

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

10.3 Rescheduling of Tests

If the Independent Engineer certifies to MOR and the Developer that it is unable to issue the Completion Certificate because of events or circumstances on account

of which the Tests could not be held or had to be suspended, the Developer shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable.

10.4 Safety Certification prior to COD and Commercial Service Certificate

10.4.1 MOR shall, not later than [30 (thirty)] days after the issuance of Completion Certificate procure that the [Chief Engineer (construction), **/Commissioner of Railway Safety] observes any or all the Tests to determine and certify that the Rail System is safe for entering into commercial service; provided that the [Chief Engineer/ Commissioner of Railway Safety] may require the Developer to conduct or cause to be conducted such additional tests as may be prudent and necessary in accordance with Applicable Laws and Good Industry Practice. For the avoidance of doubt, it is expressly agreed that the Developer shall not liable to pay any charges to MOR towards such certification by the [Chief Engineer/ Commissioner of Railway Safety].

10.4.2 Upon safety certification of the Rail System in accordance with the provisions of Clause 10.4.1, MOR shall procure the issuance of commercial service certificate in respect of the Rail System required for the purpose of commencing train operation on the Rail System not later than 15 (fifteen) days from the date on which an application has been submitted by the Developer to the Zonal Railway in this regard. MOR agrees and undertakes that in the event the Developer is unable to receive User Fees on account of the delay or denial of issuance or delivery of the commercial service certificate, the MOR shall to pay to the Developer, Damages in a sum calculated at the rate of Rs. [1,000 (one thousand)] per day of delay commencing from the 16th (sixteenth) day of the date of submission of the application by the Developer and until such commercial service certificate is procured.

10.5 Commercial Operation Date (COD)

The Rail System shall be deemed to be complete when the [safety certificate/ commercial service certificate] have been issued under the provisions of Clause 10.4. Accordingly the commercial operation date of the Rail System shall be the date on which the [the safety certificate/ commercial service certificate] is issued (the “COD”). The Rail System shall enter into commercial service on COD whereupon the MOR shall provide the Reserved Services and make payment of User Fees to the Developer in accordance with this Agreement, provided however, that the entry of Rail System into commercial service shall always be subject to compliance with the provisions of Clause 10.4.

ARTICLE 11 RESERVED SERVICES

11.1 Obligations of MOR relating to Reserved Services

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

- (i) [locomotion of trains], including providing the (a) wagons, locomotives and any other rolling stock (b) crew [and, (c) fuel/traction power], as may be required for locomotion of trains;
- (ii) fixing of tariff for movement and handling of any traffic on the Rail System;
- (iii) booking and delivery of consignments and determining any terms and conditions related thereto;
- [(iv) Station operation and management;]¹⁰
- (v) loco and wagon examination; and
- [(vi) ****]¹¹;

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

11.1.2 MOR agrees and undertakes that it shall depute, at the cost of the Developer, the essential staff required for performance of the Reserved Services (“**Railway Staff**”) as set forth in Schedule-D.

11.1.3 MOR agrees and undertakes that it shall depute, at its own cost, the staff for undertaking commercial activities related to freight handling.

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

11.2 Cost of undertaking Reserved Services

The Developer shall be responsible for and bear the cost incurred by MOR for undertaking and performance of Reserved Services, to be computed in accordance with the mechanism as specified at Schedule-E (“**Cost of Reserved Services**”).

¹⁰ The Station Operation normally to be done by Developer. MOR will undertake Station Operation if requested by the Developer.

¹¹ MOR may insert any other services as it deems fit.

11.3 Claims and Liabilities

The liability of MOR as a carrier of goods will be determined in terms of the Railways Act, 1989. The consignors / consignees of freight traffic originating, terminating or moving on the Rail System shall have the right to approach the concerned Zonal Railway which will be responsible to deal with the claims in accordance with the terms of the extant orders, procedures and circulars notified by MOR.

11.4 Liability arising out of Accidents and Indemnity

11.4.1 The Parties agree that:

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

11.4.2 Indemnity

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

11.5 Traffic Management

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

11.6 Operating Procedures

11.6.1 The Parties agree that the ['Engine on Load'/ [***]] system will be followed for undertaking the train operation on the Rail System.

11.6.2 Save and except as otherwise mutually agreed between the Parties, MOR shall be responsible for wagon examination, repairs and maintenance of incoming and outgoing trains.

11.7 Obligations of the Developer in respect of Reserved Services

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

- (a) make the Rail System available to MOR and the Railway Staff for provision of the Reserved Services;
- (b) comply with all rules, regulations and guidelines prescribed by MOR in connection with the security of the Rail System;
- (c) provide support and cooperation to MOR and the Railway Staff in the discharge of their obligations under this Article 11;
- (d) provide such information as the MOR and the Railway Staff may reasonably require for the provision of the Reserved Services;
- (e) provide, at its own cost, continuous supply of electricity and water that may be required by MOR and the Railway Staff to perform the Reserved Services [excluding power for locomotion of trains]; and
- (f) notify MOR and the Railway Staff of any proposed closure or withdrawal of any infrastructure or facilities at the Rail System, except in case of an Emergency, as per the operating procedures to be mutually agreed between the Parties from time to time.

11.8 Provision of space and access for Reserved Services

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

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

ARTICLE 12
OPERATION & MAINTENANCE

12.1 O&M obligations of the Developer

12.1.1 During the Operation Period, the Developer shall operate and maintain the Rail System in accordance with this Agreement either by itself, or through the O&M Contractor and if required, modify, repair or otherwise make improvements to the Rail System to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. Provided that notwithstanding anything to the contrary contained in this Agreement, the Developer may require MOR to undertake any or all of the operation and maintenance obligations of the Rail System on such terms and conditions as may be mutually agreed between the Parties.

The obligations of the Developer hereunder shall include:

- (a) permitting safe, smooth and uninterrupted flow of traffic on the Rail System during normal operating conditions;
- (b) carrying out periodic preventive maintenance of the Rail System;
- (c) undertaking routine maintenance including prompt repairs of track, viaducts, [tunnels, underpasses, skywalks], drains, embankments, structures, signalling systems, communication systems, lighting and Traction System;
- (d) undertaking major maintenance such as track replacement, repairs to structures, repairs and refurbishment of signalling and communication system, Traction System and other equipment;
- (e) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the rail track;
- (f) protection of the environment and provision of equipment and materials therefor;
- (g) maintenance of all communication, control and administrative systems necessary for the efficient operation of the Rail System;
- (h) complying with Safety Requirements in accordance with this Article 12;

- (i) minimising disruption to traffic in the event of accidents or other incidents affecting the safety and use of the Rail System by providing a rapid and effective response and maintaining liaison with emergency services of the State and the Zonal Railway;
- (j) maintaining a public relations unit to interface with and attend to suggestions from the Users, government agencies, media and other agencies;
- (k) maintaining a high standard of cleanliness and hygiene on the Rail System; and
- (l) operation and maintenance of all Project Assets diligently and efficiently and in accordance with Good Industry Practice.

