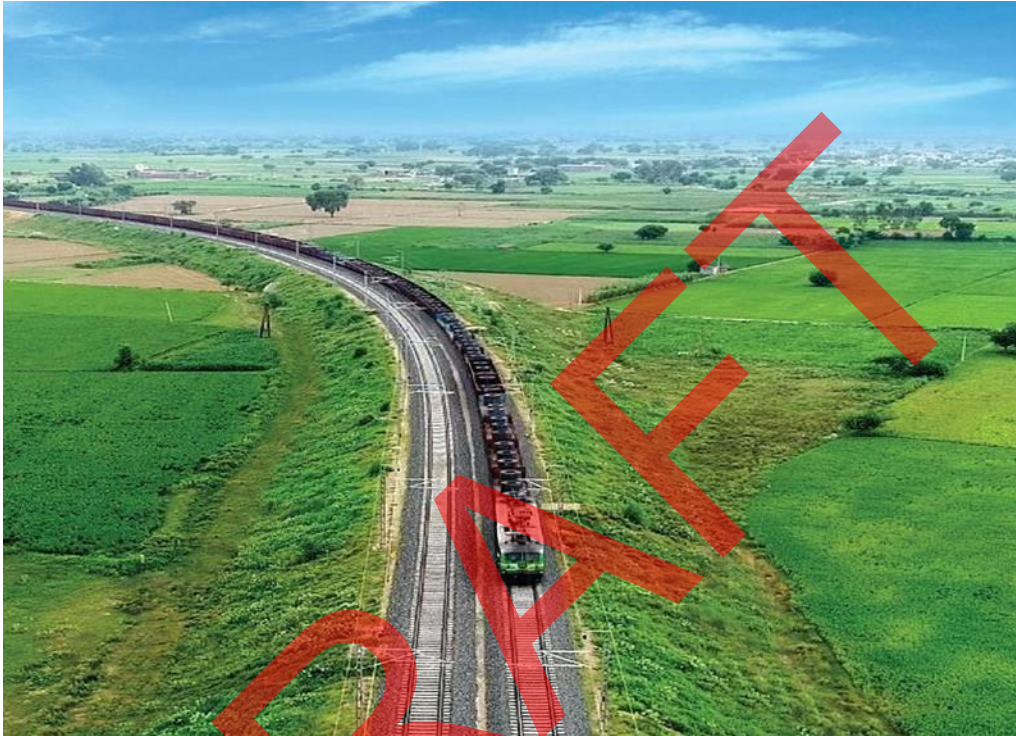




Draft Concession Agreement



Tender Notice No.....

For Selection of Concessionaire for

***Sonnagar (New Chiraila Pauthu) – New Gomoh section
(approximately 262 km) of Eastern Dedicated Freight Corridor
(EDFC)***

on Hybrid- DBFOT mode

Disclaimer: This Draft Concession Agreement is only for reference purpose.

March 2022

**Dedicated Freight Corridor Corporation of India Limited (DFCCIL)
A Government of India (Ministry of Railway) Enterprise**

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PART I
PRELIMINARY

CONCESSION AGREEMENT¹

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

BETWEEN

- 1 DEDICATED FREIGHT CORRIDOR CORPORATION OF INDIA LIMITED, a Government of India Enterprise under Ministry of Railways and a company incorporated under the provisions of the Companies Act, 2013 having its registered office at 5th Floor, Supreme Court Metro Station Building Complex, New Delhi - 110001, India with corporate identity number U60232DL2006GOI155068 represented through its Managing Director (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context, or meaning thereof, include its administrators, successors and assigns) of One Part;
- 2 {... LIMITED}, a company incorporated under the provisions of the Companies Act, 2013 with CIN.....and having its registered office at, (hereinafter referred to as the “**Concessionaire**”² which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part;

AND

- 3 MINISTRY OF RAILWAYS (MoR) represented by Principal Executive Director (Infra), Railway Board having its principal office at Rail Bhawan, 256-A, Raisina Road, Rajpath Area, Central Secretariat, New Delhi- 110001 (herein after referred to as the “**Confirming Party**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns), as a Confirming Party.

WHEREAS:

- (A) The Authority had resolved to undertake the development, operation and maintenance of Project comprising a new railway line between Sonnagar (New Chiraila Pauthu, approximately chainage IR km 542) and New Gomoh (approximately chainage IR km 301) section of EDFC (approximately 262 kms. route length) in accordance with the terms and conditions to be set forth in a Concession Agreement to be entered into.

¹ Instructions for Bidders

The draft Concession Agreement issued to the Bidders may be customized for bid-specific purposes in accordance with the instructions below:

Note 1: The provisions in curly brackets are to be retained in the draft Concession Agreement forming part of Bidding Documents and shall be suitably modified by the Bidders after the issue of Letter of Award (LOA) in order to reflect the bid-specific particulars in the Concession Agreement.

Note 2: Blank spaces are to be retained in the draft Concession Agreement and shall be suitably filled by the Bidders after the issue of LOA in order to reflect bid-specific particulars in the Concession Agreement. However, blank spaces shall be retained in all Schedules which contain formats that are to be used after the Concession Agreement is executed.

Note 3: Footnotes marked “£” is to be retained in the draft Concession Agreement. These footnotes are for guidance of the selected Bidders and shall be omitted before executing the Concession Agreement. However, footnotes marked “\$” shall be retained in the Concession Agreement as a part thereof.

² Refers to SPV incorporated by the selected bidder.

- (B) The Authority had adopted a single stage two packet bidding process and accordingly invited proposals through Request for Proposal for qualification and selection of bidder for development, operation and maintenance of the above referred Project on Hybrid- Design, Build, Finance, Operate & Maintain and Transfer (Hybrid-DBFOT) basis.
- (C) The Authority had prescribed the technical and commercial terms & conditions in the RFP, and invited Bids comprising technical and financial bids from the bidders for undertaking the Project.
- (D) After evaluation of the Bids received, the Authority has accepted the Bid of the {name and address of selected bidder/consortium/joint venture} and issued its Letter of Award No..... dated (hereinafter called the “**LOA**”) to the {selected bidder/consortium/ joint venture comprising..... and (collectively the “**Consortium**”) with as its Lead Member (the “**Lead Member**”)} requiring, *inter alia* incorporation of a limited liability company obligated to execute this Concession Agreement within 30 (thirty) days from the date of issue of LOA.
- (E) The selected bidder/ Consortium has since promoted and incorporated the Concessionaire as a limited liability company (hereafter called the “**SPV**”) under the Companies Act 2013, and has requested the Authority to accept the above SPV as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder/ Consortium under the LOA, including the obligation to enter into this Concession Agreement pursuant to the LOA for undertaking the Project.
- (F) By its letter dated, the SPV has also joined in the said request of the selected bidder/ Consortium to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder/ Consortium including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the selected bidder/ Consortium for the purposes hereof.
- (G) The Authority has agreed to the said request of the selected bidder / Consortium and the Concessionaire has accordingly agreed to enter into this Concession Agreement with the aforesaid SPV for implementation of the Project on Hybrid- DBFOT basis, subject to and on the terms and conditions set forth hereinafter.

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

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

In this Concession 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 1st (first) day of April of any calendar year and ending on the 31st (thirty first) day of March of the next calendar year;

“Accident Enquiry Committee” shall have the meaning set forth in Clause 17.15.2;

“Additional Auditor” shall have the meaning set forth in Clause 30.2.3;

“Additional Termination Payment” means the amount payable upon Termination in respect of Specified Assets, if any, as limited by the provisions of Clause 34.4.2;

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

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

- (a) on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the 1st (first) day of the month of Appointed Date and the Reference Date;
- (b) from COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the **“Base Adjusted Equity”**) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date; and

- (c) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.24% (zero point two four per cent)[£] thereof at the commencement of each month following the 4th (fourth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date;

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

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

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

“Agreement Date” means the date on which this Concession Agreement signed between the Authority and the Concessionaire;

“Appendix” shall have the meaning set forth in Clause 10.3.1;

“Applicable Laws” means all laws, brought into force and effect by GOI or the State Government(s) including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, applicable to this Concession 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 Concession Agreement;

“Applicable Permits” means all clearances, licences, permits, authorizations, 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 Project during the subsistence of this Concession Agreement;

“Appointed Date” means the date on which Financial Close is achieved and every Conditions Precedent is either satisfied or waived, as the case may be, in accordance with the provisions of this Concession Agreement, and such date shall be the date of commencement of the Concession Period;

“Approved Valuer” means a firm of valuers recognized as such by Income Tax Department and having experience of valuing at least 5 (five) properties exceeding Rs. 100 crores (Rupees One Hundred Crores) each in value;

[£] This number shall be substituted in each case by the figure arrived at upon dividing 100 by the number of months comprising the Concession Period. For example, the figure for a 35 year Concession Period shall be $100/420 = 0.238$ rounded off to two decimal points i.e., 0.24

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

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

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

“Authority Default” shall have the meaning set forth in Clause 34.2.1;

“Authority Indemnified Persons” shall have the meaning set forth in Clause 39.1.1;

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

“Authorised Detention Time” shall have the same meaning set forth in Schedule-H;

“Availability of Rail System” shall be number of hours the Rail System is available in a day measured as sum total of time available in a cycle of 24 (twenty four) hours, starting from 00:00 hours to 24:00 hours, for which the Rail System is available for Train operation after deduction of:

- (a) duration of Corridor Block availed by the Concessionaire;
- (b) any additional Power Blocks and/or Traffic Blocks availed by Concessionaire; and
- (c) period of Trains’ detention in the Project for reasons attributable to the Concessionaire;

For the avoidance of doubt, it is clarified that if failure of Rail System affects the movement of multiple Trains, then the Rail System shall be treated as non-available for the period from detention of the first affected Train to the departure of last affected Train on the particular line of the Project. The availability of Rail System shall be measured separately for each line (up and down lines) and each line shall have equal weightage in calculation of overall availability of Rail System as illustrated in Schedule-K of this Concession Agreement;

“Availability Payments” shall have the meaning as set forth in Clause 27.1;

“Award” shall have the meaning set forth in Clause 41.6.1;

“Bank” means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees One Thousand Crore) or any other bank acceptable to Senior Lenders, but does not include a bank in which any Senior Lender has an interest;

“Bid” means the Documents in their entirety comprised in the bid submitted by the {selected bidder/Consortium} in response to the Request for Proposal in accordance with the provisions thereof and **“Bids”** shall mean the bids submitted by any and all pre-qualified bidders;

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

“Block Section” means the portion of the Rail System between 2 (two) Stations;

“Booked Speed” means the maximum permissible speed of the Train in the section as sanctioned by the Authority and generally published in the working time table;

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

“Change in Law” means the occurrence of any of the following after the last date on which Bids have been submitted in accordance with the provisions of the RFP:

- (a) the enactment of any new Indian law;
- (b) the repeal, modification or re-enactment of any existing Indian law;
- (c) the commencement of any Indian law which has not entered into effect until the last date on which Bids have been submitted in accordance with the provisions of the RFP;
- (d) a change in the interpretation or application of any Indian law by a judgment 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 last date on which Bids have been submitted in accordance with the provisions of the RFP; or
- (e) any change in the rates of any of the Taxes that have a direct effect on the Project;

“Change in Ownership” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the {selected bidder/Consortium Members}, together with {its/their} Associates, in the total Equity to decline below (i) 100% (one hundred per cent) thereof until completion of Project Milestone III as certified by Independent Engineer, (ii) 51% (fifty one per cent) thereof from date of completion of Project Milestone III as certified by

Independent Engineer and until COD, and (iii) 26% (twenty six per cent) thereof from COD and until 06 (six) months from the COD; provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be,) in the proportion of the equity holding of {the selected bidder/ any Consortium Member} to the total Equity, if it occurs prior to COD, shall constitute Change in Ownership;

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

“Change of Scope Notice” shall have the meaning set forth in Clause 16.2.1;

“Change of Scope Order” shall have the meaning set forth in Clause 16.2.4;

“Commercial Service Notification” shall have the meaning set forth in Clause 14.3.2;

“Committee” shall have the meaning set forth in Clause 38.3.1;

“Completion Certificate” shall have the meaning set forth in Clause 14.4;

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

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

“Concession Fee” shall have the meaning set forth in Clause 26.1;

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

“Concessionaire Default” shall have the meaning set forth in Clause 34.1.1;

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

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

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

{**“Consortium Member”** means a company specified in Recital (D) as a member of the Consortium};

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

“Construction Works” means all works and things necessary to complete the Project in

accordance with this Concession Agreement;

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

“Core Land” means the bare minimum land required for laying of permanent way as per preliminary assessment by the Authority and marked in alignment plans mentioned in Schedule-A;

“Corridor Block” shall have the meaning set forth in Clause 17.7.1;

“Covenant” shall have the meaning set forth in Clause 5.2.4;

“CRS” means Commissioner of Railway Safety;

“Cure Period” means the period specified in this Concession Agreement for curing any breach or default of any provision of this Concession 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 Concession Agreement; and
- (c) not in any way be extended by any period of Suspension under this Concession Agreement;

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

“DAB” shall have the meaning as set forth in Clause 41.3.1;

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

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

- (a) the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Estimated Project Cost (the **“principal”**) but excluding any part of the principal that had fallen due for repayment 2 (two) years prior to the Transfer Date;

- (b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in sub-Clause (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due 1 (one) year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to the Authority Default; and
- (c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Estimated Project Cost;

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

provided further that the Debt Due, on or after COD, shall in no case exceed 42% (forty two per cent) of the Estimated Project Cost;

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

“Deemed Performance Security” shall have the meaning set forth in Clause 9.4;

“Detailed Project Report” or **“DPR”** shall have the meaning set forth in Clause 12.1.1;

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

“DFCCIL” means Dedicated Freight Corridor Corporation of India Limited;

“Dispute” shall have the meaning set forth in Clause 41.1.1;

“Dispute Resolution Procedure” means the procedure for resolution of Disputes set forth in Article 41;

“Divestment Requirements” means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 35.1;

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

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

“EBITDA” means earnings before interest, taxes, depreciation and amortization;

“EDFC” means Eastern Dedicated Freight Corridor;

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

“Encroachments” means any unauthorized occupation of the Site or part thereof, and includes an unauthorized:

- (a) erection of a building or any other structure, balconies, porches, projections on or over or overhanging the Site or part thereof;
- (b) occupation of the Site or part thereof beyond the prescribed period, if any, for stacking building materials or goods of any other description, for exhibiting articles for sale, for erecting poles, awning, tents, pandals, hoardings and other similar erections or for parking vehicles or stabling animals or for any other purpose; and
- (c) excavations or dumps of any sort made or extended on the Site or part thereof, or underneath the Site or part thereof;

“Encumbrances” means, in relation to the Project, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, where applicable herein but excluding utilities referred to in Clause 11.1;

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

“Equity” means the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Estimated Project Cost, and for the purposes of this Concession Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Concessionaire, and any interest-free funds advanced by any shareholder of the Concessionaire for meeting such equity component;

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

“Escrow Agreement” shall have the meaning set forth in Clause 28.1.1;

“Escrow Bank” shall have the meaning set forth in Clause 28.1.1;

“Escrow Default” means following events unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lenders’ Representative:

- (a) the Concessionaire commits breach of this Concession Agreement by failing to deposit any receipts into the Escrow Account as provided under Article 28 and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
- (b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any sub-account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or
- (c) the Concessionaire commits or causes any other breach of the provisions of Escrow Agreement and fails to cure the same within a Cure Period of 5 (five) business days;

“Estimated Project Cost” shall have the meaning as set forth in Clause 25.1;

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

“Financial Default” means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

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

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

“Financing Agreements” means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other Documents relating to the financing (including

refinancing) of the total capital cost of the Project, and includes amendments or modifications made in accordance with Clause 5.2.3;

“FOB” means foot over bridge;

“Force Majeure” or **“Force Majeure Event”** shall have the meaning set forth in Clause 31.1;

“Force Majeure Costs” shall have the meaning set forth in Clause 31.7.2;

“GAD” means general arrangement drawings;

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

“Good Industry Practice” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Concession Agreement and which would be expected to result in the performance of its obligations by the Concessionaire in accordance with this Concession 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 Project or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Concession Agreement;

“Grant” shall have the meaning set forth in Clause 25.2.1;

“IMD” means integrated maintenance depot;

“IMSD” means integrated maintenance sub depot;

“Important Bridge” means a bridge having a linear waterway of 300 (three hundred) meters or a total water way of 1000 (one thousand) sqm or more;

“Indemnified Party” means the Party entitled to the benefit of an indemnity pursuant to Article 39;

“Indemnifying Party” means the Party obligated to indemnify the other Party pursuant to Article 39;

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

“IR” means Indian Railways;

“Indirect Political Event” shall have the meaning set forth in Clause 31.3;

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

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 29, and includes all insurances required to be taken out by the Concessionaire under Clause 29.1 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

“Key Performance Indicators” shall have the meaning set forth in Clause 22.1;

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

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

“Licensed Premises” shall have the meaning set forth in Clause 10.2.2;

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

“Maintenance Manual” shall have the meaning set forth in Clause 17.2.1;

“Maintenance Programme” shall have the meaning set forth in Clause 17.4.1;

“Major Bridge” means a bridge having a total linear waterway of 18 (eighteen) meters or more or which has a clear opening of 12.2 (twelve point two) meters or more in spans;

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

“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 Concession Agreement and which act or event causes a material financial burden or loss to either Party;

“Material Benefit” shall have the meaning set forth in Clause 38.2;

“Material Impact” shall have the meaning set forth in Clause 38.1;

“MoEF & CC” means Ministry of Environment, Forest and Climate Change, GoI;

“MoR” or “Ministry of Railways” means Ministry of Railways, GoI;

“MoU” shall have the meaning set forth in Clause 38.3.5;

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

“Non-Political Event” shall have the meaning set forth in Clause 31.2;

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

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

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

“O&M Expenses” means expenses incurred by or on behalf of the Concessionaire, as the case may be, for all O&M including:

- (a) cost of salaries and other compensation to employees,
- (b) cost of materials, supplies, utilities and other services,
- (c) premia for insurance,
- (d) all taxes, duties, cess and fees due and payable for O&M,
- (e) all repair, replacement, reconstruction, reinstatement, improvement and O&M costs,
- (f) payments required to be made under the O&M Contract or any other contract in connection with or incidental to O&M, and
- (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Concession Agreement;

“O&M Inspection Report” shall have the meaning set forth in Clause 20.3;

“Operating Manual” shall have the meaning set forth in Clause 17.2.1;

“Operating Protocol” shall have the meaning set forth in Clause 17.2.1;

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

“Part Commissioning” shall have the meaning as set forth in Clause 15.2;

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

“Payment Due Date” shall have the meaning set forth 27.1.4;

“Performance Guarantee” shall have the meaning set forth in Clause 36.2.3;

“Performance Security” shall have the meaning set forth in Clause 9.1.1;

“Political Event” shall have the meaning set forth in Clause 31.4;

“Power Block” means the length of the railway line between 2 (two) Stations or in the Station yard or in the Zonal Railway system on which the overhead equipment is de-energised and earthed to enable the Concessionaire to execute construction or O&M works;

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

“Project” means the development of Sonnagar (New Chiraila Pauthu) and New Gomoh section of EDFC system on Hybrid- Design, Build, Finance, Operate & Maintain and Transfer (Hybrid- DBFOT) basis in accordance with the provisions of this Concession Agreement, and include all works, services and equipment relating to or in respect of the Scope of the Project;

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

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

- (a) rights over the Site in the form of licence, Right of Way or otherwise;
- (b) tangible assets such as civil works and equipment including foundations, embankments, pavements, interchanges, bridges, tunnels, culverts, drainage works, electrical systems, signal and telecommunication systems, sign boards, kilometer stones, rest areas, relief centers, maintenance depots, administrative offices and Stations;
- (c) buildings and immovable fixtures or structures forming part of the Project;
- (d) project facilities situated on the Site;

- (e) all rights of the Concessionaire under the Project Agreements;
- (f) financial assets, such as receivables, security deposits etc;
- (g) insurance proceeds; and
- (h) Applicable Permits and authorizations relating to or in respect of the Project;

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

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

“Rail System” shall mean combination of permanent way, bridges, tunnels, structures, electrical systems, signalling and telecommunication systems and any other system under the Scope of the Project for facilitating Train operation;

“Railway Act 1989” shall mean the Railway Act 1989 and shall include amendments to or any re-enactment thereof, as in force from time to time;

“Railway Staff” shall have the same meaning as set forth in Clause 18.1.1;

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

“RDSO” means Research Design and Standards Organization;

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

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

“Repo Rate” means the rate at which the Reserve Bank of India grants loans to commercial banks against Government securities;

“Request for Proposal” or “RFP” shall refer to the request for proposal for selection of Concessionaire for development, operation and maintenance of Sonnagar (New Chiraila Pauthu) – New Gomoh (approximately 262 km section) double line electrified rail system of EDFC on Hybrid- Design, Build, Finance, Operate & Maintain and Transfer (Hybrid-DBFOT) basis, published on [RFP publication date to be included];

“Reserved Services” means the services specified in Clause 18.1.1;

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

“ROB” means road over bridge;

“RUB” means road under bridge;

“Rules” shall have the meaning set forth in Clause 41.5.6.1;

“Safety Certificate” shall have the meaning set forth in Clause 14.3.1;

“Safety Consultant” have the meaning set forth in Paragraph 3 of Schedule-G;

“Safety Requirements” shall have the meaning set forth in Clause 19.1.1;

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

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

“Senior Lenders” means the financial institutions, multilateral lending agencies, banks, trusts, funds, and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements for meeting all or any part of the total capital cost of the Project and who hold *pari passu* charge on the assets, rights, title and interests of the Concessionaire;

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

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

“Specified Assets” shall have the meaning as set forth in Clause 40.5.1;

“Specified Documents” shall have the meaning set forth in Clause 42.1;

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

“Station” means all junction and crossing stations in the Scope of the Project, as specified in Paragraph 1.2 of Annex-I of Schedule-B;

“Statutory Auditors” means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act 2013, including any re-enactment or amendment thereof, for the time being in force, and appointed in accordance with Clause 30.2.1;

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

- (a) the principal amount of debt provided by lenders or the Concessionaire’s shareholders for meeting the total capital cost of the Project and subordinated to the financial assistance provided by the Senior Lenders; and
- (b) all accrued interest on the debt referred to in sub-Clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 4% (four per cent) above the Repo Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and six- month EURIBOR (Euro Inter Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due one year prior to the Transfer Date;

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

“Substitution Agreement” shall have the meaning set forth in Clause 37.3.1;

“Suspension” shall have the meaning set forth in Clause 33.1;

“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 Project charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

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

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

“Termination Payment” means the amount payable, under and in accordance with this Concession Agreement, by the Authority to the Concessionaire upon Termination. For the avoidance of doubt, it is expressly agreed that the amount payable shall be subject to the limitations specified in Clause 34.4;

“Tests” means the tests set forth in the list submitted by the Concessionaire pursuant to the provisions of Clause 14.1.1 to determine the completion of Project in accordance with the provisions of this Concession Agreement. The Tests and testing procedures shall be framed on the basis of various testing guidelines laid down by MoR in various codes and Manuals, in case there is no relevant MoR guidelines on any subject, then procedure laid down in Bureau of Indian Standards;

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

“Traffic Block” means the length of railway line between 2 (two) Stations or in the Station yard or in the Zonal Railway system on which traffic is blocked with or without overhead equipment being de-energised to enable construction or O&M works to be undertaken;

“Train” means a locomotive with or without vehicles attached or any self-propelled vehicle with or without a trailer which cannot be readily lifted off the track;

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

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

“Vesting Certificate” shall have the meaning set forth in Clause 35.4;

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

“Zonal Railway” means Railway, constituted under section 3 of the Railway Act, 1989, such as East Central Railway.

1.2 Interpretation

1.2.1. In this Concession Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof under Union and State Legislature 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 under Union and State Legislature shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended

or re-enacted;

- (c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Concession Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Concession 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 today shall mean a reference to a calendar day;
- (k) references to a “**business day**” shall be construed as 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 Concession 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 Concession 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 “**re- organization**” 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, re-organization, dissolution, arrangement, protection or relief of debtors;
- (t) save and except as otherwise provided in this Concession Agreement, any reference, at any time, to any agreement, deed, instrument, licence or Document of any description shall be construed as reference to that agreement, deed, instrument, licence or other Document as amended, varied, supplemented modified or suspended at the time of such reference; provided that this sub-Clause(s) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- (u) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Concession 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 authorized 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 Concession Agreement form an integral part of this Concession Agreement and will be in full force and effect as though they were expressly set out in the body of this Concession Agreement;
- (w) references to Recitals, Articles, Clauses, sub-Clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, sub-Clauses, Provisos and Schedules of or to this Concession Agreement; reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to

anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;

- (x) the damages payable by either Party to the other of them, as set forth in this Concession 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 Concession Agreement, but not defined herein, shall bear the same meaning as in the Railways Act, 1989 or other policies and manuals as issued by Ministry of Railways from time to time or any statutory modification thereof in force at the date of this Concession Agreement.
- 1.2.2. Unless expressly provided otherwise in this Concession Agreement, any Documentation required to be provided or furnished by the Concessionaire to Authority and/ or the Independent Engineer shall be provided free of cost and in three copies, and if Authority and/or the Independent Engineer is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.
- 1.2.3. The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
- 1.2.4. Any word or expression used in this Concession Agreement shall, unless otherwise defined or construed in this Concession 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. The financial figures shall be calculated and rounded off to 50 (fifty) paise with third digit of 5 (five) or above being rounded up and digits below 5 (five) being rounded down.

