

## **Engineering, Procurement, and Construction**

**(EPC) Agreement**

**For**

**“Construction of Integrated Modal Logistic Hub (IMLH) Yard at Nangal Choudhary including Platforms and Station & Ancillary Buildings”.**

**Volume-2**

**JULY 2024**

**NICDC Haryana Multi Modal Logistic Hub Project Limited**

Room No. 202, 1<sup>st</sup> Floor, C-13-14, Sector-6

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## ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

THIS AGREEMENT<sup>1</sup> is entered into on this the ..... day of ....., 2024.

### BETWEEN

- 1 M/s **NICDC Haryana Multi Modal Logistic Hub Project Limited (the SPV )** having its principal office at **Address Room No 202, 1<sup>st</sup> Floor, C-13-14, Sector-6, Panchkula- 134109** (hereinafter referred to as the “**SPV** ” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

### AND

- 2 {.....}<sup>2</sup>, means the selected bidder<sup>3</sup> having its registered office at ....., (hereinafter referred to as the “**Contractor**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of the Other Part.

### WHEREAS:

- (A) The **SPV** has the responsibility to develop, operate and maintain “**Construction of Integrated Modal Logistic Hub (IMLH) Yard at Nangal Choudhary including Platforms and Station & Ancillary Buildings on Engineering, Procurement and Construction Mode**”
- (B) The **SPV** had resolved to undertake the **Construction of Integrated Modal Logistic Hub (IMLH) Yard at Nangal Choudhary including Platforms and Station & Ancillary Buildings** on Engineering, Procurement, Construction (“**EPC**”) basis in accordance with the terms and conditions to be set forth in an agreement to be entered into.
- (C) The **SPV** had prescribed the Technical and Financial terms and conditions, and invited Request for Participation (RFP) No. -----dated -----from the bidders for undertaking the Project.
- (D) After evaluation of the bids received, the **SPV** had accepted the bid of the selected bidder and issued its Letter of Acceptance No. \*\*\* dated \*\*\* (hereinafter called the “**LOA**”) to the selected bidder for construction of the above railway line at the Contract Price specified hereinafter, requiring the selected bidder to inter alia:



- (i) deliver to the SPV a legal opinion from the legal counsel of the selected bidder with respect to the SPV of the selected bidder to enter into this Agreement and the enforceability of the provisions thereof, within 10 (ten) days of the date of issue of LOA; and
  - (ii) execute this Agreement within 60 (Sixty) days of the date of issue of LOA.
- (E) The Contractor has fulfilled the requirements specified in Recital (D) above;

Now, therefore, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the sufficiency and adequacy of which is hereby acknowledged, the SPV hereby covenants to pay the Contractor, in consideration of the obligations specified herein, the Contract Price or such other sum as may become payable under the provisions of the Agreement at the times and in the manner specified by the Agreement and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE 1

**DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 26) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

**1.2 Interpretation**

1.2.1 In this Agreement, unless the context otherwise requires,

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

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

clause(s) shall not operate so as to increase liabilities or obligations of the SPV hereunder or pursuant hereto in any manner whatsoever;

- (t) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the SPV Engineer shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the SPV Engineer, as the case may be, in this behalf and not otherwise;
  - (u) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
  - (v) references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of or to this Agreement; reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;
  - (w) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”); and
  - (x) time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended for the reasons specified in the Agreement, such extended time shall also be of the essence.
- 1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Contractor to the SPV shall be provided free of cost and in three copies, and if the SPV is required to return any such Documentation with its comments and/or approval, it shall be entitled to retain two copies thereof.
- 1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
- 1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply.

### 1.3 Measurements and arithmetic conventions

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

### **1.4 Priority of agreements and errors/discrepancies**

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

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

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

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

### **1.5 Joint and several liability**

1.5.1 If the Contractor has formed a Consortium/Joint Venture of two or more persons for implementing the Project:

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

1.5.2 Without prejudice to the joint and several liability of all the members of the Consortium/Joint Venture, the Lead Member shall represent all the members of the

Consortium/Joint Venture and shall at all times be liable and responsible for discharging the functions and obligations of the Contractor. The Contractor shall ensure that each member of the Consortium/Joint Venture shall be bound by any decision, communication, notice, action or inaction of the Lead Member on any matter related to this Agreement and the SPV shall be entitled to rely upon any such action, decision or communication of the Lead Member. The SPV shall have the right to release payments solely to the Lead Member and shall not in any manner be responsible or liable for the *inter se* allocation of payments among members of the {Consortium/Joint Venture}}.

## **Part II**

# **Scope of the Project**

ARTICLE 2  
**SCOPE OF THE PROJECT**

**2.1 Scope of the Project**

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

- (a) Construction of the Railway siding / Integrated Multimodal Logistics Hub (IMLH) Project on the Site set forth in Schedule-A and as specified in Schedule-B together with provision of Project Facilities as specified in Schedule-C, and in conformity with the Specifications and Standards outlined in Schedule-D; and
- (b) Maintenance of the Railway/siding / IMLH Project in accordance with the provisions of this Agreement and conformity with the requirements set forth in **Schedule-E**; and
- (c) Performance and fulfillment of all other obligations of the Contractor in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Contractor under this Agreement.



**ARTICLE 3**

**OBLIGATIONS OF THE CONTRACTOR**

**3.1 Obligations of the Contractor**

- 3.1.1 Subject to and on the terms and conditions of this Agreement, the Contractor shall undertake the survey, investigation, design, engineering, procurement, and construction of the Railway Project and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 3.1.2 The Contractor shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 3.1.3 Save and except as otherwise provided in this Agreement or Applicable Laws, as the case may be, the Contractor shall, in discharge of all its obligations under this Agreement, conform with and adhere to Good Industry Practice at all times.
- 3.1.4 The Contractor shall remedy any and all loss or damage to the Railway Project, occurring on or after the Appointed Date and until the date of Provisional Certificate, with respect to the Works completed prior to the issuance of the Provisional Certificate and/or Completion Certificate, with respect to the Works referred to in the Punch List, at its own cost, save and except to the extent that any such loss or damage shall have arisen from any default of the SPV or on account of a Force Majeure Event in which case the provisions of Article 19 shall apply.
- 3.1.5 The Contractor shall remedy any and all loss or damage to the Railway Project during the Defects Liability Period at its own cost, to the extent that such loss or damage shall have arisen out of the reasons specified in Clause 15.3.
- 3.1.6 The Contractor shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits set forth in Schedule-E and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;
  - (b) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for Materials, methods, processes, know-how and systems used or incorporated into the Railway Project;
  - (c) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Sub-contractors in connection with the performance of its obligations under this Agreement;

- (d) ensure that its Sub-contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Contractor's obligations under this Agreement;
  - (e) always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be in violation of any of the provisions of this Agreement;
  - (f) support, cooperate with and facilitate the SPV in the implementation and operation of the Project in accordance with the provisions of this Agreement;
  - (g) ensure that the Contractor and its Sub-contractors comply with the safety and welfare measures for labour in accordance with Applicable Laws and Good Industry Practice;
  - (h) keep, on the Site, a copy of this Agreement, publications named in this Agreement, the Drawings, Documents relating to the Project, Change of Scope Orders and other communications sent under this Agreement, and provide access to all these documents at all reasonable times to the SPV's Engineer and its authorised personnel;
  - (i) cooperate with other contractors employed by the SPV and with personnel of any other public authority; and
  - (j) not interfere unnecessarily or improperly with the convenience of the public, or the access to and use and occupation of all the existing facilities within the Right of Way, irrespective of whether they are public or in the possession of the SPV or of others.
  - (k) to provide reasoned comments on any information relating to the contractor's activities under or pursuant to the agreement, which the SPV may publish.
- 3.1.7 The Contractor shall undertake all necessary superintendence to plan, arrange, direct, manage, inspect and test the Works.

### **3.2 Obligations relating to sub-contracts and any other agreements**

- 3.2.1 The Contractor shall not sub-contract the Works comprising more than 70% (seventy per cent) of the Contract Price and shall carry out Works for at least 30% (thirty per cent) of the total Contract Price directly under its own supervision and through its own personnel. The Parties expressly agree that for the purposes of computing the value of sub-contracts under this Clause 3.2.1, the Contract Price shall exclude any sub-contract for the procurement of goods and equipment like [rails, sleepers and track fittings, signaling and telecommunication & Power supply equipment]. The Parties agree that all obligations and liabilities under this Agreement for the entire Railway Project shall at all time remain with the Contractor. {The Parties agree that

the obligations of the Contractor to carry out Works equal to at least 30% (thirty per cent) of the Contract Price shall be discharged solely by the Lead Member.}\$

- 3.2.2 In the event any sub-contract for Works, or the aggregate of such sub-contracts with any Sub-contractor, exceeds 5% (five percent) of the Contract Price, the Contractor shall communicate the name and particulars, including the relevant experience of the sub-contractor, to the SPV prior to entering into any such sub-contract. Provided, however, that in any event the Contractor shall communicate the name and particulars to the SPV for any sub-contract including the relevant experience prior to entering into any such sub-contract. The SPV shall examine the particulars of the sub-contractor from the national security and public interest perspective and may require the Contractor, no later than 15 (fifteen) business days from the date of receiving the communication from the Contractor, not to proceed with the sub-contract, and the Contractor shall comply therewith and shall have no claim whatsoever on this account.
- 3.2.3 Without prejudice to the provisions of Clause 3.2.2, in the event any sub-contract referred to in Clause 3.2.2 relates to a sub-contractor who has, over the preceding 3 (three) financial years and the current financial year, not undertaken at least one work of a similar nature with a contract value exceeding 40% (forty per cent) of the value of the sub-contract to be awarded hereunder and received payments in respect thereof for an amount equal to at least 80% (eighty per cent) of such contract, the SPV may, no later than 15 (fifteen) business days from the date of receiving the communication from the Contractor, require the Contractor not to proceed with such sub-contract, and the Contractor shall comply therewith.
- 3.2.4 It is expressly agreed that the Contractor shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the agreements with its Sub-contractors or any other agreement that may be entered into by the Contractor, and no default under any such agreement shall excuse the Contractor from its obligations or liability hereunder.
- 3.2.5 Notwithstanding anything to the contrary contained in this Agreement, the Contractor agrees and acknowledges that it will not assign any work to any contractor/sub-contractor from a country which shares a land border with India unless such contractor/sub-contractor is registered with the competent Authority. Contractor will ensure that such Contractor/sub-contractor fulfils all requirements in this regard and is eligible to be considered (evidence of valid registration by the competent SPV is enclosed). The Competent SPV for registration will be the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT), India.

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\$ May be deleted if the Contractor is not a Consortium/Joint Venture.

### **3.3 Employment of foreign nationals**

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

### **3.4 Contractor's personnel**

- 3.4.1 The Contractor shall ensure and procure that the personnel engaged by it or by its Sub-contractors for performance of its obligations under this Agreement are at all times appropriately qualified, skilled and experienced in their respective functions including in conformity with Applicable Laws including the Indian Railway General and Subsidiary Rules, [the Indian Electricity Rules], and Good Industry Practice.
- 3.4.2 The SPV's Engineer may, for reasons to be specified in writing, direct the Contractor to remove any member of the Contractor's or Sub-contractor's personnel from the Railway Project. Provided, any such direction issued by the SPV's Engineer shall specify the reasons for the removal of such person.
- 3.4.3 The Contractor shall, on receiving a direction from the SPV's Engineer under the provisions of Clause 3.4.2, ensure and procure the removal of such person or persons from the Railway Project with immediate effect. The Contractor shall further ensure that such persons have no further connection with the Railway Project.
- 3.4.4 The Contractor shall be responsible for the Security of the Work Site and for keeping the unauthorized persons off the Site.

### **3.5 Advertisement on Railway Project**

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

### **3.6 Contractor's care of the Works**

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

**3.7 Electricity, water and other services**

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

**3.8 Unforeseeable difficulties**

Except as otherwise specified in the Agreement:

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

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

**3.9 Training of SPV's personnel**

- 3.9.1 The Contractor shall provide and complete the training to the personnel of the SPV in diagnostic, troubleshooting, repairing, operation and maintenance of the signalling and telecommunication equipment. The number of persons to be trained shall not exceed [6 (six)] and the period of training shall be for a period of [\*\* (\*\*)] weeks. The training shall be completed before the issuance of the Provisional Certificate/ Completion Certificate. Before the issue of any handing-over certificate, the final O & M Manuals, wherever required, shall be submitted by the contractor to the SPV's Engineer.
- 3.9.2 The Contractor shall provide training to the personnel of the SPV in SCADA. The number of persons to be trained shall not exceed [6 (six)] and the period of training shall be at least [01 (one)] weeks. The training shall be completed before the issuance of the Provisional Certificate/ Completion Certificate.

**3.10 Safety at Work Site**

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

**ARTICLE 4**

**OBLIGATIONS OF THE AUTHORITY**

**4.1 Obligations of the Authority**

- 4.1.1 The SPV shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 4.1.2 The SPV shall be responsible for the correctness of the Scope of the Project, Project Facilities, Specifications and Standards and the criteria for Testing of the completed Works.
- 4.1.3 The SPV shall, upon receiving the Performance Security under Clause 7.1.1, provide to the Contractor:
- (a) the Right of Way in accordance with the provisions of Clauses 8.2 and 8.3 on no less than 95% (ninety-five per cent) of core land length and 90% (ninety percent) of non-core land length of the total length of the Railway Project before appointed date;
  - (b) all environmental and forest clearances as required under Clause 4.3<sup>7</sup> before appointed date; and
- 4.1.4 In the event that (i) the SPV does not procure fulfilment of any or all of the obligations set forth in Clause 4.1.3 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Contractor or due to Force Majeure, the SPV shall pay to the Contractor Damages in a sum calculated in accordance with the provisions of Clause 8.3 of this Agreement and grant Time Extension in accordance with the provisions of Clause 10.4.
- 4.1.5 Notwithstanding anything to the contrary contained in this Agreement, the Parties expressly agree that the aggregate Damages payable by the SPV under Clauses 4.1.4, 4.4.3, 8.3 and 9.2 shall not exceed 5% (five per cent) of the Contract Price. For the avoidance of doubt, the Damages payable by the SPV under the aforesaid Clauses shall not be additive if they arise concurrently from more than one cause but relate to the same part of the Railway Project.
- 4.1.6 The SPV agrees to provide support to the Contractor and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and Applicable Laws, the following:
- (a) upon written request from the Contractor, and subject to the Contractor complying with Applicable Laws, provide reasonable support to the Contractor in procuring Applicable Permits required from any Government Instrumentality for implementation of the Project;

- (b) upon written request from the Contractor, provide reasonable assistance to the Contractor in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable than those generally available to commercial customers receiving substantially equivalent services;
- (c) procure that no barriers that would have a material adverse effect on Works are erected or placed on or about the Railway Project by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security or law and order;
- (d) not do or omit to do any act, deed or thing which may in any manner be in violation of any of the provisions of this Agreement;
- (e) support, cooperate with and facilitate the Contractor in the implementation of the Project in accordance with the provisions of this Agreement; and
- (f) upon written request from the Contractor and subject to the provisions of Clause 3.3, provide reasonable assistance to the Contractor and any expatriate personnel of the Contractor or its Sub-contractors to obtain applicable visas and work permits for the purposes of discharge by the Contractor or its Sub-contractors of their obligations under this Agreement and the agreements with the Sub-contractors.

#### **4.2 Maintenance and operation of the existing facilities**

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

#### **4.3 Environmental and Forest Clearances**

The SPV represents and warrants that the environmental and forest clearances of Land mentioned in clause 4.1.3 (a) will be obtained before Appointed Date. In the event of any delay, the Contractor shall be entitled to Time Extension for the period of such delay in accordance with the provisions of Clause 10.4 of this Agreement and shall also be entitled to Damages calculated as if the Right of Way for and in respect of such sections of the Railway Project has not been provided in accordance with the provisions of Clause 8.2 and as a consequence thereof, the Contractor shall be entitled to Damages under and in accordance with the provisions of Clause 8.3. For the avoidance of doubt, the present status of environmental and forest clearances is specified in Schedule-A.<sup>9</sup>

#### **4.4 Machinery and equipment**

- 4.4.1 The SPV shall upon receiving a request from the Contractor, provide the machinery and equipment specified in Schedule P on payment of hire charges at the monthly rates specified therein. The Parties agree that the monthly rate for each machine or equipment shall be inclusive of fuel and all other operating charges, which shall be



converted into daily rates taking a month comprising 25 (twenty five) working days. The Parties further agree that for each machinery or equipment:

- (a) The charges shall be payable for a day even if a machine or equipment is used for less than 8 (eight) hours, so long as it has been placed at the disposal of the Contractor and has not been withdrawn;
  - (b) the daily rates shall be computed for a shift of 8 (eight) hours taken as one day. By way of illustration, if the machinery or equipment is used for 16 (sixteen) hours on any day, the charges payable shall be equal to twice the daily rate; and
- 4.4.2 The Contractor shall by notice of at least three weeks convey to the SPV the particulars of the machinery and equipment required for each day of the following one month.
- 4.4.3 In the event that the SPV does not provide any machinery and equipment at the designated time in pursuance of the provisions of Clause 4.4.1, the Contractor shall be entitled to Damages in an amount equal twice the rates specified in Schedule-P. Provided further that the Contractor shall be entitled to Time Extension in accordance with the provisions of Clause 10.4 if the number of days for which the machinery has not been provided continuously exceeds 7 (seven) and/ or the total number of days of not providing the machinery exceed 15 (fifteen) days in a period of 03 months.<sup>10</sup>

### **4.5 Electricity transmission lines**

The SPV shall procure the Applicable Permits and right of way for the erection, installation, and energization of the transmission lines required for operating the Railway Project.

### **4.6 Disconnection for modification of existing signaling and telecommunication works**

The Contractor shall on requirement of disconnection of a particular subsystem for modification in the existing signalling and telecommunication system at railway stations, level crossing gates and interlocked sections, inform the SPV's Engineer by notice of at least one week of its readiness for commissioning and the SPV's Engineer shall obtain the requisite approvals from the SPV for the required disconnections. All such work requiring disconnection of existing signalling systems shall be executed under supervision of SPV Engineer or his representative. The Parties expressly agree that in the event of any default in providing such disconnection, the SPV shall pay to the Contractor Damages at the rate of Rs.1,000 (Rupees one thousand) per day. The Contractor shall ensure that there is no interruption/ disturbance to operational circuits in such cases of modification of signalling and telecom systems.