12.1.2 The Developer shall remove promptly from the Rail System all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Rail System in a clean, tidy and orderly condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice.

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

12.2 Maintenance Requirements

The Developer shall procure that at all times during the Operation Period the Rail System is maintained in accordance with the service standards set forth in Schedule-F (the “**Maintenance Requirements**”).

12.3 Maintenance Manual

12.3.1 No later than 180 (one hundred and eighty) days prior to the Scheduled Completion Date, the Developer shall, in consultation with the Independent Engineer, evolve a repair, operation and maintenance manual (the “**Maintenance Manual**”) for the regular and preventive maintenance of the Rail System in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall furnish the same to MOR. MOR may, within 30 (thirty) days of the receipt of the Maintenance Manual, review the same and convey its observations to the Developer. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 12.3 shall apply, *mutatis mutandis*, to such revision.

12.3.2 Without prejudice to the provision of Clause 12.3.1, the Maintenance Manual shall, in particular, include provisions for maintenance of Project Assets and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that its overall condition conforms to Good Industry Practice.

12.4 Safety, breakdowns and accidents

12.4.1 The Developer shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Rail System. In particular, the Developer shall abide by the following insofar as they relate to safety of the Users and consignments:

- (a) General and Subsidiary rules of Railways;
- (b) Accident Manual, Disaster Management Manual of respective division/zone of Railways;
- (c) Station working rules of concerned stations;
- (d) Safety circulars/bulletins etc. issued by Zonal Railway; and
- (e) relevant Standards/Guidelines contained in internationally accepted codes; (the “**Safety Requirements**”).

12.4.2 Safety Requirements shall apply to all phases of construction, operation and maintenance with emphasis on identification of factors likely to be associated with accidents, consideration of the same, and implementation of appropriate preventive measures.

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

12.4.4 The Developer’s responsibility for rescue operations on the Rail System shall include safe evacuation of all Users and staff from the affected areas as an initial response to any particular incident. For this purpose, it shall maintain and operate [[2 (two)] round-the-clock road vehicles and 1 (one) accident relief train]¹² with rescue equipment and position them in a manner that allows access to the accident site.

¹² Depending on the length of the Rail System.

12.4.5 The Developer shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement, appoint an experienced and qualified Safety Consultant, to carry out safety audit of the Rail System in accordance with the Safety Requirements at least once a year and take suitable action to comply with audit observations.

12.4.6 In the event of any accident on the Rail System and upon receipt of a request in writing sent by the Developer, MOR shall arrange for relief and evacuation in the same manner as applicable in case of accidents on any other rail lines of MOR, provided however that the allocation of cost shall be determined in accordance with the provisions of Clause 11.4.1.

12.5 De-commissioning due to Emergency

12.5.1 If, in the reasonable opinion of the Developer, there exists an Emergency which warrants de-commissioning and closure of the whole or any part of the Rail System, the Developer shall be entitled to de-commission and close the whole or any part of the Rail System for so long as such Emergency and the consequences thereof warrant; provided that such de-commissioning and particulars thereof shall be notified by the Developer to MOR without any delay, and the Developer shall diligently carry out and abide by any reasonable directions that MOR may give for dealing with such Emergency.

12.5.2 The Developer shall re-commission the Rail System or the affected part thereof as quickly as practicable after the circumstances leading to its de-commissioning and closure have ceased to exist or have so abated as to enable the Developer to re-commission the Rail System and shall notify MOR of the same without any delay.

12.6 Section closure

12.6.1 The Developer shall not close any section of the Rail System for undertaking maintenance or repair works except with the prior written approval of MOR. Such approval shall be sought by the Developer through a written request to be made to MOR, at least 7 (seven) days before the proposed closure of such section and shall be accompanied by particulars thereof. Within 3 (three) days of receiving such request, MOR shall grant permission with such modifications as it may deem necessary. Provided that for closure of any one track way for a period not exceeding 2 (two) hours in a day, the Developer shall give prior notice of not less than 2 (two) hours for seeking approval of MOR for such proposed closure.

12.6.2 Upon receiving the permission pursuant to Clause 12.6.1, the Developer shall be entitled to close the designated section for the period specified therein, and in the event of any delay exceeding [2 (two) hours] in re-opening such section, the Developer shall pay Damages to MOR calculated at the rate of [0.5%(point five percentage)] of the Average Daily User Fee, for each hour of delay or part thereof on pro-rata basis, until the section has been re-opened for traffic.

12.7 MOR's right to take remedial measures

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

12.8 Overriding powers of MOR

- 12.8.1 If in the reasonable opinion of MOR, the Developer is in material breach of its obligations under this Agreement and, in particular, the Maintenance Requirements, and such breach is causing or likely to cause danger to the Users, MOR may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Developer to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.
- 12.8.2 In the event that the Developer, upon notice under Clause 12.8.1, fails to rectify or remove any danger to the Users within a reasonable period, MOR may exercise overriding powers under this Clause 12.8.2 and take over the performance of any or all the obligations of the Developer to the extent deemed necessary by it for rectifying or removing such danger; provided that the exercise of such overriding powers by MOR shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that MOR shall be entitled to recover from the Developer any costs and expenses incurred by MOR in discharge of its obligations hereunder.
- 12.8.3 In the event of a national emergency or civil commotion or any other emergency declared by the Central Government, MOR may take over the performance of any or all the obligations of the Developer to the extent deemed necessary by it, and exercise such control over the Rail System or give such directions to the Developer as may be deemed necessary; provided that the exercise of such overriding powers by MOR shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by MOR. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 18. It is also agreed that the Developer shall comply with such instructions as MOR may issue in pursuance of the provisions of this Clause 12.8, and shall provide assistance and cooperation to MOR, on a best effort basis, for performance of its obligations hereunder.