1.4 **Priority of agreements, clauses and schedules**

- 1.4.1. This Concession Agreement, and all other agreements and Documents forming part of or referred to in this Concession Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Concession Agreement, the priority of this Concession 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 Concession 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 Concession Agreement, the following shall apply:

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

PART II
THE CONCESSION

ARTICLE 2

SCOPE OF THE PROJECT

2.1 Scope of the Project

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

- (a) design, development, financing and construction of the Project on the Site as set forth in Schedule- A and as specified in Schedule-B together with the Specifications and Standards set forth in Schedule-C and in conformity with the DPR. For the avoidance of doubt, it is clarified that the construction of ROB & RUBs in lieu of level crossings and FOBs are not in the scope of Concessionaire. However, Concessionaire shall provide the necessary support for construction of ROB & RUBs in lieu of level crossings and FOBs by Zonal Railway/Authority;
- (b) operation, maintenance, management and transfer of the Project in accordance with the provisions of this Concession Agreement. For avoidance of doubt, entire operation and maintenance of the Sonnagar (New Chiraila Pauthu)- New Gomoh section, including *inter-alia* operation and maintenance of Stations, running room, IMD, IMSD, permanent way, structures, bridges, tunnels, traction system, signalling and telecommunication systems in accordance with the provisions of this Concession Agreement is included in Scope of the Project; and
- (c) performance and fulfillment of all other obligations of the Concessionaire in accordance with the provisions of this Concession Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Concession Agreement.

ARTICLE 3 GRANT OF CONCESSION

3.1 The Concession

- 3.1.1 Subject to and in accordance with the provisions of this Concession Agreement, the Applicable Laws and the Applicable Permits, Authority hereby grants to the Concessionaire the concession set forth herein including the exclusive right, licence and authority to construct, operate and maintain the Project, excluding the performance of Reserved Services, (the “**Concession**”) for a period of 35 (thirty five) years commencing from the Appointed Date and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.
- 3.1.2 Subject to and in accordance with the provisions of this Concession Agreement, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:
- (a) Right of Way, access and licence to the Site for the purpose of and to the extent conferred by the provisions of this Concession Agreement;
 - (b) design, development, financing and construction of the Project;
 - (c) manage, operate, maintain and transfer the Project;
 - (d) demand Grant from Authority for development of the Project or any part thereof;
 - (e) demand and appropriate Availability Payment from Authority for development, operation & maintenance of the Project or any part thereof;
 - (f) perform and fulfill all of the Concessionaire’s obligations under and in accordance with this Concession Agreement;
 - (g) save as otherwise expressly provided in this Concession Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Concession Agreement; and
 - (h) neither assign, transfer or sublet or create any lien or encumbrance on this Concession Agreement, or the Concession hereby granted or on the whole or any part of the Project nor transfer, lease or part possession thereof, save and except as expressly permitted by this Concession Agreement or the Substitution Agreement.

3.2 Railway Administration

Pursuant to a notification to be issued by the MoR in this regard, the Concessionaire shall, on and from the COD, be a Railway Administration (as defined in the Railways Act, 1989) for the purpose of construction, operation and maintenance of the Project as per this Concession Agreement, 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 Concession Agreement.

ARTICLE 4

CONDITIONS PRECEDENT

4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in Articles 4, 5, 6, 7, 8, 9, 10, 24, 31, 41 and 43, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Concession Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the “**Conditions Precedent**”). Provided, however, that a Party may grant waiver from satisfaction of any Conditions Precedent by the other Party in accordance with the provisions of Clauses 4.1.2 or 4.1.3, as the case may be, and to the extent of such waiver, that Conditions Precedent shall be deemed to be fulfilled for the purposes of this Clause 4.1.1.

4.1.2 The Concessionaire may, upon providing the Performance Security to Authority in accordance with Article 9, at any time after 60 (sixty) days from the date of this Concession Agreement or on an earlier day acceptable to Authority, by notice require Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 90 (ninety) days of the notice, or such longer period not exceeding 120 (one hundred and twenty) days as may be specified therein, and the Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:

- (a) procured for the Concessionaire the Right of Way to the Site in accordance with the provisions of Clause 10.3.1 and 10.3.3;
- (b) procured all Applicable Permits relating to environmental protection and conservation in respect of the Core Land granted under Clause 10.3.3; and
- (c) procured forest clearance for and in respect of the Core Land granted under Clause 10.3.3, save and except permission for cutting of trees;

Provided that upon request in writing by the Authority, the Concessionaire may, in its discretion, grant extension of time, not exceeding 90 (ninety) days for fulfillment of the Conditions Precedent set forth in this Clause 4.1.2.

4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire within a period of 270 (two hundred and seventy) days from the signing of this Concession Agreement shall be deemed to have been fulfilled when the Concessionaire shall have:

- (a) provided Performance Security to Authority as per Clause 9.1.1. For the avoidance of doubt, it is clarified and agreed that the Concessionaire is required to provide the Performance Security within 60 (sixty) days of signing of this Concession Agreement;
- (b) executed and procured execution of the Escrow Agreement;

- (c) executed and procured execution of the Substitution Agreement;
- (d) procured all the Applicable Permits as may be required for the commencement of the Project (other than those set forth in Clause 4.1.2) unconditionally or if subject to conditions, then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full and such Applicable Permits are in full force and effect;
- (e) executed the Financing Agreements and delivered to Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
- (f) delivered to Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with soft copy of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;
- (g) delivered to Authority from {the Consortium Members, their respective} confirmation of the correctness of their representations and warranties set forth in sub-Clauses (k), (l) and (m) of Clause 7.1 of this Concession Agreement; and
- (h) delivered to Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Concession Agreement and the enforceability of the provisions thereof;

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

- 4.1.4 Each Party shall make all reasonable endeavors to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.
- 4.1.5 The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Conditions Precedent for which it is responsible has been satisfied.

4.2 Damages for delay by the Authority

In the event that (i) Authority does not procure fulfillment of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Concession Agreement by the Concessionaire or due to Force Majeure, Authority shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.05% (zero point zero five per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum amount equal to the Bid Security.

4.3 Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfillment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within a period of 270 (two hundred and seventy) days from the date of this Concession Agreement, and (ii) the delay has not occurred as a result of failure to fulfill the obligations under Clause 4.1.2 or other breach of this Concession Agreement by Authority or due to Force Majeure, the Concessionaire shall pay to Authority, Damages in an amount calculated at the rate of 0.05% (zero point zero five per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum amount equal to the Bid Security, and upon reaching such maximum, the Authority may, in its sole discretion and subject to the provisions of Clause 9.2, terminate the Concession Agreement. Provided that in the event of delay by the Authority in procuring fulfillment of the Conditions Precedent specified in Clause 4.1.2, no Damages shall be due or payable by the Concessionaire under this Clause 4.3 until the date on which the Authority shall have procured fulfillment of the Conditions Precedent specified in Clause 4.1.2.

4.4 Deemed Termination upon delay

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

ARTICLE 5 OBLIGATIONS OF THE CONCESSIONAIRE

5.1 Obligations of the Concessionaire

- 5.1.1 Subject to and on the terms and conditions of this Concession Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the survey, investigation, design, engineering, procurement, construction, operation and maintenance of the Project and observe, fulfill, comply with and perform all its obligations set out in this Concession Agreement or arising hereunder.
- 5.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Concession Agreement.
- 5.1.3 Subject to the provisions of Clauses 5.1.1 and 5.1.2, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.4 The Concessionaire shall in accordance with the Key Performance Indicators and Specifications and Standards, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Concession Agreement:
- (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits (other than those set forth in Clause 4.1.2), and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
 - (b) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Project;
 - (c) perform and fulfill its obligations under the Financing Agreements;
 - (d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Concession Agreement;
 - (e) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Concession Agreement;
 - (f) provide assistance and support to Authority, as may be necessary and required for the provision of Reserved Services at the Project in accordance with the provisions of this Concession Agreement;
 - (g) ensure that all facilities and amenities within the Project are maintained in accordance

with Good Industry Practice and the Users have non- discriminatory access for use of the same;

- (h) support, cooperate with and facilitate Authority in the implementation and operation of the Project in accordance with the provisions of this Concession Agreement;
- (i) transfer the Project to Authority upon Termination of this Concession Agreement, in accordance with the provisions thereof;
- (j) undertake the complete Station operation as per relevant codes, manuals and station working rules of IR/ DFCCIL for the Stations under Sonnagar (New Chiraila Pauthu)- New Gomoh section shall be in the scope of Concessionaire. The Concessionaire's controller shall operate from the DFCCIL's operation control centre, Prayagraj for section control in coordination with IR/DFCCIL. The Station operations and operations from DFCCIL's operation control centre, Prayagraj by the Concessionaire shall be such that the Project meets the Key Performance Indicators set forth in Schedule-H on a continuous basis;
- (k) design and construction of additional opening or extension of existing ROBs, etc. including regrading of approach roads if required;
- (l) design and construction of irrigation openings in detour section if required by the local authorities;
- (m) facilitate development of connectivity to new industries, logistics parks etc. along side the Project which would enable marketing for additional traffic, and in this regard, *inter alia* encourage, promote and support the provision of rail freight terminals and freight logistics centers to increase traffic on the Project with prior written consent of Authority, provided that the cost towards connectivity shall be borne by Authority or beneficiary entity as per the extant policy of MoR/Authority;
- (n) comply with the guidelines, determinations of tariffs, charges and directions of tariff regulatory authority, if created;
- (o) always act in a manner consistent with the provisions of this Concession Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violating of any of the provisions of this Concession Agreement;
- (p) ensure to comply with the safety and welfare measures for labour in accordance with Applicable Laws and Good Industry Practice;
- (q) Concessionaire shall, in conformity with the guidelines issued from time to time by the Ministry of Social Justice and Empowerment, GoI, or a substitute thereof, procure a barrier free environment for the physically or visually challenged and for elderly persons using the Project;

- (r) ensure related environment provisions during construction as mentioned in the Safety, Health and Environment (SHE) Manual of DFCCIL and of other statutory bodies, as applicable;
- (s) compliance with the stipulations /conditions specified in any and all Applicable Permits obtained in respect of the Scope of the Project, including, without limitation, any stipulations made by MoEF & CC while granting stage-I and stage-II clearances for diversion of forest land for the Project (and, as applicable the conditions set forth therein for operation of the Trains at a maximum permissible speed of 100 (one hundred) kilometers per hour in forest and wildlife areas);
- (t) facilitate Authority to deploy, operate and maintain the latest technologies like online monitoring system for rolling stock like hot axle box hot wheel detector system, acoustic bearing detector, wheel impact load detector, machine vision inspection system, weigh bridges etc. at suitable locations as identified by the Authority;
- (u) disconnection of temporary connection with Zonal Railway yard made for development of temporary loading/ unloading yard, if any;
- (v) ensure safety of adjacent Zonal Railway track during Construction Period and Operation & Maintenance Period;
- (w) comply Make in India policy and its amendments issued by the Government of India from time to time.
- (x) ensure appointment of O&M Contractor if required as per provisions of this Concession Agreement or to comply with O&M experience as per provisions of RFP, no later than the date which is 365 (three hundred and sixty five) days prior to the Scheduled Completion Date.

5.2 Obligations relating to Project Agreements

- 5.2.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Concession Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreements or agreement shall excuse the Concessionaire from its obligations or liability hereunder.
- 5.2.2 The Concessionaire shall submit to the Authority the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Concession Agreement. It is further agreed that any failure or omission of the Authority to review and/or comment hereunder shall not be construed or deemed as

acceptance of any such agreement or Document by the Authority. No review and/or observation of the Authority and/or its failure to review and/or convey its observations on any Document shall relieve the Concessionaire of its obligations and liabilities under this Concession Agreement in any manner nor shall Authority be liable for the same in any manner whatsoever.

- 5.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire.
- 5.2.4 The Concessionaire shall ensure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the “Covenant”). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgement and undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, where under such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.
- 5.2.5 Notwithstanding anything to the contrary contained in this Concession Agreement, the Concessionaire agrees and acknowledge that selection or replacement of O&M Contractor and execution of the O&M Contract shall be subjected to the prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not effect to any such selection or contract without prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavor to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or its Contractor from any liability or obligations under this Concession Agreement.
- 5.2.6 Notwithstanding anything to the contrary contained in this Concession Agreement, the Concessionaire agrees and acknowledge that it will not assign any work to any Contractor/sub- contractor/vendor from a country which shares a land border with India

unless such Contractor/sub-contractor/vendor is registered with the competent authority. Concessionaire will ensure that such Contractor/sub-contractor/vendor fulfils all requirements in this regard and is eligible to be considered (where applicable, evidence of valid registration by the competent authority shall be obtained). The competent authority for registration will be the registration committee constituted by the Department for Promotion of Industry and Internal Trade, Government of India. Political and security clearance from the Ministry of External Affairs and Ministry of Home Affairs respectively will be mandatory for this purpose. For interpretation of this Clause Department of Expenditure, Ministry of Finance, Government of India letter F.No.6/18/2019-PPD letter dated 23/07/2020 or subsequent guidelines issued by the Government of India shall be referred).

5.3 Obligations relating to Change in Ownership

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

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

- (a) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of 20% (twenty per cent) or more of the total Equity of the Concessionaire; or
- (b) acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person acting in concert with him,

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

For the purpose of this Clause 5.3.2:

- (i) the expression "acquirer, "control" and "person acting in concert" shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Share and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Concessionaire;

- (ii) the indirect transfer of control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and
- (iii) power to appoint, whether by contract or by virtue of control or acquisitions of shares of any company holding directly or through one or more companies (whether situated in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situated in India or abroad, having ultimate control of 20% (twenty per cent) or more of the Equity of Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

5.4 Obligations relating to employment of foreign nationals

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

5.5 Sole purpose of the Concessionaire

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

5.6 Branding of Project

The Project or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Concessionaire or its shareholders. The Concessionaire undertakes that it shall not, in any manner, use the name or identity of the Project to advertise or display its own identity, brand equity or business interests, including those of its shareholders, save and except as may be necessary in the normal course of business.

5.7 Minimise disruptions

In the event of an Emergency during the implementation of the Project, the Concessionaire shall use best possible endeavors to minimise disruptions and overall delay on any railway

corridor used by the Authority which is in close proximity to the Project.

5.8 Electricity, water and other services

The Concessionaire shall be responsible for procuring of all power (except traction power), water and other services that it may require for performing its obligations at its own cost in accordance with the provisions of this Concession Agreement.

5.9 Training of Authority's personnel

The Concessionaire shall provide and complete the training to the officials nominated by the Authority in diagnostic, trouble shooting, repairing, operation and maintenance of the Rail System before the transfer of the Project to the Authority.

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ARTICLE 6

OBLIGATIONS OF THE AUTHORITY AND MoR

6.1 Obligations of the Authority

- 6.1.1 The Authority shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in this Concession Agreement or arising hereunder.
- 6.1.2 The Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Concession Agreement and Applicable Laws, the following:
- (a) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation of the Project;
 - (b) pay the Grant and Availability Payment to the Concessionaire;
 - (c) upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity;
 - (d) assist the Concessionaire in procuring police assistance for removal of trespassers and security on or at the Project;
 - (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 Concession Agreement;
 - (f) support, cooperate with and facilitate the Concessionaire in the implementation of the Project in accordance with the provisions of this Concession Agreement;
 - (g) upon written request from the Concessionaire and subject to the provisions of Clause 5.4, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Concessionaire or its Contractors of their obligations under this Concession Agreement and the Project Agreements; and
 - (h) in case construction of ROB and/ or RUB in lieu of level crossings are not completed by the Zonal Railway/Authority/other Government Instrumentality before the COD, the level crossing gate shall be interlocked by the Concessionaire and there shall be no restriction for commencement of running of Trains. Once construction of ROB and / or RUB gets completed, such level crossing gates shall be eliminated by the Concessionaire. Cost arising under this Clause shall be borne by the Authority and shall be paid to the Concessionaire as per Article 16.

6.2 Obligations of the MoR

The MoR shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in Schedule-M of this Concession Agreement.

6.3 Electricity transmission lines

The Authority shall procure the Applicable Permits, right of way and undertake erection, installation, and energization of transmission lines for traction power required for operating the Project from grid sub-station to traction sub-station.

6.4 Obligations relating to refinancing

Upon request made by the Concessionaire to this effect, the Authority shall, in conformity with any regulations or guidelines that may be notified by the Government of India or the Reserve Bank of India, as the case may be, permit and enable the Concessionaire to secure refinancing, in whole or in part, of the Debt Due on such terms as may be agreed upon between the Concessionaire and the entity providing such refinancing; for the avoidance of doubt, the tenure of debt refinanced hereunder may be determined mutually between the Senior Lenders and the Concessionaire, but the repayment thereof shall be completed no later than 1 (one) year prior to expiry of the Concession Period.

ARTICLE 7 REPRESENTATIONS AND WARRANTIES

7.1 Representations and warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

- (a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Concession Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorize the execution and delivery of this Concession Agreement and to validly exercise its rights and perform its obligations under this Concession Agreement;
- (c) along with its Associates, it has the financial standing and capacity to undertake the Project in accordance with the terms of this Concession Agreement;
- (d) this Concession Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Concession 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 Concession Agreement or matters arising there under including any obligation, liability or responsibility hereunder;
- (f) the information furnished in the Bid and as updated on or before the date of this Concession Agreement is true and accurate in all respects as on the date of this Concession Agreement;
- (g) the execution, delivery and performance of this Concession Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association {or those of any member of the Consortium} or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi- judicial or other authority, the outcome of which may result in the breach of this Concession 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 Concession 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 Concession 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 Concession 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 Concession Agreement;
- (k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3; and that the {selected bidder/ Consortium Members}, together with {its/their} Associates, hold not less than (i) 100% (hundred per cent) thereof until completion of Project Milestone III as certified by Independent Engineer, (ii) 51% (fifty one per cent) thereof from date of completion of Project Milestone III as certified by Independent Engineer and until COD, and (iii) 26% (twenty six per cent) thereof from COD and until 06 (six) months from the COD; and that no member of the Consortium whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the Request for Proposal shall together {with its/their Associates} hold less than 10% (ten per cent) of such Equity upto 06 (six) months from the COD;
- (l) {the selected bidder/ Consortium Members and its/their Associates} have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Concession Agreement;
- (m) {the selected bidder/ Consortium Members} is duly organised and validly existing under the laws of the jurisdiction of its incorporation or registration, as the case may be, and has requested Authority to enter into this Concession Agreement with the Concessionaire pursuant to the LOA, and has agreed to and unconditionally accepted the terms and conditions set forth in this Concession Agreement;
- (n) all its rights and interests in the Project shall pass to and vest in Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Concession Agreement;
- (o) no representation or warranty by it contained herein or in any other Document furnished by it to Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (p) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Concession Agreement or for influencing or attempting to influence any officer or employee of Authority in connection therewith;

- (q) all information provided by the {selected bidder/ Consortium Members} in response to the Request for Proposal or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects;
- (r) nothing contained in this Concession Agreement shall create any contractual relationship or obligation between the Authority and any Concessionaire's personnel (including its Contractor's personnel), designers, consultants or agents of the Concessionaire; and
- (s) all undertakings and obligations of the Concessionaire arising from the Request for Proposals or otherwise shall be binding on the Concessionaire as if they form part of this Concession Agreement.

7.2 Representations and warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Concession Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Concession Agreement, exercise its rights and perform its obligations, under this Concession Agreement;
- (b) it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Concession Agreement;
- (c) it has the financial standing and capacity to perform its obligations under this Concession Agreement;
- (d) this Concession 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 Authority's ability to perform its obligations under this Concession 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 Concessionaire.

7.3 Disclosure

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

ARTICLE 8 DISCLAIMER

8.1 Disclaimer

- 8.1.1 The Concessionaire acknowledges that prior to the execution of this Concession Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Proposal, Scope of the Project, Specifications and Standards, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, traffic volumes, suitability and availability of access routes to the Site and all information provided by the Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.
- 8.1.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, {the Consortium Members and their} Associates or any person claiming through or under any of them.
- 8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Concession Agreement, or render it voidable.
- 8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error provided, however, that a failure on part of the Authority to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Authority contained in Clause 8.1.1 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Concession Agreement.
- 8.1.5 Except as otherwise provided in this Concession Agreement, all risks relating to the Project shall be borne by the Concessionaire; and the Authority shall not be liable in any manner for such risks or the consequences thereof.

PART III
DEVELOPMENT AND OPERATIONS

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ARTICLE 9

PERFORMANCE SECURITY

9.1 Performance Security

- 9.1.1 The Concessionaire shall, for the performance of its obligations hereunder provide to Authority no later than 60 (sixty) days from the date of this Concession Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs¹ (Rupees Only) in the form set forth in Schedule-L (the “**Performance Security**”). Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, Authority shall release the Bid Security to the Concessionaire.
- 9.1.2 Notwithstanding anything to the contrary contained in this Concession Agreement, in the event Performance Security is not provided by the Concessionaire within a period of 60 (sixty) days from the date of this Concession Agreement, Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Concession Agreement shall be deemed to have been waived by and to have ceased with the concurrence of the Concessionaire, and this Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default or failure to meet any Conditions Precedent, Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Concessionaire Default or failure to meet any Conditions Precedent. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Performance Security, as aforesaid, failing which Authority shall be entitled to terminate this Concession Agreement in accordance with Article 34. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Concessionaire shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Concessionaire Default or to meet any Conditions Precedent, and in the event of the Concessionaire not curing its default or meeting such Conditions Precedent within such Cure Period, Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Concession Agreement in accordance with Article 34.

9.3 Release of Performance Security

¹ Performance Security shall be 3% of Estimated Project Cost

The Performance Security shall be released upon the Concessionaire expending on Project construction an aggregate sum that is not less than 40% (forty per cent) of the Estimated Project Cost excluding any sums disbursed by the Authority towards the Grant; provided, however, that the Performance Security shall not be released if the Concessionaire is in breach of this Concession Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars which establish satisfaction of the requirements specified in this Clause 9.3, the Authority shall release the Performance Security forthwith.

9.4 Deemed Performance Security

The Parties expressly agree that upon release of the Performance Security in accordance with the provisions of Clause 9.3, a substitute Performance Security for a like amount shall be deemed to be created under this Clause 9.4, as if it is a Performance Security under Clause 9.1 for and in respect of the entire Concession Period (the “**Deemed Performance Security**”). The Deemed Performance Security shall be unconditional and irrevocable, and shall, notwithstanding anything to the contrary contained in Clause 36.2.3, constitute the first and exclusive charge on an equivalent balance in the Escrow Account and on all amounts due and payable by the Concessionaire to the Authority, and the Authority shall be entitled to enforce the Deemed Performance Security through a withdrawal from the Escrow Account or by making a deduction from the amounts due and payable to it by the Concessionaire in accordance with the provisions of Clause 9.5. For the avoidance of doubt, the Parties agree that no amounts shall be earmarked, frozen or withheld in the Escrow Account for securing payment of any potential Damages that may fall due at a subsequent date, and only the amounts which shall have become due and payable by the Concessionaire upon occurrence of a Concessionaire Default shall be liable to appropriation hereunder.

9.5 Appropriation of Deemed Performance Security

Upon occurrence of a Concessionaire Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Deemed Performance Security as Damages for Concessionaire Default. For the avoidance of doubt, the Parties expressly agree that upon the Deemed Performance Security being appropriated, in whole or in part, it shall be deemed to be replenished to the extent of such appropriation.

9.6 References to Performance Security

References to Performance Security occurring in this Concession Agreement for and in respect of any period prior to the delivery of the Performance Security by the Concessionaire to the Authority, or in respect of any period subsequent to the expiry or release thereof, as the case may be, shall be construed solely for the purposes of calculating the amount of Damages payable by the Concessionaire, and the amount so determined shall be appropriated from the Bid Security or Deemed Performance Security, as the case may be.

ARTICLE 10 RIGHT OF WAY

10.1 The Site

The site of the Project (the “**Site**”) shall comprise the Site described in Schedule-A and in respect of which the Right of Way shall be provided and granted by the Authority to the Concessionaire as a licensee under and in accordance with this Concession Agreement. For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the real estate required for the Project as set forth in Schedule-A.

10.2 Licence, Access and Right of Way

- 10.2.1 The Authority hereby grants to the Concessionaire access to the Site for carrying out any surveys, investigations and soil tests that the Concessionaire may deem necessary during the Development Period, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the Site pursuant hereto in the event of Termination or otherwise.
- 10.2.2 In consideration of the Project, this Concession Agreement and the covenants and warranties on part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Appointed Date, leave and licence rights in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the Site which is described, delineated and shown in Schedule-A hereto (the “**Licensed Premises**”), on an “as is where is” basis, free of any Encumbrances and Encroachments, to develop, operate and maintain the said Licensed Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and only for the purposes permitted under this Concession Agreement, and for no other purpose whatsoever.
- 10.2.3 The licence, access and Right of Way granted by this Concession Agreement to the Concessionaire shall always be subject to existing right of way and the Concessionaire shall perform its obligations in a manner that any existing railway line along the alignment of or across the Project or an alternative thereof are open to traffic at all times during the Construction Period.
- 10.2.4 It is expressly agreed that the licence granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the licence, upon the Termination of this Concession Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the Concessionaire or its sub-licensees, the

licence in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of this Concession Agreement.

- 10.2.5 The Concessionaire hereby irrevocably appoints the Authority (acting directly or through a nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the licence granted hereunder at any time after the Concession Period has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorized officer of the Authority, and the Concessionaire consents to it being registered for this purpose.
- 10.2.6 It is expressly agreed that trees on the Site are property of the Authority except that the Concessionaire shall be entitled to exercise usufructuary rights thereon during the Concession Period.