### **4.7 Provision of Power Blocks and Traffic Blocks**

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



- 4.7.2 The Contractor shall, in consultation with the SPV's Engineer, submit a weekly programme of Blocks, commencing from Monday, with a notice of at least 1 (one) week and the SPV's Engineer shall convey the approved weekly programme to the Contractor no less than 3 (three) days prior to the start of such week.
- 4.7.3 The minimum period for which a Power Block or Traffic Block shall be provided to the Contractor shall not be less than two hours, period being counted from the time the track is placed at the disposal of the Contractor and until it is cleared by the Contractor. Provided, however, that a Power Block or Traffic Block, as the case may be, of shorter duration may be provided with mutual consent of the Parties.
- 4.7.4 The aggregate period of Power Block and Traffic Block to be provided to the Contractor during the Construction Period is specified in Schedule-O. The Contractor shall organise its work so as to complete all Construction Works within such aggregate period. However, this aggregate period may be increased by the SPV Engineer on Contractor's request, if the same is considered justified and reasonable under the prevailing circumstances.
- 4.7.5 In the event of any change in the schedule of Power Block or Traffic Block or both, as the case may be, the SPV shall inform the Contractor by a notice of not less than 24 (twenty four) hours. Provided, however, that no such notice shall be required in case of a breakdown, accident, law and order disturbance, natural calamity or any other unusual occurrence or Emergency.
- 4.7.6 In the event a Power Block or Traffic Block, as the case may be, is not provided for any day in accordance with the confirmed programme, the Contractor shall be compensated by providing an additional Power Block or Traffic Block of equal time during the same week or the following week. The Parties expressly agree that in the event of any default in providing such additional blocks for compensating the Contractor, the SPV shall pay to the Contractor Damages at the rate of Rs.1,000 (Rupees one thousand) per day for each hour which has not been provided as required hereunder and until such hour is provided during any of the 6 (six) following weeks.
- 4.7.7 The Contractor shall be entitled to undertake the Construction Works within the aggregate period specified in Schedule-O. Provided, however, that in the event the aggregate period utilised by the Contractor exceeds the period specified in Schedule-O and the extra time granted thereto under clause 4.7.4 if any, the Contractor shall pay to the SPV hourly charges at the rate specified therein.]

**ARTICLE 5**  
**REPRESENTATIONS AND WARRANTIES**

**5.1 Representations and Warranties of the Contractor**

The Contractor represents and warrants to the SPV that:

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

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

## **5.2 Representations and warranties of the Authority**

The SPV represents and warrants to the Contractor that:

- (a) it has full power and SPV to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under this Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the SPV's ability to perform its obligations under this Agreement;
- (f) it has complied with Applicable Laws in all material respects;

(g) it has good and valid right to the Site and has the power and SPV to grant the Right of Way in respect thereof to the Contractor; and

(h) it shall have procured, as on the Appointed Date, Right of Way, and environment clearances such that the Contractor can commence construction forthwith on 95% (ninety-five percent) of the core land length and 90% of the non-core land length of the Railway Project.

### **5.3 Disclosure**

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

**ARTICLE 6**  
**DISCLAIMER**

**6.1 Disclaimer**

- 6.1.1 The Contractor acknowledges that prior to the execution of this Agreement, the Contractor has, after a complete and careful examination, made an independent evaluation of the Request for Proposal (RFP), Scope of the Project, Specifications and Standards, Site, local conditions, physical qualities of ground, subsoil and geology, traffic volumes, suitability and availability of access routes to the Site and all information provided by the SPV or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. Save as provided in Clause 4.1.2 and Clause 5.2, the SPV 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 Contractor confirms that it shall have no claim whatsoever against the SPV in this regard.
- 6.1.2 The Contractor acknowledges and hereby accepts to have satisfied itself as to the correctness and sufficiency of the Contract Price.
- 6.1.3 The Contractor acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 6.1.1 above and hereby acknowledges and agrees that the SPV shall not be liable for the same in any manner whatsoever to the Contractor, or any person claiming through or under any of them, and shall not lead to any adjustment of Contract Price or Scheduled Completion Date.
- 6.1.4 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 6.1.1 above shall not vitiate this Agreement, or render it voidable.
- 6.1.5 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 6.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error.
- 6.1.6 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Contractor; and the SPV shall not be liable in any manner for such risks or the consequences thereof.

## **Part III**

# **Construction**

ARTICLE 7

**PERFORMANCE SECURITY**

**7.1 Performance Security**

- 7.1.1 The Contractor shall, for the performance of its obligations hereunder, provide to the Authority, within 30(Thirty) days of issue of LOA, an irrevocable and unconditional Bank Guarantee (the “**Performance Security**”), for an amount equal to 5% (five per cent) whichever is applicable], of the Contract Price from a Bank in the form set forth in Annex-I of Schedule-F.

The Performance Security shall be valid until 60 (sixty) days of the expiry of the Defects Liability Period specified in Clause 15.1.1. Until such time the Performance Security is furnished by the Contractor pursuant hereto and the same comes into effect, the ‘Bid Security’ shall remain in force and effect, and upon such furnishing of the Performance Security, the SPV shall release the Bid Security to the Contractor. For the avoidance of doubt, the Parties expressly agree that the Contractor shall provide, no later than 30 (thirty) days prior to the expiry of the Performance Security for the Defects Liability Period specified in Clause 15.1.1, a Performance Security in respect of the extended Defects Liability Period, as specified in Clause 15.1.2, for an amount equal to 5% (five per cent) whichever is applicable] of the estimated cost of the Structures, Important Bridges, if any, comprising a new technology not currently in use in the Railways and the interlocking and telecom switching equipment as specified in Schedule B.

- 7.1.2 Notwithstanding anything to the contrary contained in this Agreement, the Parties agree that in the event of failure of the Contractor to provide the Performance Security in accordance with the provisions of Clause 7.1.1 and within the time specified therein or such extended period as may be provided by the Authority, in accordance with the provisions of Clause 7.1.3, the SPV shall encash the Bid Security and appropriate the proceeds thereof as part-Damages, and thereupon all rights, privileges, claims and entitlements of the Contractor under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Contractor, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties along with further levy of the Liquidated Damages equivalent to the stipulated ‘Performance Security’, which shall be recoverable from contractor’s pending/future dues with IR in any of the ongoing/future contracts.
- 7.1.3 In the event the Contractor fails to provide the Performance Security within 30 (Thirty) days of the issue of LOA as provided in Clause 7.1.1 above, the Contractor may seek extension of time for a period not exceeding a further 30 (Thirty) days on payment of damages for such extended period equivalent to a sum calculated at the rate of 0.002% (zero point zero zero two percent) of the Contract Price for each day of delay until the Performance Security is provided.

**7.2 Extension of Performance Security**

The Contractor may initially provide Performance Security for a period

of 2 (two) years; provided that it shall procure the extension of the validity of the Performance Security, as necessary, at least 2 (two) months prior to the date of expiry thereof. Upon the Contractor providing an extended Performance Security, the previous Performance Security shall be deemed to be released and the SPV shall return the same to the Contractor within a period of 7 (seven) business days from the date of submission of the extended Performance Security.

**7.3 Appropriation of Performance Security**

- 7.3.1 Upon occurrence of a Contractor Default, the SPV shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate from the Performance Security the amounts due to it as Damages for the Contractor Default.
- 7.3.2 Upon such encashment and appropriation from the Performance Security, the Contractor 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 Contractor shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the SPV shall be entitled to terminate the Agreement in accordance with Article 21. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Contractor shall be entitled to an additional Cure Period of 30 (thirty) days for remedying the Contractor Default, and in the event of the Contractor not curing its default within such Cure Period, the SPV shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 21.

**7.4 Release of Performance Security**

The SPV shall release the Performance Security within 60 (sixty) days of the expiry of the Defects Liability Period or the extended Defects Liability Period, as the case may be, under this Agreement. Notwithstanding the aforesaid, the Parties agree that the SPV shall not be obliged to release the Performance Security until all Defects identified during the Defects Liability Period or the extended Defects Liability Period, as the case may be, have been rectified.

**7.5 Retention Money**

- 7.5.1 From every payment for Works due to the Contractor in accordance with the provisions of Clause 17.5, the SPV shall deduct 6% (six per cent) thereof as guarantee money for performance of the obligations of the Contractor during the Construction Period (the “**Retention Money**”) subject to the condition that the maximum amount of Retention Money shall not exceed 5% (five per cent) of the Contract Price.
- 7.5.2 Upon the occurrence of a Contractor’s Default, the SPV shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Retention Money as Damages for such Contractor’s Default.



- 7.5.3 The Contractor may, upon furnishing an irrevocable and unconditional bank guarantee substantially in the form provided at Annex-II of Schedule-F, require the SPV to refund the Retention Money deducted by the SPV under the provisions of Clause 7.5.1. Provided that the refund hereunder shall be made in tranches of not less than 0.5% (zero point five percent) of the Contract Price. Further, the Retention money may be deposited as Bank Guarantee, issued by Scheduled commercial Bank after signing of Contract Agreement, but before payment of first payment bill. Provided further that validity of Bank Guarantee shall be extended from time to time depending upon extension of Contract granted.
- 7.5.4 Within 15 (fifteen) days of the date of issue of the Completion Certificate, the SPV shall discharge the bank guarantees, if any, furnished by the Contractor under the provisions of Clause 7.5.3 and refund the balance of Retention Money remaining with the SPV after adjusting the amounts appropriated under the provisions of Clause 7.5.2 and the amounts refunded under the provisions of Clause 7.5.3.
- 7.5.5 The Parties agree that in the event of Termination of this Agreement, the Retention Money and the bank guarantees specified in this Clause 7.5 shall be treated as if they are Performance Security and shall be reckoned as such for the purposes of Termination Payment under Clause 21.6.

ARTICLE 8  
RIGHT OF WAY

**8.1 The Site**

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

- (a) acquiring and providing Right of Way on the Site in accordance with the alignment plan, Longitudinal section, Yard Plans/ESP, and electrification sectioning diagram finalized by the SPV and attached with this document, free from all encroachments and encumbrances, and free access thereto for the execution of this Agreement;
- (b) obtaining environmental clearance and forest clearance for the Railway Project.

**8.2 Handing over of the Project Site**

- 8.2.1 The SPV Representative and the Contractor shall, within 15 (fifteen) days of providing the Performance Security by the Contractor in accordance with the provisions of Clause 7.1, jointly 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. Subject to the provisions of Clause 8.2.3, such memorandum shall have appended thereto an Appendix (the “**Appendix**”) specifying in reasonable detail those parts of the Site to which vacant access and Right of Way has not been given to the Contractor. Signing of the memorandum, in 2 (two) counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall be deemed to constitute a valid evidence of handing over of the Right of Way to the Contractor for discharging its obligations under and in accordance with the provisions of this Agreement and for no other purpose whatsoever.

For the avoidance of doubt, the Parties agree that subject to the provisions of Clauses 8.2.2 and 8.2.3, whenever the SPV is ready to provide Right of Way for any part or parts of the Site included in the “**Appendix**”, it shall by notice inform the Contractor, of the proposed date and time when the SPV Representative and the Contractor shall inspect the specified parts of the Site, and prepare a memorandum which shall be deemed to constitute valid evidence of handing over of such Right of Way to the Contractor in accordance with the provisions of this Clause 8.2.1.

- 8.2.2 Notwithstanding anything to the contrary contained in Clause 8.2, the SPV shall specify the parts of the Site, if any, for which Right of Way shall be provided to the Contractor on the dates specified in Schedule-A. Such parts shall also be included in the Appendix prepared in pursuance of Clause 8.2.1. For the avoidance of doubt, the Parties expressly agree that the Appendix shall in no event contain Sections of the Railway Project the cumulative length of which exceeds 5% (Five percent) of the

core land length and 10% (Ten percent ) of the non-core land length of the Railway Project.

- 8.2.3 The SPV shall provide the Right of Way to the Contractor, in respect of the land included in the Appendix, by the date specified in Schedule-A for each part of the Site referred to therein, but in no case later than 180 (one hundred and eighty) days of the Appointed Date, and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Contractor, it shall pay to the Contractor, Damages in a sum calculated in accordance with Clause 8.3.

### **8.3 Damages for delay in handing over the Site**

- 8.3.1 In the event the Right of Way to any part of the Site is not provided by the SPV on or before the date(s) specified in Clause 8.2 for any reason other than Force Majeure or breach of this Agreement by the Contractor, the SPV shall pay Damages to the Contractor in a sum calculated in accordance with the following formula for and in respect of those parts of the core land to which the Right of Way has not been provided:

Amount of Damages in Rs. per day per km = 0.001% of Contract Price

In the event that any Damages are due and payable to the Contractor under the provisions of this Clause 8.3.1 for delay in providing the Right of Way, the Contractor shall, subject to the provisions of Clause 10.4, be entitled to Time Extension equal to the period for which the Damages have become due and payable under this Clause 8.3.1, save and except that:

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

For the avoidance of doubt, the Parties expressly agree that the Damages specified hereunder and the Time Extension specified in Clause 10.4 shall be restricted only to failure of the SPV to provide the Right of Way for and in respect of the width of the Site required for Works in accordance with the Good Industry Practice.

- 8.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Contractor expressly agrees that Works on all parts of the Site for which Right of Way is granted within 180 (one hundred and eighty) days of the Appointed Date, or with respect to the parts of the Site provided in Schedule-A, no later than the date(s) specified therein, as the case may be, shall be completed before the Scheduled Completion Date and shall not qualify for any Time Extension under the provisions of Clause 8.3.1.
- 8.3.3 Notwithstanding anything to the contrary contained in this Agreement, the SPV may at any time withdraw any part of the Right of Way and the Works forming part of this Agreement, subject to such Works not exceeding an aggregate value, such value to be determined in accordance with Schedule-G, equal to 5% (five per cent) of the Contract Price.

Provided that if Right of Way has not been provided within 240 (two hundred and forty) days of the Appointed Date, for commencing construction on any part of the Site included in the Appendix, the affected Works shall be deemed to be withdrawn under the provisions of this Clause 8.3.3 unless the Parties agree to the contrary, and such Works shall not be computed for the purposes of the aforesaid ceiling of 5% (five per cent) of the Contract Price hereunder. For the avoidance of doubt, the Parties agree that such deemed withdrawal of Works hereunder shall be without prejudice to the Contractor's entitlement to Damages under Clauses 4.1.4, 8.3 and 9.2.

- 8.3.4 In the event of withdrawal of Works under Clause 8.3.3, including deemed withdrawal of Works, the Contract Price shall be reduced by an amount equal to 95% (ninety five per cent) of the value of the Works withdrawn and the Contractor shall not be entitled to any other compensation or Damages for the withdrawal of Works, including their deemed withdrawal, save and except for Damages as provided under Clause 4.3.

Provided that if any Works are withdrawn after commencement of the Construction of such Works, the SPV shall pay to the Contractor 100% (one hundred) of the fair value of the work done, as assessed by the SPV's Engineer:

### **8.4 Site to be free from Encumbrances**

Subject to the provisions of Clause 8.2, the Site shall be made available by the SPV to the Contractor pursuant hereto free from all Encumbrances and occupations and without the Contractor being required to make any payment to the SPV on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Project Completion Schedule. For the avoidance of doubt, it is agreed that the existing rights of way, easements, privileges, liberties and appurtenances to the Site shall not be deemed to be Encumbrances. It is further agreed that, unless otherwise specified in this Agreement, the Contractor accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.

### **8.5 Protection of Site from encroachments**

On and after signing the memorandum and/or subsequent memorandum referred to in Clause 8.2.1, and until the issue of the Provisional Certificate, the Contractor shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place. During the Construction Period, the Contractor shall protect the Site from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Sub-contractor or other person claiming through or under the Agreement to place or create any Encumbrance or security interest over all or any part of the Site or the Project Assets, or on any rights of the Contractor therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement. In the event of any encroachment or occupation on any part of the Site, the Contractor shall report such encroachment or occupation forthwith to the SPV and undertake its removal at its own cost and expenses.

**8.6 Special/temporary Right of Way**

The Contractor 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 Contractor shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the Railway Project and the performance of its obligations under this Agreement.

**8.7 Access to the SPV and the SPV's Engineer**

- 8.7.1 The Right of Way given to the Contractor hereunder shall always be subject to the right of access of the SPV and the SPV's Engineer and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.
- 8.7.2 The Contractor shall ensure, subject to all relevant safety procedures, that the SPV has unrestricted access to the Site during any Emergency.

**8.8 Geological and Archaeological Finds**

It is expressly agreed that mining, geological or archaeological rights do not form part of this Agreement with the Contractor for the Works, and the Contractor 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 SPV or the concerned Government Instrumentality. The Contractor 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 SPV forthwith of the discovery thereof and comply with such instructions as the SPV 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 Contractor hereunder shall be reimbursed by the Authority. It is also agreed that the SPV shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period.

**ARTICLE 9**  
**UTILITIES AND TREES**

**9.1 Existing utilities and roads**

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

**9.2 Shifting of obstructing utilities**

- 9.2.1 The Contractor shall, in accordance with Applicable Laws and with the proactive support & assistance of the Authority, cause shifting of any utility (including electric lines, water pipes and telephone cables) to an appropriate location or alignment, if such utility or obstruction adversely affects/ infringes the execution of Works in accordance with this Agreement. The actual cost of shifting/relocation of such utilities, as approved and communicated/demanded by the entity owning such utility, shall be paid by the SPV directly to the entity. In the event of any delay in such shifting by the entity owning the utility beyond a period of 180 (one hundred and eighty) days from the date of notice by the Contractor to the entity owning the utility and to the Authority, the Contractor shall be entitled to Damages in a sum calculated in accordance with the formula specified in Clause 8.3.1 for the period of delay, and to Time Extension in accordance with Clause 10.4 for and in respect of the part(s) of the Works affected by such delay; provided that if the delays involve any time overlaps, the overlaps shall not be additive.
- 9.2.2 For the existing utilities owned by Railways, where the shifting thereof can take place only after certain works for enabling its shifting have been completed by the Contractor, the SPV shall, undertake and complete its shifting within 180 (one hundred and eighty) days after the Contractor has notified the SPV of the completion of the enabling works. In the event of delay in shifting the utility, beyond the aforesaid period of 180 (one hundred and eighty) days, the Contractor shall be entitled to Damages for the period of delay in accordance with the provisions of this Clause 9.2.1.
- 9.2.3 The utilities which are not to be diverted, proper supporting shall be done to prevent any damage. No payment shall however be made for supporting and protecting the utilities during execution of the work. All temporary diversion of any utilities done to facilitate the construction activity shall be the part of the schedule G.

**9.3 New utilities**

- 9.3.1 The Contractor shall allow, subject to such conditions as the SPV 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 Contractor, 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 9.3 shall not in any manner relieve the Contractor of its obligation to construct and maintain the Railway Project in accordance with this Agreement and any damage caused by such use shall be restored forthwith at the cost of the Authority.

- 9.3.2 In the event the construction of any Works is affected by a new utility or works undertaken in accordance with this Clause 9.3, the Contractor shall be entitled to a reasonable Time Extension in accordance with Clause 10.4 for and in respect of the part(s) of the Works affected by such delay; provided that if the delays involve any time overlaps, the overlaps shall not be additive.

### **9.4 Felling of trees**

The SPV shall obtain the Applicable Permits for felling of trees to be identified by the SPV for this purpose if and only if such trees cause a Material Adverse Effect on the construction of the Railway Project. The cost of such felling and of the compensatory plantation of trees, if any, shall be borne by the Authority. In the event of any delay in felling thereof for reasons beyond the control of the Contractor; it shall be excused for failure to perform any part of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees. The Parties hereto agree that the felled trees shall be deemed to be owned by the SPV and shall be disposed in such manner and subject to such conditions as the SPV may in its sole discretion deem appropriate. For the avoidance of doubt, the Parties agree that if any felling of trees hereunder is in a forest area, the Applicable Permit thereof shall be procured by the SPV within the time specified in the Agreement; and for any period of delay in providing the Applicable Permits, the Contractor shall be entitled to Damages and Time Extension as provided under Clause 9.2.1.