12.9 Restoration of loss or damage to the Rail System

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

12.10 Modifications to the Rail System

12.10.1 Electrification of the Rail System

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

12.10.2 Modification

- (i) In the event the average daily traffic on the Rail System exceeds 120% (one hundred and twenty per cent) of the system charted capacity, MOR may, notwithstanding anything to the contrary contained in this Agreement, require the Developer to undertake the modifications as may be necessary for augmentation of the system charted capacity of the Rail System (the “**Modification**”). Any such Modification shall be made in accordance with the provisions of this Clause 12.10.2 and the costs thereof shall be borne by the Developer. However, MOR may at its discretion, at the request of the Developer, bear such cost in full or part. For the avoidance of doubt, the Parties agree that [***] shall be deemed to be the system charted capacity of the Rail System for the purposes of this Clause 12.10.2.
- (ii) The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works undertaken by the Developer under this Article 12.
- (iii) Notwithstanding anything contained in this Agreement, the Parties may decide to undertake Modification on the terms and conditions as may be mutually agreed.

12.11 Excuse from performance of obligations

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

- (a) an event of Force Majeure;

- (b) measures taken to ensure the safe use of the Rail System except when unsafe conditions occurred because of failure of the Developer to perform its obligations under this Agreement; or
- (c) compliance with a request from MOR or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Rail System.

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

12.12 Reports of unusual occurrence

The Developer shall, upon occurrence of accidents or unusual occurrences on the Rail System, send to MOR, by facsimile or e-mail, a report, in a mutually agreed form, stating accidents and unusual occurrences on the Rail System relating to the safety and security of the Users and the Rail System, as soon as reasonably practicable, and in any event no later than 24 (twenty four) hours after such occurrence. A weekly and monthly summary of such reports shall also be sent within 3 (three) days of the closing of each week and month, as the case may be. The record of such occurrences shall be maintained as per the prevailing practices on the Zonal Railway. For the purposes of this Clause 12.12, accidents and unusual occurrences on the Rail System shall include:

- (a) death or injury to any person;
- (b) broken or buckled rails;
- (c) damaged or dislodged fixed equipment;
- (d) damage to or displacement of traction power conductor; or loss of traction power;
- (e) any obstruction on the track;
- (f) communication failure affecting the running of trains;
- (g) any obstruction or undue congestion in the provision of Reserved Services;
- (h) smoke or fire;
- (i) flooding of tracks;

- (j) any other event rendering the Rail System unsafe and/or unusable for providing the Reserved Services by MOR; and
- (k) such other relevant information as may be reasonably required by MOR.

{12.13 Supervision of Maintenance

In the event the Developer chooses to undertake the O&M obligations either by itself or through an O&M Contractor, the Zonal Railway shall inspect and certify the maintenance of the Rail System, at least once every year in accordance with the applicable standards / manuals notified by MOR and the Developer shall pay inspection charges for a sum equal to Rs. [5,000/per km]. The rate for computation of inspection charges shall be revised annually on April 1, to reflect the variation in WPI. }¹³

¹³ This clause shall be deleted in the event the Developer decides to outsource O&M obligations to MOR.

ARTICLE 13
KEY PERFORMANCE INDICATORS

13.1 Key Performance Indicators¹⁴

Without prejudice to the obligations specified in this Agreement, the Developer shall maintain the Rail System such that it achieves or exceeds the average speed of freight trains of [30 km/hr.] on a quarterly basis (the “**Key Performance Indicator**”).

13.2 Monthly status report

During Operation Period, the Developer shall, no later than 7 (seven) days after the close of each month, furnish a monthly report stating in reasonable detail the compliance with the Key Performance Indicator along with an analysis of the reasons for failures, if any, and the strategies for addressing the same and for otherwise improving the performance of the Rail System.

13.3 Damages for shortfall in performance

The Developer shall ensure and procure compliance of the Key Performance Indicator and for any shortfall in average performance during a quarter, it shall pay Damages at the rate of 1% (point five per cent) of the User Fees for that quarter for every 10% (ten per cent) in the shortfall, within 30 (thirty) days of the quarter in which the shortfall occurred subject to a maximum of 5% of the Total User Fee for that quarter.

¹⁴ The Key Performance Indicators specified here are indicative in nature and may be modified by MOR, as necessary, to reflect project-specific requirements.

ARTICLE 14

SECURITY

- 14.1 The Developer 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 Rail System; provided that MOR and the Developer may at any time mutually enter into an agreement to jointly provide security services in the Rail System.
- 14.2 The Developer shall abide by and implement any instructions of MOR for enhancing the security within and around the Rail System. The Developer agrees that it shall extend its full support and cooperation to MOR and to the other organisations authorised by MOR in the discharge of their obligations there under.
- 14.3 Developer will tie up necessary security arrangement wherever required with State/ Central agencies for providing security of Rail System at its own cost and expense.

ARTICLE 15 INDEPENDENT ENGINEER

15.1 Appointment of Independent Engineer

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

15.2 Duties and functions

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

15.2.2 The Independent Engineer shall submit regular periodic reports to MOR and the Developer in respect of its duties and functions set forth in Schedule-G.

15.3 Remuneration

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

15.4 Termination of appointment

15.4.1 The Developer 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 15.1.

15.4.2 If MOR has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Developer and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Developer shall hold a tripartite meeting with MOR and Independent Engineer for an amicable

resolution of the Dispute. If such Dispute is not resolved within 30 (thirty) days of the dispute being referred to the Developer then the Developer shall appoint forthwith another Independent Engineer in accordance with Clause 15.1.

15.5 Authorised signatories

The Developer shall require the Independent Engineer to designate and notify to MOR and the Developer 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.

ARTICLE 16

USER FEES

16.1 User Fees

MOR shall pay to the Developer a sum, determined in accordance with Schedule-H, as the User Fees for using the Rail System. The Parties agree that Zonal Railway shall undertake all payment obligations for and on behalf of MOR with respect to User Fees under this Article 16. It is also agreed that such undertaking of payment obligations by the Zonal Railways shall not in any manner absolve MOR from any liability or obligation under this Agreement.

16.2 Taxes and duties

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

16.3 Payment

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

16.4 Disputed amounts

- 16.4.1 The Developer shall, within [30 (thirty)] days of receiving the payment statement, notify Zonal Railway and MOR of any amounts which it determines as payable or disputed (the “**Disputed Amounts**”), with particulars thereof. Within [15 (fifteen) days] of receiving such notice, MOR shall present, to the Developer, any information or evidence as may reasonably be required for determining that such Disputed Amounts are payable or non-payable. MOR may, if necessary, meet a representative of the Developer for resolving the dispute and in the event that the dispute is not resolved amicably, the Dispute Resolution Procedure shall apply. For the avoidance of doubt, even if a dispute is resolved amicably, any amount paid after the Payment Due Date shall be deemed as delayed payment for the purposes of payment of interest thereon.
- 16.4.2 If any amount is payable by either Party to the other Party upon determination of a dispute regarding any Disputed Amount under the Dispute Resolution Procedure, such amount shall be deemed to be payable on the date when it first became due under this Agreement, and interest for the period of delay shall be due and payable at the rate specified in Clause 16.5.