10.3 Procurement of the Site

- 10.3.1 Pursuant to the notice specified in Clause 4.1.2, the Authority Representative, Independent Engineer and the Concessionaire shall, on a mutually agreed date and time, inspect the Site and prepare a joint memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, structures, road/ railway works, trees and any other immovable property on or attached to the Site. Such memorandum shall have appended thereto an appendix (the “**Appendix**”) specifying in reasonable detail those parts of the Site to which vacant access and Right of Way has not been granted to the Concessionaire. Signing of the memorandum, in 2 (two) counterparts (each of which shall constitute an original), by the authorized representatives of the Parties shall, subject to the provisions of Clause 10.2.2, be deemed to constitute a valid licence and Right of Way to the Concessionaire for free and unrestricted use and development of the vacant and unencumbered Site during the Concession Period under and in accordance with the provisions of this Concession Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that valid licence and Right of Way with respect to the parts of the Site as set forth in the Appendix shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the Authority to the Concessionaire.
- 10.3.2 On and after signing the memorandum referred to in Clause 10.3.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure that no Encroachment thereon takes place, and in the event of any Encroachment or occupation on any part thereof, the Concessionaire shall report such Encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.
- 10.3.3 Without prejudice to the provisions of Clause 10.3.1, the Parties hereto agree that on or prior to the Appointed Date, Authority shall have granted vacant access and Right of Way such that the Appendix shall not include more than 5% (five per cent) of the Core Land, and in the event Financial Close is delayed solely on account of delay in grant of such vacant access and Right of Way, the period for the achievement of the Financial Close shall be extended by the Authority, and the Authority shall be liable for Damages in accordance

with the provisions of Clause 4.2.

10.3.4 Authority shall procure and grant, no later than 365 (three hundred and sixty five) days from the Appointed Date, the Right of Way to the Concessionaire in respect of additional 4% (four per cent) of the Core Land included in the Appendix and no later than 730 (seven hundred and thirty) days from the Appointed Date, the Right of Way to the Concessionaire in respect of all the balance land remaining in the Appendix for Sonnagar (New Chiraila Pauthu)- New Gomoh section of the Project along with all Applicable Permits relating to environmental protection and conservation and forest clearance for and in respect of the land granted under this Clause 10.3.4, and in the event of delay for any reason other than Force Majeure or breach of this Concession Agreement by the Concessionaire, and any such delay adversely affects the Construction Works, the Authority shall pay to the Concessionaire Damages at the rate of 0.003% (zero point zero zero three per cent) of Performance Security per day per kilometer or part thereof, subject to maximum Damages reaching upto 50% (fifty per cent) of Performance Security and shall consider granting the reasonable extension in the Construction Period as per provision of Clause 12.4. Provided that, the occurrence of any such delay in the grant of Right of Way, will not have any impact whatsoever on the rights, interests, entitlements, benefits, etc. of the Authority that it may have under and in accordance with this Concession Agreement.

10.3.5 The Authority shall procure the additional land required for construction of works specified in Change of Scope Order issued under Article 16, in accordance with the provisions of this Concession Agreement, and upon procurement thereof, such land shall form part of the Site. However, any delay in handing over of such additional land, will not attract any Damages.

10.4 Site to be free from Encumbrances

Subject to the provisions of Clause 10.3, the Site shall be made available by the Authority to the Concessionaire pursuant hereto free from all Encumbrances, Encroachments and occupations and without the Concessionaire being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Concession Period. For the avoidance of doubt, it is agreed that the existing rights of way, easements, privileges, liberties and appurtenances to the Site shall not be deemed to be Encumbrances. It is further agreed that, unless otherwise specified in this Concession Agreement the Concessionaire accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.

10.5 Protection of Site from Encumbrances

During the Concession Period, the Concessionaire shall protect the Site from any and all occupations, Encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Concessionaire to place or create any Encumbrance or security interest over all or any part of the Site or the Project Assets, or on any rights of the Concessionaire therein or under this Concession Agreement, save

and except as otherwise expressly set forth in this Concession Agreement.

10.6 Special/temporary right of way

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

10.7 Access to the Authority and the Independent Engineer

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

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

10.8 Geological and archaeological finds

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

ARTICLE 11

UTILITIES, ASSOCIATED ROADS AND TREES

11.1 Existing utilities and roads

- 11.1.1 Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that the respective entities owning the existing roads, right of way, structures, or utilities on, under or above the Site are enabled by it to keep them in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the authority of the controlling body of that road, right of way or utility and the Authority shall, upon written request from the Concessionaire, initiate and undertake at its own cost, legal proceedings for acquisition of any right of way necessary for such diversion.
- 11.1.2 For the avoidance of doubt, it is clarified that the existing utilities of Zonal Railway and overhead power lines above 33 KV shall be shifted by the Zonal Railway/ Authority or concerned authority.

11.2 Shifting of obstructing utilities

- 11.2.1 The Concessionaire shall, subject to Applicable Laws and with assistance of the Authority, undertake shifting of electrical utility upto 33 KV lines to appropriate location or alignment, within or outside the Site. The cost of such shifting shall be borne by the Concessionaire.
- 11.2.2 The Concessionaire shall, subject to Applicable Laws and with assistance of the Authority, undertake shifting of utilities other than electrical utility specified in Clause 11.2.1 and 11.1.2 to an appropriate location or alignment within or outside the Site if and only if such utility causes or shall cause a Material Adverse Effect on the development, operation or maintenance of the Project. The cost of such shifting shall be borne by the Authority in accordance with the payment terms specified in Clause 11.2.3, or by the entity owning such utility, if the Authority so directs, and in the event of any delay in shifting thereof, the Concessionaire shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning such utility, as the case may be.
- 11.2.3 The Concessionaire shall, after commencement of work in accordance with Clause 11.2.2, present to the Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such Documentation as is reasonably sufficient for the Authority to determine the accuracy thereof. Within 90 (ninety) days of receipt of such bills, the Authority shall disburse to the Concessionaire such amounts as are certified by the Independent Engineer as reasonable, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure as set forth in Article 41.
- 11.2.4 For the existing utilities owned by Zonal Railway, where the shifting thereof can take place only after certain works for its shifting have been completed by the Concessionaire, the

Authority/Zonal Railway shall, undertake and complete its shifting within 180 (one hundred and eighty) days after the Concessionaire has notified the Authority of the completion of the works. In the event of delay in shifting the utility, beyond the aforesaid period of 180 (one hundred and eighty) days, the Concessionaire shall be entitled to Damages of 0.003% (zero point zero zero three per cent) of the Performance Security for each day's delay until the shifting of such utilities, subject to a maximum amount equal to 50% (fifty per cent) of the Performance Security.

- 11.2.5 Any unforeseen utilities identified during the construction of the Project shall be shifted by the Concessionaire at the cost of Authority. In the event the Construction Works is affected by such unforeseen utilities for reasons not attributable to the Concessionaire, the Concessionaire shall be entitled to get extension of time as determined by Independent Engineer under Clause 12.4.

11.3 New utilities and transport systems

- 11.3.1 The Concessionaire shall allow, subject to such conditions as the Authority may specify, access to, and use of the Site for laying telephone lines, water pipes, electric cables or other public utilities. Where such access or use causes any financial loss to the Concessionaire, it may require the user of the Site to pay compensation or damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Site under this Clause 11.3 shall not in any manner relieve the Concessionaire of its obligation to maintain the Project in accordance with this Concession Agreement and any damage caused by such use shall be restored forthwith.
- 11.3.2 Authority may, by notice require the Concessionaire to connect any adjoining transport system, including a rail system, to the Project, and the connecting portion thereof falling within the Site shall be constructed by the Concessionaire at Authority's cost in accordance with Article 16. The maintenance of such connecting portion shall be undertaken by the Concessionaire in accordance with the provisions of Clause 17.1.1.
- 11.3.3 The Authority may by notice require the Concessionaire to connect, through a paved road, any public facility or amenity to a Station, where upon the connecting portion thereof that falls within the Site shall be constructed, operated and maintained by the Concessionaire upon advance payment of the cost to be made by the beneficiary entity in accordance with the amount and period as determined by the Independent Engineer. For the avoidance of doubt, any connecting road required on the Site for enabling the Users to access the adjacent urban roads shall be constructed, operated and maintained by the Concessionaire as a part of the Project.

11.4 Felling of trees

The Authority shall pro-actively associate with the Concessionaire in obtaining the Applicable Permits for felling of trees to be identified by the Authority for this purpose if and only if such trees cause a Material Adverse Effect on the construction, operation or

maintenance of the Project. In the event of any delay in felling thereof for reasons beyond the control of the Concessionaire, it shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees. For the avoidance of doubt, the costs and expense in respect of felling of trees, transplantation (if required) and its transportation to nominated place shall be borne by the Concessionaire and any revenues thereof shall be paid to the Authority.

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ARTICLE 12 CONSTRUCTION OF THE PROJECT

12.1 Obligations prior to commencement of construction

12.1.1 The Concessionaire shall furnish to the Independent Engineer, a detailed project report comprising final alignment, details of longitudinal sections, bridges, tunnels, structures and buildings (the “**Detailed Project Report or DPR**”) in conformity with Specifications and Standards and inter-operability with existing EDFC and Zonal Railway within 180 (one hundred and eighty) days from the date of signing of Concession Agreement.

12.1.2 Prior to commencement of Construction Works, the Concessionaire shall:

- (a) submit to the Authority 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-D;
- (b) appoint its representative duly authorized to deal with the Authority in respect of all matters under or arising out of or relating to this Concession 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 Concession Agreement, the Applicable Laws and Applicable Permits; and
- (d) make its own arrangements for quarrying of materials needed for the Project under and in accordance with the Applicable Laws and Applicable Permits.

12.1.3 Within 30 (thirty) days of the receipt of the DPR, the Independent Engineer shall review the same and convey its observations, if any to the Concessionaire.

12.1.4 In the event that any modifications to the DPR shall have been determined under and in accordance with Clause 12.1.3, the DPR shall be deemed to be modified to the extent thereof.

12.2 Drawings

In respect of the Concessionaire’s obligations relating to the Drawings of the Project as set forth in Schedule-E, the following shall apply:

- (a) the Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, 3 (three) copies each of all Drawings to the Independent Engineer for review. Prior to submission of the Drawings to Independent Engineer, the Concessionaire shall have the Drawings of Important Bridges, Major Bridges, rail fly over, tunnel and viaduct proof-checked by any Indian Institute of Technology/ National Institute of Technology. It is clarified

that, in the event that the Concessionaire uses the RDSO standard drawings or Authority approved drawings wherever deemed appropriate, there will be no need for such proof checking;

- (b) by submitting the Drawings for review to the Independent Engineer, the Concessionaire shall be deemed to have represented that it has determined and verified that the design engineering, including field construction criteria related thereto, are in conformity with the Scope of the Project and the Specifications and Standards and Applicable Laws;
- (c) the Independent Engineer shall review the Drawings with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards within 21 (twenty one) days of receipt of the same except for Important Bridges, Major Bridges, rail flyover, tunnel and viaduct, for which the duration will be 45 (forty five) days. The Concessionaire shall not be obliged to await the observations of the Independent Engineer on the Drawings submitted pursuant hereto beyond the said period and may begin or continue Construction Works at its own discretion and risk;
- (d) if the aforesaid observations of the Independent Engineer indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to the Independent Engineer for review within 7 (seven) days of receipt of observations of the Independent Engineer. The Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings. For the avoidance of doubt, it is agreed that if the Independent Engineer does not deny the approval or convey its comments/observations within a period of 45 (forty five) days of the receipt of such Drawings, except for Important Bridges, Major Bridges, rail flyover, tunnel and viaduct, for which the duration will be 60 (sixty) days, the approval shall be deemed to have been granted;
- (e) no review and/or observation of the Independent Engineer and/or the Authority and/or its failure to review and/or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Concession Agreement in any manner nor shall the Authority be liable for the same in any manner; and if errors, omissions, ambiguities, inconsistencies, inadequacies or other defects are found in the Drawings, they shall, along with the affected Construction Works, be corrected by the Concessionaire at its own cost, notwithstanding any review under this Article 12;
- (f) without prejudice to the foregoing provisions of this Clause 12.2, the Concessionaire after obtaining approval from Independent Engineer, shall submit to the Authority for review, comments and approval of signal interlocking plans, electrical simulation reports, bonding plans, catenary pantograph dynamic interaction reports, general traction power supply diagrams and concept design, concept Drawings and GADs of Important Bridges, Major Bridges, rail fly overs, tunnels, viaducts and works requiring sanction of CRS, electrical inspector to the Government/ State Government or any

other statutory authority. Authority shall have the right but not the obligation to undertake such review and provide its approvals and/or comments, if any, within 28 (twenty eight) days of the receipt of such Drawings. The provisions of this Clause 12.2 shall apply *mutatis mutandis* to the review and comments hereunder. For the avoidance of doubt, it is agreed that if the Authority does not deny the approval or convey its comments/observations within a period of 28 (twenty eight) days of the receipt of such Drawings, the approval shall be deemed to have been granted;

- (g) within 120 (one hundred and twenty) days of the COD, the Concessionaire shall furnish to the Authority and the Independent Engineer a complete set of as-built Drawings, in 6 (six) hard copies and in its editable digital format or in such other medium or manner as may be acceptable to the Authority, reflecting the Project as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of the Project;
- (h) The Concessionaire shall arrange approval of all Drawings from Indian Railways or any other Central/ State Government agencies (as applicable) at his own. However, the Authority may facilitate in coordination with Indian Railways or these agencies; and
- (i) Concessionaire shall be liable for any delay of the construction of the Project on account of approval of the Drawings and not eligible for extension of time for the development of the Project.

12.3 Construction of the Project

- 12.3.1 On or after the Appointed Date, the Concessionaire shall undertake construction of the Project as specified in Schedule- B, and in conformity with the Specifications and Standards set forth in Schedule- C. The 1825th (one thousand eight hundred and twenty fifth) day from the Appointed Date shall be the scheduled date for completion of the Project (the “**Scheduled Completion Date**”) and the Concessionaire agrees and undertakes that construction of the Project shall be completed on or before the Scheduled Completion Date. All the modification works in the existing yards of Zonal Railway in the alignment of the Project (as indicated in the yard plan mentioned in Schedule-B) shall be done by the Zonal Railway/ Authority and the cost of the same shall be borne by the Authority. However, the Independent Engineer shall monitor and supervise all the necessary modifications with the approval of Authority.
- 12.3.2 The Concessionaire shall construct the Project in accordance with the Project Completion Schedule set forth in Schedule- D. In the event that the Concessionaire fails to achieve any Project Milestone within a period of 90 (ninety) days from the date set forth in Schedule- D, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.05% (zero point zero five per cent) of the amount of Performance Security for delay of each day reckoned from the date specified in Schedule- D until such Project Milestone is achieved; provided that if the period for any Project Milestone/ Scheduled Completion

Date is extended in accordance with the provisions of this Concession Agreement, the dates set forth in Schedule- D shall be deemed to be modified accordingly and the provisions of this Concession Agreement shall apply as if Schedule- D has been amended as above. Provided further that, in the event COD is achieved on or before the Scheduled Completion Date, the Damages paid under this Clause 12.3.2 shall be refunded by the Authority to the Concessionaire, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.3.2 shall be without prejudice to the rights of the Authority under this Concession Agreement, including the right of Termination thereof.

- 12.3.3 In the event that the Project is not completed and COD does not occur within 365 (three hundred and sixty five) days from the Scheduled Completion Date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Concession Agreement

12.4 Extension of time for completion

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

- (a) delay in providing the Right of Way, environmental/ forest clearances beyond the time- period prescribed in Article 4, 6 and 10 in accordance with the provisions of this Concession Agreement;
- (b) Change of Scope, unless an adjustment to the Scheduled Completion Date has been agreed under Article 16;
- (c) occurrence of a Force Majeure Event;
- (d) any delay, impediment or prevention caused by or solely attributable to the Authority, the Authority’s personnel or the Authority’s other contractors on the Site;
- (e) any delay affecting the Construction Works due to shifting of unforeseen utilities for reasons not attributable to the Concessionaire as per provision of Clause 11.2.5.

- 12.4.2 The Concessionaire shall, no later than 30 (thirty) business days from the occurrence of an event or circumstance specified in Clause 12.4.1, inform the Independent Engineer by notice in writing, with a copy to the Authority, stating in reasonable detail with supporting particulars, the event or circumstances giving rise to the claim for Time Extension in accordance with the provisions of this Concession Agreement. Provided that the period of 30 (thirty) business days shall be calculated from the date on which the Concessionaire became aware, or should have become aware, of the occurrence of such an event or circumstance.

Provided further that notwithstanding anything to the contrary contained in this Concession

Agreement, Time Extension shall be due and applicable only for the Construction Works which are affected by the aforesaid events or circumstances and shall not in any manner affect the Project Completion Schedule for and in respect of the Construction Works which are not affected thereby.

12.4.3 In the event of the failure of the Concessionaire to issue to the Independent Engineer notice in accordance with the provisions of Clause 12.4.2 within the time specified therein, the Concessionaire shall not be entitled to any Time Extension and shall forfeit its right for any such claims in future. For the avoidance of doubt, in the event of failure of the Concessionaire to issue notice as specified in this Clause 12.4.3, the Authority shall be discharged from all liability in connection with the claim.

12.4.4 The Independent Engineer shall, on receipt of a claim in accordance with the provisions of Clause 12.4.2, examine the claim expeditiously within the time frame specified herein. In the event the Independent Engineer requires any clarifications to examine the claim, the Independent Engineer shall seek the same within 15 (fifteen) days from the date of receiving the claim. The Concessionaire shall, on the receipt of the communication of the Independent Engineer requesting for clarification, furnish the same to the Independent Engineer within 10 (ten) days thereof. The Independent Engineer shall, within a period of 30 (thirty) days from the date of receipt of such clarifications, forward in writing to the Concessionaire its determination of Time Extension. For the avoidance of doubt, the Parties agree that the Independent Engineer shall, in accordance with the provisions of this Concession Agreement, notify the Concessionaire of the aforesaid Time Extension no later than 30 (thirty) days from the date of receipt of the Concessionaire's claim for Time Extension or the date of receipt of the clarification from the Concessionaire, as the case may be.

Provided that when determining each extension of time under this Clause 12.4, the Independent Engineer shall review previous determinations and may increase, but shall not decrease, the total Time Extension.

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

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

Upon receipt of the claim hereunder, the Independent Engineer shall examine and determine the same in accordance with the provisions of Clause 12.4.4 within a period of 30 (thirty) days of the receipt thereof.

12.5 Provision of Power Blocks and Traffic Blocks during Construction Period

- 12.5.1 The Authority shall arrange Power Block and/or Traffic Block on the Zonal Railway and/or DFCCIL system wherever required to enable the Concessionaire to undertake the Construction Works, or such other work as may be determined by the Independent Engineer.
- 12.5.2 The Concessionaire shall, in consultation with the Independent Engineer, Zonal Railway and/or DFCCIL, submit a weekly programme of Traffic Blocks and/or Power Blocks, commencing from Monday, with a notice of at least 2 (two) weeks and the Independent Engineer shall convey the approved weekly programme to the Concessionaire no less than 3 (three) days prior to the start of such week.
- 12.5.3 The Traffic Block and/or Power Block on Zonal Railway and/or DFCCIL system shall be governed by terms and conditions mutually agreed between the Concessionaire and Zonal Railway/DFCCIL. No fees shall be paid by Concessionaire for such block, however any penalties if levied by Zonal Railway/DFCCIL, caused due to violation of the terms and conditions shall be payable by the Concessionaire.

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ARTICLE 13

MONITORING OF CONSTRUCTION

13.1 Quarterly progress reports

During the Construction Period, the Concessionaire shall, no later than 7 (seven) days after the close of each quarter, furnish to the Authority 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 the Authority and/or the Independent Engineer.

13.2 Inspection

During the Construction Period, the Independent Engineer shall inspect the Project 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 the Authority and the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever. Without prejudice to the above, the Authority may undertake inspection of the Construction Works at any time.

13.3 Tests

13.3.1 For determining that the Construction Works conform to the Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Independent Engineer from time to time, in accordance with the programme submitted by the Concessionaire for quality assurance. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Independent Engineer and furnish the results thereof to the Independent Engineer. For the avoidance of doubt, the costs to be incurred on any test including tests undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.

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

be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to the Independent Engineer forthwith.

13.4 Delays during construction

Without prejudice to the provisions of Clause 12.3.2, if the Concessionaire does not achieve any of the Project Milestones or the Independent Engineer shall have reasonably determined that the rate of progress of Construction Works is such that the Project is not likely to be completed by the Scheduled Completion Date, it shall notify the Concessionaire and the Authority to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Independent Engineer and the Authority in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve COD.

13.5 Suspension of unsafe Construction Works

- 13.5.1 Upon recommendation of the Independent Engineer to this effect, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Authority, such work threatens the safety of the Users and pedestrians. Provided, however, that in case of an Emergency, the Authority may *suo moto* issue the notice referred to hereinabove.
- 13.5.2 The Concessionaire shall, pursuant to the notice under Clause 13.5.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works, the Users, other persons and vehicles on or about the Project including pedestrians at its own cost and expense. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Engineer, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 13.5 shall be repeated until the suspension hereunder is revoked.
- 13.5.3 Subject to the provisions of Clause 31.7, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the “**Preservation Costs**”), shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Concession Agreement by the Authority, the Preservation Costs shall be borne by the Authority.
- 13.5.4 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled, and shall notify the Authority accordingly whereupon the Authority shall extend such Project Completion Schedule dates in accordance with the recommendations of the Independent Engineer.

ARTICLE 14

COMPLETION CERTIFICATE

14.1 Tests

- 14.1.1 The Concessionaire shall prepare and submit, to the Independent Engineer, for examination and approval, a list of all Tests required and proposed to be conducted, during the Construction Period to determine commissioning of the Project, along with a tentative schedule of the same. Within 15 (fifteen) days of the receipt of the list of Tests, the Independent Engineer shall review and approve the same and convey its observations to the Concessionaire with a copy to the Authority. For avoidance of doubt, Concessionaire and Independent Engineer shall ensure that all Tests and Documents required to be submitted for seeking approval from CRS or Managing Director of Authority are included in the list of Tests.
- 14.1.2 At least 120 (one hundred and twenty) days prior to the likely completion of the Project, the Concessionaire shall notify the Independent Engineer of its intent to subject the Project to Tests. The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire, and notified to the Authority (at least 10 (ten) days in advance), who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer and the Authority Representative may require for conducting the Tests. For the avoidance of doubt, the costs to be incurred on any Test shall be borne solely by the Concessionaire.
- 14.1.3 The Independent Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Project 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 Project or any part thereof does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer may require the Concessionaire to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project with Specifications and Standards.
- 14.1.4 Upon completion of Construction Works, and the Independent Engineer determining the Tests to be successful, the Independent Engineer shall notify to the Authority about the Test results.

14.2 Rescheduling of Tests

If the Independent Engineer notify to the Authority and the Concessionaire about events or circumstances on account of which the Tests could not be held or had to be suspended, the Concessionaire shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable.

14.3 Safety Certification and Commercial Service Notification prior to COD

- 14.3.1 The Authority shall, not later than 30 (thirty) days after the issuance of the notice by the Independent Engineer as mentioned in Clause 14.1.4, procure that the Managing Director of the Authority (“**Managing Director**”)/**Commissioner of Railway Safety** (as the case may be) shall review the results of the Tests submitted by the Independent Engineer and joint inspection conducted by team of Zonal Railway official and Authority officials and compliance thereof to determine and certify that the Project is safe for entering into commercial service and issue safety certificate (the “**Safety Certificate**”) for 100 kmph speed of operation provided that the Managing Director /Commissioner of Railway Safety may inspect the Project and/or require the Concessionaire to conduct or cause to be conducted such additional Tests as may be prudent and necessary in accordance with Applicable Laws and Good Industry Practice. For the avoidance of doubt, it is expressly agreed that the Concessionaire shall not be liable to pay any charges to the Authority towards such certification by the Managing Director / Commissioner of Railway Safety.
- 14.3.2 Upon Safety Certification of the Project in accordance with the provisions of Clause 14.3.1, the Authority shall procure the issuance of commercial service notification (the “**Commercial Service Notification**”) by MoR in respect of the Project required for the purpose of commencing Train operation on the Project not later than 15 (fifteen) days from the date of issue of Safety Certificate.

14.4 Completion Certificate

The Independent Engineer shall issue the Concessionaire a certificate certifying the completion of the Project in the form set forth in the Schedule-F (the “**Completion Certificate**”) within 02 (two) business days of issue of Commercial Service Notification. The Authority agrees and undertakes that in the event the Concessionaire suffers delay in receiving Availability Payment on account of the delay in issuance of the Completion Certificate beyond above period, the Authority shall pay to the Concessionaire, Damages in a sum calculated at the rate of 0.05% (zero point zero five percent) of the Performance Security per day of delay commencing from the 60th (sixtieth) day of issuance of the notice by the Independent Engineer as mentioned in Clause 14.1.4, save and except delay by the Concessionaire’s obligations under Clause 14.3.