ARTICLE 10

**DESIGN AND CONSTRUCTION OF THE RAILWAY PROJECT**

**10.1 Obligations prior to commencement of Works**

10.1.1 Within 20 (twenty) days of the Appointed Date, the Contractor shall:

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

10.1.2 The SPV shall, within 15 (fifteen) days of the date of this Agreement, appoint an engineer (the “**SPV’s Engineer**”) to discharge the functions and duties specified in this Agreement, and shall notify to the Contractor the name, address and the date of appointment of the SPV’s Engineer forthwith.

10.1.3 Within 30 (thirty) days of the Appointed Date, the Contractor shall submit to the SPV and the SPV’s Engineer a programme/CPM Charts & Bar Charts (the “programme”) for construction of Works, developed using networking techniques and giving the following details:

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

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

- (a) the order in which the Contractor intends to carry out the Works, including the anticipated timing of design and stages of Works;
- (b) the periods for reviews under Clause 10.2; and



- (c) the sequence and timing of inspections and tests specified in this agreement. The Contractor shall submit a revised programme whenever the previous programme is inconsistent with the actual progress or with the contractor's obligations.

### **Part III Monthly cash flow forecast for the Project.**

Provided, however, that the SPV may, within a period of 15 (fifteen) 21 (twenty one) days of receipt of the Programme, convey its comments to the Contractor stating the modifications, if any, required for compliance with the provisions of this Agreement! and the Contractor shall carry out such modifications, to the extent required for conforming with the provisions of this Agreement.

- 10.1.4 The Contractor shall plan the project work by keeping Schedule-G into consideration in order to maximise the cash flow and progress. However the SPV's Engineer may modify/break up any of the the stage payment schedule (payment milestones) during execution if the same is considered essential to speed up the progress or if the contractor is not able to achieve a particular payment milestone due to the reasons/delays attributable to the SPV or due to the factors beyond the control of Contractor or to any unforeseen circumstances.

- 10.1.5** Procurement of items should be planned by the Contractor in consultation with the SPV's Engineer . Procurement plan should be prepared in such a manner that those materials which have limited shelf life may be procured in a staggered manner so that materials are utilised/consumed well before its expiry. If the material/product does not remain of required specifications at the time of its actual use, the same will be replaced by the Contractor with materials conforming to Specifications at his own cost.

## **10.2 Design and Drawings**

- 10.2.1 Design and Drawings shall be developed in conformity with the Specifications and Standards set forth in Schedule-D. In the event, the Contractor requires any relaxation in design standards due to restricted Right of Way in any section or unforeseen issues, the alternative design criteria for such section shall be provided for review/approval of the SPV's Engineer .

- 10.2.2 The Contractor shall appoint a proof checking con Consultant") consultant at its cost (the "Proof Consultant'". The contractor shall submit 3 names within 30 dates of the appointed date to the SPV's Engineer . After proposing to the SPV a panel of three names of qualified, reputed, and experienced firms, the SPV will select one from the above panel, provided, however, Proof Consultant that if none of the names proposed in the panel is acceptable to the SPV and the reasons for the same are furnished to the Contractor, the Contractor shall propose to the SPV a revised panel of 3 (three) more names for obtaining the consent of the Authority. The Contractor shall also obtain the consent of the SPV for two key personnel of the Proof Consultant who shall have adequate experience and qualifications with respect to the main components of the Railway Project. The SPV shall, within 30 (thirty) days of receiving a panel from the Contractor, either convey its decision with reasons, to the Contractor, and if no such decision is conveyed within the said period, the Contractor may proceed with engaging of the Proof Consultant of its own choice. For the avoidance of doubt, the

Parties agree that no firm or person having any conflict of interest shall be engaged for this purpose. The Parties further agree that any assignments completed at least three years prior to the appointment hereunder shall not be reckoned for the purposes of conflict of interest.

### 10.2.3 The Proof Consultant shall:

- (a) evolve a systems approach with the Design Director so as to minimise the time required for approval of final designs and construction drawings; and
- (b) examine the designs expeditiously and wherever necessary raise observations/ seek clarifications etc. as deemed appropriate and refer back the drawings within 15 days for rectifications/clarifications, and finally proof check and endorse/counter-sign the detailed calculations, drawings and designs, which have been approved by the Design Director.

### 10.2.4 In respect of the route control chart, the following shall apply: **- Not Applicable**

#### (a) route control chart

- (i) The Contractor shall prepare and submit to the Authoritys Engineer all route control charts conforming to the ESP/SIPs, within a period of 3 (three) months from the Appointed Date;
- (ii) The SPV's Engineer shall review the route control chart within two weeks and submit it with its comments to the SPV for its approval; and
- (iii) The SPV shall communicate the route control chart as approved by it within a period not exceeding 2(two) months from the date of submission of the route control chart by the Contractor. Such period of two months shall exclude any time that is taken by the Contractor in providing clarifications or modifications in response to any communication from the Authority.

10.2.5 In the event of delay by the Contractor in submitting route control chart, as the case may be, within the period specified in Clause 10.2.4 for any reason other than Force Majeure or the delay attributable to the Authority, the Contractor shall pay Damages to the SPV in a sum equal to 0.001% (zero point zero zero one percent) of the Contract Price for each day of delay.

10.2.6 In the event of delay by the SPV in providing to the Contractor the approved route control chart, within the period specified in Clause 10.2.4 for any reason other than Force Majeure or breach of this Agreement by the Contractor, the SPV shall pay Damages to the Contractor in a sum equal to 0.001% (zero point zero zero one percent) of the Contract Price for each day of delay, and shall also grant Time Extension in accordance with the provisions of Clause 10.4.

10.2.7 In regard to Contractor's obligations with respect to the design and Drawings of the Railway Project as set forth in Schedule-H, the following shall apply:

- (a) The Contractor shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, 3 (three) copies each of the design and necessary Drawings, duly approved/signed by the Design Director and certified/signed by the Proof Consultant, to the SPV's Engineer for review. Provided, however, that in respect of Important Bridges, Major Bridges, Structures, railway stations and yards, the SPV's Engineer may require additional drawings for its review in accordance with Good Industry Practice;
- (b) by submitting the Drawings for review to the SPV's Engineer, the Contractor shall be deemed to have represented that it has determined and verified that the design and Drawings are in conformity with stipulated Specifications and Standards, the Applicable Laws, statutory stipulations and Good Industry Practice;
- (c) within 21 (twenty one) days of the receipt of the Drawings, the SPV's Engineer shall review the same and convey its observations to the Contractor with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. Beyond the said period of 21 (twenty one) days, the Contractor shall not be obliged to await the observations of the SPV's Engineer on the Drawings submitted pursuant hereto and may begin or continue Works at its own discretion and risk; Provided, however, that in case of Important Bridges, Major Bridges, Structures, interlocking and telecom switching equipment and any other specified item the aforesaid period of 21 (twenty one) days may be extended as per the time limit as indicated in Annexure-II of Schedule-D;
- (d) if the aforesaid observations of the SPV's Engineer indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Contractor in conformity with the provisions of this Agreement and resubmitted to the SPV's Engineer for review. The SPV's Engineer shall give its observations, if any, within 10 (ten) days of receipt of the revised Drawings. In the event the Contractor fails to revise and resubmit such Drawings to the SPV's Engineer for review as aforesaid, the SPV's Engineer may cause the payment for the affected works to be withheld under and in accordance with the provisions of Clause 17.5.4. If the Contractor disputes any decision, direction or determination of the SPV's Engineer hereunder, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure;
- (e) no review and/or observation of the SPV's Engineer and/or its failure to review and/or convey its observations on any Drawings shall relieve the Contractor of its obligations and liabilities under this Agreement in any manner nor shall the SPV's Engineer or the SPV be liable for the same in any manner; and if errors, omissions, ambiguities, inconsistencies, inadequacies or other Defects are found in the Drawings, they shall, along with the affected Works, be corrected at the Contractor's cost, notwithstanding any review under this Article 10;

- (f) the Contractor shall be responsible for delays in submitting the Drawings, as set forth in Schedule-H, caused by reason of delays in surveys and field investigations, and shall not be entitled to seek any relief in respect thereof from the Authority; and
- (g) the Contractor warrants that its designers, including any third parties engaged by it, shall have the required experience and capability in accordance with Good Industry Practice and it shall indemnify the SPV against any damage, expense, liability, loss or claim, which the SPV might incur, sustain or be subject to arising from any breach of the Contractor's design responsibility and/or warranty as set out in this Clause.

10.2.8 Any cost or delay in construction arising from the review by the SPV's Engineer shall be borne by the Contractor.

10.2.9 Works shall be executed in accordance with the Drawings provided by the Contractor in accordance with the provisions of this Clause 10.2 and the observations of the SPV's Engineer thereon as communicated pursuant to the provisions of Clause 10.2.7. Such Drawings shall not be amended or altered without prior written notice to the SPV's Engineer. If a Party becomes aware of an error or defect of a technical nature in the design or Drawings, that Party shall promptly give notice to the other Party of such error or defect.

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

10.2.11 The Contractor shall also appoint a safety consultant (the "Safety consultant"), Contractor shall submit the panel within 30 days of appointed date to the SPV's Engineer. after proposing to the SPV a panel of 3 (three) names of qualified and experienced consultants having minimum 10 years experience in ensuring safety at work site from whom the SPV may choose 1 (one) to be the Safety Consultant. Provided, however, that if the panel is not acceptable to the SPV and the reasons for the same are furnished to the Contractor, the Contractor shall propose to the SPV a revised panel of 3 (three) names for obtaining the consent of the Authority. The Contractor shall also obtain the consent of the SPV for additional two key personnel of the Safety Consultant who shall have at least 5 years experience in ensuring safety at work site. The SPV shall, within 15 (fifteen) days of receiving a proposal from the Contractor hereunder, convey its decision, with reasons, to the Contractor, and if no such decision is conveyed within the said period, the Contractor may proceed with engaging of the safety consultant. The Safety Consultant shall:

- (a) evolve a system approach for undertaking a safety audit of the Railway P
- (b) proof check the detailed safety plan covering all aspects of including safety of Users, workers and equipment.

### 10.3 Construction of the Railway Project

- 10.3.1 The Contractor shall construct the Railway Project as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D. The Contractor shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works. For works involving existing yards, the non-interlocking programme for each yard shall be drawn by the SPV's Engineer and provided to the Contractor. The Contractor and the SPV's Engineer, within a period of 30 days, will discuss the same and issue a jointly agreed NI programme. The execution of work during the non-interlocking period will be the responsibility of the Contractor. The work during non-interlocking period in yards will be executed directly under the supervision of Railways, however, the timely completion of NI working will be the responsibility of the Contractor. The [900<sup>th</sup> (nine hundredth) day] from the Appointed Date shall be the scheduled completion date (the "**Scheduled Completion Date**") and the Contractor agrees and undertakes that the construction shall be completed on or before the Scheduled Completion Date, including any extension thereof, in which case the Scheduled Completion Date will be the extended date as per the time extension granted.
- 10.3.2 The Contractor shall construct the Railway Project in accordance with the Project Completion Schedule set forth in Schedule-I. In the event that the Contractor fails to achieve any Project Milestone or the Scheduled Completion Date within a period of 30 (thirty) days from the date set forth in Schedule-I, unless such failure has occurred due to Force Majeure or for reasons attributable to the Authority, it shall pay Damages to the SPV in a sum calculated at the rate of 0.05% (zero point zero five per cent) of the Contract Price for delay of each day reckoned from the date specified in Schedule - I and until such Project Milestone is achieved or the Works are completed; provided that if the period for any or all Project Milestones or the Scheduled Completion Date is extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-I shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-I has been amended as above; provided further that in the event the Works are completed within or before the Scheduled Completion Date including any Time Extension, the Damages paid under this Clause 10.3.2 shall be refunded by the SPV to the Contractor, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 10.3.2 shall be without prejudice to the rights of the SPV under this Agreement including the right of Termination thereof. The Parties further agree that Time Extension hereunder shall only be reckoned for and in respect of the affected Works as specified in Clause 10.4.2.
- 10.3.3 The SPV shall notify the Contractor of its decision to impose Damages in pursuance of the provisions of this Clause 10.3. Provided, however, that no deduction on account of Damages shall be effected by the SPV without taking into consideration the representation, if any, made by the Contractor within 20 (twenty) days of such notice. The Parties expressly agree that the total amount of Damages under Clause 10.3.2 shall not exceed 10% (ten percent) of the Contract Price.

10.3.4 Certain works, which are executed in the vicinity of running track, may require prior sanction of Commissioner of Railway Safety (CRS) before execution of such works are taken up by the Contractor. SPV's Engineer will advise such works to the Contractor. The Contractor shall be responsible to prepare and submit applications to SPV's Engineer for obtaining sanction of CRS at least 60 (sixty) days in advance of commencing a work that requires prior sanction of CRS.

### 10.4 Extension of time for completion

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

- (a) delay in providing the Right of Way, [approval of GAD by road / canal authorities,] environmental/ forest clearances, or [signalling interlocking plan] and route control chart in accordance with the provisions of this Agreement;
- (b) Change of Scope, unless an adjustment to the Scheduled Completion Date has been agreed under Article 13;
- (c) occurrence of a Force Majeure Event;
- (d) any delay, impediment or prevention caused by or attributable to the Authority, the SPV's personnel or the SPV's other contractors on the Site; and
- (e) any other cause or delay which entitles the Contractor to Time Extension in accordance with the provisions of this Agreement.

10.4.2 The Contractor shall, no later than 30 (thirty) business days from the occurrence of an event or circumstance specified in Clause 10.4.1, inform the SPV's Engineer by notice in writing, with a copy to the Authority, stating in reasonable detail with supporting particulars, the event or circumstances giving rise to the claim for Time Extension in accordance with the provisions of this Agreement. Provided that the period of 15 (fifteen) business days shall be calculated from the date on which the Contractor became aware, or should have become aware, of the occurrence of such an event or circumstance.

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

10.4.3 In the event of the failure of the Contractor to issue to the SPV's Engineer a notice in accordance with the provisions of Clause 10.4.2 within the time specified therein, the Contractor 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 Contractor to issue notice as specified in this Clause 10.4.3, the SPV shall be discharged from all liability in connection with the claim.



10.4.4 The SPV's Engineer shall, on receipt of a claim in accordance with the provisions of Clause 10.4.2, examine the claim expeditiously within the time frame specified herein. In the event the SPV's Engineer requires any clarifications to examine the claim, the SPV's Engineer shall seek the same within 15 (fifteen) days from the date of receiving the claim. The Contractor shall, on the receipt of the communication of the SPV's Engineer requesting for clarification, furnish the same to the SPV's Engineer within 10 (ten) days thereof. The SPV's Engineer shall, within a period of 30 (thirty) days from the date of receipt of such clarifications, forward in writing to the Contractor its determination of Time Extension. For the avoidance of doubt, the Parties agree that the SPV's Engineer shall, in accordance with the provisions of this Agreement, notify the Contractor of the aforesaid Time Extension no later than 30 (thirty) days from the date of receipt of the Contractor's claim for Time Extension or the date of receipt of the clarification from the Contractor, as the case may be.

Provided that when determining each extension of time under this Clause 10.4, the SPV's Engineer shall review previous determinations and may increase, but shall not decrease, the total Time Extension.

10.4.5 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 Contractor 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 SPV's Engineer may reasonably require; and
- (c) the Contractor 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 SPV's Engineer shall examine and determine the same in accordance with the provisions of Clause 10.4.4 within a period of 30 (thirty) days of the receipt thereof.

### 10.5 Incomplete Works

In the event the Contractor fails to complete the Works in accordance with the Project Completion Schedule, including any Time Extension granted under this Agreement, the Contractor shall endeavour to complete the balance work expeditiously and shall pay Damages to the SPV in accordance with the provisions of Clause 10.3.2 for delay of each day until the Works are completed in accordance with the provisions of this Agreement. Recovery of Damages under this Clause shall be without prejudice to the rights of the SPV under this Agreement including the right to termination under Clause 21.1.

### 10.6 Equipment specific Maintenance Manual

No later than 90 (ninety) days prior to the Project Completion Date, the Contractor shall, in consultation with the SPV's Engineer, evolve an equipment specific maintenance manual for equipment based on a new technology not currently in use in the Railways (the "**Maintenance Manual**") for the regular operation and

maintenance of such equipment in conformity with safety requirements, Good Industry Practice and manufacturer's manuals and instructions and shall provide 10 (ten) hard copies and 2 (two) compact discs thereof to the SPV's Engineer .



ARTICLE 11

**QUALITY ASSURANCE, MONITORING AND SUPERVISION**

**11.1 Quality of Materials and workmanship**

- 11.1.1 The Contractor shall ensure that the Construction, Materials and workmanship are in accordance with the requirements specified in this Agreement, Specifications and Standards and Good Industry Practice.
- 11.1.2 The Contractor warrants that all Materials shall be new, unused, not reconditioned and in conformity with Specification and Standards, Applicable Laws and Good Industry Practice, and that the Contractor shall not use any materials which are generally recognised as being deleterious under Good Industry Practice.

**11.2 Quality control system**

- 11.2.1 The Contractor shall establish a Quality Control Mechanism, Quality Assurance Plan (the “**Quality Assurance Plan**” or “**QAP**”), Material Testing Plan (the “**Material Testing Plan**” or “**MTP**”) and Method Statements for execution of works (the “**Method Statements**” or “**MS**”) in consultation of SPV’s Engineer .
- 11.2.2 The Contractor shall, within 30 (thirty) days of the Appointed Date, submit to the SPV’s Engineer its Quality Control Mechanism, QAP, MTP and MS which shall include the following:
- (a) organisation, duties and responsibilities, procedures, inspections and documentation;
  - (b) quality control mechanism including sampling and testing of Materials, tests required during the execution of works and frequencies by Contractor and SPV’s Engineer , standards, acceptance criteria, testing facilities, reporting, recording and interpretation of test results, approvals, check list for site activities, and proforma for testing and calibration in accordance with the Specifications and Standards and Good Industry Practice; and
  - (c) internal quality audit system. The Contractor shall carry out internal audits of the Quality management System regularly, and at least once every 6 months. The Contractor shall submit to the Engineer a report listing the results of each internal audit within 7 days of completion. Each report shall include, where appropriate, the proposed measures to improve and/or rectify the Quality Management System and/or its implementation.

The SPV’s Engineer shall convey its comments to the Contractor within a period of 21 (twenty-one) days of receipt of the QAP stating the modifications, if any, required, and the Contractor shall incorporate those in the QAP to the extent required for conforming with the provisions of this Clause 11.2.

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

11.2.4 The cost of testing of Construction, Materials and workmanship under this Article 11 shall be borne by the Contractor.

### **11.3 Methodology**

The Contractor shall, at least 15 (fifteen) days prior to the commencement of any construction activity, submit to the SPV's Engineer for review the Method Statement proposed to be adopted for executing the Work, giving details of inspection checklist, quality parameters, equipment to be deployed, traffic management and measures for ensuring safety. The SPV's Engineer shall complete the review and convey its comments, if any, to the Contractor within a period of 10 (ten) days from the date of receipt of the proposed method statement from the Contractor. The Contractor shall revise the method statements by incorporating these comments or else will advise the SPV's Engineer reasons for not/partially including the same.