16.5 Delayed payments

All amounts due and payable to the Developer under the provisions of this Agreement shall be paid within the period set forth in Clause 16.3. In the event of delay beyond such period, MOR shall pay interest for the period of delay, calculated at a rate equal to [3% (three per cent)] above the Bank Rate on the amounts payable.

ARTICLE 17

FORCE MAJEURE

17.1 Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 17.2, 17.3 and 17.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

17.2 Non-Political Event

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

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Developer, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Rail System for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 17.3;
- (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 Developer by or on behalf of such Contractor;
- (d) any delay or failure of an overseas contractor to deliver 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 Developer by or on behalf of such contractor;

- (e) any judgement or order of any court of competent jurisdiction or statutory authority made against the Developer in any proceedings for reasons other than (i) failure of the Developer to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by MOR;
- (f) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (g) any event or circumstances of a nature analogous to any of the foregoing.

17.3 Indirect Political Event

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

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (c) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Developer by or on behalf of such Contractor;
- (d) any Indirect Political Event that causes a Non-Political Event; or
- (e) any event or circumstances of a nature analogous to any of the foregoing.

17.4 Political Event

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

- (a) Change in Law;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Developer 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 Developer 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 Developer'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 Developer by or on behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

17.5 Duty to report Force Majeure Event

17.5.1 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 17 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.

17.5.2 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.

17.5.3 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 17.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

17.6 Allocation of costs arising out of Force Majeure

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

17.7 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.

17.8 Excuse from performance of obligations

If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

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

ARTICLE 18
SUSPENSION OF DEVELOPER'S RIGHTS

18.1 Suspension upon Developer Default

Upon occurrence of a Developer Default any time after COD, MOR shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Developer under this Agreement and (ii) 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 MOR to the Developer and shall continue until such time the relevant Developer Default is cured.

18.2 MOR to act on behalf of Developer

18.2.1 During the period of Suspension, MOR shall, on behalf of the Developer, operate and maintain the Rail System under and in accordance with this Agreement, and appropriate the User Fees payable to the Developer under and in accordance with this Agreement for meeting the expenditure incurred by MOR towards O&M. Any balance remaining after appropriating the aforesaid expenditure from the User Fees shall be paid to the Developer after deduction of 10% (ten per cent) hereof during the first year of Suspension and the deduction shall be increased by 5% (five per cent) every subsequent year thereafter subject to a maximum deduction of 50% (fifty per cent) of the User Fees. For the avoidance of doubt, the deduction during the 2nd and 3rd year of Suspension shall be 15% (fifteen per cent) and 20% (twenty per cent) respectively.

18.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Developer in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by MOR for discharging the obligations of the Developer 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 Developer and the Developer undertakes to indemnify MOR for all costs incurred during such period. The Developer hereby licences and sub-licences respectively, MOR or any other person authorised by it under Clause 18.1 to use during Suspension, all Intellectual Property belonging to or licenced to the Developer with respect to the Rail System and its design, engineering, operation and maintenance, and which is used or created by the Developer in performing its obligations under the Agreement.

18.3 Revocation of Suspension

Upon the Developer having cured the Developer Default, the Developer may, by notice in writing require MOR to revoke the Suspension and MOR shall revoke such Suspension within 3 (three) months of the date of such notice and restore all rights of the Developer under this Agreement.

ARTICLE 19
DEFAULT, COMPENSATION AND TERMINATION

19.1 Developer Default

19.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Developer 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 Developer shall be deemed to be in default of this Agreement (the “**Developer Default**”), unless the default has occurred solely as a result of any breach of this Agreement by MOR or due to Force Majeure. The defaults referred to herein shall include:

- (a) the Developer abandons or manifests intention to abandon the construction of the Rail System without the prior written consent of MOR;
- (b) COD does not occur within the period specified in Clause 7.3;
- (c) the Developer abandons or manifests intention to abandon the operation and maintenance of the Rail System without the prior written consent of MOR;
- (d) the Developer is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
- (e) the Developer has failed to make any payment to MOR within the period specified in this Agreement;
- (f) the Developer repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (g) an execution levied on any of the assets of the Developer has caused a Material Adverse Effect on MOR;
- (h) the Developer is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Developer or for the whole or material part of its assets that has a material bearing on the Project;
- (i) the Developer has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of MOR, a Material Adverse Effect on MOR;
- (j) a resolution for winding up of the Developer is passed, or any petition for winding up of the Developer is admitted by a court of competent

jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Developer is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Developer are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Developer 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
- (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and has a credit worthiness at least as good as that of the Developer as at the date of Financial Close;
- (k) any representation or warranty of the Developer herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Developer is at any time hereafter found to be in breach thereof;
- (l) the Developer submits to MOR any statement, notice or other document, in written or electronic form, which has a material effect on MOR's rights, obligations or interests and which is false in material particulars;
- (m) the Developer has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or
- (n) the Developer commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on MOR.

19.1.2 Upon occurrence of a Developer Default prior to the COD, without prejudice to any other rights or remedies which MOR may have under this Agreement, MOR shall be entitled to terminate this Agreement by issuing a Termination Notice to the Developer; provided that before issuing the Termination Notice, MOR shall by a notice inform the Developer of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Developer 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. Upon Termination MOR shall be entitled to take possession and control of the Railway Land and the assets build by MOR.

19.1.3 Upon occurrence of a Developer Default during the Operation Period, MOR shall be entitled to exercise its Suspension rights in accordance with the provisions of Article 18. However, in the event MOR, in its opinion, is unable to exercise its Suspension rights and undertake operation and maintenance of the Rail System for any reason, it may terminate in accordance with this Agreement.

19.1.4 Upon Termination on account of a Developer Default pursuant to Clause 19.1.2 or 19.1.3, as the case may be, the Developer shall pay to MOR by way of compensation, all direct costs suffered or incurred by MOR as a consequence of such Developer Default within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof. For the avoidance of doubt, compensation payable may include expenses incurred on any assets built by MOR on the Railway Land and all other costs directly attributable to such Developer Default but shall not include other consequential losses. For the avoidance of doubt, the compensation payable hereunder by Developer shall be in addition to the Damages, if any, due and payable under any other provisions of this Agreement.