ARTICLE 15

ENTRY INTO COMMERCIAL SERVICE

15.1 Commercial Operation Date (COD)

The Project shall be deemed to be complete when the Completion Certificate has been issued under the provisions of Clause 14.4. Accordingly, the Commercial Operation Date of the Project shall be the date on which the Completion Certificate is issued (the “COD”). The Project shall enter into commercial service on COD whereupon the Authority shall make Availability Payment to the Concessionaire in accordance with this Concession Agreement, provided however, that the entry of Project into commercial service shall always be subject to compliance with the provisions of Article 14.

15.2 Part Commissioning of the Project

15.2.1 Subject to the provisions of this Concession Agreement, Authority shall permit part commissioning of the Project upon request from the Concessionaire in the following order (the “Part Commissioning”):

- (i) Sonnagar (New Chiraila Pauthu) - New Koderma
- (ii) New Koderma – New Gomoh

Provided that the above order may be relaxed in case there is delay in providing Right of Way for Sonnagar (New Chiraila Pauthu) - New Koderma section as per provisions of Clause 10.3.

15.2.2 The Part Commissioning of a section as per Clause 15.2.1 shall be subject to successful completion of Tests as per Clauses 14.1 & 14.2, issue of Safety Certificate and Commercial Service Notification as per Clause 14.3 and issue of Completion Certificate as per Clause 14.4 for that section.

15.2.3 The Part Commissioning of a section as per Clause 15.2.1 shall not cause any extension in the Scheduled Completion Date for the entire Project.

15.2.4 The provisions of this Concession Agreement, in so far as they relate to rights and obligations of the Concessionaire and Authority after COD, shall apply *mutatis mutandis* to the sections approved for Part Commissioning by the Authority, except the following provisions:

- a) the Concessionaire shall not be allowed to withdraw balance sums from Escrow Account as stated in Clause 28.3.1 (j), until achievement of COD;
- b) in case of Termination of Concession Agreement under the provisions of this Concession Agreement before the Scheduled Completion Date or COD whichever is earlier, Clause 15.2 shall be treated as null and void and the Termination Payment due to the Concessionaire for the Project shall be as per the provisions of this Concession Agreement.

ARTICLE 16 CHANGE OF SCOPE

16.1 Change of Scope

- 16.1.1 The Authority may, notwithstanding anything to the contrary contained in this Concession Agreement, require the provision of additional works and services which are not included in the Scope of the Project as contemplated by this Concession Agreement (the “**Change of Scope**”). Any such Change of Scope shall be made in accordance with the provisions of this Article 16 and the costs thereof shall be expended by the Concessionaire and reimbursed to it by the Authority in accordance with Clause 16.3.
- 16.1.2 If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved services to the Users, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 30 (thirty) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefore in accordance with this Article 16 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope.
- 16.1.3 Any works or services which are provided under and in accordance with this Article 16 shall form part of the Project and the provisions of this Concession Agreement shall apply *mutatis mutandis* to such works or services.

16.2 Procedure for Change of Scope

- 16.2.1 In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated there under (the “**Change of Scope Notice**”).
- 16.2.2 Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documentation in support of:
- (a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and
 - (b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works as specified in Clause 16.2.3; provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed by the Authority to the extent such cost is certified by the Independent Engineer as reasonable.
- 16.2.3 The Concessionaire’s quotation of costs for the Change of Scope shall be determined as

follows:

The cost of work shall be derived on the basis of last accepted rates with respect to applicable schedule of rates for similar works done by the adjacent Zonal Railway (except for the restricted items as identified by the Zonal Railway, for which the non-schedule items or prevailing market rate can be taken) and wherever required such rates may be escalated or otherwise with reference to the WPI from the date of acceptance of such last accepted rate; provided, however, that for any item not included in the schedule of rates, the prevailing market rates in accordance with Good Industry Practice shall apply. The rates used for cost of work shall be certified by the Independent Engineer.

16.2.4 Upon receipt of information set forth in Clause 16.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire, and the Parties shall, with assistance of the Independent Engineer, thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the “**Change of Scope Order**”) requiring the Concessionaire to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Concessionaire to proceed with the performance thereof pending resolution of the Dispute, or carry out the works in accordance with Clause 16.5.

16.1.1 The provisions of this Concession Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works undertaken by the Concessionaire under this Article 16.

16.3 Payment for Change of Scope

16.3.1 Within 7 (seven) days of issuing a Change of Scope Order, the Authority shall make an advance payment to the Concessionaire in a sum equal to 20% (twenty per cent) of the cost of Change of Scope as agreed hereunder, and in the event of a Dispute, 20% (twenty per cent) of the cost assessed by the Independent Engineer. The Concessionaire shall, after commencement of work, present to the Independent Engineer bills for payment in respect of the works in progress or completed works, as the case may be, supported by such Documentation as is reasonably sufficient for the Independent Engineer to determine the accuracy thereof. The Independent Engineer shall certify the bills and submit to the Authority within 15 (fifteen) days of receipt of such bills. Within 15 (fifteen) days of receipt of bills certified by the Independent Engineer, the Authority shall disburse to the Concessionaire such amounts and after making a proportionate deduction for the advance payment made hereunder, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure as set forth in Article 41.

16.3.2 Notwithstanding anything to the contrary contained in Clause 16.3.1, all costs arising out of any Change of Scope Order issued during the Construction Period shall be borne by the Concessionaire, subject to an aggregate ceiling of 0.25% (zero point two five per cent) of the Estimated Project Cost. Any costs in excess of the ceiling shall be reimbursed by the

Authority in accordance with Clause 16.3.1. For the avoidance of doubt, it is agreed that the aforesaid 0.25% (zero point two five per cent) of the Estimated Project Cost shall, to the extent borne by the Concessionaire, be deemed to form part of the actual capital cost of the Project.

16.4 Restrictions on certain works

- 16.4.1 Notwithstanding anything to the contrary contained in this Article 16, but subject to the provisions of Clause 16.4.2, the Authority shall not require the Concessionaire to undertake any works or services if such works or services are likely to delay completion of the Project; provided that in the event that the Authority considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such Change of Scope Order shall not be reckoned for purposes of determining completion of the Project and issuing the Completion Certificate.
- 16.4.2 Notwithstanding anything to the contrary contained in this Article 16, the Concessionaire shall be entitled to nullify any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope Orders to exceed 10% (ten per cent) of the Estimated Project Cost in any continuous period of 3 (three) years immediately preceding the date of such Change of Scope Order or if such cumulative costs exceed 25% (twenty five per cent) of the Estimated Project Cost at any time during the Concession Period.

16.5 Power of the Authority to undertake works

- 16.5.1 Notwithstanding anything to the contrary contained in Clauses 16.1.1, 16.2 and 16.3, the Authority may, after giving notice to the Concessionaire and considering its reply thereto, award any works or services, contemplated under Clause 16.1.1, to any person on the basis of open competitive bidding; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 2 % (two per cent) of the bid amount to the Authority^{\$}, and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten per cent) thereof. It is also agreed that the Concessionaire shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not undertake any works or services under this Clause 16.5.1 if such works or services cause a Material Adverse Effect on the Concessionaire.
- 16.5.2 The works undertaken in accordance with this Clause 16.5 shall conform to the Specifications and Standards and shall be carried out in a manner that minimises the disruption in operation of the Project. The provisions of this Concession Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the

^{\$} The Authority shall transfer 75% (seventy five per cent) of the amount so received to the first ranked bidder whose bid shall have been matched by the Concessionaire.

works carried out under this Clause 16.5.

16.6 Reduction in Scope of the Project

- 16.6.1 If the Concessionaire shall have failed to complete any Construction Works on account of Force Majeure or for reasons attributable to the Authority, the Authority may, in its discretion, require the Concessionaire to pay 80% (eighty per cent) of the sum saved there from as certified by the Independent Engineer, within 30 (thirty) days after certification of cost by Independent Engineer. Upon such payment to the Authority, the obligations of the Concessionaire in respect of such works shall be deemed to have been fulfilled. It is also agreed that in the event of a Dispute, the Dispute Resolution Procedure as set forth in Article 41 shall apply.
- 16.6.2 For determining the obligations of the Concessionaire under this Clause 16.6, the provisions of Clauses 16.1, 16.2 and 16.4 shall apply *mutatis mutandis*, and upon issue of Change of Scope Order by the Authority hereunder, the Concessionaire shall pay forthwith the sum specified therein.

ARTICLE 17 OPERATION AND MAINTENANCE

17.1 O&M obligations of the Concessionaire

17.1.1 During the Operation & Maintenance Period, the Concessionaire shall operate and maintain the Project in accordance with this Concession Agreement either by itself, or through the O&M Contractor and if required, modify, repair or otherwise make improvements to the Project to comply with the provisions of this Concession 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 Concession Agreement, Parties may mutually agree for the Authority to undertake the operation and maintenance of the Project at the cost of the Concessionaire.

The obligations of the Concessionaire regarding O&M hereunder shall include:

- (a) provide suitably trained personnel, tools, machinery and plants for O&M activities all times;
- (b) permitting safe, smooth and uninterrupted flow of traffic on the Project during normal operating conditions;
- (c) minimizing disruption to traffic in the event of accidents or other incidents affecting the safety and use of the Project by providing a rapid and effective response and maintaining liaison with emergency services of the State Government and the Authority;
- (d) carrying out periodic preventive maintenance of the Project;
- (e) undertaking routine maintenance including prompt repairs of track, bridges, viaducts, underpasses, RUBs in detour section, rail fly overs, tunnels, joints, drains, embankments, structures, signalling systems, telecommunication systems, electrical systems, lighting and Traction System;
- (f) undertaking major maintenance such as track with fittings replacement, ballast replacement, electrical assets replacement and signaling & telecommunication assets replacement based on condition basis or completion of codal life whichever is earlier, repairs to structures, repairs and refurbishment of signaling and telecommunication system, overhaul of Traction System and other equipment. All the asset replacement during the Operation & Maintenance Period shall be based on condition basis or codal life of the equipment whichever is earlier, as per guidelines available/ issued through codes, specifications, manuals, circulars, letters etc. by MoR from time to time. For the avoidance of doubt, the renewal of 1175 (~110 UTS) heat treated or equivalent rail shall be done after it has carried 1200 (one thousand two hundred) gross million tonne of traffic or on condition basis whichever is earlier;

- (g) preventing, with the assistance of the concerned law enforcement agencies, any Encroachments on the Project;
 - (h) protection of the environment and provision of equipment and materials therefor;
 - (i) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Project;
 - (j) maintaining a public relations unit to interface with and attend to suggestions from the Users, Government agencies, media and other agencies;
 - (k) complying with Safety Requirements in accordance with Article 19;
 - (l) O&M of the Project Assets as defined in this Concession Agreement diligently and efficiently and in accordance with Good Industry Practice;
 - (m) maintaining a high standard of cleanliness and hygiene on the Project;
 - (n) mandatory trainings/ periodical medical examinations / refresher courses of the O&M staff employed by the Concessionaire as per Authority/ Zonal Railway Standards; and
 - (o) operation of the Project as per provisions of this Concession Agreement.
- 17.1.2 The Concessionaire shall remove promptly from the Project all surplus construction machinery and materials, waste materials (including hazardous materials and wastewater), rubbish and other debris (including, without limitation, accident debris) and keep the Project in a clean, tidy and orderly condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice.
- 17.1.3 The Concessionaire shall maintain, in conformity with Good Industry Practice, all stretches of approach roads, over-passes, under-passes or other structures situated on the Site but not forming part of the Project.
- 17.2 Operating Manual, Operating Protocol & Maintenance Manual**
- 17.2.1 No later than 90 (ninety) days prior to the Scheduled Completion Date, the Concessionaire shall, in consultation with the Independent Engineer, evolve a repair and maintenance manual (the “**Maintenance Manual**”) for the regular and preventive maintenance of the Project in conformity with the Specifications and Standards, operating manual for Train operation (the “**Operating Manual**”) and operating protocol (the “**Operating Protocol**”) in conformity with the Authority’s operating manual and operating protocol, Safety Requirements and Good Industry Practice and submit to Authority for approval, and shall provide 5 (five) copies thereof to the Authority and 2 (two) copies to the Independent Engineer. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 17.2 shall apply, *mutatis mutandis*, to such revision.

17.2.2 Without prejudice to the provision of Clause 17.2.1, 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 practices by Authority/ Zonal Railway and Good Industry Practice.

17.3 O&M requirements

17.3.1 The Concessionaire shall procure that at all times during the Operation & Maintenance Period, the Project conforms to the O&M requirements set forth in the Operating Manual and Maintenance Manual respectively.

17.4 Maintenance Programme

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

- (a) preventive maintenance schedule;
- (b) arrangements and procedures for carrying out urgent repairs;
- (c) criteria to be adopted for deciding maintenance needs;
- (d) intervals and procedures for carrying out inspection of all elements of the Project;
- (e) intervals at which the Concessionaire shall carry out periodic/ planned maintenance;
- (f) arrangements and procedures for carrying out safety related measures;
- (g) intervals for major maintenance works and the scope thereof; and
- (h) intervals of carrying out intermediate and periodic overhaul of track, signalling and telecommunication system, electrical systems and Traction System, as per the guidelines issued by MoR/ Authority.

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

17.4.3 The Concessionaire may modify the Maintenance Programme as may be reasonable in the circumstances, and the procedure specified in Clauses 17.4.1 and 17.4.2 shall apply *mutatis mutandis* to such modifications.

17.5 Safety, breakdowns and accidents

- 17.5.1 The Concessionaire shall ensure safe conditions for the operation of Project including but not limited to Consignments and consignee. In the event of unsafe conditions, damage to the Project, breakdowns and accidents etc. Concessionaire shall be responsible for quick restoration of the same by following relevant operating procedures and manual of Authority. Such procedures shall conform to the provisions of the Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.
- 17.5.2 The Concessionaire shall deploy adequate man and machinery for quick restoration of Project. The Concessionaire shall keep sufficient reserve material inventory for immediate and permanent restoration of Project. On written request from the Concessionaire, rail mounted crane/ accident relief Train, if required for restoration and available with the Authority, can be utilized for restoration.
- 17.5.3 The cost of rescue and restoration shall be borne by the Concessionaire unless liability arising out of the accident is not attributable to Concessionaire as per Clause 18.4.1 (b) and (d).

17.6 Deleted

17.7 Provision of Power Blocks and Traffic Blocks during Operation & Maintenance Period

- 17.7.1 The Concessionaire shall, in consultation with the Independent Engineer, Zonal Railway and/or DFCCIL, submit a weekly programme of Traffic Blocks and/or Power Blocks for maintenance of Rail System for each line (up or down line) for each day of the week ("Corridor Block"). The weekly program of Corridor Block shall be submitted with a notice of at least 2 (two) weeks and the Independent Engineer shall convey the approved weekly programme to the Concessionaire no less than 3 (three) days prior to the start of such week, giving due consideration to the traffic pattern following strict safety procedures. Corridor Block for each day shall be limited to a period of upto 3 (three) hours for each line (up or down line), period being counted from the time the railway line is placed at the disposal of the Concessionaire and until it is cleared by the Concessionaire. Corridor Block shall follow the shadow pattern across the railway line in each direction.
- 17.7.2 The period of Corridor Block can be modified with mutual consent of all the parties concerned if circumstances so warrant. The Concessionaire shall organize its work so as to complete all maintenance related works of Rail System within such period.
- 17.7.3 In case any failure of Rail System requires any additional Traffic Block and/or Power Block apart from the Corridor Block, the Concessionaire shall approach the Authority for additional Traffic Block and/or Power Block and undertake all possible measures to restore the Rail System as quickly as possible within the granted period of block.
- 17.7.4 In case of Traffic Block and/or Power Block required by the Concessionaire on the Zonal

Railway and/or DFCCIL system, such block shall be governed by terms and conditions mutually agreed between the Concessionaire and Zonal Railway/DFCCIL. No fees shall be paid by Concessionaire for such block, however any penalties if levied by Zonal Railway/DFCCIL, caused due to violation of the terms and conditions shall be payable by the Concessionaire.

17.8 Authority's right to take remedial measures

17.8.1 In the event the Concessionaire does not maintain and/or repair the Project or any part thereof in conformity with the Maintenance Manual or the Maintenance programme and/or does not operate the Project as per the Operating Manual and/or Operating Protocol, as the case may be, and fails to commence remedial works within 15 (fifteen) days of the O&M Inspection Report issued by the Independent Engineer and/or Authority or a notice in this behalf from Authority, as the case may be, Authority shall, without prejudice to its rights under this Concession Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to Authority as Damages.

17.8.2 Authority shall have the right, and the Concessionaire hereby expressly grants to Authority the right, to recover the costs and Damages specified in Clause 17.8.1 directly from the Escrow Account as if such costs and Damages were O&M Expenses, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of Authority under this Clause 17.8.2 and debit the same to O&M Expenses.

17.9 Overriding powers of the Authority

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

17.9.2 In the event that the Concessionaire, upon notice under Clause 17.9.1, fails to rectify or remove any danger to the Users within a reasonable period, the Authority may exercise overriding powers under this Clause 17.9.2 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of

Clause 17.8 along with the Damages specified therein.

17.9.3 In the event of a national emergency, civil commotion, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it, and exercise such control over the Project or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 31. It is also agreed that the Concessionaire shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 17.9, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

17.10 Restoration of loss or damage to the Project

Save and except as otherwise expressly provided in this Concession Agreement, in the event that the Project or any part thereof suffers any loss or damage during the Concession Period from any cause whatsoever, the Concessionaire shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Project conforms to the provisions of this Concession Agreement.

17.11 Modifications to the Project

The Concessionaire shall not carry out any material modifications to the Project save and except where such modifications are necessary for the Project to operate and maintain in conformity with the Specifications and Standards, Maintenance Manual, Good Industry Practice and Applicable Laws; provided that the Concessionaire shall take prior approval of the Authority for the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications. For the avoidance of doubt, all modifications made hereunder shall comply with the Specifications and Standards, Applicable Laws and the provisions of this Concession Agreement. The provisions of this Concession Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to all Construction Works forming part of modification of the Project.

17.12 Excuse from performance of obligations

The Concessionaire shall not be considered in breach of its obligations under this Concession Agreement if any part of the Project 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 Project except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under

this Concession Agreement; or

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

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

17.13 Advertising on the Project

The Concessionaire shall not undertake or permit any form of commercial advertising, display or hoarding at any place on the Site.

17.14 Supervision of maintenance

The Independent Engineer shall inspect and certify the maintenance of the Project, at least once every month in accordance with the operation and maintenance requirements set forth in Clause 17.3.

17.15 Safety Management

17.15.1 Accident & unusual occurrence

In case of accidents or any unusual occurrences on Concessionaire's system putting human life in jeopardy, the Concessionaire shall accord highest priority for safety and rescue of human life involved in such accident or unusual occurrence. Concessionaire shall be responsible for quick restoration and removal of debris at its own cost by following relevant operating procedures and manual of Authority. Such procedures shall conform to the provisions of the Agreement, Applicable Laws, Applicable Permits and Good Industry Practice. In case Authority/ Concessionaire administration feels that assistance is required from Zonal Railway it may seek assistance from Zonal Railway. Similarly in case of an accident occurring on Zonal Railway /DFCCIL system the primary responsibility of restoration shall lie with Zonal Railway /DFCCIL. Concerned party/ parties may raise debits regarding expenses on this account to the party/ parties responsible for the accident(s).

In case an accident affecting both Zonal Railway and Concessionaire or DFCCIL and Concessionaire occurs, Concessionaire, Zonal Railway and DFCCIL shall immediately pool resources to undertake restoration activities. In all such cases the Zonal Railway or DFCCIL (as the case may be) shall act as overall coordinator and shall demand and utilize resources available with Zonal Railway / DFCCIL/ Concessionaire.

In case of accidents affecting passenger Trains, the responsibility of providing medical relief shall lie with Zonal Railway and DFCCIL shall provide other possible assistance as per requirements of Zonal Railway.

17.15.2 Accident Enquiry

In case of any accident, the accident enquiry shall be conducted by a joint committee (the “**Accident Enquiry Committee**”). The joint committee shall comprise of 3 (three) members, of whom 1 (one) member from Authority nominated by Managing Director of the Authority, 1 (one) member from Concessionaire and 1 (one) member from Indian Railways nominated by General Manager of concerned Zonal Railway. In case of accident requiring enquiry by Commissioner of Railway Safety as per applicable rules, the same shall be binding to all the concerned parties.

17.16 Inspection by Zonal Railway officials or officials from Government Instrumentality

The Concessionaire shall allow free access to the Site at all times for the Zonal Railway officials and authorized officials of any Government Instrumentality to inspect the Project and to investigate any matter within their authority at Authority’s cost. The Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions and comply the observations related to the Project within a reasonable time period as specified by the Authority at Concessionaire’s own cost.

ARTICLE 18 RESERVED SERVICES

18.1 Provisions relating to Reserved Services

18.1.1 The Zonal Railway shall, at its own cost, perform or cause to be performed, the following services (the “**Reserved Services**”) at the Project:

- (a) locomotion of Trains, including providing the (a) wagons, locomotives and any other rolling stock and, (b) fuel/traction power, and (c) crew, as may be required for locomotion of Trains;
- (b) fixing of tariff for movement and handling of any traffic on the Project;
- (c) loco and wagon examination; and
- (d) deputation of necessary staff required for providing the Reserved Services (“**Railway Staff**”);

however, the Reserved Services shall not include the maintenance of the Project including tracks, overhead equipment and signalling and telecommunication system.

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

18.2 Deleted

18.3 Claims and Liabilities

The general liability of the Zonal Railway 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 Project 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 the MoR/ Authority.

18.4 Liability arising out of Accidents and Indemnity

18.4.1 The Parties agree that:

- (a) in the event of any accident on the Project, the accident enquiry shall be as per Clause 17.15.2 of this Concession Agreement. The procedure for enquiry shall be in conformity with Authority’s accident manual with amendments if any (provided by the Authority). The enquiry report of such accident include 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 as per prevalent guidelines of

MoR/Authority;

- (b) in the event of any Train accident occurring due to negligence of Railway Staff/Authority's personnel or faulty maintenance of wagon and locomotives, the Zonal Railway / Authority, as the case may be, shall be liable for loss, damage, destruction, deterioration, non- delivery or shortage of the Consignment caused by such accident;
- (c) in the event of any Train accident occurring due to negligence of the Concessionaire or its Contractor or faulty maintenance of the Project, the Concessionaire shall be liable for loss, damage, destruction, deterioration, non- delivery or shortage of Consignment caused by such accident;
- (d) in the event of any Train accident occurring due to the negligence of the Zonal Railway /Authority as per the accepted findings of the Accident Enquiry Committee, the Concessionaire shall have the right to submit the claim for the cost towards restoration and removal of debris through Independent Engineer for certification and reimbursement by Zonal Railway/ Authority; and
- (e) Managing Director of the Authority shall be the competent authority for accepting the findings of the Accident Enquiry Committee.

It is further clarified that the maximum liability of the Concessionaire and Authority as mentioned in Clause 18.4.1 (b), (c) or (d) above in each case will be limited to the maximum of 50% (fifty per cent) amount of Availability Payment due in the immediately preceding month.

18.5 Traffic Management

The Parties agree that the Train movement and traffic management on the Project will be undertaken by Zonal Railway /Authority in consultation with the Concessionaire. However, the final decision will be that of Authority.

18.6 Obligations of the Concessionaire in respect of Reserved Services

The Concessionaire agrees and undertakes that it shall, at all times during the Operation & Maintenance Period:

- (a) make the Project available to the Zonal Railway and the Railway Staff for provision of the Reserved Services;
- (b) comply with all rules, regulations and guidelines prescribed by the MoR/Authority in connection with the security of the Project;
- (c) provide support and cooperation to the Zonal Railway /Authority and the Railway Staff in the discharge of their obligations under this Article 18;

- (d) provide such information as the Zonal Railway and the Railway Staff may reasonably require for the provision of the Reserved Services;
- (e) provide, at its own cost, continuous supply of electricity (except traction power) and water that may be required by the staff of Zonal Railway/Authority to perform the Reserved Services and disaster management activities; and
- (f) notify the Zonal Railway /Authority of any proposed closure or withdrawal of any infrastructure or facilities at the Project, except in case of an Emergency, as per the operating procedures to be mutually agreed between the Parties from time to time.

18.7 Provision of space and access for Reserved Services

- 18.7.1 The Concessionaire undertakes that it shall, at all times during the Operation & Maintenance Period, provide to the Zonal Railway /Authority's staff such access, space and facilities at the Project as may be necessary to enable them to perform the Reserved Services and disaster management activities in accordance with the provisions of this Concession Agreement.
- 18.7.2 The Concessionaire shall not reduce or restrict the access, space and facilities provided to the Zonal Railway /Authority's staff for the provision of Reserved Services and disaster management activities, except with the prior consent of the Authority.

ARTICLE 19 SAFETY REQUIREMENTS

19.1 Safety Requirements

19.1.1 The Concessionaire shall comply with the provisions of this Concession Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Project. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project, and shall comply with the Safety Requirements set forth in Schedule-G (the “Safety Requirements”).

19.2 Traffic regulation by the Concessionaire

19.2.1 The Concessionaire shall take all the required measures and make arrangements for the safety of any persons and vehicles on or about the Site during the construction of the Project or a section thereof in accordance with Good Industry Practice, and Applicable Laws. It shall provide, erect and maintain all such barricades, signs, markings, flags, and lights as may be required by Good Industry Practice for the safety of the traffic using any public roads or access along or across the section under construction. The Concessionaire shall take approval from local authority (if required) at its own cost.