### **11.4 Inspection and technical audit by the Authority**

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

### **11.5 External technical audit**

At any time during construction, the SPV may appoint an external technical auditor to conduct an audit of the quality of the Works. The findings of the audit, to the extent accepted by the Authority, shall be notified to the Contractor and the SPV's Engineer for taking remedial action in accordance with this Agreement. The Contractor shall provide all assistance as may be required by the auditor in the conduct of its audit hereunder. Notwithstanding anything contained in this Clause 11.5, the external technical audit shall not affect any obligations of the Contractor or the SPV's Engineer under this Agreement.

### **11.6 Inspection of construction records**

The SPV shall have the right to inspect the records of the Contractor relating to the Works.

### **11.7 Monthly progress reports**

During the Construction Period, the Contractor shall, no later than 10 (ten) days after the close of each month, furnish to the SPV and the SPV's Engineer a monthly report on the progress of Works and shall promptly give such other relevant information as may be required by the SPV's Engineer along with all resources deployed and all problems faced during work.

### 11.8 Inspection

11.8.1 The SPV's Engineer and its authorised representative shall at all times:

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

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

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

### 11.9 Samples

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

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

### 11.10 Tests

11.10.1 For determining that the Works conform to the Specifications and Standards, the SPV's Engineer shall require the Contractor to carry out or cause to be carried out tests, at such time and frequency and in such manner as specified in this Agreement, and in accordance with Good Industry Practice for quality assurance. The Contractor shall submit the schedule for performing such tests to the SPV's Engineer well in advance and not less than 7 days prior to conducting such tests. The Contractor shall, with due diligence, carry out all the tests in accordance with the Agreement and furnish the results thereof to the SPV's Engineer. Of the total tests for each category or type to be undertaken by the Contractor under the provisions of this Agreement and Good Industry Practice, the SPV's Engineer or his authorised representative may witness or participate in such tests conducted or cause to be conducted by the Contractor. Documentation of test records to be maintained by Contractor and SPV's Engineer or his authorised representative shall scrutinize 100% Testing records of all tests conducted as per existing guidelines of Indian Railways and Indian Road Congress. A copy of such test records shall be provided to the SPV's Engineer.

11.10.2 In the event that results of any tests conducted under this Clause 11.10 establish any Defects or deficiencies in the Works, the Contractor shall carry out remedial measures and furnish a report to the SPV's Engineer in this behalf. The SPV's Engineer shall require the Contractor to carry out or cause to be carried out tests to determine that such remedial measures have brought the Works into compliance with the Specifications and Standards, and the procedure shall be repeated until such Works conform to the Specifications and Standards. For the avoidance of doubt, the cost of such tests and the remedial measures in pursuance thereof shall be solely borne by the Contractor.

### **11.11 Examination of work before covering up**

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

### **11.12 Rejection**

11.12.1 If, as a result of an examination, inspection, measurement or testing, any Plant, Material, design or workmanship is found to be defective or otherwise not in accordance with the provisions of this Agreement, the SPV's Engineer may reject such Plant, Material, design or workmanship by giving notice to the Contractor, with reasons. The Contractor shall then promptly make good the Defect and ensure that the rejected item complies with the requirements of this Agreement.

11.12.2 If the SPV's Engineer requires the Plant, Material, design or workmanship to be retested, the tests shall be repeated on the same terms and conditions, as applicable in each case. If the rejection and retesting cause the SPV to incur any additional costs, such costs shall be recoverable by the SPV from the Contractor and may be deducted by the SPV from any monies due to be paid to the Contractor.

11.12.3 The Contractor shall not be entitled to any extension of time on account of rectifying any Defect or retesting as specified in this Clause 11.12.

11.12.4 No examination, inspection, measurement or testing of any Plant, Material, design or workmanship by the SPV's Engineer or its failure to convey its observations or to examine, inspect, measure or test shall relieve the Contractor of its obligations and

liabilities under this Agreement in any manner nor shall the SPV be liable for the same in any manner.

### **11.13 Remedial work**

11.13.1 Notwithstanding any previous test or certification, the SPV's Engineer may instruct the Contractor to:

- (a) remove from the Site and replace any Plant or Materials which are not in accordance with the provisions of this Agreement;
- (b) remove and re-execute any work which is not in accordance with the provisions of this Agreement and the Specification and Standards; and
- (c) execute any work which is urgently required for the safety of the Railway Project, whether because of an accident, unforeseeable event or otherwise; provided that in case of any work which is required on account of a Force Majeure Event, the provisions of Clause 19.6 shall apply.

11.13.2 If the Contractor fails to comply with the instructions issued by the SPV's Engineer under Clause 11.13.1, within the time specified in the SPV's Engineer's notice or as mutually agreed, the SPV's Engineer may advise the SPV to have the work executed by another agency. The cost so incurred by the SPV for undertaking such work shall, without prejudice to the rights of the SPV to recover Damages in accordance with the provisions of this Agreement, be recoverable from the Contractor and may be deducted by the SPV from any monies due to be paid to the Contractor.

### **11.14 Delays during construction**

Without prejudice to the provisions of Clause 10.3.2, in the event the Contractor does not achieve any of the Project Milestones within the time period stipulated in Schedule - I or the SPV's Engineer shall have reasonably determined that the rate of progress of Works is such that Completion of the Railway Project is not likely to be achieved by the end of the Scheduled Completion Date, it may notify the same to the Contractor, and the Contractor shall, within 15 (fifteen) days of such notice, by a communication inform the SPV's Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Project Completion Date.

### **11.15 Quality control records and Documents**

The Contractor shall hand over to the SPV's Engineer a copy of all its quality control records and documents before the Completion Certificate is issued pursuant to Clause 12.2.

### **11.16 Video recording**

During the Construction Period, the Contractor shall provide to the SPV for every calendar quarter, a video recording, which will be compiled into a 3 (three) hour digital video disc or any substitute thereof, covering the status and progress of Works

in that quarter. The video recording shall be provided to the SPV no later than 15 (fifteen) days after the close of each quarter after the Appointed Date.

### **11.17 Suspension of unsafe Construction Works**

- 11.17.1 Upon recommendation of the SPV's Engineer to this effect, or on its own volition in cases of emergency or urgency, the SPV may by notice require the Contractor to suspend forthwith the whole or any part of the Works if, in the reasonable opinion of the SPV's Engineer or the Authority, as the case may be, such work threatens the safety of the Users and or other persons on or about the Railway Project.
- 11.17.2 The Contractor shall, pursuant to the notice under Clause 11.17.1, suspend the Works or any part thereof for such time and in such manner as may be specified by the SPV and thereupon carry out remedial measures to secure the safety of suspended works, the Users, other persons and vehicles on or about the Railway Project including pedestrians. The Contractor may by notice require the SPV's Engineer to inspect such remedial measures forthwith and make a report to the SPV recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the SPV's Engineer, the SPV shall either revoke such suspension or instruct the Contractor to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 11.17 shall be repeated until the suspension hereunder is revoked.
- 11.17.3 Subject to the provisions of Clause 19.6, all reasonable costs incurred for maintaining and protecting the Works or part thereof during the period of suspension (the "**Preservation Costs**"), shall be borne by the Contractor; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.
- 11.17.4 If suspension of Works is for reasons not attributable to the Contractor, the SPV's Engineer shall determine any Time Extension to which the Contractor is reasonably entitled.



ARTICLE 12

**COMPLETION CERTIFICATE**

**12.1 Tests on completion**

- 12.1.1 No later than 30 (thirty) days prior to the likely completion of the Railway Project or a part thereof, the Contractor shall prepare and submit to the SPV's Engineer the documents required for seeking approval of the Commissioner of Railway Safety in accordance with the provisions of the Railways Opening for Public Carriage of Passenger Rules, the Indian Railway Permanent Way Manual, the Indian Railways Manual of A.C. Traction, Indian Railways Signal Engineering Manual, Indian Railways Telecom Manual as the case may be, and notify the SPV's Engineer of its intent to subject the Railway Project to Tests. After ensuring and procuring that the documents required to be submitted to the Commissioner for Railway Safety meet the requirements of Applicable Laws, the SPV's Engineer shall, in consultation with the Contractor, determine the date and time of each of the Tests, and inform the SPV who may designate its representative to witness the Tests. The Contractor shall provide such assistance as the SPV's Engineer may reasonably require for conducting the Tests. For avoidance of doubts, the parties agree that in the event of the Contractor and the SPV's Engineer failing to mutually agree on the dates for conducting the Tests, the Contractor shall fix the dates by giving not less than 10 (ten) days' notice to the SPV's Engineer. SPV will carry out tests on completion within 30 days of receiving request from contractor. And if SPV's Engineer fails to carry out the test within 30 days, the SPV will pay damage to Contractor @ 0.02% of the payment pending for want of test per day.
- 12.1.2 All Tests shall be conducted in accordance with Schedule-J at the cost and expense of the Contractor; provided, , that the trial running on railway track shall be undertaken at the cost and expense of the Authority. The SPV's Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Railway Project with Specifications and Standards and if it is reasonably anticipated or determined by the SPV's Engineer during the course of any Test that the performance of the Railway Project or Section or any part thereof, does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Contractor to remedy and rectify any Defect or deficiency. Upon completion of each Test, the SPV's Engineer shall provide to the Contractor and the SPV copies of all Test data including detailed Test results. For the avoidance of doubt, the Parties expressly agree that the SPV's Engineer may require the Contractor to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Railway Project thereof with the Specifications and Standards.

**12.2 Provisional Certificate**

- 12.2.1 Upon completion of Tests, the SPV's Engineer shall satisfy itself that the Tests have been successful and the Railway Project is fit for opening to traffic. A list of outstanding items signed jointly by the SPV's Engineer and the Contractor (called the "**Punch List**") shall be prepared in two parts. The part -1 showing the critical/safety items and the part-2 showing non-critical/non-safety items. The

SPV's Engineer may issue a Provisional Certificate to the Contractor and the SPV in the form set forth in Schedule-K (the "**Provisional Certificate**"), provided the items figuring in the Punch List of critical/safety items (part-1) have been fully completed/attended to. The items figuring in the Punch List (part-2) of non-critical/non-safety should be completed by contractor in a time frame as stipulated in Clause 12.3.

- 12.2.2 Upon issuance of the "Provisional Certificate", the SPV's Engineer shall forward to the SPV (i) copies of all Test data including Test results, and (ii) the documents submitted by the Contractor for seeking approval of the Commissioner of Railway Safety in accordance with the provisions of the Railways Opening for Public Carriage of Passenger Rules, the Indian Railway Permanent Way Manual/ or the Indian Railways Manual of A.C. Traction, Indian Railways Signal Engineering Manual, Indian Railways Telecom Manual as the case may be, for obtaining authorisation from the Commissioner for Railway Safety.
- 12.2.3 The Contractor shall assist the SPV during inspection and tests to be conducted by the Commissioner of Railway Safety for determining compliance of the Railway Project with Applicable Laws and the provisions of this Agreement.
- 12.2.4 The Defects Liability Period for the Railway Project shall commence from the date of issue of the Provisional Certificates.
- 12.2.5 The Parties hereto expressly agree that the SPV's Engineer may also issue a "part Provisional Certificate" for part of the Railway Project ready for commissioning/opening subject to the provisions of Clauses 12.1 and 12.2 applying mutatis mutandis. The issuance of the part-provisional certificate will however not absolve the contractor in any manner of its obligations to complete the remaining part of Railway Project.
- 12.2.6 The risk of loss or damage to any Materials, Plant or Works in the Railway Project or part thereof, as the case may be, and the care and custody thereof shall pass from the Contractor to the SPV upon issuance of Provisional Certificate for the Railway Project or part thereof.

### **12.3 Completion of Part-2 Punch List items**

All items figuring in the part-2 of Punch List shall be completed by the Contractor within 90 (ninety) days of the date of issuance of the Provisional Certificate for that part and for any delay thereafter, other than for reasons solely attributable to the SPV or due to Force Majeure, the SPV shall be entitled to recover Damages from the Contractor to be calculated and paid for each day of delay until all items are completed, at the rate of 0.2% (zero point two per cent) of the cost of completing such items as estimated by the SPV's Engineer. Subject to payment of such Damages, the Contractor shall be entitled to a further period not exceeding 120 (one hundred and twenty) days for completion of the part-2 Punch List items. For the avoidance of doubt, it is agreed that if completion of any item in the part-2 of Punch List is delayed for reasons attributable to the SPV or due to Force Majeure, the completion date thereof shall be determined by the SPV's Engineer in accordance with Good Industry Practice, and such completion date shall be



deemed to be the date of issue of the Provisional Certificate for the purposes of Damages, if any, payable for such item under this Clause 12.3.

### 12.4 Completion Certificate

- 12.4.1 Upon completion of all items in the Punch List (part-1 as well as part-2) and issuance of authorisation by the Commissioner of Railway Safety and compliance of all CRS observations pertaining to the Contractor if any, the SPV's Engineer shall issue forthwith to the Contractor and the Authority; a completion certificate substantially in the form set forth in Schedule-K (the "**Completion Certificate**") separately in respect of each Provisional Certificate issued. For Avoidance of doubt, a Completion Certificate may also be issued for part-commissioning of the Project.
- 12.4.2 Upon receiving the Completion Certificate, the Contractor shall remove its equipment, materials, debris and temporary works from the Site, which are not required any more for the Project, within a period of 15 (fifteen) days thereof, failing which the SPV may remove or cause to be removed, such equipment, materials, debris and temporary works and recover from the Contractor an amount equal to 120% (one hundred and twenty per cent) of the actual cost of removal incurred by the Authority.

### 12.5 Rescheduling of Tests

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

### 12.6 Delayed authorisation

In the event of delay in issuance of authorisation by the Commissioner of Railway Safety beyond a period of 60 (sixty) days from the date of completion of all safety/critical items of the punch list, the Contractor shall be entitled to interest for the period of delay at a rate equal to 3% (three percent) above the Bank Rate on the payment due for integrated testing and commissioning as specified in Schedule-G.

ARTICLE 13  
**CHANGE OF SCOPE**

**13.1 Change of Scope**

13.1.1 The SPV may, notwithstanding anything to the contrary contained in this Agreement, require the Contractor to make modifications or alterations to the Works (“**Change of Scope**”) before the issue of the Completion Certificate either by giving an instruction or by requesting the Contractor to submit a proposal for Change of Scope involving additional cost or reduction in cost. Any such Change of Scope shall be made and valued in accordance with the provisions of this Article 13.

13.1.2 Change of Scope shall mean:

- (a) change in specifications of any item of Work;
- (b) omission of any work from the Scope of the Project except under Clause 8.3.3; provided that, subject to Clause 13.5, the SPV shall not omit any work under this Clause in order to get it executed by any other entity; or
- (c) any additional work, Plant, Materials or services which are not included in the Scope of the Project, including any associated Tests on completion of construction. However, any un sanctioned work which is independent work per se shall not be considered as Change of Scope
- (d) Variation in the quantities of certain items (positive or negative) necessitated due to any change(s) in the L-Section/Alignment/ESPs of the Project with respect to those attached with this document, except on account of existing ground mentioned conditions in L-Section/Alignment/E S P s. For avoidance of doubt, it is clarified that the existing ground conditions are to be validated by bidders before bid and hence no change on this account is payable.

13.1.3 If the Contractor determines at any time that a Change of Scope will, if adopted, (i) accelerate completion, (ii) reduce the cost to the SPV of executing maintaining or operating the Railway Project, (iii) improve the efficiency or value to the SPV of the completed Railway Project or (iv) otherwise be of benefit to the Authority, it shall prepare a proposal with relevant details at its own cost. The Contractor shall submit such proposal, supported with the relevant details including the amount of reduction in the Contract Price, if any, to the SPV to consider such Change of Scope. The SPV shall, within 15 (fifteen) days of receipt of such proposal, either accept such Change of Scope with modifications, if any, and initiate proceedings therefor in accordance with this Article 13 or reject the proposal and inform the Contractor of its decision. In case Change of Scope is proposed by SPV’s Engineer to the contractor, the contractor shall, within 15 (fifteen) days of receipt of such proposal, either accept such Change of Scope with modifications- if any, and initiate proceedings therefore in accordance with Article 13 or reject the proposal and inform the SPV of its decision.

For the avoidance of doubt the Parties agree that the Contractor shall not undertake any Change of Scope without a Change of Scope Order being issued by the Authority, save and except any Works necessary for meeting any Emergency..

### 13.2 Procedure for Change of Scope

13.2.1 In the event of the SPV determining that a Change of Scope is necessary, it may direct the SPV's Engineer to issue to the Contractor a notice specifying in reasonable detail the works and services contemplated thereunder (the "**Change of Scope Notice**").

13.2.2 Upon receipt of a Change of Scope Notice from SPV's Engineer, the Contractor shall, with due diligence, provide to the SPV's Engineer such information as is necessary, together with preliminary documentation in support of:

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

For the avoidance of doubt, the Parties expressly agree that, subject to the provisions of Clause 13.4.2, the Contract Price shall be increased or decreased, as the case may be, on account of Change of Scope.

13.2.3 The Contractor's quotation of rates/costs for the Change of Scope shall be determined on the following principles:

- (A) The rate for various items to be executed through the change of scope order shall be estimated based on analysis of rates (AOR) of [Zonal Railway, CORE, which ever is applicable] for an item other than building works and as per CPWD's AOR for building works and by applying the prevailing market rates of various input construction materials, labour, machinery and T & P.
- (B) In case AOR of any items is not available in [Zonal Railway's or CORE's AOR] then such rates shall be determined as per prevailing market rates in accordance with Good Industry Practice by the SPV's Engineer .

13.2.4 Upon reaching an agreement, the SPV shall issue an order (the “**Change of Scope Order**”) requiring the Contractor to proceed with the performance thereof. In the event that the Parties are unable to agree, the SPV may:

- (a) issue a Change of Scope Order requiring the Contractor to proceed with the performance thereof at the rates and conditions approved by the SPV till the matter is resolved in accordance with Article 24; or
- (b) proceed in accordance with Clause 13.5.

13.2.5 The provisions of this Agreement, insofar as they relate to Works and Tests, shall apply *mutatis mutandis* to the works undertaken by the Contractor under this Article 13.

### **13.3 Payment for Change of Scope**

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

### **13.4 Restrictions on Change of Scope**

13.4.1 No Change of Scope shall be executed unless the SPV has issued the Change of Scope Order save and except any Works necessary for meeting any Emergency.

13.4.2 Unless the Parties mutually agree to the contrary, the total value of all Change of Scope Orders shall not exceed 25% (twenty five per cent) of the Contract Price.

13.4.3 Notwithstanding anything to the contrary in this Article 13, no change arising from any default of the Contractor in the performance of its obligations under this Agreement shall be deemed to be Change of Scope, and shall not result in any adjustment of the Contract Price or the Project Completion Schedule.