19.2 Consequences of MOR Default

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

- (a) MOR commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Developer;
- (b) MOR has failed to make any payment to the Developer within the period specified in this Agreement; or
- (c) MOR repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

19.2.2 Without prejudice to any other right or remedy which the Developer may have under this Agreement, upon occurrence of a MOR Default, MOR shall pay to the Developer by way of compensation, all direct costs suffered or incurred by the Developer, however not exceeding 1% (one per cent) of the total project cost, as a consequence of such MOR Default within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof. 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 MOR Default but shall not include loss of User Fee, debt repayment obligations or other consequential losses, and for determining such compensation, information notified by the Developer within a period of 60 (sixty) days from the COD, including the total project cost as on COD and its disaggregation between debt and equity, may be relied upon to the extent it is relevant. For the avoidance of doubt, the compensation payable hereunder by MOR shall be in addition to the Damages, if any, due and payable under any other provisions of this Agreement.

19.3 Transfer of Project Assets

Notwithstanding anything to the contrary contained in this Agreement, the Developer shall if required by MOR transfer of all the rights, title and interest of the Developer in the Project Assets in favour of MOR on such terms and conditions as shall be mutually agreed upon between the Parties. It is expressly agreed that this Agreement shall terminate automatically and forthwith, without the need for any action to be taken by either Party to terminate the Agreement, upon transfer of the Project Assets as specified in this Clause 19.3.

19.4 Survival of rights

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

ARTICLE 20 ASSIGNMENT

20.1 Restrictions on assignment

This Agreement shall not be assigned by the Developer to any person, save and except with the prior consent in writing of MOR, which consent MOR shall be entitled to decline without assigning any reason. For the avoidance of doubt, the restraints set forth herein shall not apply to assignment of rights, interest and obligations of the Developer to or in favour of the Lenders as security for financing provided by the Lenders under the Financing Agreements.

20.2 Assignment by MOR

Notwithstanding anything to the contrary contained in this Agreement, MOR may, after giving 60 (sixty) days' notice to the Developer, assign and/ or transfer any of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of MOR, capable of fulfilling all of MOR's then outstanding obligations under this Agreement. For the present, MOR has nominated the Zonal Railway as its nominee to perform on its behalf and exercise all its rights and obligations under this Agreement and the reference to MOR in this Agreement shall include the Zonal Railway. Accordingly, till further directions are given by MOR, the rights and obligations relating to payment, review of Drawings, day to day operational requirements as envisaged in this Agreement, shall be performed and exercised by the Zonal Railway for and on behalf of MOR.

ARTICLE 21
LIABILITY AND INDEMNITY

21.1 General indemnity

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

21.1.2 MOR will indemnify, defend, save and hold harmless the Developer 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 breach by MOR of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Developer 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 Developer, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Developer.

21.2 Indemnity by the Developer

21.2.1 Without limiting the generality of Clause 21.1, the Developer shall fully indemnify, hold harmless and defend MOR and MOR Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- (a) failure of the Developer to comply with Applicable Laws and Applicable Permits;
- (b) payment of taxes required to be made by the Developer in respect of the income or other taxes of the Developer’s contractors, suppliers and representatives; or

- (c) non-payment of amounts due as a result of materials or services furnished to the Developer or any of its contractors which are payable by the Developer or any of its contractors.

21.2.2 Without limiting the generality of the provisions of this Article 21, the Developer shall fully indemnify, hold harmless and defend MOR Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which MOR Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Developer or by the Developer's Contractors in performing the Developer'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 Developer shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Rail System, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Developer shall promptly make every reasonable effort to secure for MOR a licence, at no cost to MOR, authorising continued use of the infringing work. If the Developer is unable to secure such licence within a reasonable time, the Developer 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.

21.3 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 21 (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.

21.4 Defence of claims

21.4.1 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 21, 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.

21.4.2 If the Indemnifying Party has exercised its rights under Clause 21.3, 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).

21.4.3 If the Indemnifying Party exercises its rights under Clause 21.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
- (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:

- (i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
- (ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 21.4.3 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.

21.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 21, 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.

21.6 Survival on Termination

The provisions of this Article 21 shall survive Termination.

ARTICLE 22 DISPUTE RESOLUTION

22.1 Dispute resolution

22.1.1 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 22.2.

22.1.2 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.

22.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to [*Insert the designation of the Person authorized in this behalf by MOR*] and the Chairman of the Board of Directors of the Developer 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 22.1.1 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 22.3.

22.3 Arbitration

22.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 22.2, shall be finally decided by reference to arbitration by a board of arbitrators appointed in accordance with Clause 22.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be [Delhi], and the language of arbitration proceedings shall be English.

- 22.3.2 There shall be a board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.
- 22.3.3 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 22 shall be final and binding on the Parties as from the date it is made, and the Developer and MOR agree and undertake to carry out such Award without delay.
- 22.3.4 The Parties agree that an Award may be enforced against the Developer and/or MOR, as the case may be, and their respective assets wherever situated.
- 22.3.5 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.

22.4 Adjudication by Regulatory Authority or Commission

In the event of constitution of a statutory Regulatory Authority or Commission with powers to adjudicate upon disputes between the Developer and MOR, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 22.3, be adjudicated upon by such Regulatory Authority or Commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

ARTICLE 23
MISCELLANEOUS

23.1 Governing law and jurisdiction

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

23.2 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).

23.3 Depreciation and interest

- 23.3.1 The property representing the capital investment made by the Developer in the Project shall be acquired and owned by the Developer. For the avoidance of doubt, MOR shall not in any manner be liable in respect of any claims for depreciation to be made by the Developer under the Applicable Laws.

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

23.4 Delayed payments and Damages

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

23.4.2 The rate for computation of Damages under Clause 5.2.1, Clause 10.4.2, Clause 12.13 and para 1.2 of Schedule-F shall be revised annually on April 1, to reflect the variation in WPI.

23.5 Waiver

23.5.1 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.

23.5.2 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.

23.6 Exclusion of implied warranties etc.

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

23.7 Survival

23.7.1 Termination shall:

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

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

23.8 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn.