19.2.2 All Construction Works shall be carried out in a manner creating least interference to traffic passing along or across the Project or a section thereof. The Concessionaire shall ensure that proper passage is provided for the traffic. Where it is not possible or safe to allow traffic on the existing road or passage, a temporary diversion of proper specifications shall be constructed by the Concessionaire at its own cost. The Concessionaire shall take prior approval of the Independent Engineer for any proposed arrangement for traffic regulation during construction, which approval shall not be unreasonably withheld.

19.2.3 For any Construction Works or O&M activities to be executed in close proximity of an existing operating system of Zonal Railway, the Concessionaire shall make arrangements for the safety of such system in accordance with the provisions of the ‘Compendium of Instructions on Safety at work Sites’ issued by MoR/Authority.

19.3 Expenditure on Safety Requirements

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire to the extent such costs and expenses form part of the works and services included in the Scope of the Project.

ARTICLE 20

MONITORING OF OPERATION AND MAINTENANCE

20.1 Monthly status reports

During Operation & Maintenance Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Independent Engineer and Authority a monthly report stating in reasonable detail the condition of the Project including its compliance or otherwise with the operation requirement related to Train operation, Operating Protocol, Operating Manual, Maintenance Manual, Maintenance Programme and Safety Requirements, and shall promptly give such other relevant information as may be required by the Independent Engineer or Authority. In particular, such report shall separately identify and state in reasonable detail the defects or deficiencies that require rectification.

20.2 Reports of unusual occurrence

The Concessionaire shall, upon occurrence of accidents or unusual occurrences on the Project, send to the Authority, by facsimile or e-mail, a report, in a mutually agreed form, stating accidents and unusual occurrences on the Project relating to the safety and security of the Users and the Project, 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 Indian Railways/Authority. For the purposes of this Clause 20.2, accidents and unusual occurrences on the Project 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) signaling and telecommunication 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 Project unsafe, unusable and /or causing traffic disruptions for providing the Reserved Services by the Zonal Railway; and
- (k) such other relevant information as may be reasonably required by the Authority.

20.3 Inspection

The Independent Engineer or Authority's officials shall inspect the Project at least once a month. It shall make a report of such inspection (the "**O&M Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the operation requirement related to Train operation, Operating Protocol, Operating Manual, Maintenance Manual, the Maintenance Programme and Safety Requirements, and send a copy thereof to the Concessionaire within 7 (seven) days of such inspection.

20.4 Remedial measures

- 20.4.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report within 15 (fifteen) days of receiving the O&M Inspection Report; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Concession Agreement.
- 20.4.2 The Concessionaire to carry out tests at its own cost, to determine that such remedial measures have brought the Project into compliance with the maintenance requirements as set forth in Maintenance Manual and the procedure set forth in this Clause 20.4 shall be repeated until the Project conforms to the maintenance requirement as set forth in Maintenance Manuals.

ARTICLE 21 SECURITY

21.1 Security

- 21.1.1 The Concessionaire shall provide and maintain perimeter fencing or other suitable protection around the Stations and other service buildings and shall, with the exception of the obligations to be discharged by the Authority under Clause 21.1.3, be responsible for the security arrangements, which also includes providing and maintaining necessary equipment at the entry, exit and within the Project in order to maintain orderly conduct of its business and the security thereof.
- 21.1.2 The Concessionaire shall abide by and implement any instructions of the Authority for enhancing the security within and around the Project. The Concessionaire shall not be entitled to any compensation, for disruption of its operations or loss or damage resulting from such Authority or Zonal Railway actions or the actions of any organization authorized by Authority/Zonal Railway in this behalf other than those resulting from willful or grossly negligent acts or omissions of such organization. The Authority agrees that it shall cause the relevant organizations to take such actions as reasonably deemed necessary by them, without unduly or unreasonably disrupting the operations of the Project or interfering with the exercise of rights or fulfillment of obligations by the Concessionaire under this Concession Agreement. The Concessionaire agrees that it shall extend its full support and cooperation to Authority and to the other organizations authorized by the Authority in the discharge of their obligations there under.
- 21.1.3 Subject to compliance of Clauses 21.1.1 and 21.1.2 by the Concessionaire, Authority, at its own cost, may provide additional security forces in very limited areas/cases (i.e. left wing extremist affected areas notified by Ministry of Home Affairs from time to time) within the limits of the Project for the prevention of act of terrorism, hijacking, abduction, sabotage and/or similar acts or occurrences. The Concessionaire shall not be entitled to any compensation from Authority, for disruption of its operations or loss or damage resulting from such occurrences.
- 21.1.4 Subject to the rights of the Concessionaire under this Clause 21.1, the Authority or any agency duly authorized by it shall be entitled to inspect and search any person or vehicle entering the Site or departing there from, without unduly or unreasonably disrupting the operations of the Project.
- 21.1.5 The Authority shall ensure and procure that the personnel of the Concessionaire and all its Contractors, suppliers, sub-contractors and agents and the Users are allowed free ingress and egress from the limits of the Project without any unreasonable interference by the personnel of the Authority, including the security personnel employed by or on behalf of the Authority.
- 21.1.6 A detailed standing operating procedure shall be drawn up and finalized by the Authority in mutual consultation with the Concessionaire for operation of security forces within 6 (six) months from the date of signing of this Concession Agreement.

ARTICLE 22

KEY PERFORMANCE INDICATORS

22.1 Key Performance Indicators

Without prejudice to the obligations specified in this Concession Agreement, the Concessionaire shall operate and maintain the Project such that it achieves or exceeds the performance indicators specified in Schedule- H (the “**Key Performance Indicators**”).

22.2 Quarterly performance report

Independent Engineer shall monitor the Key Performance Indicators on a daily basis and compute the Damages for each day as illustrated in Schedule-H. The Independent Engineer shall submit a weekly report of Damages along with an analysis of the reasons for failures, for each week post COD to the Authority and Concessionaire by 3rd (third) day of the subsequent week. The Independent Engineer shall further compile the weekly reports of Damages on quarterly basis and submit to Concessionaire and Authority by 7th (seventh) day of completion of each quarter.

22.3 Damages for shortfall in performance

The Concessionaire shall ensure and procure compliance of the Key Performance Indicators and for any shortfall as determined under Clause 22.2, it shall pay Damages within 07 (seven) days of receipt of quarterly performance report. The Damages due and payable under this Clause 22.3 shall be paid on quarterly basis.

22.4 ISO certification

22.4.1 The Concessionaire shall, within 12 (twelve) months from COD, achieve and thereafter maintain throughout the Concession Period, ISO 9001:2000 certification or a substitute thereof for maintenance of all the facilities at the Project, and shall provide a certified copy thereof to the Authority forthwith.

22.4.2 In the event of default in obtaining the certification specified in Clause 22.4.1, the Concessionaire shall, within 15 (fifteen) days thereof, submit to the Authority an action plan that sets out the actions proposed to be taken by the Concessionaire for rectifying its deficiencies and obtaining such certification for maintenance of all facilities at the Project.

22.4.3 If the period of default in obtaining the ISO certification under this Clause 22.4 shall exceed a continuous period of 3 (three) months, the Concessionaire shall thereafter pay Damages to the Authority in an amount equal to 0.5% (point five per cent) of the total monthly Availability Payment for every 1 (one) month of default.

ARTICLE 23 INDEPENDENT ENGINEER

23.1 Appointment of Independent Engineer

The Authority shall appoint a consulting engineering firm substantially in accordance with the selection criteria set forth in Schedule-I, to be the independent consultant under this Agreement (the “**Independent Engineer**”). The appointment shall be made no later than 90 (ninety) days from the date of this Concession Agreement and shall be for an initial period of 5 (five) years and further extendable upto 2nd (second) anniversary of COD at the discretion of Authority. On expiry or termination of the aforesaid appointment, the Authority shall appoint an Independent Engineer for a further term of 3 (three) years in accordance with the provisions of Schedule-I, and such procedure shall be repeated after expiry of each appointment till the end of Concession Period.

23.2 Duties and functions

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

23.3 Remuneration

The remuneration, cost and expenses of the Independent Engineer shall be paid by the Authority, one half of such remuneration, cost and expenses shall be reimbursed by the Concessionaire within 15 (fifteen) days of receiving a statement of expenditure from the Authority.

23.4 Termination of appointment

- 23.4.1 The Authority may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer in accordance with Clause 23.1.
- 23.4.2 If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written

representation to the Authority and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Independent Engineer for an amicable resolution of the dispute, and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure as set forth in Article 41. In the event that the appointment of the Independent Engineer is terminated hereunder, the Authority shall appoint forthwith another Independent Engineer in accordance with Clause 23.1.

23.5 Authorized signatories

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

23.6 Dispute resolution

If either Party disputes any advice, instruction, decision, direction or award of the Independent Engineer, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure as set forth in Article 41.

23.7 Interim arrangement

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

PART IV
FINANCIAL COVENANTS

ARTICLE 24

FINANCIAL CLOSE

24.1 Financial Close

- 24.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 270 (two hundred and seventy) days from the date of this Concession Agreement and in the event of delay, Concessionaire shall pay Damages to the Authority in a sum calculated at the rate of 0.05% (zero point zero five per cent) of the Performance Security for each day of delay; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 270 (two hundred and seventy) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.3.
- 24.1.2 The Concessionaire shall, upon occurrence of Financial Close, notify the Authority forthwith, and shall provide to the Authority, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with soft copy of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

24.2 Termination due to failure to achieve Financial Close

- 24.2.1 Notwithstanding anything to the contrary contained in this Concession Agreement, but subject to Clause 31.6.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 24.1.1 or the extended period provided there under, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Concession Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties.
- 24.2.2 Upon Termination under Clause 24.2.1, the Authority shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages; provided, however, if Financial Close has not occurred solely as a result of the Authority being in default of any of its obligations under Clause 4.1.2, it shall, upon Termination, return the Bid Security forthwith along with the Damages due and payable under Clause 4.2. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by Performance Security, the Authority shall be entitled to encash there from an amount equal to Bid Security.

ARTICLE 25 GRANT

25.1 Estimated Project Cost

The Estimated Project Cost (the “**Estimated Project Cost**”) is Rs. 8,749 crores (Rupees Eight Thousand Seven Hundred Forty Nine Crores).

25.2 Grant

- 25.2.1 Authority agrees to provide to the Concessionaire cash support by way of an outright grant (the “**Grant**”) equal to Rs. 3,200 crores (Rupees Three Thousand Two Hundred Crores) inclusive of GST in 10 (ten) equal installments spread over the Construction Period in accordance with the provisions of Clause 25.2.3.
- 25.2.2 In the event of occurrence of a Concessionaire Default, disbursement of Grant shall be suspended till such Concessionaire Default has been cured by the Concessionaire.
- 25.2.3 Upon receiving a report from the Independent Engineer certifying that the Concessionaire has expended 10% (ten per cent), 20% (twenty per cent), 30% (thirty per cent), 40% (forty per cent), 50% (fifty per cent), 60% (sixty per cent), 70% (seventy per cent), 80% (eighty per cent), 90% (ninety per cent) and 95% (ninety five per cent) respectively of the capital cost of the Project set forth in the Financial Package, the Authority shall disburse, within 15 (fifteen) days of the receipt of each such report, an instalment equal to 10% (ten per cent) of the Grant.

ARTICLE 26 CONCESSION FEE

26.1 Concession Fee

In consideration of the grant of Concession, the Concessionaire shall pay to the Authority by way of concession fee a sum of Re.1 (Rupee One) per annum (the “**Concession Fee**”).

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ARTICLE 27 AVAILABILITY PAYMENT

27.1 Availability Payment

27.1.1 The availability payment is Rs....[accepted Availability Payment in Bid (A_0)] per day (the “**Availability Payment**”). The Availability Payment will be escalated or otherwise on annual basis from the 1st (first) anniversary of COD as per following formula:

$$A_n = (0.82 \times A_0) + \{0.18 \times A_0 \times (1+3\%)^n\}$$

A_n = Availability Payment in n^{th} year from 1st (first) anniversary of COD

A_0 = [accepted Availability Payment in Bid]

For illustration purpose, Availability Payment would be:

Till first anniversary of COD: A_0

From 1st (first) anniversary of COD till 2nd (second) anniversary of COD: $A_1 = (0.82 \times A_0) + \{0.18 \times A_0 \times (1+3\%)^1\}$

From 2nd (second) anniversary of COD till 3rd (third) anniversary of COD: $A_2 = (0.82 \times A_0) + \{0.18 \times A_0 \times (1+3\%)^2\}$ and so on.

27.1.2 The Availability Payment payable to the Concessionaire by the Authority shall be calculated on the basis of Availability of Rail System provided by the Concessionaire and certified by the Independent Engineer as per Schedule-K.

27.1.3 Independent Engineer shall monitor the daily Availability of Rail System and submit weekly report of average Availability of Rail System for each week post COD to the Authority and Concessionaire by 3rd (third) of the subsequent week. The Independent Engineer shall further compile the weekly reports of Availability of Rail System on quarterly basis and submit to Concessionaire and Authority by 7th (seventh) day of completion of each quarter. Based on the quarterly report, Concessionaire shall prepare and submit invoice for Availability Payment for that quarter to the Independent Engineer, who shall certify the due Availability Payment within 2 (two) days. The Concessionaire shall submit invoice with certification of Independent Engineer to the Authority.

27.1.4 The Authority agrees and undertakes that the certified invoice shall be paid by the 15th (fifteenth) day (or, if such day is not a business day, the immediately following business day) of receipt of such invoice (the “**Payment Due Date**”).

27.1.5 For Part Commissioning of the following section, the Availability Payment in Clause 27.1.1 shall be considered on pro-rata basis as provided below:

- (a) Sonnagar (New Chiraila Pauthu) - New Koderma : Rs.[63% (sixty three per cent) of accepted Availability Payment in Bid]
- (b) New Koderma – New Gomoh : Rs.[37% (thirty seven per cent) of accepted Availability Payment in Bid]

27.1.6 The Concessionaire hereby acknowledges and agrees that it is not entitled to any revision of Availability Payment or other relief from the Authority or any Government Instrumentality except in accordance with the express provisions of this Concession Agreement.

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

27.2 Taxes and duties

It is expressly agreed by the Parties that any Goods and Service Tax payable as per Applicable Laws on Availability Payment shall also be borne and paid by the Authority.

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ARTICLE 28 ESCROW ACCOUNT

28.1 Escrow Account

28.1.1 The Concessionaire shall, prior to the Appointed Date, open and establish an Escrow Account with a Bank (the “**Escrow Bank**”) and execute the Escrow Agreement (the “**Escrow Agreement**”).

28.1.2 The Escrow Agreement to be entered into amongst the Concessionaire, the Authority, the Escrow Bank and the Senior Lenders through the Lenders’ Representative.

28.2 Deposits into Escrow Account

The Concessionaire and/or the Authority, as the case may be, shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

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

28.3 Withdrawals during Concession Period

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

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- (c) all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (d) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (e) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Concession Agreement, and certified by the Authority as due and payable to it;
- (f) Concession Fee due and payable to the Authority;

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

28.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 28.3.1, except with the prior written approval of the Authority.

28.4 Withdrawals upon Termination

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

- (i) all taxes due and payable by the Concessionaire for and in respect of the Project;
- (ii) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- (iii) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (iv) outstanding Concession Fee;
- (v) retention and payments relating to the liability for defects or deficiencies set forth in Article 36;
- (vi) outstanding Debt Service including the balance of Debt Due;
- (vii) outstanding Subordinated Debt;
- (viii) incurred or accrued O&M Expenses;
- (ix) any other payments required to be made under this Concession Agreement; and
- (x) balance, if any, in accordance with the instructions of the Concessionaire;

Provided that no appropriations shall be made under sub-Clause (j) of this Clause 28.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article 35.

28.4.2 The provisions of this Article 28 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 28.4.1 have been discharged.

ARTICLE 29 INSURANCE

29.1 Insurance during Concession Period

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

29.1.2 Insurance Cover

Without prejudice to the provisions contained in Clause 29.1.1, the Concessionaire shall, during the Operation & Maintenance Period, procure and maintain Insurance Cover including but not limited to the following:

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

29.2 Notice to the Authority

No later than 45 (forty five) days prior to commencement of the Construction Period or the Operation & Maintenance Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 29.

Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure as set forth in Article 41 shall apply.

29.3 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 29 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority.

29.4 Remedy for failure to insure

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

29.5 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 29 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, *inter alia*, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

29.6 Concessionaire's waiver

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

29.7 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire by credit to the Escrow Account and it shall, notwithstanding anything to the contrary contained in clause 28.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

29.8 Compliance with conditions of insurance policies

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

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ARTICLE 30

ACCOUNTS AND AUDIT

30.1 Audited accounts

- 30.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including Availability Payment and other revenues derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Concession Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its balance sheet, cash flow statement and profit and loss account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Concession Agreement. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Concession Agreement.
- 30.1.2 The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.
- 30.1.3 On or before the 31st (thirty-first) day of May each year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarized information on Availability Payment received and other revenues derived from the Project, and such other information as the Authority may reasonably require.

30.2 Appointment of auditors

- 30.2.1 The Concessionaire shall, at its own cost and expense, appoint, and have during the subsistence of this Concession Agreement as its Statutory Auditors, a firm chosen by it in accordance with the eligibility criteria set forth herein below:
- (a) the firm should have conducted statutory audit of the annual accounts of at least 100 (one hundred) companies registered under the Companies Act 1956/2013, of which at least 10 (ten) should have been public sector undertakings;
 - (b) the firm should have at least 5 (five) practicing chartered accountants on its rolls, each with a minimum experience of 10 (ten) years in the profession;

- (c) the firm or any of its partners should not have been disqualified or black-listed by the Comptroller and Auditor General of India or the Authority; and
- (d) the firm should have an office in the State or in an adjacent State with at least 2 (two) practicing chartered accountants on its rolls in such State.

30.2.2 The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 45 (forty five) days to the Authority, subject to the replacement of Statutory Auditors being appointed by it in accordance with Clause 30.2.1.

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

30.3 Certification of claims by Statutory Auditors and Additional Auditor

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

30.4 Set-off

In the event any amount is due and payable by the Authority to the Concessionaire, it may set-off any sums payable to it by the Concessionaire and pay the balance remaining. Any exercise by the Authority of its rights under this Clause 30.4 shall be without prejudice to any other rights or remedies available to it under this Concession Agreement or otherwise.

30.5 Dispute resolution

In the event of there being any difference between the findings of the Additional Auditors and the certification provided by the Statutory Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by the Authority by recourse to the Dispute Resolution Procedure as set forth in Article 41.

PART V
FORCE MAJEURE AND TERMINATION

ARTICLE 31 FORCE MAJEURE

31.1 Force Majeure

As used in this Concession 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 31.2, 31.3 and 31.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Concession 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.

31.2 Non-Political Event

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

- (a) act of God, pandemic, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 31.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (d) any delay or failure of an overseas Contractor to deliver equipment in India if such delay or failure is caused outside India by any event specified in sub-Clause (a) above and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (e) any judgment or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Concession Agreement, or (iv) exercise of any of its rights under this Concession Agreement by the Authority;

- (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.

31.3 Indirect Political Event

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

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (c) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (d) any Indirect Political Event that causes a Non-Political Event;
- (e) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

31.4 Political Event

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

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 38;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
- (c) unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorization, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Concession

Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorization, no objection certificate, exemption, consent, approval or permit;

- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

31.5 Duty to report Force Majeure Event

31.5.1 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 31 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 Concession 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.

31.5.2 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 Concession Agreement.

31.5.3 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 31.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

31.6 Effect of Force Majeure Event on the Concession

31.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 24.1.1 for achieving Financial Close shall be extended by a period equal

in length to the duration of the Force Majeure Event.

31.6.2 At any time after the Appointed Date, if any Force Majeure Event occurs, the Construction Period of such phase and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists, provided that if aggregate duration of Force Majeure events from Appointed Date until COD exceeds 180 (one hundred and eighty) days, the Concession Period shall also be extended by duration from 181st (one hundred and eighty first) day till subsistence of Force Majeure.

31.7 Allocation of costs arising out of Force Majeure

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

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

- (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;
- (b) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Concessionaire; and
- (c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Concessionaire.

For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the cost of Construction Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include any costs which are expressly covered under any provision of this Concession Agreement or debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant. Reimbursement of additional cost due to Force Majeure Event (if any) shall be done by the Authority on half yearly basis reckoned from the Appointed Date onwards.

31.7.3 Save and except as expressly provided in this Article 31, 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.

31.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Concession Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 31, and upon issue of such Termination Notice, this Concession Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

31.9 Termination Payment for Force Majeure Event

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

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

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

31.9.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 34.3.2 as if it were an Authority Default.

31.10 Dispute resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure as set forth in Article 41; 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.

31.11 Excuse from performance of obligations

If the Affected Party is rendered wholly or partially unable to perform its obligations under this Concession 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 Concession Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

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ARTICLE 32

COMPENSATION FOR BREACH OF AGREEMENT

32.1 Compensation for default by the Concessionaire

Subject to the provisions of Clause 32.5, in the event of the Concessionaire being in material breach or default of this Concession Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material breach or default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 32.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Concession Agreement or for any consequential losses incurred by the Authority.

32.2 Compensation for default by the Authority

Subject to the provisions of Clause 32.5, in the event of the Authority being in material breach or default of this Concession Agreement at any time after the Appointed Date, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire, however not exceeding 1% (one per cent) of the Estimated Project Cost, as a consequence of such material breach or default within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Concession Agreement. For the avoidance of doubt, any increase in capital costs on account of inflation and all other costs directly attributable to such material breach or default but shall not include loss of Availability Payments, debt repayment obligations or other consequential losses, and for determining such compensation, information contained in the Financial Package and the Financial Model may be relied upon to the extent it is relevant.

32.3 Extension of Concession Period

Subject to the provisions of Clause 32.5, in the event that a material default or breach of this Concession Agreement set forth in Clause 32.2 causes delay in achieving COD, the Authority shall, in addition to payment of compensation under Clause 32.2, extend the Concession Period, such extension being equal in duration to the period by which COD was delayed.

32.4 Compensation to be in addition

Compensation payable under this Article 32 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any.

32.5 Mitigation of costs and damage

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

ARTICLE 33

SUSPENSION OF CONCESSIONAIRE'S RIGHTS

33.1 Suspension upon Concessionaire Default

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

33.2 Authority to act on behalf of Concessionaire

33.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, appropriate Availability Payment and revenues under and in accordance with this Concession Agreement and deposit the same in the Escrow Account. The Authority shall be entitled to make withdrawals from the Escrow Account for meeting the O&M Expenses and for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Clause 28.3.

33.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Concession Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Concession Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period.

33.3 Revocation of Suspension

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

33.3.2 Upon the Concessionaire having cured the Concessionaire Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Authority shall revoke the

Suspension forthwith and restore all rights of the Concessionaire under this Concession Agreement.

33.4 Substitution of Concessionaire

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice there under from the Lenders' Representative, the Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 33.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

33.5 Termination

- 33.5.1 At any time during the period of Suspension under this Article 33, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Concession Agreement and within the period specified in Clause 33.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Concession Agreement under and in accordance with Article 34 as if it is a Concessionaire Default under Clause 34.1.
- 33.5.2 Notwithstanding anything to the contrary contained in this Concession Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 33.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Concession Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.

ARTICLE 34 TERMINATION

34.1 Termination for Concessionaire Default

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

- (a) the Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to meet any Conditions Precedent or cure the Concessionaire Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of 90 (ninety) days;
- (c) the Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule- D and continues to be in default for 120 (one hundred and twenty) days;
- (d) the Concessionaire abandons or manifests intention to abandon the construction, operation or maintenance of the Project without the prior written consent of the Authority;
- (e) COD does not occur within the period specified in Clause 12.3.1;
- (f) the Concessionaire is in breach of the maintenance requirements set forth in Maintenance Manual or the Safety Requirements, as the case may be, or commits repeated default in conforming to the Key Performance Indicators;
- (g) the Concessionaire has failed to make any payment to the Authority within the period specified in this Concession Agreement;
- (h) an Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days;
- (i) upon occurrence of a Financial Default, the Lenders’ Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be,

in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified herein above;

- (j) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- (k) the Concessionaire creates any Encumbrance in breach of this Concession Agreement;
- (l) the Concessionaire repudiates this Concession Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (m) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- (n) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
- (o) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- (p) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;
- (q) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- (r) a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by a court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Concession 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 Concession Agreement and the Project Agreements;
 - (ii) the amalgamated or reconstructed entity has the financial standing to perform

its obligations under this Concession Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and

- (iii) each of the Project Agreements remains in full force and effect;
 - (s) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;
 - (t) the Concessionaire submits to the Authority any statement, notice or other Document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
 - (u) the Concessionaire has failed to fulfill any obligation, for which failure Termination has been specified in this Concession Agreement;
 - (v) the Concessionaire issues a Termination Notice in violation of this Concession Agreement; or
 - (w) the Concessionaire commits a default in complying with any other provision of this Concession Agreement if such default causes a Material Adverse Effect on the Authority.
- 34.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Concession Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Concession Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 34.1.3.
- 34.1.3 The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 34.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:

Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the

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

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

34.2 Termination for Authority Default

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

- (a) the Authority commits a material default in complying with any of the provisions of this Concession Agreement and such default has a Material Adverse Effect on the Concessionaire;
- (b) the Authority has failed to pay Grant as per Article 25 or make Availability Payment to the Concessionaire in accordance with Article 27 of this Concession Agreement within 90 (ninety) days of due date;
- (c) subject to provisions set out in Clause 10.3, the Authority has failed to grant vacant access and Right of Way for the length of the Site required and necessary for the Project, which may prevent construction of a continuous rail track or prevent any other Construction Work without which the Completion Certificate may not be granted; or
- (d) the Authority repudiates this Concession Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Concession Agreement.