### **13.5 Power of the SPV to undertake works**

13.5.1 In the event the Parties are unable to agree to the proposed Change of Scope Orders in accordance with Clause 13.2, the SPV may, after giving notice to the Contractor and considering its reply thereto, award such works or services to any person on the basis of open competitive bidding from amongst bidders who are pre-qualified for undertaking the additional work; provided that the Contractor 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<sup>\$</sup>, and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Contractor 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 percent) thereof. It is also agreed that the Contractor shall provide assistance and

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<sup>\$</sup> The SPV shall transfer 75% (seventy five percent) of the amount so received to the first ranked bidder whose bid shall have been matched by the Contractor.

cooperation to the person who undertakes the works or services hereunder, but shall not be responsible for rectification of any Defects and/or maintenance of works carried out by other agencies.

- 13.5.2 The works undertaken in accordance with this Clause 13.5 shall conform to the Specifications and Standards and shall be carried out in a manner that it should not cause any disruption to the Project and also minimise adverse effect to main contractor. The provisions of this Agreement, insofar as they relate to Works and Tests, shall apply mutatis mutandis to the works carried out under this Clause 13.5.

**ARTICLE 14**  
**TRAFFIC REGULATION**

**14.1 Traffic Regulation by the Contractor**

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

**ARTICLE 15**

**DEFECTS LIABILITY**

**15.1 Defects Liability Period**

15.1.1 The Contractor shall be responsible for all the Defects and deficiencies, except usual wear and tear in the Railway Project or any part thereof, till the expiry of a period of 2 (two) years commencing from the date of Provisional Certificate or expiry of a period 12 (twelve) months from the date of Completion Certificate, whichever is later (the “**Defects Liability Period**”).

[15.1.2 Without prejudice to the provisions of Clause 15.1.1, the Defects Liability Period for and in respect of any Structure or Important Bridge specified in Schedule B, or interlocking and telecom switching equipment comprising a new technology shall be deemed to be extended by a further period of 2 (two) year after the expiry of the Defects Liability Period specified in Clause 15.1.1.]Defect Liability Period shall also cover the extensions covered under clause 15.6]

[15.1.3 Without prejudice to the provisions of Clause 15.1.1, the Contractor shall be responsible for making arrangement for signing of agreement for AMC of SCADA as per clause 3.9 of Annexure - I (Schedule-B) between OEM/Approved SCADA vendor and concerned Railway/Division 6 months prior to defects liability period as defined in 15.1.1. In the event that the Contractor fails to make above Arrangement, the SPV shall be entitled to remedy the defects and deficiency of the Contractor in Accordance with the clause 15.4 or may extend the Defects Liability Period in accordance with clause 15.6.1].

[15.1.4 Without prejudice to the provisions of Clause 15.1.1, the Contractor shall be responsible for making arrangement for signing of agreement for AMC of EI system /Axle Counters/ Automatic Train protection system between OEM/Approved vendor and concerned Railway/Division 6 months prior to defects liability period as defined in 15.1.1. for duaration of Defect liability period including extended defect liability period. In the event that the Contractor fails to make above Arrangement, the SPV shall be entitled to remedy the defects and deficiency of the Contractor in Accordance with the clause 15.4 or may extend the Defects Liability Period in accordance with clause 15.6.1].

**15.2 Remedy and rectification of Defects and deficiencies**

15.2.1 Without prejudice to the provisions of Clause 15.2.2, the Contractor shall repair or rectify all Defects and deficiencies observed by the SPV’s Engineer during the Defects Liability Period within a period of 15 (fifteen) days from the date of notice issued by the SPV’s Engineer , or within such reasonable period as may be determined by the SPV’s Engineer at the request of the Contractor, in accordance with Good Industry Practice. For the purpose of this clause, the time period of 15 days shall be applicable only to those Defects and Deficiencies which are not affecting train operations of safety. For any defect noticed affecting train operation of train safety, the Contractor shall arrange to rectify it within such reasonable period as

may be determined by the SPV's Engineer . If the Contractor is not able to rectify any fault as decided by the SPV's Engineer , the SPV will be at full liberty to make its own efforts to get such defects rectified at the Contractor's cost.

- 15.2.2 During 2 (two) months from the date of issuance of the Completion Certificate, the Contractor shall retain sufficient staff and spares at Project for procuring prompt replacement, installation or re-installation of any defective parts of (a) the SCADA system; (b) traction sub-stations and switching posts and (c) EI system /Axle Counters/ Automatic Train protection system. The spares for the purpose of this clause, shall be separate from any spares supplied within the scope of the Project.

### **15.3 Cost of remedying Defects**

For the avoidance of doubt, any repair or rectification undertaken in accordance with the provisions of Clause 15.2, including any additional tests, shall be carried out by the Contractor at its own risk and cost, to the extent that such rectification or repair is attributable to:

- (a) the design of the Project;
- (b) Works, Plant, Materials or workmanship not being in accordance with this Agreement and the Specifications and Standards;
- (c) improper maintenance during construction of the Railway Project by the Contractor; or
- (d) failure by the Contractor to comply with any other obligation under this Agreement.

### **15.4 Contractor's failure to rectify Defects**

In the event that the Contractor fails to repair or rectify such Defect or deficiency within the period specified in Clause 15.2, the SPV shall be entitled to get the same repaired, rectified or remedied at the Contractor's cost so as to make the Railway Project conform to the Specifications and Standards and the provisions of this Agreement. All costs consequent thereon shall, after due consultation with the SPV and the Contractor, be determined by the SPV's Engineer . The cost so determined, and an amount equal to 20% (twenty percent) of such cost as Damages, shall be recoverable by the SPV from the Contractor and may be deducted by the SPV from any monies due to the Contractor.

### **15.5 Contractor to Search Cause**

- 15.5.1 The SPV's Engineer may instruct the Contractor to examine the cause of any Defect in the Works or part thereof before the expiry of the Defects Liability Period.
- 15.5.2 In the event any Defect identified under Clause 15.5.1 is attributable to the Contractor, the Contractor shall rectify such Defect within the period specified by the SPV's Engineer , and shall bear the cost of the examination and rectification of such Defect.



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

**15.6. Extension of Defects Liability Period**

15.6.1 The Defects Liability Period shall be deemed to be extended till the identified Defects under Clause 15.2 have been remedied.

15.6.2 Any Materials or Works with Defects identified under Clause 15.2 and replaced or repaired during the Defects Liability Period or the extended Defects Liability Period, as the case may be, would be further warranted for a period of twelve (12) months from the date of completion of such repair or replacement.

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

**ARTICLE 16**  
**SPV'S ENGINEER**

**16.1 Appointment of the SPV's Engineer**

- 16.1.1 **The SPV appointed IPRCL as** Project Management Agency (PMC), to be the engineer under this Agreement (the “SPV's Engineer”).
- 16.1.2 The SPV shall notify the replacement of the SPV's Engineer to the Contractor if any.
- 16.1.3 The staff of the SPV's Engineer shall include suitably qualified engineers and other professionals who are competent to assist the SPV's Engineer to carry out its duties.

**16.2 Duties and functions of the SPV's Engineer**

- 16.2.1 The SPV's Engineer shall perform its duties and discharge its functions in accordance with the provisions of this Agreement, and substantially in accordance with the duties and responsibilities set forth in Annex 1 of Schedule L, but subject to obtaining prior written approval of the SPV before determining:
- (a) any Time Extension;
  - (b) any additional cost to be paid by the SPV to the Contractor;
  - (c) the Termination Payment;
  - (d) providing assistance for Power Block or Traffic Block or necessary disconnections to the Contractor;
  - (e) providing assistance for approval of signalling & interlocking plan and route control chart; and alterations in ESP if essentially required;
  - (f) providing assistance for approval of disconnections for modification of signalling and telecom works, or
  - (g) any other matter which is not specified in (a) to (f) above and which creates an obligation or liability on either Party for a sum exceeding Rs.5,000,000 (Rupees fifty lakh).
- 16.2.2 No decision or communication of the SPV's Engineer shall be effective or valid unless it is accompanied by an attested true copy of the approval of the SPV for and in respect of any matter specified in Clause 16.2.1.
- 16.2.3 The SPV's Engineer shall submit regular periodic reports, at least once every month, to the SPV in respect of its duties and functions assigned to him for the project. Such reports shall be submitted by the SPV's Engineer within 10 (ten) days of the beginning of every month.

16.2.4 A true copy of all communications sent by the SPV to the SPV's Engineer and by the SPV's Engineer to the SPV shall be sent forthwith by the SPV's Engineer to the Contractor.

16.2.5 A true copy of all communications sent by the SPV's Engineer to the Contractor and by the Contractor to the SPV's Engineer shall be sent forthwith by the SPV's Engineer to the Authority.

**16.3 Authorised signatories**

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

**16.4 Instructions of the SPV's Engineer**

16.4.1 The SPV's Engineer may issue to the Contractor instructions for remedying any Defect. The Contractor shall take such instructions from the SPV's Engineer only.

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

16.4.3 In case the Contractor does not receive the confirmation of the oral instructions within the time specified in Clause 16.4.2, the Contractor shall seek the written confirmation of the oral instructions from the SPV's Engineer and shall obtain an acknowledgement from the SPV's Engineer of the communication seeking written confirmation. In case of failure of the SPV's Engineer to reply to the Contractor within 2 (two) days of the receipt of the communication from the Contractor, the Contractor may not carry out the instruction.

**16.5 Determination by the SPV's Engineer**

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

16.5.2 Each Party shall give effect to each agreement or determination made by the SPV's Engineer in accordance with the provisions of this Agreement. Provided, however, that if any Party disputes any instruction, decision, direction or determination of the SPV's Engineer, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure as per article 24.

**16.6 Remuneration of the SPV's Engineer**

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

**16.7 Replacement of the SPV's Engineer**

16.7.1 The SPV may, in its discretion, replace the SPV's Engineer at any time, but only upon appointment of another SPV's Engineer in accordance with Clause 16.1.

16.7.2 If the Contractor has reasons to believe that the SPV's Engineer is not discharging its duties and functions in accordance with the provisions of this Agreement, it may make a written representation to the SPV and seek replacement of the SPV's Engineer. Upon receipt of such representation, the SPV shall hold a tripartite meeting with the Contractor and SPV's Engineer and make best efforts for an amicable resolution of the Dispute. After due consideration, The SPV will decide about the replacement of SPV's Engineer or otherwise. However, if Contractor is not satisfied with decision of Authority, the Dispute shall be resolved in accordance with Depute Resolution Procedure as per article 24. In the event that the SPV's Engineer is to be replaced, the SPV shall appoint forthwith another SPV's Engineer in accordance with Clause 16.1.

**16.8 Interim Arrangement**

In the event that the SPV has not appointed an SPV's Engineer, or the SPV's Engineer so appointed has relinquished its functions, the SPV may, in the interim, designate and authorise any person to discharge the functions of the SPV's Engineer in accordance with the provisions of this Agreement, save and except that such person shall not exercise any functions relating to review, comment, approval or inspection as specified in this Agreement for and in respect of the SPV's Engineer, and such functions shall be discharged as and when an SPV's Engineer is appointed in accordance with the provisions of this Agreement. Provided, however, that nothing contained in this Clause 16.8 shall in any manner restrict the rights of the SPV to enforce compliance of the provisions of this Agreement.

**Part IV**  
**Financial Covenants**

ARTICLE 17

**PAYMENTS**

**17.1 Contract Price**

- 17.1.1 The SPV shall make payments to the Contractor for the Works on the basis of the lump sum price accepted by the SPV in consideration of the obligations specified in this Agreement for an amount of Rs. \*\*\*\*\* (Rs. \*\*\*\*\*) (the “**Contract Price**”), which shall be subject to adjustments in accordance with the provisions of this Agreement. The Parties further agree that save and except as provided in this Agreement, the Contract Price shall be valid and effective until issue of Completion Certificate.
- 17.1.2 The Contract Price includes all duties, taxes, royalties, and fees that may be levied in accordance with the laws and regulations in force as on the Base Month on the Contractor’s equipment, Plant, Materials and supplies acquired for the purpose of this Agreement and on the on the Works undertaken under this Agreement. Nothing in this Agreement shall relieve the Contractor from its responsibility to pay any tax including any tax that may be levied in India on profits made by it in respect of this Agreement.
- 17.1.3 The Contract Price shall not be adjusted for any change in duties, taxes etc. specified in Clause 17.1.2 above, save and except as specified in Clauses 17.8 and 17.13.
- 17.1.4 The Contract Price shall not be adjusted to take account of any unforeseen difficulties or costs, unless otherwise provided for in this Agreement.
- 17.1.5 Unless otherwise specified in this Agreement, the Contract Price covers all the Contractor’s obligations for the Works under this Agreement and all things necessary for the Construction thereof and for the rectification of any Defects in the Railway Project.
- 17.1.6 All payments under this Agreement shall be made in Indian Rupees.

**17.2 Advance Payment**

- 17.2.1 Upon receiving the request from Contractor, the SPV shall make an advance payment (the “**Advance Payment**”), up to 10% (ten percent)<sup>14</sup> of the Contract Price, for mobilisation expenses and for the acquisition of equipment, which shall carry simple interest at the rate of Bank Rate plus 4% per annum and shall be made in two instalments of upto maximum 5% (five per cent) of the contract price each.
- 17.2.2 The Contractor may apply to the SPV for the first instalment of the Advance Payment at any time after the Appointed Date, along with an irrevocable and unconditional guarantee from a Bank for an amount equivalent to 110% (one hundred and ten percent) of such instalment, substantially in the form provided at Annex-III of Schedule-F, to remain effective till the complete and full repayment thereof.

- 17.2.3 At any time, after 60 (sixty) days from the Appointed Date, the Contractor may apply to the SPV for the second instalment of the Advance Payment along with an irrevocable and unconditional guarantee from a Bank for an amount equivalent to 110% (one hundred and ten per cent) of such instalment, substantially in the form provided at Annex-III of Schedule-F, to remain effective till the complete and full repayment thereof along with proof of utilization of 1<sup>st</sup> instalment.
- 17.2.4 The instalments of Advance Payment shall generally be paid by the SPV to the Contractor within 15 (fifteen) days of the receipt of its respective requests in accordance with the provisions of this Clause 17.2.
- 17.2.5 The Advance Payment shall be recovered through proportionate deductions to be made in the Interim Payments Certificates issued in accordance with the provisions of Clause 17.5.2. Deductions of Advance Payment shall commence from the Interim Payment Certificate in which the cumulative interim payments certified shall have reached 50% (fifty per cent) of the Contract Price. The total amount recovered in each Interim Payment Certificate shall be equal to 30% (thirty per cent) of the amount of interim payment due and payable under such Interim Payment Certificate, and interest on the amount being recovered to be calculated from the date of disbursement of the Advance Payment to the date of recovery until the entire Advance Payment together with interest is recovered. For the avoidance of doubt, the Parties agree that in the event the total payment specified in any Interim Payment Certificate exceeds the limit of 50% (fifty per cent) of the Contract Price, the proportionate of recovery hereunder shall be restricted to the amount exceeding 50% (fifty per cent) of the Contract Price. By way of illustration, the Parties agree that if the first recovery of say, Rupees 'x' is made after 20 (twenty) months from the date of 1<sup>st</sup> (first) instalment of the Advance Payment, the interest will be recovered on Rupees 'x' for a period of 20 (twenty) months; and when the next recovery is made in the following month for say, Rupees 'y', interest on Rupees 'y' will be computed for a period of 21 (twenty-one) months. The Parties further agree that no payments in excess of 90% (ninety per cent) of the Contract Price shall be released until the Advance Payment, including interest thereon, has been fully recovered.
- 17.2.6 If the Advance Payment has not been fully repaid prior to Termination under Clause 19.7 or Article 21, as the case may be, the whole of the balance then outstanding shall immediately become due and payable by the Contractor to the Authority. In the event of Termination due to Contractor's Default, the Advance Payment shall be deemed to carry interest at an annual rate of 4% (four per cent) above the Bank Rate from the date of Advance Payment to the date of recovery by encashment of bank guarantee for the Advance Payment. For the avoidance of doubt, the aforesaid interest shall be payable on each instalment of the Advance Payment, regardless of whether the instalment or any part thereof has been repaid to the SPV prior to Termination.

**17.3 Procedure for estimating the payment for the Works**

- 17.3.1 The SPV shall make interim payments to the Contractor, as certified by the SPV's Engineer on completion of a Stage, for a length, number or area as specified, and valued in accordance with the proportion of the Contract Price assigned to each item and its stage and payment procedure in Schedule-G.

- 17.3.2 The Contractor shall base its claim for interim payment for the stages completed till the end of the month for which the payment is claimed, valued in accordance with Clause 17.3.1, supported with necessary particulars and documents in accordance with this Agreement.
- 17.3.3 Any reduction in the Contract Price arising out of Change of Scope or the Works withdrawn under Clause 8.3, as the case may be, shall not affect the amounts payable for the items or stage payments thereof which are not affected by such Change of Scope or withdrawal. For the avoidance of doubt and by way of illustration, the Parties agree that if the amount assigned to Important Bridges and/or Major Bridges is reduced from Rs.100 crore to Rs. 80 crore owing to Change of Scope or withdrawal of Works, as the case may be, the reduction in payment shall be restricted to the relevant payments for Important Bridges and/or Major Bridges and the payment due in respect of all other stage payments under the item Important Bridges and/or Major Bridges shall not be affected in any manner. The Parties further agree that the adjustments arising out of the aforesaid modifications shall be carried out in a manner that the impact of such modifications is restricted to the said Change of Scope or withdrawal, as the case may be, and does not alter the payments due for and in respect of items or stage payments which do not form part of such Change of Scope or withdrawal.

### **17.4 Stage Payment Statement for Works**

The Contractor shall submit a statement (the “**Stage Payment Statement**”), in 3 copies, by the 7<sup>th</sup> (seventh) day of a month to the SPV’s Engineer in the form set forth in Schedule-M, showing the amount calculated in accordance with Clause 17.3 to which the Contractor considers itself entitled for the completed stage(s) of Works. The Stage Payment Statement shall be accompanied with the progress reports and any other supporting documents. The Contractor shall not submit any claim for payment of incomplete stages of work. In the event that there is no claim for a month in accordance with the provisions of this Clause 17.4, the Contractor shall submit a nil claim to the SPV’s Engineer .

### **17.5 Stage Payment for Works**

- 17.5.1 Within 10 (ten) days of receipt of the Stage Payment Statement from the Contractor pursuant to Clause 17.4, the SPV’s Engineer shall broadly determine the amount due to the Contractor and recommend the release of 80 (eighty) percent of the amount so determined as part payment against the Stage Payment Statement, pending issue of the Interim Payment Certificate (IPC) by the SPV’s Engineer . Within 5 (five) days of the receipt of recommendation of the SPV’s Engineer as above, the SPV shall make electronic payment directly to the Contractor’s bank account.
- 17.5.2 Within 20 (twenty) days of the receipt of the Stage Payment Statement referred to in Clause 17.4, the SPV’s Engineer shall determine and shall deliver to the SPV and the Contractor an IPC certifying the amount due and payable to the Contractor, after adjusting the payments already released to the Contractor against the said statement. For the avoidance of doubt, the Parties agree that the IPC shall specify all the



amounts that have been deducted from the Stage Payment Statement and the reasons therefor.