23.9 Severability

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

23.10 No partnership

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

23.11 Third parties

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

23.12 Successors and assigns

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

23.13 Notices

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

- (a) in the case of the Developer, 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 Developer may from time to time designate by notice to MOR; provided that notices or other communications to be given to an address outside [Delhi] may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Developer may from time to time designate by notice to MOR;
- (b) in the case of MOR, be given by facsimile or e-mail and by letter delivered by hand and be addressed to [Insert the designation of the person authorized in this behalf] with a copy delivered to MOR Representative or such other person as MOR may from time to time designate by notice to the Developer; provided that if the Developer does not have an office in

*** it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and

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

23.14 Language

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

23.15 Counterparts

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

ARTICLE 24 DEFINITIONS

24.1 Definitions

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

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

“**Affected Party**” shall have the meaning set forth in Clause 17.1;

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

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

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

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

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

“**Award**” shall have the meaning set forth in Clause 22.3.3;

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

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

- (a) the enactment of any new Indian law as applicable to the State;
- (b) the repeal, modification or re-enactment of any existing Indian law;
- (c) the commencement of any Indian law which has not entered into effect until the Effective Date; or
- (d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Effective Date;

“**COD**” or “**Commercial Operation Date**” shall have the meaning set forth in Clause 10.5;

“**Completion Certificate**” shall have the meaning set forth in Clause 10.2;

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

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

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

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

“**Cost of Reserved Services**” shall have the meaning set forth in Clause 11.2;

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

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

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

“**Damages**” shall have the meaning set forth in Sub-clause (x) of Clause 1.2.1;

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

“**Developer Default**” shall have the meaning set forth in Clause 19.1.1;

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

“**Dispute Resolution Procedure**” means the procedure for resolution of Disputes set forth in Article 22;

“**Disputed Amount**” shall have the meaning set forth in Clause 16.4.1;

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

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

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

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

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

“**Financing Agreements**” means the agreements executed by the Developer in respect of financial assistance to be provided by the Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the total project cost;

“**Force Majeure**” or “**Force Majeure Event**” shall have the meaning ascribed to it in Clause 17.1;

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

“**Good Industry Practice**” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced 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 Developer in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

“**Government Instrumentality**” means any department, division or sub-division of the Government of India or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body including Panchayat under the control of the Government of India or the State Government, as the case may be, and having jurisdiction over all or any part of the Rail System or the performance of all or any of the services or obligations of the Developer under or pursuant to this Agreement;

“**Indemnified Party**” means the Party entitled to the benefit of an indemnity pursuant to Article 21;

“**Indemnifying Party**” means the Party obligated to indemnify the other Party pursuant to Article 21;

“**Independent Engineer**” shall have the meaning set forth in Clause 15.1;

“**Indirect Political Event**” shall have the meaning set forth in Clause 17.3;

“**Inspection Report**” shall have the meaning set forth in Clause 9.2;

“**Intellectual Property**” means 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, semi-conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

“**Key Performance Indicator**” shall have the meaning set forth in Clause 13.1;

“**Lenders**” means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Developer under any of the Financing Agreements for financing the Project;

“**Maintenance Manual**” shall have the meaning set forth in Clause 12.3.1;

“**Maintenance Requirements**” shall have the meaning set forth in Clause 12.2;

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

“**Modification**” shall have the meaning set forth in Clause 12.10.2;

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

“**MOR Default**” shall have the meaning set forth in Clause 19.2.1;

“**MOR Indemnified Persons**” shall have the meaning set forth in Clause 21.1.1;

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

“**Non-Political Event**” shall have the meaning set forth in Clause 17.2;

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

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

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

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

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

“**Payment Due Date**” shall have the meaning set forth in Clause 16.3.1;

“**Political Event**” shall have the meaning set forth in Clause 17.4;

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

“**Project Agreements**” means this Agreement, the Financing Agreements, EPC Contract, O&M Contract, and any other material agreements or contracts that may be entered into by the Developer with any person in connection with matters relating to, arising out of or incidental to the Project;

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

- (a) Site;
- (b) tangible assets such as civil works and equipment including foundations, embankments, pavements, interchanges, bridges, drainage works, electrical systems, signal and communication systems, rest areas, relief centres, maintenance depots, administrative offices and Stations;

- (c) Project Facilities situated on the Site;
- (d) all rights of the Developer under the Project Agreements;
- (e) financial assets, such as receivables, security deposits etc;
- (f) insurance proceeds; and
- (g) Applicable Permits and authorisations relating to or in respect of the Rail System;

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

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

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

“**Proposal**” shall have the meaning set forth in Recital A;

“**Rail System**” means the [non-Government railway under the Railways Act, 1989 in ***** comprising the *****] built, or to be built, and maintained on the Site and includes civil, mechanical and electrical works, rail tracks, signalling and telecommunication equipment, and all other Project Assets necessary for and associated with operation of trains on the Site;

“**Railway Land**” shall have the meaning ascribed to it in Clause 5.2.1;

“**Railway Staff**” shall have the meaning set forth in Clause 11.1.2;

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

“**Reserved Services**” means the services specified in Clause 11.1.1;

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

“**Rules**” shall have the meaning set forth in Clause 22.3.1;

“**Safety Requirements**” shall have the meaning set forth in Clause 12.4.1;

“**Scheduled Completion Date**” shall have the meaning set forth in Clause 7.3.1;

“**Scope of the Project**” shall have the meaning set forth in Clause 2.2;

“**Sidings**” shall have the meaning set forth in Clause 8.2.1;

“**Site**” shall have the meaning set forth in Clause 4.1.4 (a);

“**Specifications and Standards**” means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Rail System, as specified by Indian Railways from time to time, and any modifications thereof, or additions thereto, as included in the design and engineering for the Rail System submitted by the Developer to, and expressly approved by, MOR. Where no specifications and standards have been specified by the Indian Railway the construction of the Rail System shall conform to the international specification in this regard;

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

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

“**Suspension**” shall have the meaning set forth in Clause 18.1;

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

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

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

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

“**Tests**” shall mean the tests specified by the Developer and approved by the MOR to be undertaken to determine the completion of Rail System in accordance with the provisions of this Agreement;

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

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

“**User Fee**” means the charge(s) payable by MOR to the Developer for use of the Rail System computed in accordance with Schedule-H;

“**WPI**” means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month; and

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

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

SIGNED, SEALED AND
DELIVERED

For and on behalf of
THE MINISTRY OF RAILWAY by
the President of India:

(Signature)
(Name)
(Designation)

THE COMMON SEAL OF
DEVELOPER has been affixed pursuant
to the resolution passed by the Board of
Directors of the Developer 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 [§]:

In the presence of:

1.

2.

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

Schedules

SCHEDULE – A
(See Clause 2.2)

DEVELOPMENT OF THE RAIL SYSTEM

1 Development of the Rail System

Development of the Rail System shall include construction of the Rail System as described in this Schedule-A on the Site as per the Site Layout in Annex I.

2 Description of Rail System

2.1 The Rail System shall be of [***] Km in Route length and from [***] Km (Chainage) (Station Name) to [***] Km (Chainage) (Station Name).

2.2 The Rail System shall be constructed [in tunnel/at grade/elevated] as briefly described below:

S.No	Items	Descriptions
1	Gauge	
2	Total Track Km	
3	Track in Tunnel	
4	Bridges	
5	Stations	
6	Ruling gradient	
7	Axle Load	
8	Maximum Permissible Speed [100kmph]	
9	[Any other specification may be prescribed here.]	