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

34.3 Termination Payment

34.3.1 Upon Termination on account of a Concessionaire Default during the Operation &

Maintenance Period, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:

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

provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due.

For the avoidance of doubt, the Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Default occurring prior to COD, save and except as provided in Clause 34.3.4.

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

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

34.3.3 Termination Payment shall become due and payable to the Concessionaire on demand being made to the Authority with the necessary particulars. The Authority shall pay the due Termination Payment in 4 (four) equal quarterly instalments within 7 (seven) days of each quarter over next 1 (one) year period. Along with aforesaid quarterly termination instalment payment, the interest on balance Termination Payment at beginning of corresponding quarter at a rate equal to 4% (four per cent) above the Repo Rate shall be payable. In the event of any delay, the Authority shall pay interest at a rate equal to 4% (four per cent) above the Repo Rate on the amount of Termination Payment due for that quarter; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

34.3.4 Upon Termination on account of Concessionaire Default during the Construction Period, no Termination Payment shall be due and payable for and in respect of expenditure (excluding any sums disbursed towards Grant) comprising the first 40% (forty per cent) of (Estimated Project Cost minus Grant) and in the event of expenditure (excluding any sums disbursed towards Grant) exceeding such 40% (forty per cent) and forming part of Debt Due, the provisions of Clause 34.3.1 shall, to the extent applicable to Debt Due, apply in respect of the expenditure exceeding such 40% (forty per cent). For the avoidance of doubt and by way of illustration, the Parties agree that if the expenditure (excluding any sums disbursed towards Grant) incurred prior to Termination is 90% (ninety per cent) of the

(Estimated Project Cost minus Grant), the expenditure eligible for computation of Termination Payment hereunder shall be 50% (fifty per cent) of the (Estimated Project Cost minus Grant) and the Termination Payment due and payable in such event shall not exceed 45% (forty five per cent) of the (Estimated Project Cost minus Grant). The Parties agree that for determining the Termination Payment under this Clause 34.3.4, the expenditure comprising the latest Project Milestone shall also be reckoned.

34.3.5 Upon Termination on expiry of the Concession Period by efflux of time, no Termination Payment shall be due and payable to the Concessionaire.

34.3.6 The Concessionaire expressly agrees that Termination Payment under this Article 34 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Concession Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

34.4 Certain limitations on Termination Payment

34.4.1 Termination Payment, not being Additional Termination Payment, due and payable under this Concession Agreement shall be computed with reference to the Debt Due and Adjusted Equity, as the case may be, in accordance with the provisions of this Concession Agreement. The Parties further agree that the Equity and Debt Due shall be arrived at by adopting the proportion between debt and Equity as specified in the Financing Agreements. The Parties also agree that for the purposes of computing Termination Payment, the Debt Due shall at no time exceed 42% (forty two per cent) of the Estimated Project Cost.

34.4.2 Additional Termination Payment due and payable in respect of Specified Assets shall be limited to the lowest of:

- (a) Adjusted Depreciated Value thereof;
- (b) the replacement value thereof, as assessed by an Approved Valuer, who shall be selected and appointed by the Authority, within 60 (sixty) days of Termination, for submitting his assessment within 60 (sixty) days of his appointment hereunder; and
- (c) 10% (ten per cent) of the Estimated Project Cost.

Provided that there shall be no Additional Termination Payment in case of expiry of Concession Period by efflux of time.

34.4.3 The amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. Provided, however, that the provisions of this Clause 34.4.3 shall not apply if the Concessionaire does not notify the particulars of any foreign currency loans within 60 (sixty) days of the date of conversion of such foreign currency loans into Indian currency. Provided further that all borrowings in foreign currency shall be restricted to the financing of up to 60% (sixty per cent) of Estimated

Project Cost and any borrowings in excess thereof shall not qualify for computation of Termination Payment.

34.5 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

- (a) be deemed to have taken possession and control of the Project forthwith;
- (b) take possession and control of all materials, stores, implements, construction plants and equipment on or about the Site;
- (c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the Project;
- (d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 35.1; and
- (e) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

34.6 Survival of rights

Notwithstanding anything to the contrary contained in this Concession Agreement, but subject to the provisions of Clause 34.3.6, any Termination pursuant to the provisions of this Concession 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 Concession Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 35

DIVESTMENT OF RIGHTS AND INTEREST

35.1 Divestment Requirements

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

- (a) notify to the Authority forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of the Project, free and clear of all Encumbrances and Encroachments, save and except to the extent set forth in the Substitution Agreement;
- (c) cure all Project Assets of all defects or deficiencies so that the Project is compliant with the Maintenance Manual; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition;
- (d) the condition of the Project is such that no Project Asset is due for replacement or refurbishment;
- (e) deliver and transfer relevant records, reports and other licences pertaining to the Project and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date;
- (f) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (g) execute such deeds of conveyance, Documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project Assets, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims, to the extent due and payable to the Authority, absolutely unto the Authority; and
- (h) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project, free from all Encumbrances, absolutely unto the Authority.

35.1.2 Subject to the exercise by the Authority of its rights under this Concession Agreement under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Concessionaire, the Parties shall continue to perform their obligations under this Concession Agreement, notwithstanding the giving of any

Termination Notice, until the Termination of this Concession Agreement becomes effective in accordance with its terms.

35.2 Inspection and cure

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Authority or its representatives shall verify, after giving due notice to the Concessionaire specifying the time, date and venue of such verification and/or inspection, compliance by the Concessionaire with the maintenance requirements set forth in Maintenance Manual, and if required, cause appropriate Tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the maintenance requirements set forth in Maintenance Manual shall be cured by the Concessionaire at its cost and the provisions of Article 36 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 35.

35.3 Cooperation and assistance on transfer of Project

- 35.3.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Concession Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Users or other members of the public or the lawful occupiers of any part of the Site.
- 35.3.2 The Parties shall provide to each other, 09 (nine) months prior to the Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the Authority, its concessionaire or agent may reasonably require for operation of the Project until the expiry of 06 (six) months after the Transfer Date.
- 35.3.3 The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value and free from any encumbrance all or any part of the plant and machinery used in connection with the Project but which does not form part of the assets specified in Clause 35.1.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of Dispute or difference relating to fair market value, the Dispute Resolution Procedure as set forth in Article 41 shall apply.

35.4 Vesting Certificate

The divestment of all rights, title and interest in the Project shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule-J (the "**Vesting Certificate**"), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the

Project, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority on, or in respect of, the Project on the footing that all Divestment Requirements have been complied with by the Concessionaire.

35.5 Divestment costs etc.

- 35.5.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project Assets in favour of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such divestment shall be borne by the Authority.
- 35.5.2 In the event of any Dispute relating to matters covered by and under this Article 35, the Dispute Resolution Procedure as set forth in Article 41 shall apply.

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ARTICLE 36 DEFECTS LIABILITY AFTER TERMINATION

36.1 Liability for defects after Termination

The Concessionaire shall be responsible for all defects or deficiencies in the Project for a period of 120 (one hundred and twenty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects or deficiencies observed by the Authority or its representatives in the Project during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Project conform to the O&M requirements set forth in Operating Manual and Maintenance Manual. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the Escrow Account under the provisions of Clause 36.2 or from the Performance Guarantee provided thereunder.

36.2 Retention in Escrow Account

- 36.2.1 Notwithstanding anything to the contrary contained in this Concession Agreement, but subject to the provisions of Clause 36.2.3, a sum equal to 5% (five per cent) of the total Availability Payment for the year immediately preceding the Transfer Date shall be retained in the Escrow Account for a period of 120 (one hundred and twenty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 36.1.
- 36.2.2 Without prejudice to the provisions of Clause 36.2.1, the Independent Engineer shall carry out an inspection of the Project at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the Termination and if it recommends that the status of the Project is such that a sum larger than the amount stipulated in Clause 36.2.1 should be retained in the Escrow Account and for a period longer than the aforesaid 120 (one hundred and twenty) days, the amount recommended by the Independent Engineer shall be retained in the Escrow Account for the period specified by it.
- 36.2.3 The Concessionaire may, for the performance of its obligations under this Article 36, provide to the Authority a guarantee from a Bank (the "Performance Guarantee") for a sum equivalent to the amount determined under Clause 36.2.1 or 36.2.2, as the case may be, and for the period specified therein, and the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Concessionaire's risk and cost in accordance with the provisions of this Article 36. Upon furnishing of a Performance Guarantee under this Clause 36.2.3, the retention of funds in the Escrow Account in terms of Clause 36.2.1 or 36.2.2, as the case may be, shall be dispensed with.

Part - VI
OTHER PROVISIONS

ARTICLE 37 ASSIGNMENT AND CHARGES

37.1 Restrictions on assignment and charges

- 37.1.1 Subject to Clauses 37.2 and 37.3, this Concession Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.
- 37.1.2 Subject to the provisions of Clause 37.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, Encroachment or otherwise transfer or dispose of all or any of its rights and benefits under this Concession Agreement or any Project Agreement to which the Concessionaire is a party, except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

37.2 Permitted assignment and charges

The restraints set forth in Clause 37.1 shall not apply to:

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

37.3 Substitution Agreement

- 37.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire pursuant to the agreement for substitution of the Concessionaire (the "Substitution Agreement") to be entered into amongst the Concessionaire, the Authority and the Lenders' Representative, on behalf of Senior Lenders.

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

37.4 Assignment by the Authority

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

ARTICLE 38 CHANGE IN LAW

38.1 Increase in cost

If as a result of Change in Law, the Concessionaire suffers increase in costs or reduction in EBITDA or other financial burden, the aggregate financial effect of which results in either (a) reduction by more than 20% (twenty per cent) of EBITDA in the affected financial year as compared to the average EBITDA of the previous 3 (three) financial years or from COD till occurrence of Change in Law in case the Project is operational for less than 3 (three) years from COD and this is enduring in nature due to the effect of Change in Law or (b) an increase in the capital expenditure by more than 5% (five per cent) of the estimations before the occurrence of such Change in Law provided that such an increase in capital expenditure has been certified by the Senior Lender and the Independent Engineer, (hereby (a) and (b) known as “**Material Impact**”), the Concessionaire may so notify the Authority.

38.2 Reduction in cost

If as a result of Change in Law, the Concessionaire benefits from decrease in costs or increase in EBITDA or other financial gain, the aggregate financial effect of which results in either (a) increase by more than 20% (twenty per cent) of EBITDA in the affected financial year as compared to the average EBITDA of the previous 3 (three) financial years or from COD till occurrence of Change in Law in case the Project is operational for less than 3 (three) years from COD and this is enduring in nature due to the effect of Change in Law or (b) decrease in the capital expenditure by more than 5% (five per cent) of the estimations before the occurrence of such Change in Law provided that such a decrease in capital expenditure has been certified by the Independent Engineer, (hereby (a) and (b) known as “**Material Benefit**”), the Authority may so notify the Concessionaire.

38.3 Remedy

38.3.1 Upon notification by either Party as per Clause 38.1 and 38.2, the Parties shall make a reference to a committee which shall comprise 1 (one) member each to be nominated by both Parties from among persons who have requisite qualifications and professional experience relevant to the field to which the Concession Agreement relates and the members so nominated shall choose a chairperson who has experience in conciliation (the “**Committee**”).

38.3.2 The Committee shall conduct its proceedings in accordance with the provisions of Article 41 as if it is an arbitration proceeding under that Article, save and except as provided in this Article 38.

38.3.3 The Committee shall conduct preliminary proceedings to satisfy itself that –

- (a) a Change in Law has occurred, and this has a Material Impact or Material Benefit as the case may be; and

- (b) the Change in Law or its effects have not been caused by any Party by any act or omission or negligence on its part, and if the Committee is satisfied that each of the conditions specified herein above is fulfilled, it shall issue an order to this effect and conduct further proceedings under this Clause 38.3.

38.3.4 Upon completion of the proceedings referred to in Clause 38.3.3, the Committee may by a reasoned order make recommendations and setting out the terms of reference which shall be:

- (a) based on a fair and transparent justification;
- (b) no greater in scope than is necessary for mitigating the effects or benefits of the Change in Law so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law;
- (c) of no greater duration than is necessary for mitigating the effects of the Change in Law; and
- (d) quantified and restricted in terms of relief or remedy and may include extension of Concession Period or change in Availability Payment or both, as the case may be, subject to such extension in the Concession Period is limited to a maximum of 10 (ten) years, or any other remedy as it deems appropriate but shall not include any recommendation of any financial compensation by either of the Parties.

38.3.5 Within 15 (fifteen) days of receiving the order and terms of reference referred to in Clause 38.3.4, the Parties shall meet and make efforts in good faith to accept, in whole or in part, the relief or remedy recommended by the Committee for mitigating the effects of the Change in Law and to procure implementation of the Project in accordance with the provisions of this Concession Agreement. In pursuance hereof, the Parties may enter into a Memorandum of Understanding (the “MoU”) setting forth the agreement reached hereunder, and the terms of such MoU shall have force and effect as if they form part of this Concession Agreement. Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Parties may resolve this matter as per the provisions of Article 41. For the avoidance of doubt, it is agreed that this Article 38 shall be restricted to Change in Law directly affecting the Concessionaire’s costs or EBITDA or capital expenditure of performing its obligations under this Concession Agreement.

ARTICLE 39

LIABILITY AND INDEMNITY

39.1 General indemnity

- 39.1.1 The Concessionaire shall indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and the Authority owned and/or controlled entities/enterprises, (the “**Authority Indemnified Persons**”) against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Concessionaire of any of its obligations under this Concession Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Concessionaire to Authority or from any negligence of the Concessionaire under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Concession Agreement on the part of the Authority Indemnified Persons.
- 39.1.2 Authority shall indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (i) defect in title and/or the rights of Authority in the land comprised in the Site, and/or (ii) breach by Authority of any of its obligations under this Concession Agreement or any related agreement, which materially and adversely affect the performance by the Concessionaire of its obligations under this Concession Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to negligent act or omission, or breach of any of its obligations under any provision of this Concession Agreement or any related agreement and/or breach of its statutory duty on the part of the Concessionaire, its subsidiaries, affiliates, Contractors, servants or agents, the same shall be the liability of the Concessionaire.

39.2 Indemnity by the Concessionaire

- 39.2.1 Without limiting the generality of Clause 39.1, the Concessionaire shall fully indemnify, hold harmless and defend Authority and Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:
- (a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
 - (b) payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire’s Contractors, suppliers and representatives; or
 - (c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its Contractors which are payable by the Concessionaire or any of its Contractors.

39.2.2 Without limiting the generality of the provisions of this Article 39, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorizing continued use of the infringing work. If the Concessionaire is unable to secure such licence within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

39.3 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 39 (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.

39.4 Defense of claims

39.4.1 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 39, the Indemnifying Party shall be entitled, at its option, to assume and control the defense 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 defense. 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.

39.4.2 If the Indemnifying Party has exercised its rights under Clause 39.3, 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).

39.4.3 If the Indemnifying Party exercises its rights under Clause 39.3, 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 authorized in writing by the Indemnifying Party;
- (b) the Indemnified Party shall have ~~reasonably concluded~~ that there may be a conflict of interest between the ~~Indemnifying Party~~ and the Indemnified Party in the conduct of the defense of such action;
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably ~~satisfactory to the Indemnified Party~~, to assume the defense 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 defenses 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 Concession Agreement:

Provided that if sub-Clauses (b), (c) or (d) of this Clause 39.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defense 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.

39.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 39, 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 Concession Agreement.

39.6 Survival on Termination

The provisions of this Article 39 shall survive Termination.

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ARTICLE 40

RIGHTS AND TITLE OVER THE SITE

40.1 Licensee rights

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

40.2 Access rights of the Authority and others

40.2.1 The Concessionaire shall allow free access to the Site at all times for the authorized representatives of the Authority, IR officials, Commissioner of Railway Safety, Senior Lenders, and the Independent Engineer, and for the persons duly authorized by any Government Instrumentality to inspect the Project and to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

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

40.3 Property taxes

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

40.4 Sub-letting

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

40.5 Licensing of vacant railway land for logistic/ commercial purpose

40.5.1 Concessionaire is allowed to approach the Authority for seeking permission for licensing of vacant railway land within the Right of Way at and around the Stations (other than

required under the Scope of the Project as per this Concession Agreement). Concessionaire on getting the permission from Authority, shall be liable to pay stipulated licence fee to the Authority as per the applicable land policy of MoR. All buildings and immovable fixtures or structures thus created on such licensed railway land shall be referred as specified assets (the “**Specified Assets**”).

40.5.2 Subject to provisions of Clause 5.2, the Concessionaire may sub-license the Specified Assets such that the period and validity of such sub-license shall not extend beyond the period specified under Clause 3.1.1.

40.6 Handing over of Specified Assets to Authority at the Termination of Concession Agreement

40.6.1 In the event of Termination prior to expiry of sub-license period specified in Clause 40.5.2, the tenure of the sub-licenses and the rights of the sub-licensees shall continue to subsist as if the sub-licenses were granted by the Authority, and the Authority shall, for the remaining period of each sub-license, be deemed to be the grantor of the sub-license by stepping into such sub-license in pursuance of the Covenant referred to in Clause 5.2.4.

ARTICLE 41 DISPUTE RESOLUTION

41.1 Dispute resolution

41.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Concession 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 procedures set forth in Clause 41.2, 41.3 and 41.4.

41.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Concession 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.

41.2 Mediation

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 either Party may go for DAB.

41.3 Dispute Adjudication Board

41.3.1 The Parties shall jointly appoint a dispute adjudication board (“**DAB**”) within 90 (ninety) days of signing of the Concession Agreement.

41.3.2 The DAB shall comprise of 3 (three) members. 1 (one) member each shall be appointed by the respective Parties and the 2 (two) members so appointed shall select the chairperson of DAB. The DAB shall adjudicate Dispute only when a Party refers the aforesaid Dispute to DAB, i.e. the role of DAB shall be only to the extent of whenever a Dispute is referred to it.

41.3.3 The appointment shall be effectuated by way of a tri-patriate agreement among the Authority, Concessionaire and respective DAB members.

41.3.4 The terms of the remuneration of each of the 3 (three) members shall be mutually agreed upon by the Parties and duly reflected in aforesaid DAB agreement. Each Party shall be responsible for paying one-half of this remuneration.

41.3.5 DAB shall give its decision within 84 (eighty four) days of a Dispute being referred to it by any of the Parties, this time limit shall be extendable subject to the Parties mutual agreement.

41.3.6 The decision shall be binding on both the Parties, unless the Dispute is referred to conciliation as per provisions of Clause 41.4.

- 41.3.7 If at any time the Parties so agree, they may appoint a suitably qualified person or persons to replace any 1 (one) or more members of the DAB. Unless the Parties agree otherwise, the appointment will come into effect if a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment. The replacement shall be appointed in the same manner as the replaced person was required to have been nominated or agreed upon, as described in this Clause 41.3.
- 41.3.8 The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Authority or the Concessionaire acting alone. Unless otherwise agreed by both Parties, the appointment of the DAB (including each member) shall expire upon expiry of this Concession Agreement.

41.4 Conciliation

Dispute shall be due for conciliation only if either or both of the Parties are aggrieved of the decision of the DAB, either Party may require such Dispute to be referred to Managing Director of the Authority and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) days period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting 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 41.5.

41.5 Arbitration

41.5.1 Dispute due for arbitration

Disputes or differences shall be due for arbitration only if all the conditions in Clause 41.4 are fulfilled.

41.5.2 Settlement of Disputes

Except where otherwise provided in the Concession Agreement, all Disputes, whatsoever arising between the Parties, arising out of touching or relating to construction, measuring, operation, maintenance or effect of the Concession Agreement or the breach thereof, shall be settled by arbitration as detailed in Clause 41.5.3.

41.5.3 Nomination of arbitrators

Matters to be arbitrated upon shall be referred to an arbitral tribunal. The arbitral tribunal comprising 3 (three) arbitrators, of whom each Party shall select 1 (one), and the 3rd (third) arbitrator shall be appointed by the 2 (two) arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.

41.5.4 No suspension of work

The reference to arbitration shall proceed notwithstanding that works shall not then be or be alleged to be complete, provided always that the obligations of the Authority, the Independent Engineer and the Concessionaire shall not be altered by reasons of arbitration being conducted during the progress of works. Neither Party shall be entitled to suspend the work to which the Dispute relates on account of arbitration and payments to the Concessionaire shall continue to be made in terms of the Concession Agreement.

41.5.5 Award to be binding on all Parties

The arbitration Award shall be binding on all Parties

41.5.6 Rules governing the arbitration proceedings

41.5.6.1 The arbitration proceedings shall be governed by Indian Arbitration and Conciliation Act, 1996, as amended from time to time. Such arbitration shall be held in accordance with the Rules of Arbitration of the Delhi International Arbitration Centre (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 language of arbitration proceedings shall be English.

41.5.6.2 Where the arbitral Award is for payment of money, no interest shall be payable on the whole or any part of the money for any period till the date on which the Award is made.

41.5.6.3 The cost of arbitration shall be borne by the respective Parties. The cost shall *inter alia* include the fees of the arbitrator(s) as per the rates fixed by the Authority from time to time.

41.5.6.4 The seat and venue of such arbitration shall be New Delhi, India.

41.6 Arbitration Awards to be binding

41.6.1 The Concessionaire and Authority undertake to carry out any decision or award of the arbitrators (the “**Award**”) without delay. Awards relating to any Dispute shall be final and binding on the Parties as from the date they are made.

41.6.2 The Concessionaire and Authority agree that an Award may be enforced against the Concessionaire and/or Authority, as the case may be and their respective assets wherever situated.

41.6.3 This Concession Agreement and rights and obligations of the Parties shall remain in full force and effect pending the Award in any arbitration proceeding hereunder.

41.7 Adjudication by regulatory authority or commission

In the event of constitution of a statutory regulatory authority or commission with powers to adjudicate upon Disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 41.5, 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.

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ARTICLE 42 DISCLOSURE

42.1 Disclosure of Specified Documents

The Concessionaire, on request of the Authority, shall make available for inspection by any person, copies of this Concession Agreement, the Operating Manual, the Operating Protocol, the Maintenance Manual, the Maintenance Programme and the Safety Requirements (hereinafter collectively referred to as the “**Specified Documents**”), free of charge, during normal business hours on all working days at the Concessionaire’s Registered Office.

42.2 Disclosure of Documents relating to safety

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

42.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 42.1 and 42.2, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or Documents referred to in Clauses 42.1 and 42.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

ARTICLE 43 MISCELLANEOUS

43.1 Governing law and jurisdiction

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

43.2 Waiver of immunity

Each Party unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Concession 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 Concession Agreement or any transaction contemplated by this Concession 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 judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

43.3 Depreciation

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

43.4 Delayed payments

- 43.4.1 The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Concession 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 4% (four per cent) above the Repo Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Concession Agreement including Termination thereof.

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

43.5 Waiver

43.5.1 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 Concession 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 Concession Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
- (c) shall not affect the validity or enforceability of this Concession Agreement in any manner.

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

43.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Concession Agreement:

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

43.7 Exclusion of implied warranties etc.

This Concession 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.

43.8 Survival

43.8.1 Termination shall:

- (a) not relieve the Concessionaire or the Authority, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and
- (b) except as otherwise provided in any provision of this Concession 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.

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

43.9 Entire Agreement

This Concession 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 Concession Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Concessionaire arising from the Request for Proposal, shall be deemed to form part of this Concession Agreement and treated as such.

43.10 Severability

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

43.11 No partnership

This Concession 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.

43.12 Third parties

This Concession Agreement is intended solely for the benefit of the Parties and their respective successors and permitted assigns, and nothing in this Concession 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 Concession Agreement.

43.13 Successors and assigns

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

43.14 Notices

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

- (a) in the case of the Concessionaire, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Concessionaire may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside Delhi may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Concessionaire may from time to time designate by notice to the Authority;
- { Attention:
Designation:
Address:
Fax No:
Email;}
- (b) in the case of the Authority, 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 the Authority Representative or such other person as the Authority may from time to time designate by notice to the Concessionaire; provided that if the Concessionaire does not have an office in Delhi it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier;
- { Attention:
Designation:

Address:
Fax No:
Email; } and

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

43.15 Language

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

43.16 Counterparts

This Concession Agreement may be executed in 2 (two) counterparts, each of which, when executed and delivered, shall constitute an original of this Concession Agreement.

43.17 Limitation of Liability

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

43.17.2 The total liability of one Party to the other Party under and in accordance with the provisions of this Concession Agreement, save and except as provided in Articles 34 and 39, shall not exceed the Estimated Project Cost. For the avoidance of doubt, this Clause shall not limit the liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

43.18 Confidentiality

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

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

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

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

THE COMMON SEAL OF THE
Concessionaire has been affixed pursuant to the
resolution passed by the Board of Directors of
the Concessionaire at its meeting held on the
..... day of 20... hereunto affixed in the
presence of....., Director, who has signed
these presents in token thereof and,
Company Secretary/ Authorized Officer who
has countersigned the same in token
thereof[£]:

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

In the presence of:

1. 2.

[£] To be affixed in accordance with article of association of the Concessionaire and the resolution passed by its Board of Directors.

SCHEDULES

SCHEDULE – A
SITE OF THE PROJECT
(See Clause 10.1)

1. The Site

- 1.1. Site of the Project as described in Annex-I of this Schedule A.
- 1.2. An inventory of the Site including the land, buildings, structures, road works, trees and any other immovable property on, or attached to, the Site shall be prepared jointly by Authority's Representative, Independent Engineer and the Concessionaire, and such inventory shall form part of the memorandum referred to in Clause 10.3.1 of the Agreement.
- 1.3. The alignment plans of the Project are specified in Annex-I of this Schedule A.
- 1.4. Additional land required for ancillary buildings, Stations or for construction of works specified in Change of Scope Order shall be acquired in accordance with the provisions of this Concession Agreement. Upon acquisition, such land shall form part of the Site and vest in the Authority.