- 17.5.3 In cases where there is a difference of opinion as to the value of any stage, the opinion of the SPV's Engineer shall prevail and interim payments shall be made to the Contractor on this basis; provided that the foregoing shall be without prejudice to the Contractor's right to raise a Dispute.
- 17.5.4 The SPV's Engineer may, for reasons to be recorded, withhold from payment:
- (a) the estimated value of work or obligation that the Contractor has failed to perform in accordance with this Agreement and in respect of which the SPV's Engineer had notified the Contractor; and
  - (b) the estimated cost of rectification of any Works which have not been constructed in accordance with this Agreement.
- 17.5.5 Payment by the SPV shall not be deemed to indicate the SPV acceptance, approval, consent or satisfaction with the work done.
- 17.5.6 In the event the amounts released by the SPV under Clause 17.5.1 exceed the amount finally determined by the SPV's Engineer pursuant to Clauses 17.5.2 to 17.5.4, the difference thereof shall be accounted for in the next IPC.

### **17.6 Payment of Damages**

- 17.6.1 The Contractor as well as the SPV may claim Damages due and payable to it in accordance with the provisions of this Agreement.
- 17.6.2 The SPV's Engineer shall verify and check the claim and issue the IPC within 20 (twenty) days of the receipt of the claim under Clause 17.6.1, after making adjustments in accordance with the provisions of this Agreement. The SPV shall pay to the Contractor the amount due under such IPC within a period of 30 (thirty) days from the date of the submission of the claim under this Clause 17.6. In the event of the failure of the SPV to make payment to the Contractor within the specified time, the SPV shall be liable to pay to the Contractor interest thereon and the provisions of Clause 17.7 shall apply *mutatis mutandis* thereto.

### **17.7 Time of payment and interest**

- 17.7.1 The SPV shall pay to the Contractor any amount due under any payment certificate issued by the SPV's Engineer in accordance with the provisions of this Article 17, or in accordance with any other clause of this Agreement as follows:
- (a) Payment shall be made no later than 30 (thirty) days from the date of submission of the Stage Payment Statement by the Contractor to the SPV's Engineer for certification in accordance with the provisions of Clause 17.4 for an IPC; provided, however, that in the event the IPC is not issued by the SPV's Engineer within the aforesaid period of 30 (thirty) days, the SPV shall pay the amount shown in the Contractor's Stage Payment Statement and any discrepancy therein shall be adjusted in the next payment certificate; and

- (b) payment shall be made no later than 30 (thirty) days from the date of submission of the Final Payment Certificate for Works along with the discharge submitted to the SPV's Engineer for certification in accordance with the provisions of Clause 17.12.

17.7.2 In the event of failure of the SPV to make payment to the Contractor within the time period specified in this Clause 17.7, the SPV shall be liable to pay to the Contractor interest at a rate equal to the Bank Rate plus 3%, calculated at quarterly rests, on all sums remaining unpaid from the date by which the same should have been paid, calculated in accordance with the provisions of Clause 17.7.1 (a) and (b) and till the date of actual payment.

## **17.8 Price adjustment for Works**

17.8.1 The amounts payable to the Contractor for Works shall be adjusted in accordance with the provisions of this Clause 17.8.

17.8.2 Subject to the provisions of Clause 17.8.3, the amounts payable to the Contractor for Works shall be adjusted in the IPC issued by the SPV's Engineer for the increase or decrease in the index cost of inputs for the works, by the addition or subtraction of the amounts determined by the formulae specified in Clause 17.8.4.

17.8.3 To the extent that any compensation or reimbursement for increase or decrease in costs to the Contractor is not covered by the provisions of this or other Clauses in this Agreement, the costs and prices payable under this Agreement shall be deemed to include the amounts required to cover the contingency of such other increase or decrease of costs and prices.

17.8.4 The Contract Price shall be adjusted for increases or decrease in rates and prices of labour, Materials, fuel and lubricants, equipment, Machinery, Plant and other Materials or inputs in accordance with the principles, procedures and formulae specified below:<sup>15</sup>

- (a) Price adjustment shall be applied on completion of the specified stage of the respective item of work in accordance with Schedule-G. The 1<sup>st</sup> Quarter will start from Bid Due date month;

- (b) Adjustments for each item of work/stage shall be made separately;

- (c) The following expressions and meanings are assigned to the value of the work done for civil and track work:

EW = Value of work done for the completion of a stage under the item earthwork;

BRIMP = Value of work done for the completion of a stage under the item Important Bridges;

BR = Value of work done for the completion of a stage under the items Major Bridges, Minor Bridges, RCC box/pipe culverts, Flyovers, RUB, and ROB in accordance with Schedule-G;

TRK = Value of work done for the completion of a stage under the itemTrack Works;

TUNL = Value of work done for the completion of a stage under the items Tunnel;

OEW = Value of work done for the completion of a stage under the item Other Engineering Works;

INVCIV = Value of work done for under the item inventory;

INTGTESTCIV = Value of work done for the item integrated testing and commissioning of the Railway Project.

(d) Price adjustment for change in costs of civil and track work shall be paid in accordance with the following formula:

(i)  $VEW = 0.85 EW \times [PLB \times (LBI - LBO)/LBO + PC \times (CI - CO)/CO + PF \times (FI - FO)/FO + PMACH \times (MACHI - MACHO)/MACHO + POTH \times (OTHI - OTHO)/OTHO];$

(ii)  $VBRIMP = 0.85 BRIMP \times [PLB \times (LBI - LBO)/LBO + PC \times (CI - CO)/CO + PS \times (SI - SO)/SO + PF \times (FI - FO)/FO + PMACH \times (MACHI - MACHO)/MACHO + POTH \times (OTHI - OTHO)/OTHO];$

(iii)  $VBR = 0.85 BR \times [PLB \times (LBI - LBO)/LBO + PC \times (CI - CO)/CO + PS \times (SI - SO)/SO + PF \times (FI - FO)/FO + PMACH \times (MACHI - MACHO)/MACHO + POTH \times (OTHI - OTHO)/OTHO];$

(iv)  $VTRK = 0.85 TRK \times [PLB \times (LBI - LBO)/LBO + PC \times (CI - CO)/CO + PS \times (SI - SO)/SO + PF \times (FI - FO)/FO + PMACH \times (MACHI - MACHO)/MACHO + POTH \times (OTHI - OTHO)/OTHO + PR \times (RI - RO)/RO];$

(v)  $VTUNL = 0.85 TUNL \times [PLB \times (LBI - LBO)/LBO + PC \times (CI - CO)/CO + PS \times (SI - SO)/SO + PF \times (FI - FO)/FO + PMACH \times (MACHI - MACHO)/MACHO + POTH \times (OTHI - OTHO)/OTHO + PXL \times (XLPi - XLPo)/XLPo];$

(vi)  $VOEW = 0.85 OEW \times [PLB \times (LBI - LBO)/LBO + PC \times (CI - CO)/CO + PS \times (SI - SO)/SO + PF \times (FI - FO)/FO + PMACH \times ((MACHI - MACHO)/MACHO + POTH \times (OTHI - OTHO)/OTHO];$

(vii)  $VINVCIV = 0.85 INVCIV \times [PR \times (RI - RO)/RO + POTH \times (OTHI - OTHO)/OTHO];$  and

(viii)  $VINTGTESTCIV = 0.85 INTGTESTCIV \times [PLB \times (LBI - LBO)/LBO + POTH \times (OTHI - OTHO)/OTHO];$

Where

VEW = Increase or decrease in the cost of earthwork during the period under consideration due to changes in the rates for relevant components as specified in sub-paragraph (e);

VBRIMP = Increase or decrease in the cost of Important Bridges during the period under consideration due to changes in the rates for relevant components as specified in sub-paragraph (e);

VBR = Increase or decrease in the cost of Major Bridges, Minor Bridges, Flyovers, RCC box/pipe culverts (ROB/RUB) during the period under consideration due to changes in the rates for relevant components as specified in sub-paragraph (e);

VTRK = Increase or decrease in the cost of track works during the period under consideration due to changes in the rates for relevant components as specified in sub-paragraph (e);

VTUNL = Increase or decrease in the cost of tunnels during the period under consideration due to changes in the rates for relevant components as specified in sub-paragraph (e);

VOEW = Increase or decrease in the cost of Other Engineering Works during the period under consideration due to changes in the rates for relevant components as specified in sub-paragraph (e);

VINVCIV = Increase or decrease in the cost of inventory during the period under consideration due to changes in the rates for relevant components as specified in sub-paragraph (e);

VINTGTESTCIV = Increase or decrease in the cost of integrated testing and commissioning during the period under consideration due to changes in the rates for relevant components as specified in sub-paragraph (e);

PC, PF, PLB, PMACH, POTH, PR, PS and PXLPL are the percentages of cement, fuel and lubricants, labour, Plant Machinery and tools, other materials, rails, steel/ components (including strands and steel cables), and explosives respectively for the relevant item as specified in sub-paragraph (e);

Co = The wholesale price index as published by the Ministry of Commerce and Industry, Government of India (hereinafter called “WPI”) for sub-group Cement, Lime & Plaster for the month of the Base Month;

Ci = The WPI for sub-group Cement, Lime & Plaster for the average price index of the 3 months of the quarter under consideration;

Fo = The wholesale price index as published by the Ministry of Commerce and Industry, Government of India (hereinafter called “WPI”) for group Fuel & Power for the month of the Base Month

Fi = The WPI for group Fuel & Power for the average price index of the 3 months of the quarter under consideration

LBo = The consumer price index for industrial workers – All India, published by Labour Bureau, Ministry of Labour, Government of India, (hereinafter called “CPI”) for the month of the Base Month;

LBi = The CPI for industrial workers – All India for the average price index of the 3 months of the quarter under consideration;

MACHo = The wholesale price index as published by the Ministry of Commerce and Industry, Government of India (hereinafter called “WPI”) for category- k “Manufacturing of Machinery for Mining, quarrying and construction’ under (R) Manufacturing of Machinery and Equipment for the month of the Base Month;

MACHi = The WPI for category- k “Manufacturing of Machinery for Mining, quarrying and construction’ under (R) Manufacturing of Machinery and Equipment for the average price index of the 3 months of the quarter under consideration;

OTHo = The wholesale price index as published by the Ministry of Commerce and Industry, Government of India (hereinafter called “WPI”) for all commodities for the month of the Base Month;

OTHi = The WPI for all commodities for the average price index of the 3 months of the quarter under consideration;

Ro = The Price for Rails (60kg) published by the Bhilai Plant of the Steel SPV of India for the month of the Base Month ;

Ri = The Price for Rails (60kg) published by the Bhilai Plant of the Steel SPV of India for the month which is three months prior to the month to which the IPC relates;

So : The rate provided by the Joint Plant Committee "for the relevant category of steel item as mentioned in clause 17.8.4(A) as published for the month of the Base Month:

Si : The average rate provided by the Joint Plant Committee for the relevant category of steel item as mentioned in clause 17.8.4-A as published for the 3 months of the quarter under consideration  
XLPo = The wholesale price index as published by the Ministry of Commerce and Industry, Government of India (hereinafter called “WPI”) for explosives for the month of the Base Month; and

XLPI = The WPI for explosives for the average price index of the 3 months of the quarter under consideration.

17.8.4-A(1) Relevant categories of steel for the purpose of operating Price Variation formula as mentioned in this Clause shall be as under:

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SL	Classification	Rates to be used for calculating So or SB
1.	Reinforcement bars and other rounds.	Average of per tonne rates of 10mm dia TMT and 25mm dia TMT confirming 1S1786: Fe 500.
2.	All types and sizes of channels, angles and joists.	Average of per tonne rates of 'Angle 75x75x6mm, Mild Steel Plate 10mm thickness and Channel 150x75mm; confirming 1S2062. E250 Gr "A"'
3.	All types and sizes of plates.	Average of per tonne rates of 'MS Plates 10mm thickness and 25mm thickness; confirming 1S2062, E250 Gr "A"'.
4.	Any other section of steel not covered in the above categories.	Average of price for the 3 categories covered under SL 1, 2 & 3 in this table.

(2). Relevant city for referring "JPC (Joint Plant Committee) "rates of steel items (SO /SB) in different Zonal railways shall be as under:

SL	City	Railway
1.	Delhi	Northern, North Central, North eastern, North western
2.	Kolkata	Eastern, East Central. East Coast, North east Frontier, South Eastern, Southeast Centra
3.	Mumbai	Central, Western, West Central
4.	Chennai	Southern, South Central & South Western

(e) The following percentages shall govern the price adjustment of the Contract Price:

<b>Component</b>	<b>Earthwork</b>	<b>Minor Bridges</b>	<b>Track works</b>	<b>Platform &amp; Other engineering works</b>
<b>(1)</b>	<b>(2)</b>	<b>(4)</b>	<b>(5)</b>	<b>(7)</b>
<b>Cement (PC)</b>	0%	-	0%	16%
<b>Explosives (PXL P)</b>	-	-	-	-
<b>Fuel and lubricants</b>	29%	-	18%	13%
<b>Labour (PLB)</b>	24%	-	59%	9%
<b>Machinery and Plants (PMACH)</b>	35%	-	18%	16%
<b>Other Materials (POTH)</b>	12%	-	6%	12%
<b>Rail (PR)</b>	-	-	-	-
<b>Steel (PS)</b>	-	-	-	34 %
<b>Total</b>	100%	100%	100%	100%

- (i) The following expressions and meanings are assigned to the value of the work done for electrification works:

OHE = Value of work done for the completion of a stage under the item Overhead Equipment Work;

SP = Value of work done for the completion of a stage under the item Switching Posts;

TRANSBOO = Value of work done for the completion of a stage under the item Booster Transformer;

TRANSAUX = Value of work done for the completion of a stage under the item Auxiliary Transformer;

TSS = Value of work done for the completion of a stage under the item Traction Sub Station;

TLOH = Value of work done for the completion of a stage under the item High Voltage Transmission Line Overhead including monopole;

TLUG = Value of work done for the completion of a stage under the item Underground High Tension Cable Transmission Line;

BAY = Value of work done for the completion of a stage under the item Bay Augmentation work at Grid Sub-Station/Terminal arrangement at TSS;

SCADA = Value of work done for the completion of a stage under the item SCADA;

ELEGWK = Value of work done for the completion of a stage under the item various electrical general services works;

MODHTPWRLINE = Value of work done for the completion of a stage under the item modification of HT power lines and crossings (raising of height);

MODHTLTOUG = Value of work done for the completion of a stage under the item modification of HT power lines and crossings to underground (replacement by underground cabling);

MODLTLTOUG = Value of work done for the completion of a stage under the item modification of LT power lines and crossings to under ground (replacement by underground cabling);

EXTNLTPWRSPLY = Value of work done for the completion of a stage under the item extension/augmentation of power supply for CLS work;

EXTNPWRSUPPLY = Value of work done for the completion of a stage under the item extension/augmentation of general power supply;

MODELECTRICAL = Value of work done for the completion of a stage under the item modification to existing electrical works;

INVELECTRICAL = Value of work done for the completion of a stage under the item inventory electrical;



SIGMOD = Value of work done for the completion of a stage under the item Signalling System Modification;

INVSIG = Value of work done for the completion of a stage under the item signalling inventory;

TESTSIG = Value of work done for the completion of a stage under the item integrated testing and commissioning;

COMMODO = Value of work done for the completion of a stage under the item Telecommunications modifications;

INVCOMO = Value of work done for the completion of a stage under the item telecommunication inventory;

TESTCOMO = Value of work done for the completion of a stage under the item integrated testing and commissioning; and

CIVENG = Value of work done for the completion of a stage under the item Civil Engineering works.

(j) **Price adjustment for changes in cost for electrification works shall be paid in accordance with the following formula:**

(i) 
$$VOHE = 0.85 \text{ OHE} \times [\text{PLB} \times (\text{LBi} - \text{LBo})/\text{LBo} + \text{PC} \times (\text{Ci} - \text{Co})/\text{Co} + \text{PSST} \times (\text{SSTi} - \text{SSTo})/\text{SSTo} + \text{PCU} \times (\text{CUi} - \text{CUo})/\text{CUo} + \text{PINS} \times (\text{INSi} - \text{INSo})/\text{INSo}];$$

(ii) 
$$\text{VSP} = 0.85 \text{ SP} \times [\text{PLB} \times (\text{LBi} - \text{LBo})/\text{LBo} + \text{PC} \times (\text{Ci} - \text{Co})/\text{Co} + \text{PSWGR} \times (\text{SWGRi} - \text{SWGRo})/\text{SWGRo}];$$

(iii) 
$$\text{VTRANSBOO} = 0.85 \text{ TRANSBOO} \times [\text{PLB} \times (\text{LBi} - \text{LBo})/\text{LBo} + \text{PSST} \times (\text{SSTi} - \text{SSTo})/\text{SSTo} + \text{PTR} \times (\text{TRi} - \text{TRo})/\text{TRo}];$$

(iv) 
$$\text{VTRANSAUX} = 0.85 \text{ TRANSAUX} \times [\text{PLB} \times (\text{LBi} - \text{LBo})/\text{LBo} + \text{PSST} \times (\text{SSTi} - \text{SSTo})/\text{SSTo} + \text{PTR} \times (\text{TRi} - \text{TRo})/\text{TRo}];$$

(v) 
$$\text{VTSS} = 0.85 \text{ TSS} \times [\text{PLB} \times (\text{LBi} - \text{LBo})/\text{LBo} + \text{PTR} \times (\text{TRi} - \text{TRo})/\text{TRo} + \text{PC} \times (\text{Ci} - \text{Co})/\text{Co} + \text{PSST} \times (\text{SSTi} - \text{SSTo})/\text{SSTo} + \text{PSWGR} \times (\text{SWGRi} - \text{SWGRo})/\text{SWGRo}];$$

(vi) 
$$\text{VTLOH} = 0.85 \text{ TLOH} \times [\text{PLB} \times (\text{LBi} - \text{LBo})/\text{LBo} + \text{PSST} \times (\text{SSTi} - \text{SSTo})/\text{SSTo} + \text{PCOND} \times (\text{CONDi} - \text{COND o})/\text{COND o} + \text{PC} \times (\text{Ci} - \text{Co})/\text{Co} + \text{PINS} \times (\text{INSi} - \text{INSo})/\text{INSo} + \text{POTH} \times (\text{OTHi} - \text{OTHo})/\text{OTHo}];$$

(vii) 
$$\text{VTLUG} = 0.85 \text{ TLUG} \times [\text{PLB} \times (\text{LBi} - \text{LBo})/\text{LBo} + \text{PPC} \times (\text{PCi} - \text{PCo})/\text{PCo}];$$

(viii) 
$$\text{VBAY} = 0.85 \text{ BAY} \times [\text{PLB} \times (\text{LBi} - \text{LBo})/\text{LBo} + \text{PSST} \times (\text{SSTi} - \text{SSTo})/\text{SSTo} + \text{PC} \times (\text{Ci} - \text{Co})/\text{Co} + \text{PCU} \times (\text{CUi} - \text{CUo})/\text{CUo}];$$

(ix) 
$$\text{VSCADA} = 0.85 \text{ SCADA} \times [\text{PLB} \times (\text{LBi} - \text{LBo})/\text{LBo} + \text{PELEX} \times (\text{ELEXi} - \text{ELEXo})/\text{ELEXo}];$$