3 Project Facilities

3.1 Description of Project Facilities

Each of the Project Facilities is briefly described below:

1. [Stations
2. Freight Handling Facilities
3. Warehousing Facilities
4. FOIS/TMS
5. Railway Office Infrastructure
6. Running Room Facilities]

[Note: Each of the above Project Facilities will be briefly described.]

Annex - 1
Site Layout

[Note: Developer to insert the Site Layout]

SCHEDULE – B
(See Clause 7.1)

PROJECT COMPLETION SCHEDULE

1 Project Completion Schedule

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

2. Project Milestones

[Note: Developer to insert the Project Completion Schedule.]

Sr. No	Activity/Project Milestone	Date

3 Scheduled Completion Date

3.1 The Scheduled Completion Date shall occur on the [730th] day from the Effective Date.

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

4 Extension of period

Upon extension of any or all of the aforesaid Project Milestones or the Scheduled Completion Date, as the case may be, under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly.

SCHEDULE – C
(See Clause 7.2)

DRAWINGS

1 Drawings

In compliance of the obligations set forth in Clause 7.2 of this Agreement, the Developer shall furnish to the Independent Engineer, free of cost, all Drawings listed in Annex-I of this Schedule-C.

2 Additional drawings

- 2.1 If the Independent Engineer determines that for discharging its duties and functions under this Agreement, it requires any drawings other than those listed in Annex-I, it may by notice require the Developer to prepare and furnish such drawings forthwith. Upon receiving a requisition to this effect, the Developer shall promptly prepare and furnish such drawings to the Independent Engineer, as if such drawings formed part of Annex-I of this Schedule-C.

Annex - I
(Schedule-C)

List of Drawings

1. List of Drawings and Documents to be furnished by the Developer shall include, but not be limited to:
 - (a) General map of the country traversed by the Project, scale about 20 km to 1 cm;
 - (b) Index map, scale about 1 km to 1 cm;
 - (c) Index Plan and Sections prepared in accordance with clause 3 of this Schedule C;
 - (d) Schematic Plans of Station Yards;
 - (e) General arrangement drawings of Structures; and
 - (h) Plans of Junction Arrangements.

2. Tabulated details which shall consist of important characteristics of the railway or a portion of railway to be constructed, which shall, as may be applicable, include, but not be limited to the following:
 - (a) Curve Abstract;
 - (b) Gradient abstract;
 - (c) Bridge abstract;
 - (d) Important bridges-particulars of waterway and construction;
 - (e) Ballast and permanent way;
 - (f) Station and station sites;
 - (g) Station accommodation;
 - (h) Station machinery;
 - (i) Level crossing abstract;
 - (j) Brief particular of tractions installations;
 - (k) Power supply installation abstract;
 - (l) Traction maintenance depot abstract;
 - (m) Restricted overhead equipment clearance abstract; and
 - (n) Electrical crossing over railway track abstract;

as specified in the Indian Railways Code for Engineering Department.

SCHEDULE – D
(See Clause 11.1.2)

RAILWAY STAFF

The number of Railway Staff to be deployed on the Rail System for Reserved Services would be as follows¹⁵:

Sr. No	Designation	Grade ¹⁶	Number	Location

¹⁵ The list provided in this Schedule D is indicative and the same may be revised on a project to project basis by MOR, prior to execution of the Agreement.

¹⁶ As shall be revised from time to time

SCHEDULE – E
(See Clause 11.2)

Cost of Reserved Services

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

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

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

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

(B). Cost of Fuel:

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

Calculation Methodology of cost of fuel/Electricity:

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

Other than Fuel For Diesel Locomotive:

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

		Goods Diesel of the For the concerned Zone.	Railway Board. (Statement No. 16, Col. 7-BG) for <u>Total Diesel Traction</u> .
Other stores	F-242	GTKM GTKm. for Goods Diesel of the Zone .	<u>For the Zonal Railway to be adopted</u> – Annual Statistical Statement of the relevant year – Published by Railway Board. (Statement No. 16, Col. 7-BG) for <u>Total Diesel Traction</u> . GTKm. for Goods Diesel of the NGR . <u>Summation of GTKm. (in ‘000) as calculated from RRs Of the NGR Section for Month / Year.</u>

Other than Fuel for Electric Locomotive:

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

(C) Cost of Crew (Diesel Traction)

Item	Account Head	Unit to be used for allocation of Cost	Source of Data
Running Staff loco crew	F-212	GTKM/1000 GTKm. for Goods Diesel of the concerned ZONE .	Annual Statistical Statement of the relevant year – Published by Railway Board. (Statement No. 16, Col. 7-BG) for Total Diesel Traction.
Running Staff - Guard	G-510	TOTAL GTKM/1000 GTKm. for Goods of the concerned ZONE (All Traction) .	Annual Statistical Statement of the relevant year – Published by Railway Board. (Statement No. 16, Col. 7-BG)
Other operating staff accompanying the trains	G-520	TOTAL GTKM/1000 GTKm. for Goods of the concerned ZONE (All Traction) .	Annual Statistical Statement of the relevant year – Published by Railway Board. (Statement No. 16, Col. 7-BG) for All Traction .
Contingent expenses	F-243	GTKM/1000 GTKm. for Goods of the concerned ZONE (Traction Specific) .	Annual Statistical Statement of the relevant year – Published by Railway Board. (Statement No. 16, Col. 7-BG) for Traction Specific .
Misc. expenses	F-291 to 294	GTKM/1000 GTKm. for Goods of the concerned ZONE (Traction Specific)	Annual Statistical Statement of the relevant year – Published by Railway Board. (Statement No. 16, Col. 7-BG) for Traction Specific .
Other unclassified expenses	F-295	GTKM/1000 GTKm. for Goods of the concerned ZONE (Traction Specific)	Annual Statistical Statement of the relevant year – Published by Railway Board. (Statement No. 16, Col. 7-BG) for Traction Specific .
Supervisory, Running and Office Staff.	8F-211	GTKM/1000 GTKm. for Goods	Annual Statistical Statement of the relevant

		of the concerned ZONE (Traction Specific)	year – Published by Railway Board. (Statement No. 16, Col. 7-BG) for Traction Specific.
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Cost of Crew (Electric Traction)