ANNEX-I
(SCHEDULE-A)
SITE FOR THE PROJECT

1. Site

The Eastern Dedicated Freight Corridor (EDFC) is having a route length of 1875 km from Ludhiana (Punjab) to Dankuni (West Bengal). Sonnagar (New Chiraila Pauthu) – New Gomoh section, (approximately 262 km) is Phase-I of Sonnagar (New Chiraila Pauthu) – New Dankuni section of EDFC to be developed on PPP basis. The Scope of Project includes laying of double line broad gauge railway track fit for 25T axle load and bridges & formation fit for 32.5T axle load with ruling gradient as 1 in 200 (compensated). There are four crossing Stations and three junction Stations. Traction system is 2x25 KV 50Hz AC auto transformer feed system. The signalling system is automatic block signalling with 4 aspect colour light signals at a nominal spacing of 2 km with mobile train radio communication.

Sonnagar (New Chiraila Pauthu) - New Gomoh (approximately 262 km) section falls in the State of Bihar and Jharkhand and in the East Central Railway. The Site of Sonnagar (New Chiraila Pauthu) - New Gomoh section (approximately 262 km) Project comprises the section commencing from IR km 301.480 to km 541.842 (up) / km 542.075 (down). DFCCIL proposed route is going parallel to the Grand Chord (GC) line from IR km 301.48 to km 394.692 and thereafter detour section from IR km 394.692 (DFCCIL proposed chainage 123.019 km) to IR km 430.89 (DFCCIL proposed chainage 180.144 km) (Koderma detour approximately 57.125 km). Again parallel with IR main line from IR km 430.89 to km 462.829 (approximately 31.939 km) and thereafter detour section from IR km 462.829 (DFCCIL proposed chainage 212.10 km) to IR km 475.30 (DFCCIL proposed chainage 225.30 km) (Gaya detour approximately 13.200 km); again parallel with IR main line from IR km 475.3 to km 541.842 (up) / km 542.075 (down) (approximately 66.775 km).

The site for electrical (Traction System) and signal and telecommunication works in junction Stations shall be as per yard plan of junction Stations mentioned in Para 1.3 of Annex-I of Schedule-B.

2. Route Length

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

| S.N. | Name of location from | Name of location to | approximate start IR km | approximate end IR km | approximate route length (km) | Remarks |
|------|-----------------------|----------------------|---------------------------|-----------------------|-------------------------------|------------------|
| 1. | Gomoh | Koderma detour start | 301.48 | 394.692 | 93.212 | parallel with IR |
| 2. | Koderma detour start | Koderma detour end | 394.692 (DFCCIL proposed) | 430.89 | 57.125 | detour |

| S.N. | Name of location from | Name of location to | approximate start IR km | approximate end IR km | approximate route length (km) | Remarks |
|------|-----------------------|----------------------------|--|---|-------------------------------|------------------|
| | | | chainage 123.019 km) | (DFCCIL proposed chainage 180.144 km) | | |
| 3. | Koderma detour end | Gaya detour start | 430.89 | 462.829 | 31.939 | parallel with IR |
| 4. | Gaya detour start | Gaya detour end | 462.829 (DFCCIL proposed chainage 212.10 km) | 475.30 (DFCCIL proposed chainage 225.30 km) | 13.200 | detour |
| 5. | Gaya detour end | New Chirala Pauthu station | 475.3 | 541.842 (up) / 542.075 (down) km | 66.775 | parallel with IR |
| | | | | Total | 262.251 | |

Note:

- (a) All the chainages mentioned are approximate only.
- (b) IR km are from Howrah, Eastern Railway.
- (c) DFCCIL chainage assumed as 0.00 km at IR km 272.000 ex/Howrah.

3. Alignment Plans

The proposed alignment plans of the Sonnagar (New Chiraila Pauthu)- New Gomoh section are attached as Annexure-1.

| S.N. | Division | Drawing No. | Annexure No. |
|------|---------------------|--|--------------|
| 1. | Deen Dayal Upadhyay | DFCC/KKK/ALIGNMENT PLAN-MGS/18-19/02, 08 to 41 | 1.1 to 1.35 |
| 2. | Dhanbad | DFCC/KKK/ALIGNMENT PLAN -DHN/ 18-19/ 22, 24 to 26, 29 to 68, 70A, and 71 to 87 DFCC/KKK/ALIGNMENT PLAN -DHN/ 18-19/27 to 28/REV-1 DFCC/KKK/ALIGNMENT PLAN -DHN/ 18-19/69 to 70/REV-1 | 1.36 to 1.64 |
| 3. | Koderma Detour | DFCC/KKK/ALIGNMENT PLAN/KQR. DET./01 to 29 | 1.65 to 1.93 |
| 4. | Gaya Detour | DFCC/KKK/ALIGNMENT PLAN/GAYA DET./01 TO 05 | 1.94 to 1.98 |

SCHEDULE – B
DEVELOPMENT OF THE PROJECT
(See Clause 2.1)

1. Development of the Project

Development of the Project shall include design and construction of the Project as described in Annex-I to this Schedule-B and Manual of Specifications & Standards for Sonnagar (New Chiraila Pauthu)-New Gomoh section of EDFC provided by Authority.

2. Specifications and Standards

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

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ANNEX – I
(SCHEDULE- B)
DESCRIPTION OF PROJECT

1. Description

1.1. Sonnagar (New Chiraila Pauthu) – New Gomoh section (approximately 262 kms) of EDFC will be executed through Public Private Partnership. The work involves financing, designing, engineering, procurement, construction, operation and maintenance of civil, structures and track works for railway line involving formation in embankment/ cuttings, ballast on formation, track works, bridges, tunnels, structures, buildings, electrification of track, general electrical works, signaling and telecom works including testing and commissioning. The Scope of Project includes laying of electrified double line Railway track fit for 25T axle load and Bridges & formation fit for 32.5T axle load with ruling gradient as 1 in 200 (compensated) taking off from Sonnagar (New Chiraila Pauthu) Station to New Gomoh Station in East Central Railway. There are four new crossing Stations and three junction Stations. Traction System is 2x25 KV 50Hz AC auto transformer feed system. The signaling system is automatic block signaling with 4 aspect colour light signals at a nominal spacing of 2 km with mobile train radio communication.

1.2. List of proposed crossing Stations, junction Stations, Integrated Maintenance Depot, Integrated Maintenance Sub Depot, running room are as under:

| S.N. | Name of Station | Type of Station | IMD/IMSD/ running room | approximate existing IR km of proposed Station | approximate inter- Station distance (in km.) |
|------|-----------------|-----------------|------------------------|--|---|
| 1. | New Rafiganj | crossing | IMSD | 521.000 | 22.64 (from New Chiraila Pauthu station center line) |
| 2. | New Kastha | junction | | 481.666 | 39.334 |
| 3. | New Paharpur | crossing | IMD | 439.366 | 42.300 |
| 4. | New Koderma | junction | | 127.000 (DFCCIL proposed chainage) | 61.667 (due to detour) |
| 5. | New Hirodih | crossing | IMSD | 383.300 | 15.373 |
| 6. | New Keshwari | crossing | | 350.000 | 33.300 |
| 7. | New Gomoh | junction | IMD, running room | 306.500 | 43.50 |

Note:

- (a) All the chainages mentioned are approximate only.
- (b) IR km are from Howrah, Eastern Railway.
- (c) DFCCIL chainage assumed as 0.00 km at IR km 272.000 ex/Howrah.
- (i) The proposed areas for Station buildings are as follows:
Carpet area for junction Station: 380 sqm
Carpet area for crossing Station: 245 sqm
- (ii) The proposed area for Integrated Maintenance Depot (IMD) and Integrated Maintenance Sub Depot (IMSD) are as follows:
Carpet area for IMD : 1039 sqm
Carpet area for IMSD: 186 sqm
- (iii) The proposed area for running room with 62 bed capacity at New Gomoh junction Station is as follows:

Carpet area for running room: 2004 sqm
- (iv) The location of the following proposed staff quarters are as follows:

Type-II: 7 nos. at each junction and crossing Stations and additional 2 nos. at New Gomoh junction Station (total 51 nos).
Plinth area of each quarter to be 70 sqmt.

Type-III: 3 nos. at each junction Stations and crossing Stations and additional 2 nos. at New Gomoh junction Station (total 23 nos).
Plinth area of each quarter to be 80 sqmt.

Type-IV: 1 no. at each junction Stations (total 3 nos.).
Plinth area of each quarter to be 120 sqmt.

1.3. The conceptual yard plan and connectivity plan of above junction and crossing Stations are attached as Annexure-2 as brief below:

| S N. | Station yard | Drawing No. | Annexure No |
|------|--------------|--|-------------|
| 1. | New Rafiganj | DFC/KKK/21-22/Y/05 | 2A |
| 2. | New Kastha | DFC/KKK/21-22/Y/02 | 2B |
| 3. | New Paharpur | DFC/KKK/21-22/Y/03 | 2C |
| 4. | New Koderma | DFC/KKK/19-20/Y/01 (yard plan) DFC/KKK/21-22/Y/01 (ALT-I) (connectivity plan) | 2D 2E |
| 5. | New Hirodih | DFC/KKK/21-22/Y/04 | 2F |
| 6. | New Kheswari | DFC/KKK/21-22/Y/06 | 2G |

| | | | |
|----|---------------------|--|----|
| 7. | New Gomoh | DFC/KKK/14-15/Y/08 (yard plan) | 2H |
| | | ALIGNMENT PLAN-DHN/18-19/22 (ALT-III) (connectivity plan) | 2I |
| 8. | New Chiraila Pauthu | MGS/EN/YP-CHIRAILA PAUTHU/506/2018 (ALT-I) | 2K |

1.4. List of proposed Sub-Sectioning and Paralleling Post (SSP), Sectioning and Paralleling Post (SP) & Traction Sub-Station (TSS)

| S.N. | Nearest IR stations | TSS/SP/SSP | approximate existing IR km | District | Village involved for land acquisition |
|------|-----------------------------|------------|------------------------------------|------------|---------------------------------------|
| 1. | Bholidih block halt | SSP | 304.99 | Gridih | Madhwadi |
| 2. | Nimighat – Parasnath | SP | 317.99 | Gridih | Barmasia |
| 3. | Karmabad block halt | SSP | 331 | Gridih | Karma |
| 4. | Hazaribagh Road | TSS | 344 | Gridih | Barki Saria |
| 5. | Chaube - Dasarah | SSP | 357 | Hazaribagh | Khari |
| 6. | Parsabad - Yadudih | SP | 370 | Koderma | Gohal |
| 7. | Hirodih | SSP | 384 | Koderma | Rabhnadih |
| 8. | Koderma detour starting end | TSS | DFCCIL proposed chainage 125.2 km | Koderma | Gumo sheet I |
| 9. | detour | SSP | DFCCIL proposed chainage 140.2 km | Hazaribagh | Kanti |
| 10. | detour | SP | DFCCIL proposed chainage 156.2 km | Hazaribagh | Bukar |
| 11. | detour | SSP | DFCCIL proposed chainage 172.83 km | Gaya | Alakdiha sheet No 2 |
| 12. | Gurpa - Paharpur | TSS | 436.00 | Gaya | Paharpur sheet-I |
| 13. | Tankuppa | SSP | 449.72 | Gaya | Ichoi |

| | | | | | |
|-----|------------------|-----|--------|------------|-------------|
| 14. | Manpur - Gaya | SP | 466.5 | Gaya | Gere |
| 15. | Kastha - Paraiya | SSP | 483 | Gaya | Kastha |
| 16. | Ismailpur | TSS | 499.5 | Gaya | Amwan |
| 17. | Deo Road | SSP | 515.06 | Aurangabad | Maluk Bigha |
| 18. | Deoria Kurmaha | SP | 532.06 | Aurangabad | Hemja |

Note:

- All the chainages mentioned are approximate only.
- IR km are from Howrah, Eastern Railway.
- DFCCIL chainage assumed as 0.00 km at IR km 272.000 ex/Howrah.

Super built-up area for TSS : 11900 sqmt

Super built-up area for SP : 1650 sqmt.

Super built-up area for SSP : 1375 sqmt

1.5. List of proposed rail fly over:

| S.N. | Block Section | Division | approximate existing IR km |
|------|-------------------|----------|----------------------------------|
| 1. | Bholidih-Gomoh | Dhanbad | 302.6 |
| 2. | Bholidih-Gomoh | Dhanbad | 304.45 |
| 3. | Bekobar - Koderma | Dhanbad | 391.88 |
| 4. | Koderma- Gujhandi | Dhanbad | 396.035 |
| 5. | Gurpa -Paharpur | Dhanbad | 430.89 |
| 6. | Bandhua- Manpur | Danapur | DFCCIL proposed chainage 212.925 |
| 7. | Manpur -Kastha | Danapur | DFCCIL proposed chainage 219.234 |

Note:

- All the chainages mentioned are approximate only.
- IR km are from Howrah, Eastern Railway.
- DFCCIL chainage assumed as 0.00 km at IR km 272.000 ex/Howrah.

SCHEDULE – C
SPECIFICATIONS AND STANDARDS
(See Clause 2.1)

1. Construction

The Concessionaire shall comply with the Specifications and Standards set forth in Annex-I of this Schedule-C for construction of the Project.

2. Design Standards

The Project shall conform to design requirements set out in the Manual of Specifications and Standards for Sonnagar (New Chiraila Pauthu)-New Gomoh section of EDFC provided by Authority.

3. Latest Version

Latest version of the codes, Manuals, Specifications and Standards, guidelines etc. including the amendments notified/ published by the last date on which Bids have been submitted in accordance with the provisions of the RFP, shall be considered applicable.

4. Terms used in Manuals

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

5. Absence of specific provision

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

Bureau of Indian Standards (BIS)

Euro Codes or British Standards or American Standards

Any other specifications/standards proposed by the Concessionaire and reviewed by the Independent Engineer.

6. Alternative Specifications and Standards

- 6.1.** The requirements specified in the Manuals are the minimum. The Concessionaire shall, however, be free to adopt international practices, alternative specifications, materials and standards to bring in innovation in the design and construction provided they are better or comparable with the standards prescribed in the Manuals. The specifications and techniques which are not included in the Authority/ IR Manuals/ RDSO specifications shall

be supported with authentic Specifications and Standards specified in paragraph 5 above. Such a proposal shall be submitted by the Concessionaire to the Independent Engineer. In case, the Independent Engineer is of the opinion that the proposal submitted by the Concessionaire is not in conformity with any of the international standards or codes, then he shall record his reasons and convey the same to the Concessionaire for compliance.

- 6.2.** For signaling and telecommunication system, RDSO maintains an approved list of suppliers/ vendors for various equipment/ items/ components to be used on Railway systems in India. The list of suppliers/ vendors approved for various items are available at the website of RDSO (www.rdsso.gov.in). The Concessionaire can procure items/ equipment from RDSO's "Approved list of firms for manufacture and supply" and as per relevant RDSO specification. The Concessionaire can also procure items/ equipment with proven/ approved design as per "Procedure Order for Cross Acceptance / Approval of Software Embedded Electronics Systems and New/ Imported Technology Products for DFCCIL".

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ANNEX – I
(SCHEDULE-C)
SPECIFICATIONS AND STANDARDS FOR CONSTRUCTION

1. Specifications and Standards

The Sonnagar (New Chiraila Pauthu) – New Gomoh section of EDFC shall conform to the Manual of Specifications and Standards for Sonnagar (New Chiraila Pauthu) – New Gomoh section of EDFC (“**Manual of Specifications and Standards**”) provided by Authority.

All materials and Construction Works shall conform to the following Manuals in confirmation with the Manual of Specifications and Standards for Sonnagar (New Chiraila Pauthu) – New Gomoh section of EDFC:

1.1 For civil works:

- (a) Indian Railways Permanent Way Manual
- (b) Indian Railway Bridge Manual
- (c) EDFC Standard Schedule of Dimensions
- (d) Indian Railways Schedule of Dimensions
- (e) Specifications of works of concerned Zonal Railway
- (f) In case of any contradiction in the various codal provisions, the order of precedence shall be as follows: -
 - (i) Provisions of this Annex-I
 - (ii) IRS Codal provisions
 - (iii) IRC Codal provisions
 - (iv) IS (BIS) Codal provisions

1.2 For signaling and telecommunication works:

- (a) Indian Railway Signal Engineering Manual.
- (b) Indian Railway Telecom Manual.
- (c) DFCCIL General and Subsidiary Rules.

- (d) DFCCIL Block Working Manual.
- (e) EDFC Standard Schedule of Dimensions.
- (f) Specifications & Standards mentioned in Chapter 3 & 5 of Manual of Specifications and Standards for Sonnagar (New Chiraila Pauthu) – New Gomoh section of EDFC.
- (g) Any other Manuals prescribed by MoR /Authority from time to time.

1.3 For electrification works:

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

SCHEDULE – D
PROJECT COMPLETION SCHEDULE
(See Clause 12.3)

1. Project Completion Schedule

Project Completion Schedule during Construction Period, the Concessionaire shall comply with the requirements set forth in this Schedule-D for each of the Project Milestones and the Scheduled Completion Date. Within 15 (fifteen) days of the date of each Project Milestone, the Concessionaire shall notify Authority of such compliance along-with necessary particulars thereof.

2. Project Milestone-I

- 2.1 Project Milestone-I shall occur on the date falling on the 365th (three hundred and sixty fifth) day from the Appointed Date (the “**Project Milestone-I**”).
- 2.2 Prior to the occurrence of Project Milestone-I, the Concessionaire shall have commenced construction of the Project and expended not less than 15% (fifteen per cent) of the capital cost of the Project set forth in the Financial Package.

3. Project Milestone-II

- 3.1 Project Milestone-II shall occur on the date falling on the 730th (seven hundred and thirtieth) day from the Appointed Date (the “**Project Milestone-II**”).
- 3.2 Prior to the occurrence of Project Milestone-II, the Concessionaire shall have commenced construction of bridges, Station buildings, earthwork, and expended not less than 35% (thirty five per cent) of the capital cost of the Project set forth in the Financial Package.

4. Project Milestone-III

- 4.1 Project Milestone-III shall occur on the date falling on the 1095th (one thousand and ninety fifth) day from the Appointed Date (the “**Project Milestone-III**”).
- 4.2 Prior to the occurrence of Project Milestone-III, the Concessionaire shall have tied up arrangement for procurement of power supply system, signalling and telecom system, electrical and mechanical system and expended not less than 65% (sixty five per cent) of the capital cost of the Project set forth in the Financial Package.

5. Project Milestone-IV

Project Milestone-IV shall occur on the date falling on the 1460th (one thousand four hundred and sixtieth) day from the Appointed Date (the “**Project Milestone-IV**”).

Prior to the occurrence of Project Milestone-IV, the Concessionaire shall have commenced

laying of track on the Project, erection of power supply system, signalling and telecom system, electrical and mechanical system and expended not less than 85% (eighty five per cent) of the capital cost of the Project set forth in the Financial Package.

6. Project Milestone-V

- 6.1 Project Milestone-V shall occur on the date falling on the 1705th (One thousand seven hundred and fifth) day from the Appointed Date (the “**Project Milestone-V**”).
- 6.2 Prior to the occurrence of Project Milestone-V, the Concessionaire shall have commenced the trial running of the Project and expended not less than 95% (ninety five per cent)] of the capital cost of the Project set forth in the Financial Package.

7. Scheduled Completion Date

- 7.1 The Scheduled Completion Date shall be the 1825th (one thousand eight hundred and twenty fifth) day from the Appointed Date.
- 7.2 On or before the Scheduled Completion Date, the Concessionaire shall have completed construction in accordance with this Concession Agreement.

8. Extension of time

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

SCHEDULE – E
DRAWINGS
(See Clause 12.2)

1. Drawings

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

2. Additional Drawings

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

3. List of Drawings and Documents to be furnished by the Concessionaire shall include, but not be limited to:

(i) General & Civil Engineering: -

- (a) General map of the country traversed by the Project, scale about 20 km to 1 cm;
- (b) Index map, scale about 1 km to 1 cm;
- (c) Index plan and sections prepared in accordance with the terms of Engineering Code;
- (d) Schematic plans of Station yards;
- (e) GAD of structures;
- (f) River training/ protection work;
- (g) Details of bridges, rail fly overs, viaduct and tunnels;
- (h) Station yard layout including details of connectivity with existing Zonal Railway/DFCCIL yards;
- (i) Station building including cabins, approach connectivity etc.;

- (j) Details of track structure & its component; and
- (k) Details of Integrated Maintenance Depots (IMD) & Integrated Maintenance Sub Depots (IMSD).

(ii) **Signal Engineering: -**

- (a) Signal interlocking plans of Stations and Block Sections.
- (b) Route control tables.
- (c) Video display unit (VDU) diagram.
- (d) System configuration showing electronic interlocking connectivity.
- (e) Electronic interlocking interface circuit.
- (f) Equipment layout plans – operation control centre, signal equipment room, power supply room, auto location hut, location/junction boxes, station master office.
- (g) Cable core allocation - Station, Block Section.
- (h) Cable route plan - Station, Block Section.
- (i) Power supply load calculation for Stations (junction & crossing) and for auto location huts.
- (j) Equipment sizing (Stations/auto location huts/relay huts).
- (k) Equipment layout and details including cable troughs required (Stations/auto location huts/relay huts).
- (l) Axle counter interface circuit.
- (m) Circuit diagrams/wiring diagrams of all signaling arrangement.
- (n) Application logic of Stations and Block Sections.
- (o) Equipment rack details.
- (p) Cable termination rack diagrams.
- (q) Fuse details.
- (r) Relay contact analysis.

- (s) Interconnection details for all equipment in signal equipment rooms.
- (t) Cable termination details, wiring details of locations/junction boxes.
- (u) Station working rule diagrams.
- (v) Detailed signaling power supply distribution arrangement at operation control centre, Station, auto location hut, relay huts.
- (w) Lightening, surge protection and earthing plan.

(iii) Telecommunication Engineering: -

- (a) System design of optical fiber cable (synchronous digital hierarchy).
- (b) Design of data network system.
- (c) Electronic EPABX system design.
- (d) Design of GSM-R (mobile train radio communication).
- (e) Master clock system design.
- (f) 48V DC battery backup system design.
- (g) Method statement of all telecom system/equipment.
- (h) RF design and radio survey-GSM-R
- (i) Tower foundation design- GSM-R
- (j) Tower structural design- GSM-R
- (k) Installation design-GSM-R
- (l) Cable route plan, cable core plan-Station and Block Section.
- (m) System configuration data - Station and Block Section.
- (n) Installation drawing - Station and Block Section.

(iv) Electrical Engineering (traction): -

- (a) (General arrangement of the traction substation (TSS) for (2 x 25 KV) system single transformer and the double transformer with incoming as 220 KV or 132

KV 3 phase. (These substations will be remotely controlled and operated)

- (b) General arrangement of SP (sectioning post) with the autotransformer. (These substations will be remotely controlled and operated)
 - (c) General arrangement of the SSP (sub sectioning post) with the auto transformer. (These substations will be remotely controlled and operated)
 - (d) Power supply arrangement for (2 X 25 KV) AT system and sectioning drawing for the traction arrangement.
 - (e) Power supply arrangement for the signals at the Stations (Auxiliary transformer and the arrangement of 230 volt supply)
 - (f) Typical layout of the control room at the TSS, SP, SSP.
 - (g) Typical layout of the remote control centre.
 - (h) General arrangement of the implementation of the SCADA system.
 - (i) Earthing arrangement at the TSS, SP and SSP.
 - (j) Typical arrangement of the regulated OHE for (2 X 25 KV) system with the feeder arrangement.
 - (k) Power supply arrangement with IR at interface point.
- (v) Electrical Engineering (General Power supply):-**
- (a) General arrangement of the 11/33/66 KV substations for the Station and the service buildings.
 - (b) General arrangement of the distribution of the 415 V 50 Hz supply to various loads
- (vi) 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) Brief particular of tractions installations;
- (j) Power supply installation abstract;
- (k) Traction maintenance depot abstract;
- (l) Restricted overhead equipment clearance abstract; and
- (m) Electrical crossing over railway track abstract.

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SCHEDULE – F
COMPLETION CERTIFICATE
(See Clause 14.4)

1. I/We, (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated(the “**Agreement**”), for development of the Sonnagar (New Chiraila Pauthu) - New Gomoh section (kmto km) of EDFC on Hybrid- design, build, finance, operate & maintain and transfer (the “**Hybrid- DBFOT**”) mode, through (Name of Concessionaire), hereby certify that the Tests specified in Article 14 of the Concession Agreement have been successfully undertaken to determine compliance of the Project with the provisions of the Concession Agreement, and I/We am/are satisfied that the Project can be safely and reliably placed in commercial service of the Users thereof.
2. It is certified that, in terms of the aforesaid Agreement, all works forming part of Project have been completed, and the Project is hereby declared fit for entry into commercial operation on this the day of20.....