(x) 
$$\text{VELEGWK} = 0.85 \text{ ELEGW} \times [\text{PLB} \times (\text{LBi} - \text{LBo})/\text{LBo} + \text{POTH} \times (\text{OTHi} - \text{OTHo})/\text{OTHo}];$$

- (xi)  $V_{MODHTPWRLINE} = 0.85 \text{ MODHTPWRLINE} \times [PLB \times (LB_i - LB_o)/LB_o + PSST \times (SST_i - SST_o)/SST_o + POTH \times (OTH_i - OTH_o)/OTH_o]$ ;
- (xii)  $V_{MODHTLTOUG} = 0.85 \text{ MODHTLTOUG} \times [PLB \times (LB_i - LB_o)/LB_o + PPC \times (PC_i - PC_o)/PC_o + POTH \times (OTH_i - OTH_o)/OTH_o]$ ;
- (xiii)  $V_{MODLTLTOUG} = 0.85 \text{ MODLTLTOUG} \times [PLB \times (LB_i - LB_o)/LB_o + PPC \times (PC_i - PC_o)/PC_o + POTH \times (OTH_i - OTH_o)/OTH_o]$ ;
- (xiv)  $V_{EXTNLTWPWSPLY} = 0.85 \text{ EXTNLTWPWSPLY} \times [PLB \times (LB_i - LB_o)/LB_o + POTH \times (OTH_i - OTH_o)/OTH_o]$ ;
- (xv)  $V_{EXTNPWRSUPPLY} = 0.85 \text{ EXTNPWRSUPPLY} \times [PLB \times (LB_i - LB_o)/LB_o + POTH \times (OTH_i - OTH_o)/OTH_o]$ ;
- (xvi)  $V_{MODELETRICAL} = 0.85 \text{ MODELETRICAL} \times [PLB \times (LB_i - LB_o)/LB_o + POTH \times (OTH_i - OTH_o)/OTH_o]$ ;
- (xvii)  $V_{INELECTRICAL} = 0.85 \text{ INELECTRICAL} \times [POTH \times (OTH_i - OTH_o)/OTH_o]$ ;
- (xviii)  $V_{SIGMOD} = 0.85 \text{ SIGMOD} \times [PLB \times (LB_i - LB_o)/LB_o + PELEX \times (ELEX_i - ELEX_o)/ELEX_o + PPC \times (PC_i - PC_o)/PC_o + POTH \times (OTH_i - OTH_o)/OTH_o]$ ;
- (xix)  $V_{INVSIG} = 0.85 \text{ INVSIG} \times [POTH \times (OTH_i - OTH_o)/OTH_o]$ ;
- (xx)  $V_{TESTSIG} = 0.85 \text{ TESTSIG} \times [PLB \times (LB_i - LB_o)/LB_o + POTH \times (OTH_i - OTH_o)/OTH_o]$ ;
- (xxi)  $V_{COMMOD} = 0.85 \text{ COMMOD} \times [PLB \times (LB_i - LB_o)/LB_o + PELEX \times (ELEX_i - ELEX_o)/ELEX_o + POFC \times (OFC_i - OFC_o)/OFC_o]$ ;
- (xxii)  $V_{INVCOM} = 0.85 \text{ INVCOM} \times [POTH \times (OTH_i - OTH_o)/OTH_o]$ ;
- (xxiii)  $V_{TESTCOM} = 0.85 \text{ TESTCOM} \times [PLB \times (LB_i - LB_o)/LB_o + POTH \times (OTH_i - OTH_o)/OTH_o]$ ; and
- (xxiv)  $V_{CIVENG} = 0.85 \times V_{CIVENG} \times [PLB \times (LB_i - LB_o)/LB_o + PS \times (S_i - S_o)/S_o + PC \times (C_i - C_o)/C_o + POTH \times (OTH_i - OTH_o)/OTH_o]$ .

Where

VOHE = Increase or decrease in the cost of Over Head Equipment and other related works during the period under consideration due to changes in the rates for relevant components as specified in sub-paragraph (k);

VSP = Increase or decrease in the cost of Switch Post and other related works during the period under consideration due to changes in the rates for relevant components as specified in sub-paragraph (k);

VTRANSBOO = Increase or decrease in the cost of booster transformer and other related works during the period under consideration due to changes in the rates for relevant components as specified in sub-paragraph (k);

VTRANSAUX = Increase or decrease in the cost of auxiliary transformer and other related works during the period under consideration due to changes in the rates for relevant components as specified in sub-paragraph (k);

VTSS = Increase or decrease in the cost of Traction Sub-Station and other related works during the period under consideration due to changes in the rates for relevant components as specified in sub-paragraph (k);

VTLOH = Increase or decrease in the cost of overhead transmission line and related works during the period under consideration due to changes in the rates for relevant components as specified in sub-paragraph (k);

VTLUG = Increase or decrease in the cost of underground high voltage transmission line and related works during the period under consideration due to changes in the rates for relevant components as specified in sub-paragraph (k);

VBAY = Increase or decrease in the cost of bay augmentation work at grid sub-station/ terminal arrangement at TSS and related works during the period under consideration due to changes in the rates for relevant components as specified in sub-paragraph (k);

VSCADA = Increase or decrease in the cost of SCADA and related works during the period under consideration due to changes in the rates for relevant components as specified in sub-paragraph (k);

VELEGWK = Increase or decrease in the cost of various electrical general services works and related works during the period under consideration due to changes in the rates for relevant components as specified in sub-paragraph (k);

VMODHTPWRLINE = Increase or decrease in the cost of modification of HT power lines and crossings (raising of height) and related works during the period under consideration due to changes in the rates for relevant components as specified in sub-paragraph (k);

VMODHTLTOUG = Increase or decrease in the cost of modification of HT power lines and crossings to under ground (replacement by underground cabling) and related works during the period under consideration due to changes in the rates for relevant components as specified in sub-paragraph (k);

VMODLTLTOUG = Increase or decrease in the cost of modification of LT power lines and crossings to under ground (replacement by underground cabling) and related works during the period under consideration due to changes in the rates for relevant components as specified in sub-paragraph (k);

VEXTNLTPWRSPLY = Increase or decrease in the cost of extension/augmentation of power supply for CLS work and related works

during the period under consideration due to changes in the rates for relevant components as specified in sub-paragraph (k);

VEXTNPWRSUPPLY = Increase or decrease in the cost of extension/augmentation of general power supply and related works during the period under consideration due to changes in the rates for relevant components as specified in sub-paragraph (k);

VMODELETICAL = Increase or decrease in the cost of modification to existing electrical works and related works during the period under consideration due to changes in the rates for relevant components as specified in sub-paragraph (k);

VINVELECTRICAL = Increase or decrease in the cost of inventory electrical during the period under consideration due to changes in the rates for relevant components as specified in sub-paragraph (k);

VSIGMOD = Increase or decrease in the cost of signalling system modification and related works during the period under consideration due to changes in the rates for relevant components as specified in sub-paragraph (k);

VINVSIG = Increase or decrease in the cost of signalling inventory during the period under consideration due to changes in the rates for relevant components as specified in sub-paragraph (k);

VTESTSIG = Increase or decrease in the cost of SCADE and related works during the period under consideration due to changes in the rates for relevant components as specified in sub-paragraph (k);

VCOMMODO = Increase or decrease in the cost of communication and related works during the period under consideration due to changes in the rates for relevant components as specified in sub-paragraph (k);

VINVCOM = Increase or decrease in the cost of telecommunication inventory during the period under consideration due to changes in the rates for relevant components as specified in sub-paragraph (k);

VTESTCOM = Increase or decrease in the cost of integrated testing and commissioning and related works during the period under consideration due to changes in the rates for relevant components as specified in sub-paragraph (k);

VCIVENG = Increase or decrease in the cost of civil engineering and related works during the period under consideration due to changes in the rates for relevant components as specified in sub-paragraph (k);

PC, PCOND, PCU, PELEX, PINS, PLB, POFC, PSWGR, , PPC, and PSST are the percentages of cement, conductor, copper wire, electronic items, insulators, labour, fibre optic cables, electrical switch gears, PVC insulated cable and structural steel respectively for the relevant item as specified in sub-paragraph (k);

Co = The wholesale price index as published by the Ministry of Commerce & Industry, Government of India (hereinafter called “WPI”) for cement, lime, plaster for the month of the Base Month;

Ci = The WPI for cement, lime, plaster for the average price index of the 3 months of the quarter under consideration;

CONDo = **Aluminium LME SELLER Settlement Price including Premium for AL Ingots and Customs duty published by IEEMA** for the month of the Base Month;

CONDi = **Aluminium LME SELLER Settlement Price including Premium for AL Ingots and Customs duty published by IEEMA** for the average price index of the 3 months of the quarter under consideration;

CUo = **Copper: (Cu) Price of copper wire rod published by IEEMA** for the month of the Base Month;

CUi = **Copper: (Cu) Price of copper wire rod published by IEEMA** for the average price index of the 3 months of the quarter under consideration;

ELEXo = **The WPI for Manufacture OF Electronic Components** for the month of the Base Month;

ELEXi = **The WPI for Manufacture OF Electronic Components** for the average price index of the 3 months of the quarter under consideration;

INSo = The WPI for insulators for the month of the Base Month;

INSi = The WPI for insulators for the average price index of the 3 months of the quarter under consideration;

LBo = The consumer price index for industrial workers – All India, published by Labour Bureau, Ministry of Labour, Government of India, (hereinafter called “CPI”) for the month of the Base Month;

LBi = The CPI for industrial workers – All India for the average price index of the 3 months of the quarter under consideration

OFCo = The WPI for optical fibre cables for the month of the Base Month;

OFCi = The WPI for optical fibre cables for the average price index of the 3 months of the quarter under consideration;

OTHo = The WPI for all commodities for the month of the Base Month;

OTHi = The WPI for all commodities for the average price index of the 3 months of the quarter under consideration;

PCo = The WPI for PVC insulated cable for the month of the Base Month;

PCi = The WPI for PVC insulated cable for the average price index of the 3 months of the quarter under consideration;

So = The WPI for steel (rods) for the month of the Base Month;

Si = The WPI for steel (rods) for the average price index of the 3 months of the quarter under consideration;

**SST<sub>o</sub> = Price for BLOOMS-Retail (SBLR) 150mmx150mm published by IEEMA for the month of the Base Month;**

**SST<sub>i</sub> = Price for BLOOMS-Retail (SBLR) 150mmx150mm published by IEEMA for the average price index of the 3 months of the quarter under consideration;**

**SWGR<sub>o</sub> = The WPI for MANUFACTURE OF ELECTRICAL EQUIPMENT for the month of the Base Month;**

**SWGR<sub>i</sub> = The WPI for MANUFACTURE OF ELECTRICAL EQUIPMENT for the average price index of the 3 months of the quarter under consideration;**

**TR<sub>o</sub> = The WPI for transformers for the month of the Base Month; and**

**TR<sub>i</sub> = The WPI for transformers for the average price index of the 3 months of the quarter under consideration.**

**P30C<sub>i</sub> = Price payable per Km as adjusted in accordance with price variation Clause for size 30C x 1.5 sq mm signalling cable**

**P30C<sub>o</sub> = Price per Km of cable as per purchase order/ Contract agreement.**

**S30C = Percentage of size 30C x 1.5 sq mm signalling cable shall govern the price adjustment of the contract price for signalling and telecommunication works.**

**P24C<sub>i</sub> = Price payable per Km as adjusted in accordance with price variation Clause for size 24C x 1.5 sq mm signalling cable**

**P24C<sub>o</sub> = Price per Km of cable as per purchase order/ Contract agreement.**

**S24C = Percentage of size 24C x 1.5 sq mm signalling cable shall govern the price adjustment of the contract price for signalling and telecommunication works.**

**P19C<sub>i</sub> = Price payable per Km as adjusted in accordance with price variation Clause for size 19C x 1.5 sq mm signalling cable**

**P19C<sub>o</sub> = Price per Km of cable as per purchase order/ Contract agreement.**

**S19C = Percentage of size 19C x 1.5 sq mm signalling cable shall govern the price adjustment of the contract price for signalling and telecommunication works.**

**P12C<sub>i</sub> = Price payable per Km as adjusted in accordance with price variation Clause for size 12C x 1.5 sq mm signalling cable**

**P12C<sub>o</sub> = Price per Km of cable as per purchase order/ Contract agreement.**

**S12C = Percentage of size 12C x 1.5 sq mm signalling cable shall govern the price adjustment of the contract price for signalling and telecommunication works.**

**P9C<sub>i</sub> = Price payable per Km as adjusted in accordance with price variation Clause for size 9C x 1.5 sq mm signalling cable**

**P9C<sub>o</sub> = Price per Km of cable as per purchase order/ Contract agreement.**

S9C = Percentage of size 9C x 1.5 sq mm signalling cable shall govern the price adjustment of the contract price for signalling and telecommunication works.

P6C<sub>i</sub> = Price payable per Km as adjusted in accordance with price variation Clause for size 6C x 1.5 sq mm signalling cable

P6C<sub>o</sub> = Price per Km of cable as per purchase order/ Contract agreement.

S6C = Percentage of size 6C x 1.5 sq mm signalling cable shall govern the price adjustment of the contract price for signalling and telecommunication works.

P4C<sub>i</sub> = Price payable per Km as adjusted in accordance with price variation Clause for size 4C x 1.5 sq mm signalling cable

P4C<sub>o</sub> = Price per Km of cable as per purchase order/ Contract agreement.

S4C = Percentage of size 4C x 1.5 sq mm signalling cable shall govern the price adjustment of the contract price for signalling and telecommunication works.

P2C<sub>i</sub> = Price payable per Km as adjusted in accordance with price variation Clause for size 2C x 1.5 sq mm signalling cable

P2C<sub>o</sub> = Price per Km of cable as per purchase order/ Contract agreement.

S2C = Percentage of size 2C x 1.5 sq mm signalling cable shall govern the price adjustment of the contract price for signalling and telecommunication works.

P12C2.5<sub>i</sub> = Price payable per Km as adjusted in accordance with price variation Clause for size 12C x 2.5 sq mm signalling cable

P12C2.5<sub>o</sub> = Price per Km of cable as per purchase order/ Contract agreement.

S12C2.5 = Percentage of size 12C x 2.5 sq mm signalling cable shall govern the price adjustment of the contract price for signalling and telecommunication works.

P2C2.5<sub>i</sub> = Price payable per Km as adjusted in accordance with price variation Clause for size 2C x 2.5 sq mm signalling cable

P2C2.5<sub>o</sub> = Price per Km of cable as per purchase order/ Contract agreement.

S2C2.5 = Percentage of size 2C x 2.5 sq mm signalling cable shall govern the price adjustment of the contract price for signalling and telecommunication works.

P2C25<sub>i</sub> = Price payable per Km as adjusted in accordance with price variation Clause for size 2C x 25 sq mm signalling cable

P2C25<sub>o</sub> = Price per Km of cable as per purchase order/ Contract agreement.

S2C25 = Percentage of size 2C x 25 sq mm signalling cable shall govern the price adjustment of the contract price for signalling and telecommunication works.

PQC<sub>i</sub> = Price payable per Km as adjusted in accordance with price variation Clause for size 0.9mm dia, 6 Quad cable.

PQC<sub>o</sub> = Price per Km of cable as per purchase order/ Contract agreement.

QC = Percentage of size 0.9mm dia, 6 Quad cable shall govern the price



(k) The following percentages shall govern the price adjustment of the Contract Price for electrification works:

(i) For OHE,:

<b>Component</b>	<b>Over Head Equipment</b>	
	<b>Foundation, mast erection, bracket, erection, insulators</b>	<b>Stringing of catenary and contact wire</b>
<b>Labour (PLB)</b>	10.13%	13.35%
<b>Cement (PC)</b>	19.66%	-
<b>Structural steel (PSST)</b>	54.22%	18.84%
<b>Insulators (PINS)</b>	15.98%	7.88%
<b>Copper wire (PCU)</b>	-	59.93%
<b>Transformer (PTR)</b>	-	-
<b>Electrical Switch Gear (PSWGR)</b>	-	-
<b>Total</b>	100%	100%



17.8.5 In case an IPC relates to a month which is within 3 (three) months from the Base Month , no price adjustment shall be applicable.

### 17.9 Restrictions on price adjustment

Price adjustment shall be due and payable only in respect of the stages of Works for which the Stage Payment Statement has been submitted by the Contractor no later than 30 (thirty) days from the date of the applicable Project Milestone or the Scheduled Completion Date, as the case may be, including any Time Extension granted therefor in accordance with the provisions of this Agreement. For the avoidance of doubt, in the event of submission of any Stage Payment Statement after the period specified herein, price adjustment shall be applicable only until the date of the respective Project Milestone or the Scheduled Completion Date, as the case may be.

### 17.10 Final Payment Statement

17.10.1 Within 60 (sixty) days of receiving the Completion Certificate under Clause 12.4, the Contractor shall submit to the SPV's Engineer six copies of a final payment statement (the "**Final Payment Statement**"), with supporting documents, in the form prescribed by the SPV's Engineer :

- (a) the summary of Contractor's Stage Payment Statements for Works as submitted in accordance with Clause 17.4;
- (b) the amounts received from the SPV against each claim; and
- (c) any further sums which the Contractor considers due to it from the Authority.

If the SPV's Engineer disagrees with or cannot verify any part of the Final Payment Statement, the Contractor shall submit such further information as the SPV's Engineer may reasonably require. The SPV's Engineer shall deliver to the Authority:

- (i) an IPC for those parts of the Final Payment Statement which are not in dispute, along with a list of disputed items which shall then be settled in accordance with the provisions of Article 24; or
- (ii) a Final Payment Certificate in accordance with Clause 17.15, if there are no disputed items.

17.10.2 If the SPV's Engineer does not prescribe the form referred to in Clause 17.10.1 within 7 (Seven) days of the date of issue of the Completion Certificate, the Contractor shall submit the statement in such form as it deems fit.

### 17.11 Discharge

Upon submission of the Final Payment Statement under Clause 17.10, the Contractor shall give to the Authority, with a copy to the SPV's Engineer , a written discharge confirming that the total of the Final Payment Statement represents full and final settlement of all monies due to the Contractor in respect of this Agreement for all the Works arising out of this Agreement, except for any monies due to either Party on account of any Defect. Provided that such discharge shall become effective only after the payment due has been made in accordance with the Final Payment Certificate issued pursuant to Clause 17.12.

**17.12 Final Payment Certificate**

- 17.12.1 Within 30 (thirty) days after receipt of the Final Payment Statement under Clause 17.10, and the written discharge under Clause 17.11, and there being no disputed items of claim, the SPV's Engineer shall deliver to the Authority, with a copy to the Contractor, a final payment certificate (the "**Final Payment Certificate**") stating the amount which, in the opinion of the SPV's Engineer, is finally due under this Agreement or otherwise. For the avoidance of doubt, before issuing the Final Payment Certificate, the SPV's Engineer shall ascertain from the SPV all amounts previously paid by the Authority, all sums due to the Authority, and the balance, if any, due from the SPV to the Contractor or from the Contractor to the Authority, as the case may be.
- 17.12.2 The SPV shall, in accordance with the provisions of Clause 17.7, pay to the Contractor the amount which is specified as being finally due in the Final Payment Certificate.