Item	A/cs. Head	Basis for apportionment	Source of Data & Methodology
Running staff – Loco crew	F-312	GTKM/1000 GTKm. for Goods Electric of the concerned ZONE.	Annual Statistical Statement of the relevant year – Published by Railway Board. (Statement No. 16, Col. 7-BG) for Electric Traction (<u>AC +DC</u>).
Running staff – Guard	G-510	Total GTKM/1000 GTKm. for Goods of the ZONE (All Traction).	Annual Statistical Statement of the relevant year – Published by Railway Board. (Statement No. 16, Col. 7-BG) for All Traction.
Other operating staff accompanying freight trains	G-520	Total GTKM/1000 GTKm. for Goods of the concerned ZONE (All Traction).	Annual Statistical Statement of the relevant year – Published by Railway Board. (Statement No. 16, Col. 7-BG) for All Traction.
Contingent expenses	8F-333	GTKM/1000 GTKm. for Goods of the concerned ZONE (Traction Specific).	Annual Statistical Statement of the relevant year – Published by Railway Board. (Statement No. 16, Col. 7-BG) for Traction Specific.
Misc. Expenses	8F-341 to 344	GTKM/1000 GTKm. for Goods of the concerned ZONE (Traction Specific)	Annual Statistical Statement of the relevant year – Published by Railway Board. (Statement No. 16, Col. 7-BG) for Traction Specific.
Other unclassified expenses	8F-345	GTKM/1000 GTKm. for Goods of the concerned ZONE (Traction Specific)	Annual Statistical Statement of the relevant year – Published by Railway Board. (Statement No. 16, Col. 7-

			BG) for Traction Specific.
Supervisory and office staff, Running	8F-311	GTKM/1000 GTKm. for Goods of the Railway (Traction Specific)	Annual Statistical Statement of the relevant year – Published by Railway Board. (Statement No. 16, Col. 7-BG) for Traction Specific.

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

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

(D) INDIRECT COST

OVERHEAD COST:

- (i) These include Headquarter Costs representing expenses (under A 100 to A 400) on General Management, Financial Management, Personnel Management and Materials Management Services; Expenses on Staff Welfare & amenities like repair and maintenance of residential & welfare buildings, Educational, Medical, Health and Welfare Services; Appropriation to Pension Fund (under M 200); Provident Fund & Retirement Benefits (under Abstract L) and other Miscellaneous Expenses. In addition, working expenses such as Safety, RPF, Staff Training, etc. are included.
- (ii) Overhead costs will be applicable only on costs of Crew, Running Repair of wagons and Cost of Railway Staff.
- (iii) The Overhead costs shall be charged on the basis of Best Zonal railway average rate¹⁷.

¹⁷ The Overhead Cost percentage will be taken from Table – 15 – General Overheads as a percentage of direct expenses, under GROUP – B Costs from Latest “Summary of End Results – Freight Services Unit Costs”, Published by the Statistics & Eco. Date. (Cost Analysis Unit), Railway Board, Ministry of Railway.

SCHEDULE – F
(See Clause 12.2)

MAINTENANCE REQUIREMENTS

1. Maintenance Requirements

1.1 The Developer shall, at all times, maintain the Rail System in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Developer shall, at all times during the Operation Period, conform to the Maintenance Requirements set forth in this Schedule-F.

1.2 The Developer shall repair or rectify any defect or deficiency set forth in Paragraph 2 of this Schedule-F within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the MOR shall be entitled to recover Damages at the rate of [Rs. 1,000 (one thousand)] for each day of delay. Recovery of such Damages shall be without prejudice to the rights of the MOR under the Agreement, including Termination thereof.

2. Extension of time limit

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

3. Emergency repairs/restoration

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

Annex - I
(Schedule- F)

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

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

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

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

SCHEDULE – G
(See Clause 15.2)

TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

1. Scope

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

2. Definitions and interpretation

- 2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.
- 2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
- 2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, *mutatis mutandis*, to this TOR.

3. Roles and functions of the Independent Engineer

- 3.1 The roles and functions of the Independent Engineer shall include the following:
- (i) review of the Drawings and Documents as set forth in Paragraph 4;
 - (ii) review, inspection and monitoring of Construction Works as set forth in Paragraph 5;
 - (iii) conducting Tests on completion of construction and submitting copies of all Test data including detailed Test results to the MOR, Chief Engineer/Independent Surveyor Assessor as set forth in Paragraph 5;
 - (iv) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;

- (v) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
 - (vi) assisting the Parties in resolution of disputes as set forth in Paragraph 8; and
 - (vii) undertaking all other duties and functions in accordance with the Agreement.
- 3.2 The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

4. Drawings and Documents

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

5. Construction Period

- 5.1 In respect of the Drawings and Documents received by the Independent Engineer for its review and comments during the Construction Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.
- 5.2 The Independent Engineer shall review the quarterly progress report furnished by the Developer and send its comments thereon to the MOR and the Developer within 7 (seven) days of receipt of such report.
- 5.3 The Independent Engineer shall inspect the Construction Works once every quarter, preferably after receipt of the quarterly progress report from the Developer, but before the [7th (seventh) day] of next quarter in any case, and make out a report of such inspection (the “**Inspection Report**”) setting forth an overview of the status, progress, quality and safety of construction, including the

work methodology adopted, the materials used and their sources, and conformity of Construction Works with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Rail System. The Independent Engineer shall send a copy of its Inspection Report to MOR and the Developer within 7 (seven) days of the inspection.

- 5.4 The Independent Engineer may inspect the Rail System more than once in a quarter if any lapses, defects or deficiencies require such inspections.
- 5.5 In the event that the Developer fails to achieve any of the Project Milestones, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Rail System is not feasible within the time specified in the Agreement, it shall require the Developer to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which the Scheduled Completion Date shall be achieved. Upon receipt of a report from the Developer, the Independent Engineer shall review the same and send its comments to MOR and the Developer forthwith.
- 5.6 The Independent Engineer shall carry out, or cause to be carried out, all the Tests and upon completion of Construction Works, and shall issue the Completion Certificate. The Independent Engineer shall submit copies of all Test data including detailed Test results to the MOR, Chief Engineer/Independent Surveyor Assessor. For carrying out its functions under this Paragraph 5.6 and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of Article 10.

6. Operation Period

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

7. Determination of costs and time

- 7.1 The Independent Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.
- 7.2 The Independent Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

8. Assistance in Dispute resolution

- 8.1 When called upon by either Party in the event of any Dispute, the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement.
- 8.2 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

9. Other duties and functions

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

10. Miscellaneous

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

SCHEDULE – H
(See Clause 16.1)

USER FEES

The User Fees for the purposes of this Agreement shall be calculated as per the following formula:

User Fees = 95% of [Apportioned Basic Freight Revenue – (Costs of Reserved Services + Other charges and fee in accordance with the terms of the Agreement)]

The Apportioned Basic Freight Revenue component of the User Fees shall be calculated as per Inter-Railway Financial Adjustment Rules and the Cost of Reserved Services shall be computed on the basis of the mechanism as specified in Schedule-D and Schedule-E.