SIGNED, SEALED AND DELIVERED
For and on behalf of INDEPENDENT ENGINEER by:
(Signature)
(Name)
(Designation)
(Address)

SCHEDULE – G
SAFETY REQUIREMENTS
(See Clause 19.1.1)

1. Guiding principles

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

2. Obligations of the Concessionaire

The Concessionaire shall abide by the following in so far as they relate to safety of the Users:

- (a) Applicable Laws and Applicable Permits;
- (b) General and subsidiary rules, accident manual & disaster management manual of MoR/Authority;
- (c) Provisions of this Concession Agreement;
- (d) Relevant Standards/Guidelines contained in internationally accepted codes; and
- (e) Good Industry Practice.

3. Appointment of Safety Consultant

For carrying out safety audit of the Project under and in accordance with this Schedule-G, the Authority shall appoint from time to time, one or more qualified firms or organizations as its consultants (the “**Safety Consultant**”) at Concessionaire’s cost.

4. Safety measures during Construction Period

- 4.1 A Safety Consultant shall be appointed by the Authority, no later than 4 (four) months prior to the expected COD, for carrying out a safety audit of the completed Construction Works.

- 4.2 The Safety Consultant shall carry out a safety audit of the completed Construction Works.
- 4.3 The Safety Consultant shall complete the safety audit within a period of 4 (four) months and submit a Safety Report recommending a package of additional safety measures, if any, that are considered essential for reducing accident hazards on the Project. Such recommendations shall be processed, *mutatis mutandis*, and acted upon accordingly.
- 4.4 The Concessionaire shall make adequate arrangements during the Construction Period for the safety of workers, road users and parallel IR rail system in accordance with Applicable Laws and Good Industry Practice for safety in construction zones, and notify the Authority and the Independent Engineer about such arrangements. The Concessionaire shall comply with various instructions related to work site safety, as compiled in Compendium of Instruction issued by MoR /Authority and any other instruction pertaining to work site safety, as may be issued from time to time.
- 5. Safety measures during Operation & Maintenance Period**
- 5.1 System integrity**
- In the design of power supply, signalling & telecom, track-work, circuits and equipment, particular care shall be taken to minimize the likely incidence of failure.
- 5.2 Restoration of service**
- The Project shall be designed such that in the event a fault occurs, a limited service can be provided within a few minutes by isolation of the affected area or equipment, to the extent possible.
- 5.3 Safety management**
- A safety statement shall be prepared by the Concessionaire once every quarter to bring out clearly the system of management of checks and maintenance tolerances for various assets and compliance thereof. The statement shall also bring out the nature and extent of, staff training and awareness in dealing with such checks and tolerances. Two copies of the statement shall be sent to the Independent Engineer within 15 (fifteen) days of the close of every quarter.
- 5.4** No later than 90 (ninety) days prior to Scheduled Completion Date, Concessionaire in consultation with Independent Engineer will submit safety manual for Operation & Maintenance Period.
- 5.5** The Concessionaire shall develop, implement and administer a surveillance and safety programme for Users, including correction of safety violations and deficiencies and all other actions necessary to provide a safe environment in accordance with this Concession Agreement.

- 5.6 The Concessionaire shall establish a Rail Safety Management Unit (the “**RSMU**”) to be functional on and after COD, and designate one of its officers to be in-charge of the RSMU. Such officer shall have specialist knowledge and training in Project safety by having attended a course conducted by a reputed organization on the subject.
- 5.7 The Concessionaire shall keep a copy of every FIR recorded by the Police with respect to any accident occurring on the Project. In addition, the Concessionaire shall also collect data for all cases of accidents not recorded by the Police. The information so collected shall be summarized properly. The Concessionaire shall also record the exact location of each accident on a route map. The aforesaid data shall be submitted to the Authority at the conclusion of every quarter and to the Safety Consultant as and when appointed.
- 5.8 The Concessionaire shall submit to the Authority before the 31st (thirty first) May of each year, an annual report (in 6 (six) copies) containing, without limitation, a detailed listing and analysis of all accidents of the preceding Accounting Year and the measures taken by the Concessionaire pursuant to the provisions of Paragraph 5.1 of this Schedule-G for averting or minimizing such accidents in future.
- 5.9 Once in every Accounting Year, a safety audit shall be carried out by the Safety Consultant. It shall review and analyze the annual report and accident data of the preceding year, and undertake an inspection of the Project. The Safety Consultant shall complete the safety audit within a period of 1 (one) month and submit a Safety Report recommending specific improvements, if any, required to be made in the Project. Such recommendations shall be processed, *mutatis mutandis*, and acted upon accordingly.

6. Costs and expenses

Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of Paragraph 2 of this Schedule-G, shall be met in accordance with Article 19, and in particular, the remuneration of the safety Consultant, safety audit, and costs incidental thereto, shall be met by the Concessionaire.

SCHEDULE – H

KEY PERFORMANCE INDICATORS

(See Clause 22.1)

| S.N. | Item | Frequency for evaluation | Target | Damages* |
|---|--|--------------------------|---|---|
| (1) | (2) | (3) | (4) | (5) |
| 1. | average speed of freight Trains operated on the Project for a particular day | per day | Until 1 st (first) anniversary of COD: 70% (seventy per cent) of average Booked Speed of freight Trains on particular day For subsequent years after 1 st (first) anniversary of COD: 85% (eighty five per cent) of average Booked Speed of freight Trains on particular day | 1% (one per cent) of Availability Payment of that day as per Schedule-K for every shortfall of 10% (ten per cent) on pro-rata basis |
| <p>*the Damages shall be computed with reference to the frequency set forth in column 3.</p> <p>Note-</p> <p>(i) average speed of each freight Train = $\frac{\text{total distance travelled by freight Train on the Project}}{\text{total reckoning time in hrs (t)}}$ where, t= (arrival time at exiting Station of the Project) - (departure time from the entering Station of the Project) – Authorised Detention Time.</p> <p>Authorised Detention Time shall mean summation of the period of Corridor Block in which the Train is detained and period of time loss attributed to Authority /IR/DFCCIL as certified by Independent Engineer.</p> <p>(ii) average Booked Speed of freight Trains for a particular day = average of Booked Speed of all freight Trains running on the Project on a particular day.</p> <p>(iii) average speed of freight Trains operated on the Project for a particular day = average of average speed for all freight Trains in the day.</p> | | | | |

Illustration for calculation of Damages:

| S.N. | Date | average Booked Speed of freight Trains for that date | target speed of freight Trains for that date | average speed of freight Trains achieved on that date | Shortfall (%) | Damages |
|------------------------------|------|--|--|---|---------------|---|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) |
| Until 1st anniversary of COD | | | | | | |
| 1. | **** | 60 kmph | 42 kmph (70% of Booked Speed) | 36 kmph | 14.28% | 2% (two per cent) of Availability Payment of that day as per Schedule-K |
| After 1st anniversary of COD | | | | | | |
| 1. | **** | 70 kmph | 59.5 kmph (85% of Booked Speed) | 55 kmph | 7.56% | 1% (one per cent) of Availability Payment of that day as per Schedule-K |

SCHEDULE – I
INDEPENDENT ENGINEER
(See Clause 23.1)

1. Selection of Independent Engineer

- 1.1. The provisions of the Model Request for Proposals for Selection of Technical Consultants, issued by the Ministry of Finance, GOI vide OM 24(23)/PF-II/ 2008 dated 21 May 2009, or any substitute thereof shall apply for selection of an experienced firm to discharge the functions and duties of an Independent Engineer. Provided, however, that no entity which is owned or controlled by the Authority shall be eligible for appointment as the Independent Engineer hereunder.
- 1.2. In the event of termination of an Independent Engineer appointed in accordance with the provisions of paragraph 1.1, the Authority shall appoint another firm of technical consultants forthwith as per provisions of paragraph 1.1 above.

2. Draft terms of reference

2.1 Scope

These Terms of Reference for the Independent Engineer (the “TOR”) are being specified pursuant to the Concession Agreement dated..... (the “Agreement”), which has been entered into between the Authority and(the “Concessionaire”) for the Sonnagar (New Chiraila Pauthu) to New Gomoh on Hybrid- design, build, finance, operate & maintain and transfer (Hybrid- DBFOT) mode shall be as per the provisions of the Model Request for Proposals for Selection of Technical Consultants, issued by the Ministry of Finance, GOI vide OM 24(23)/PF-II/ 2008 dated 21 May 2009, or any substitute thereof.

2.2 Role and functions of the Independent Engineer

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

- (i) review of the Drawings and Documents as set forth in Paragraph 2.3 and periodically submit list of those Drawings which are deemed to be approved under the provision of Clause 12.2;
- (ii) review, inspection and monitoring of Construction Works as set forth in Paragraph 2.4;
- (iii) conducting periodic tests and Tests on completion of construction and issuing Completion Certificate as set forth in Paragraph 2.4;
- (iv) review, inspection and monitoring of O&M as set forth in Paragraph 2.5;

- (v) conducting safety audit of the Project during the Construction Period and the Operation & Maintenance Period;
 - (vi) review, inspection and monitoring of Divestment Requirements as set forth in Paragraph 2.6;
 - (vii) determining, as required under the Concession Agreement, the costs of any works or services and/or their reasonableness;
 - (viii) computing and determining the Damages payable by the Concessionaire under the Concession Agreement;
 - (ix) determining, as required under the Concession Agreement, the period or any extension thereof, for performing any duty or obligation;
 - (x) assisting the Parties in resolution of Disputes as set forth in Paragraph 2.8; and
 - (xi) undertaking all other duties and functions in accordance with the Concession Agreement.
- 2.2.2 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.

2.3 Development Period

- 2.3.1 During the Development Period, the Independent Engineer shall undertake a detailed review of the DPR to be furnished by the Concessionaire along with supporting data, including the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys and traffic surveys. The Independent Engineer shall complete such review and send its comments/observations to Authority and the Concessionaire within 30 (thirty) days of receipt of such DPR. In particular, such comments shall specify the conformity or otherwise of such DPR with the Scope of the Project and Specifications and Standards.
- 2.3.2 The Independent Engineer shall review any modified DPR or supporting Documents sent to it by the Concessionaire and Authority and furnish its comments within 7 (seven) days of receiving such DPR or Documents.
- 2.3.3 The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.
- 2.3.4 Upon reference by Authority, the Independent Engineer shall review and comment on the EPC Contract or any other contract for construction, operation and maintenance of the

Project, and furnish its comments within 7 (seven) days from receipt of such reference from Authority.

2.4 Construction Period

- 2.4.1 In respect of the Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments during the Construction Period, the provisions of Paragraph 2.4 shall apply, *mutatis mutandis*.
- 2.4.2 The Independent Engineer shall review the quarterly progress report furnished by the Concessionaire and send its comments thereon to Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 2.4.3 The Independent Engineer shall inspect the Construction Works once every quarter, preferably within 7 (seven) days of receipt of the quarterly progress report from the Concessionaire, but before the 20th (twentieth) day of each month 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 Project. The Inspection Report shall also contain a review of the maintenance of the existing roads in conformity with the provisions of the Concession Agreement. The Independent Engineer shall send a copy of its Inspection Report to Authority and the Concessionaire within 7 (seven) days of the inspection.
- 2.4.4 The Independent Engineer may inspect the Project more than once in a quarter if any lapses, defects or deficiencies require such inspections.
- 2.4.5 For determining that the Construction Works conform to Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.
- 2.4.6 The sample size of the tests, to be specified by the Independent Engineer under Paragraph 2.4.5, shall comprise 10% (ten per cent) of the quantity or number of tests prescribed for each category or type of tests provided that the Independent Engineer may, for reasons to be recorded in writing, increase the aforesaid sample size by up to 10% (ten per cent) for certain categories or types of tests.
- 2.4.7 The timing of tests referred to in Paragraph 2.4.5, and the criteria for acceptance/ rejection of their results shall be determined by the Independent Engineer. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the

tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.

- 2.4.8 In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Specifications and Standards, and the provisions of this Paragraph 2.4 shall apply to such tests.
- 2.4.9 In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Project is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which the Project Completion Date shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to Authority and the Concessionaire forthwith.
- 2.4.10 If at any time during the Construction Period, the Independent Engineer determines that the Concessionaire has not made adequate arrangements for the safety of workers and Users in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the Users, it shall make a recommendation to Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.
- 2.4.11 In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and Users, it may, by notice in writing, require the Independent Engineer to inspect such works, and within 3 (three) days of receiving such notice, the Independent Engineer shall inspect the suspended works and make a report to Authority forthwith, recommending whether or not such suspension may be revoked by Authority.
- 2.4.12 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of dates set forth in the Project Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify Authority and the Concessionaire of the same.
- 2.4.13 The Independent Engineer shall carry out, or cause to be carried out, all the Tests and issue Completion Certificate, as the case may be. For carrying out its functions under this Paragraph 2.4.13 and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of Article 14.
- 2.4.14 Upon reference from Authority, the Independent Engineer shall make a fair and reasonable assessment of the costs of providing information, works and services as set forth in Article 16 and certify the reasonableness of such costs for payment by Authority to the Concessionaire.

2.4.15 The Independent Engineer shall aid and advise the Concessionaire in preparing the Maintenance Manual.

2.4.16 The Independent Engineer shall monitor and supervise all the modification works in the existing yards of Zonal Railway as per Clause 12.3.1 of this Concession Agreement.

2.5 Operation & Maintenance Period

2.5.1 In respect of the Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments during the Operation & Maintenance Period, the provisions of Paragraph 2.3 shall apply, *mutatis mutandis*.

2.5.2 The Independent Engineer shall review the annual Maintenance Programme furnished by the Concessionaire and send its comments thereon to Authority and the Concessionaire within 15 (fifteen) days of receipt of the Maintenance Programme.

2.5.3 The Independent Engineer shall review the monthly status report furnished by the Concessionaire and send its comments thereon to Authority and the Concessionaire within 7 (seven) days of receipt of such report.

2.5.4 The Independent Engineer shall inspect the Project, once every month, preferably after receipt of the monthly status report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out an O&M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the Key Performance Indicators, maintenance requirements as set forth in Maintenance Manual and Safety Requirements. In a separate section of the O&M Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Project. The Independent Engineer shall send a copy of its O&M Inspection Report to Authority and the Concessionaire within 7 (seven) days of the inspection.

2.5.5 The Independent Engineer may inspect the Project more than once in a month, if any lapses, defects or deficiencies require such inspections.

2.5.6 The Independent Engineer shall in its O&M Inspection Report specify the Tests, if any, that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the Project is in conformity with the maintenance requirements as set forth in Maintenance Manual. It shall monitor and review the results of such Tests and the remedial measures, if any, taken by the Concessionaire in this behalf.

2.5.7 In respect of any defect or deficiency in the Project poses a hazard to safety or risk of damage to property, the Independent Engineer shall, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards and shall also specify the time limit for repair or rectification of any deviation or deterioration beyond the permissible limit.

- 2.5.8 The Independent Engineer shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Concession Agreement, and shall also determine the Damages, if any, payable by the Concessionaire to Authority for such delay.
- 2.5.9 The Independent Engineer shall monitor and review the curing of defects or deficiencies by the Concessionaire as set forth in Clause 20.4.
- 2.5.10 The Independent Engineer shall monitor and supervise all the modification works in the existing yards of Zonal Railway as per Clause 12.3.1 of this Concession Agreement.
- 2.5.11 In the event that the Concessionaire notifies the Independent Engineer of any modifications that it proposes to make to the Project, the Independent Engineer shall review the same and send its comments to Authority and the Concessionaire within 15 (fifteen) days of receiving the proposal.

2.6 Termination

- 2.6.1 At any time, not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Independent Engineer shall, in the presence of a representative of the Concessionaire, inspect the Project for determining compliance by the Concessionaire with the Divestment Requirements set forth in Clause 35.1 and, if required, cause tests to be carried out at the Concessionaire's cost for determining such compliance. If the Independent Engineer determines that the status of the Project is such that its repair and rectification would require a larger amount than the sum set forth in Clause 36.2, it shall recommend retention of the required amount in the Escrow Account and the period of retention thereof.
- 2.6.2 The Independent Engineer shall inspect the Project once in every 15(fifteen) days during a period of 90 (ninety) days after Termination for determining the liability of the Concessionaire under Article 36, in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Independent Engineer, it shall make a report in reasonable detail and send it forthwith to Authority and the Concessionaire.

2.7 Determination of costs and time

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

2.8 Assistance in Dispute resolution

- 2.8.1 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.

- 2.8.2 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 Concession 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.

2.9 Other duties and functions

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

2.10 Miscellaneous

- 2.10.1 The Independent Engineer shall notify its programme of inspection to Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.
- 2.10.2 A copy of all communications, comments, instructions, drawings or Documents sent by the Independent Engineer to the Concessionaire pursuant to the TOR, and a copy of all the test results with comments of the Independent Engineer thereon shall be furnished by the Independent Engineer to Authority forthwith.
- 2.10.3 The Independent Engineer shall obtain, and the Concessionaire shall furnish in 2 (two) copies thereof, all communications and reports required to be submitted, under this Concession Agreement, by the Concessionaire to the Independent Engineer, whereupon the Independent Engineer shall send one of the copies to Authority along with its comments thereon.
- 2.10.4 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.
- 2.10.5 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 Authority or such other person as Authority may specify, and obtain written receipt thereof. 2 (two) copies of the said Document shall also be furnished in microfilm form or in such other medium as may be acceptable to Authority.

SCHEDULE – J
VESTING CERTIFICATE
(See Clause 35.4)

- 1 Dedicated Freight Corridor Corporation of India Limited represented by Managing Director (“**Authority**”) refers to the Concession Agreement dated (the “**Agreement**”) entered into between the Authority and.....(the “**Concessionaire**”) for development, operation and maintenance of Project comprising a new railway line between Sonnagar (New Chiraila Pauthu) and New Gomoh section (approximately 262 kms) of EDFC on Hybrid- design, build, finance, operate & maintain and transfer (“**Hybrid- DBFOT**”) mode.
- 2 The Authority hereby acknowledges compliance and fulfillment by the Concessionaire of the Divestment Requirements set forth in Clause 35.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Project shall be deemed to have vested unto the Authority, free from any Encumbrances, Encroachments, charges and liens whatsoever.
- 3 Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this day of, 20.... at

AGREED, ACCEPTED AND SIGNED
 For and on behalf of CONCESSIONAIRE by:

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

(Signature)
 (Name)
 (Designation)
 (Address)

(Signature)
 (Name)
 (Designation)
 (Address)

In the presence of:

1.

2.

SCHEDULE – K
METHODOLOGY FOR CALCULATION OF AVAILABILITY PAYMENT
(See Clauses 27.1)

The Availability of Rail System shall be certified by the Independent Engineer for each day and reconciled on a weekly basis to calculate the average Availability of Rail System (hours per day) for the week. The Availability Payment shall be calculated on the basis of average Availability of Rail System (hours per day) for the week.

The following provides the Methodology for calculation of Availability Payment :

| S.N. | average daily Availability of Rail System* (in hours) | Availability Payment |
|------|---|----------------------|
| 1. | ≥ 20 | 100% |
| 2. | <20 to 19 | 90% |
| 3. | <19 to 18 | 80% |
| 4. | <18 to 17 | 70% |
| 5. | <17 to 16 | 60% |
| 6. | <16 to 15 | 50% |
| 7. | <15 to 14 | 40% |
| 8. | <14 to 13 | 30% |
| 9. | <13 to 12 | 20% |
| 10. | <12 | Nil (0%) |

* An illustration for calculation of Availability Payment for each day is as below:

| Day of the week | Availability of Rail System in up line in hours for the day | Availability of Rail System in down line in hours for the day | Availability of Rail System in hours for the day (Availability of Rail System on up line + Availability of Rail System on down line)/2 |
|---|---|---|---|
| 1 | 20 | 18 | 19 |
| 2 | 20 | 20 | 20 |
| 3 | 18 | 16 | 17 |
| 4 | 15 | 11 | 13 |
| 5 | 21 | 21 | 21 |
| 6 | 17 | 15 | 16 |
| 7 | 13 | 9 | 11 |
| Average Availability of Rail System for the week | | | 16.71 |
| Availability Payment payable for each day of the week | | | 60% (sixty per cent) of the Availability Payment |

Note:

- i. It shall be the right of the Concessionaire to avail 3 (three) hours of Corridor Block, and thus the maximum Availability of Rail System in a day shall not exceed 21 (twenty one) hours for

the purpose of calculation of Availability Payment, even if the Rail System is available for 24 (twenty four) hours.

- ii. Non-availability of Rail System as certified by Independent Engineer, for the reasons attributable to the Authority/Zonal Railway, liability arising out of Accidents on account of Zonal Railway/Authority as per Clause 18.4.1 (b) & (d), or due to Emergency/ Force Majeure, shall not be considered while calculating the Availability Payment.
- iii. In case, Concessionaire does not avail 3 (three) hours of Corridor Block during 24 (twenty four) hours period from 00:00 (zero) hours to 24:00 (twenty four) hours, the Authority shall have the right to use the Rail System for 24 (twenty four) hours.

DRAFT

SCHEDULE – L
PERFORMANCE SECURITY
(See Clause 9.1)

The Managing Director
Dedicated Freight Corridor Corporation of India Limited
5th Floor, Supreme Court Metro Station Building Complex,
New Delhi-110001

WHEREAS:

- (A)(the “**Concessionaire**”) and the Dedicated Freight Corridor Corporation of India Limited represented by Managing Director (“**Authority**”) have entered into a Concession Agreement dated(the “**Agreement**”) whereby Authority has agreed to the Concessionaire undertaking the development and operation and maintenance of the Sonnagar (New Chiraila Pauthu)- New Gomoh section of EDFC (approximately 262 kms.) (the “**Project**”) on design, build, finance, operate & maintain and transfer (“**Hybrid-DBFOT**”) mode, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Concessionaire to furnish a Performance Security to Authority in a sum of Rs.....crores (Rupees Crores) (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period (as defined in the Agreement).
- (C) We, through our Branch at (the “**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire’s obligations during the Construction Period, under and in accordance with the Agreement, and agrees and undertakes to pay to Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums upto an aggregate sum of the Guarantee Amount as Authority shall claim, without Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an officer not below the rank of Joint General Manager to Authority, that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Concession Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Construction Period under the Concession Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the

Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.

3. In order to give effect to this Guarantee, Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force until the Concessionaire has expended on the Project construction an aggregate sum not less than 40% (forty per cent) of the Estimated Project Cost excluding any sums disbursed by the Authority towards the Grant and unless a demand or claim in writing is made by Authority on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder. Provided, however, that the Performance Security shall not be released if the Concessionaire is in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars required hereunder, duly certified by a statutory auditor of the Concessionaire, the Authority shall release the Performance Security forthwith.

8. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
9. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorized to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of Authority that the envelope was so posted shall be conclusive.
10. This Guarantee shall come into force with immediate effect and shall remain in force and effect for the period stated in paragraph 7 above or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this day of, 20.... at

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

(Signature)
(Name)
(Designation)
(Code Number)
(Address)

NOTES:

- i. The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- ii. The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

SCHEDULE – M
OBLIGATIONS OF THE MoR
(See Clause 6.2)

The MoR shall, at its own cost and expense, undertake, comply with and perform all its obligations as follows:

- (a) subject to the fulfillment of Authority's and Concessionaire's obligations under this Concession Agreement, IR will transfer 100% (one hundred per cent) of freight traffic due on to the Sonnagar (New Chiraila Pauthu) – New Gomoh section of EDFC in each of the year starting from the COD to the end of Concession period;
- (b) ensure Grant during Construction Period, Availability Payment post COD, or any payment due on Authority under this Concession Agreement in case Authority is unable to pay;
- (c) pass on to Authority the apportioned revenue of Sonnagar (New Chiraila Pauthu) - New Gomoh section of EDFC after deduction of cost towards Reserved Services;
- (d) undertake or cause any future private rail operators to undertake and perform the Reserved Services on the Project in accordance to the provisions of Article 18, Applicable Laws and Applicable Permits, and Good Industry Practice;
- (e) grant permission for temporary connections with Zonal Railway yards for commissioning of temporary loading/ unloading yards by the Concessionaire within Right of Way of the Project;
- (f) issue a notification recognizing the Concessionaire as Railway Administration under Railway Act for the purpose of Clause 3.2 of this Concession Agreement;
- (g) undertake or cause to undertake by Zonal Railway/other Government Instrumentalities the construction and maintenance of ROBs & RUBs in lieu of level crossings;
- (h) undertake or cause to undertake by Zonal Railway, all the modification works in existing yards of Zonal Railway;
- (i) empower the Authority to review applications for, and grant permission in respect of use of the Site as per Clause 40.5 of this Concession Agreement; and
- (j) grant Power Block and/or Traffic Block at no fees in mutual agreement with Authority and Concessionaire as mentioned in Clause 12.5 and 17.7 of this Concession Agreement.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of
President of India by:

SIGNED, SEALED AND DELIVERED

For and on behalf of
Authority by:

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

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

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on theday of the 20.....hereunto affixed in the presence of Director, who has signed these presents in token thereof and....., Company Secretary/ Authorised Officer who has countersigned the same in token thereof[£]:

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

In the presence of:

1. 2.

[£] To be affixed in accordance with article of association of the Concessionaire and the resolution passed by its Board of Directors.

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

THE COMMON SEAL OF SIGNED, SEALED AND DELIVERED
CONCESSIONAIRE has been affixed For and on behalf of Authority by:
pursuant to the resolution passed by the Board
of Directors of the Concessionaire at its
meeting held on theday of the
20.....hereunto affixed in the presence of
..... Director, who has
signed these presents in token thereof
and....., Company Secretary/
Authorised Officer who has countersigned the
same in token thereof[£]:

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

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

In the presence of:

1.

2.

[£] To be affixed in accordance with article of association of the Concessionaire and the resolution passed by its Board of Directors.