**17.13 Change in law**

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

**17.14 Correction of Interim Payment Certificates**

The SPV's Engineer may by an Interim Payment Certificate make any correction or modification in any previous Interim Payment Certificate issued by the SPV's Engineer.

**17.15 SPV's claims**

If the SPV considers itself to be entitled to any payment from the Contractor under any Clause of this Agreement, it shall give notice and particulars to the Contractor 20 (twenty) days before making the recovery from any amount due to the Contractor and shall take into consideration the representation, if any, made by the Contractor in this behalf, before making such recovery.

**17.16 Bonus for early completion**

In the event that the Project Completion Date occurs prior to the Scheduled Completion Date, the Contractor shall be entitled to receive a payment of bonus equivalent to 0.03% (zero point zero three percent) of the Contract Price for each day by which the Project Completion Date precedes the Scheduled Completion Date, but subject to a maximum of 5% (five per cent) of

the Contract Price. Provided, however, that the payment of bonus, if any, shall be made only after the issue of the Completion Certificate. For the avoidance of doubt, the Parties agree that for the purpose of determining the bonus payable hereunder, the Contract Price shall always be deemed to be the amount specified in Clause 17.1.1, and shall exclude any revision thereof for any reason.

**ARTICLE 18**

**INSURANCE**

**18.1 Insurance for Works**

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

18.1.2 Subject to the provisions of Clause 19.6, the Contractor shall, in accordance with the provisions of this Agreement, be liable to bear the cost of any loss or damage that does not fall within the scope of this Article 18 or cannot be recovered from the insurers.

18.1.3 Subject to the exceptions specified in Clause 18.1.4 below, the Contractor shall fully indemnify, hold harmless and defend the SPV from and against any and all losses, damages, costs, charges and/or claims with respect to:

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

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

18.1.4 Notwithstanding anything stated above in Clause 18.1.3, the SPV shall fully indemnify the Contractor from and against any and all losses, damages, costs, charges, proceedings and/or claims arising out of or with respect to

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

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

18.1.5 Without prejudice to the obligations of the parties as specified under Clauses 18.1.3 and 18.1.4, the Contractor shall maintain or effect such third party insurances as may be required under Applicable Laws.

18.1.6 The Contractor shall provide to the Authority, within 30 days of the Appointed Date, evidence of professional liability insurance maintained by its Design Director and/or consultants to cover the risk of professional negligence in the design of Works. The professional liability

cover shall be for a sum of not less than [3% (three per cent)] of the Contract Price and shall be maintained until the end of the Defects Liability Period.

**18.2 Notice to the Authority**

No later than 15 (fifteen) days after the date of this Agreement, the Contractor 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 18. Within 15 (fifteen) days of receipt of such notice, the SPV may require the Contractor to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

**18.3 Evidence of Insurance Cover**

18.3.1 All insurances obtained by the Contractor in accordance with this Article 18 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 10(ten) days of obtaining any insurance cover, the Contractor shall furnish to the SPV 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 Contractor to the Authority. The Contractor shall act in accordance with the directions of the Authority.

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

**18.4 Remedy for failure to insure**

If the Contractor shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the SPV shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Contractor, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Contractor. If either the Contractor or the SPV fails to comply with any condition of the the insurances effected under the contract, the Party so failing to comply shall indemnify the other Party against all direct losses and claims (including legal fees and expenses) arising from such failure.

**18.5 Waiver of subrogation**

All insurance policies in respect of the insurance obtained by the Contractor pursuant to this Article 18 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.

**18.6 Contractor's waiver**

The Contractor hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, the SPV and its assigns, undertakings and their subsidiaries, Affiliates, employees, successors, insurers and underwriters, which the Contractor 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 Contractor pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

**18.7 Cross liabilities**

Any such insurance maintained or effected in pursuance of this Article 18 shall include a cross liability clause such that the insurance shall apply to the Contractor and to the SPV as separately insured.

**18.8 Accident or injury to workmen**

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

**18.9 Insurance against accident to workmen**

The Contractor shall effect and maintain during the Agreement such insurances as may be required to insure the Contractor's personnel and any other persons employed by it on the Railway Project from and against any liability incurred in pursuance of this Article 18. Provided that for the purposes of this Clause 18.9, the Contractor's personnel/any person employed by the Contractor shall include the Sub-contractor and its personnel. Provided further that in respect of any persons employed by any Sub-contractor, the Contractor's obligations to insure as aforesaid under this Clause 18.9 shall be discharged if the Sub-contractor shall have insured against any liability in respect of such persons in such manner that the SPV is indemnified under the policy. The Contractor shall require such Sub-contractor to produce before the Authority, when required, such policy of insurance and the receipt for payment of the current premium within 10 (ten) days of such demand being made by the Authority.

**18.10 Application of insurance proceeds**

The proceeds from all insurance claims, except for life and injury, shall be applied for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Railway Project and the provisions of this Agreement in respect of construction of Works shall apply *mutatis mutandis* to the Works undertaken out of the proceeds of insurance.

**18.11 Compliance with policy conditions**

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

**Part V**

**Force Majeure and Termination**

ARTICLE 19

**FORCE MAJEURE**

**19.1 Force Majeure**

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall mean the occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 19.2, 19.3 and 19.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (c) has Material Adverse Effect on the Affected Party.

**19.2 Non-Political Event**

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

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Contractor, Sub-contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Railway Project for a continuous period of 24 (twenty-four) hours and an aggregate period exceeding 10 (ten) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 19.3;
- (c) any failure or delay of a Sub-contractor but only to the extent caused by another Non-Political Event;
- (d) any judgement or order of any court of competent jurisdiction or statutory SPV made against the Contractor in any proceedings for reasons other than (i) failure of the Contractor to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority; or (v) breach of its obligations by the Contractor under its sub-contracts;
- (e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.



**19.3 Indirect Political Event**

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

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

**19.4 Political Event**

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

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Clause 17.13;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Contractor or of the Sub-Contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Contractor or any of the Sub-contractors to perform their respective obligations under this Agreement; provided that such delay, modification, denial, refusal or revocation did not result from the Contractor's or any Sub-contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- (d) any failure or delay of a Sub-contractor but only to the extent caused by another Political Event; or
- (e) any event or circumstances of a nature analogous to any of the foregoing.

**19.5 Duty to report Force Majeure Event**

19.5.1 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 19 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

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

19.5.3 For so long as the Affected Party continues to claim to be affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 19.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

**19.6 Effect of Force Majeure Event on the Agreement**

19.6.1 Upon the occurrence of any Force Majeure

- (a) prior to the Appointed Date, both Parties shall bear their respective Force Majeure costs.
- (b) after the Appointed Date, the costs incurred and attributable to such event and directly relating to this Agreement (the "**Force Majeure costs**") shall be allocated and paid as follows:
  - (i) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure costs and neither Party shall be required to pay to the other Party any costs thereof;
  - (ii) upon occurrence of an Indirect Political Event, all Force Majeure costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Contractor, and to the extent Force Majeure costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the SPV to the Contractor for the Force Majeure events; and

- (iii) upon occurrence of a Political Event, all Force Majeure costs attributable to such Political Event shall be reimbursed by the SPV to the Contractor.

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

- 19.6.2 Save and except as expressly provided in this Article 19, 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.
- 19.6.3 Upon the occurrence of any Force Majeure Event during the Construction Period, the Project Completion Schedule for and in respect of the affected Works shall be extended on a day for day basis for such period as performance of the Contractor's obligations is affected on account of the Force Majeure Event or its subsisting effects, as may be determined by the SPV's Engineer .
- 19.6.4 Force Majeure costs for any event which results in any offsetting compensation being payable to the Contractor by or on behalf of its sub-contractors shall be reduced by such amounts that are payable to the Contractor by its Sub-contractors.

#### **19.7 Termination Notice for Force Majeure Event**

If a Force Majeure Event subsists for a period of 60 (sixty) days or more within a continuous period of 120 (one hundred and twenty) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 19, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

#### **19.8 Termination Payment for Force Majeure Event**

- 19.8.1 In the event of this Agreement being terminated on account of a Non-Political Event, the Termination Payment shall be an amount equal to the sum payable under Clause 21.5.
- 19.8.2 If Termination is on account of an Indirect Political Event, the Termination Payment shall include:
  - (a) any sums due and payable under Clause 21.5; and
  - (b) the reasonable cost, as determined by the SPV's Engineer, of the Plant and Materials procured by the Contractor and transferred to the SPV for use in Construction, only if such Plant and Materials are in conformity with the Specifications and Standards;
- 19.8.3 If Termination is on account of a Political Event, the SPV shall make a Termination Payment to the Contractor in an amount that would be payable under Clause 21.6.2 as if it were an SPV Default.

**19.9 Dispute resolution**

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

**19.10 Excuse from performance of obligations**

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

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

**ARTICLE 20**

**SUSPENSION OF CONTRACTOR'S RIGHTS**

**20.1 Suspension upon Contractor Default**

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

**20.2 SPV to act on behalf of Contractor**

During the period of Suspension hereunder, all rights and liabilities vested in the Contractor in accordance with the provisions of this Agreement shall continue to vest in the Contractor and all things done or actions taken, including expenditure incurred by the SPV for discharging the obligations of the Contractor under and in accordance with this Agreement shall be deemed to have been done or taken for and on behalf of the Contractor and the Contractor undertakes to indemnify the SPV for all costs incurred during such period. The Contractor hereby licenses and sub-licenses respectively, the SPV or any other person authorised by it under Clause 20.1 to use during Suspension, all Intellectual Property belonging to or licenced to the Contractor with respect to the Railway Project and its design, engineering, construction and maintenance, and which is used or created by the Contractor in performing its obligations under the Agreement.

**20.3 Revocation of Suspension**

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

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

**20.4 Termination**

20.4.1 At any time during the period of Suspension under this Article 20, the Contractor may by notice require the SPV to revoke the Suspension and issue a Termination Notice. The SPV shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 21 as if it is a Contractor Default under Clause 21.1.

20.4.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 90 (ninety) days from the date of Suspension hereunder, the Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by

mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the SPV upon occurrence of a Contractor Default.

ARTICLE 21  
**TERMINATION**

**21.1 Termination for Contractor Default**

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

- (a) The Contractor fails to provide, extend or replenish, as the case may be, the Performance Security in accordance with this Agreement;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 7.3, the Contractor fails to cure, within a Cure Period of 30 (thirty) days, the Contractor Default for which the whole or part of the Performance Security was appropriated;
- (c) the Contractor does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule-I, subject to any Time Extension, and continues to be in default for 45 (forty five) days;
- (d) the Contractor abandons or manifests intention to abandon the construction of the Railway Project without the prior written consent of the Authority;
- (e) the Contractor fails to proceed with the Works in accordance with the provisions of Clause 10.1 or stops Works for 30 (thirty) days without reflecting the same in the current programme and such stoppage has not been authorised by the SPV’s Engineer ;
- (f) the Project Completion Date does not occur within the period specified in Schedule-I for the Scheduled Completion Date, or any extension thereof;
- (g) failure to complete the Punch List items within the periods stipulated therefor in Clause 12.3;
- (h) the Contractor fails to rectify any Defect, the non rectification of which shall have a Material Adverse Effect on the Project, within the time specified in this Agreement or as directed by the SPV’s Engineer ;
- (i) the Contractor subcontracts the Works or any part thereof in violation of this Agreement or assigns any part of the Works without the prior approval of the Authority;
- (j) the Contractor creates any Encumbrance in breach of this Agreement;
- (k) an execution levied on any of the assets of the Contractor has caused a Material Adverse Effect ;
- (l) the Contractor is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Contractor or for the whole or material part of its assets that has a material bearing on the Project;

- (m) the Contractor 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;
- (n) a resolution for winding up of the Contractor is passed, or any petition for winding up of the Contractor 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 Contractor 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 Contractor are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Contractor under this Agreement; and provided that:
  - (i) the amalgamated or reconstructed entity has the capability and experience necessary for the performance of its obligations under this Agreement; and
  - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and has a credit worthiness at least as good as that of the Contractor as at the Appointed Date;
- (o) any representation or warranty of the Contractor herein contained which is, as of the date hereof, found to be materially false or the Contractor is at any time hereafter found to be in breach thereof;
- (p) the Contractor submits to the SPV any statement, notice or other document, in written or electronic form, which has a material effect on the SPV's rights, obligations or interests and which is false in material particulars;
- (q) the Contractor has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;
- (r) the Contractor has failed to make any payment to the SPV within the period specified in this Agreement; or
- (s) the Contractor commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on the Project or on the Authority.

21.1.2 Without prejudice to any other rights or remedies which the SPV may have under this Agreement, upon occurrence of a Contractor Default, the SPV shall be entitled to terminate this Agreement by issuing a Termination Notice to the Contractor; provided that before issuing the Termination Notice, the SPV shall by a notice inform the Contractor of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Contractor 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.

21.1.3 After termination of this Agreement for Contractor Default, the SPV may complete the Works and/or procure its completion through any other entity. The SPV and such entity may, for this purpose, use any Materials, Plant and equipment, Contractor's documents and other design documents made by or on behalf of the Contractor.



**21.2 Termination for SPV Default**

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

- (a) the SPV commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Contractor;
- (b) the SPV has failed to make payment of any amount due and payable to the Contractor within the period specified in this Agreement;
- (c) the SPV has failed to provide, within a period of 180 (one hundred and eighty) days from the Appointed Date, the environmental clearances and forest clearances required for construction of the Railway Project;
- (d) the SPV repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement; or
- (e) the SPV’s Engineer fails to issue the relevant Interim Payment Certificate within 60 (sixty) days after receiving a statement and supporting documents.

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

**21.3 Right of SPV to Determine the Contract**

Notwithstanding anything hereinabove, the SPV shall be entitled to determine and terminate the contract at any time should, in the SPV’s opinion, the cessation of work becomes necessary owing to paucity of funds or from any other cause whatever, in which case it shall be treated as SPV Default and Termination Payment shall be made as per clause 21.6 below. Notice in writing from the SPV of such determination and the reasons therefor shall be conclusive evidence thereof. The termination shall take effect 30 (thirty) days from the date of notice hereunder.

**21.4 Requirements after Termination**

Upon Termination of this Agreement in accordance with the provisions of this Article 21, the Contractor shall comply with and conform to the following:

- (a) deliver to the SPV all Plant and Materials which shall have become the property of the SPV under this Article 21;
- (b) deliver all relevant records, reports, Intellectual Property and other licences pertaining to the Works, other design documents and in case of Termination occurring after the Provisional Certificate has been issued, the “**as built**” Drawings for the Works;
- (c) transfer and/or deliver all Applicable Permits to the SPV to the extent permissible under Applicable Laws; and
- (d) vacate the Site within 15 (fifteen) days.

### 21.5 Valuation of Unpaid Works

21.5.1 Within a period of 45 (forty-five) days after Termination under Clause 21.1, 21.2 or 21.3, as the case may be, has taken effect, the SPV’s Engineer shall proceed in accordance with Clause 16.5 to determine as follows the valuation of unpaid Works (the “**Valuation of Unpaid Works**”):

- (a) value of the completed stage of the Works, less payments already made; and
- (b) reasonable value of the partially completed stages of works as on the date of Termination, only if such works conform with the Specifications and Standards.

and shall adjust from the sum thereof (i) any other amounts payable or recoverable, as the case may be, in accordance with the provisions of this Agreement; and (ii) all taxes due to be deducted at source.

21.5.2 The Valuation of Unpaid Works shall be communicated to the Authority, with a copy to the Contractor, within a period of 45 (forty five) days from the date of Termination.

### 21.6 Termination Payment

21.6.1 Upon Termination on account of Contractor Default under Clause 21.1, the SPV shall:

- (a) encash and appropriate the Performance Security and Retention Money and in the event the Contractor has failed to replenish or extend the Performance Security, claim the amount stipulated in Clause 7.1.1, as agreed pre-determined compensation to the SPV for any losses, delays and cost of completing the Works, if any;
- (b) encash and appropriate the bank guarantee, if any, to the extent of the outstanding Advance Payment and interest thereon; and
- (c) pay to the Contractor, by way of Termination Payment, an amount equivalent to the Valuation of Unpaid Works after adjusting any other sums payable or recoverable, as the case may be, in accordance with the provisions of this Agreement, and all taxes due to be deducted at source.

21.6.2 Upon Termination on account of an SPV Default under Clause 21.2 or under Clause 21.3, the SPV shall:

- (a) return the Performance Security and Retention Money forthwith;
- (b) encash and appropriate the bank guarantee, if any, to the extent of the outstanding Advance Payment, including interest thereon; and
- (c) pay to the Contractor, by way of Termination Payment, an amount equal to:
  - (i) Valuation of Unpaid Works;
  - (ii) the reasonable cost, as determined by the SPV's Engineer, of the Plant and Materials procured by the Contractor and transferred to the SPV for its use, only if such Plant and Materials are in conformity with the Specifications and Standards;
  - (iii) the reasonable cost of temporary works, as determined by the SPV's Engineer ; and

shall adjust from the sum thereof (i) any other amounts payable or recoverable, as the case may be, in accordance with the provisions of this Agreement, and (ii) all taxes due to be deducted at source.

21.6.3 Termination Payment shall become due and payable to the Contractor within 30 (thirty) days of a demand being made by the Contractor to the SPV with the necessary particulars, after the Valuation of Unpaid Works has been communicated by the SPV's Engineer, and in the event of any delay, the SPV shall pay interest at the Bank Rate plus 3% (three percent), calculated at quarterly rests, on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the SPV of its payment obligations in respect thereof hereunder.

21.6.4 The Contractor expressly agrees that Termination Payment under this Article 21 shall constitute a full and final settlement of all claims of the Contractor on account of Termination of this Agreement and that it shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

## **21.7 Other rights and obligations of the Parties**

Upon Termination for any reason whatsoever

- (a) property and ownership in all Materials, Plant and Works and the Railway Project shall, as between the Contractor and the Authority, vest in the SPV in whole, free from any and all Encumbrances; provided that the foregoing shall be without prejudice to Clause 21.6;
- (b) risk of loss or damage to any Materials, Plant or Works and the care and custody thereof shall pass from the Contractor to the Authority; and
- (c) the SPV shall be entitled to restrain the Contractor and any person claiming through or under the Agreement from entering upon the Site or any part of the Project except for taking possession of materials, stores, implements, construction plants and equipment of the Contractor, which have not been vested in the SPV in accordance with the provisions of this Agreement.

**21.8 Survival of rights**

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

**Part VI**  
**Other Provisions**

**ARTICLE 22**

**ASSIGNMENT AND CHARGES**

**22.1 Restrictions on assignment and charges**

This Agreement shall not be assigned by the Contractor to any person, save and except with the prior consent in writing of the Authority, which consent the SPV shall be entitled to decline without assigning any reason.

**22.2 Hypothecation of Materials or Plant**

Notwithstanding the provisions of Clause 22.1, the Contractor may pledge or hypothecate to its lenders, any Materials or Plant prior to their incorporation in the Works. Further, the Contractor may, by written notice to the Authority, assign its right to receive payments under this Agreement either absolutely or by way of charge, to any person providing financing to the Contractor in connection with the performance of the Contractor's obligations under this Agreement. The Contractor acknowledges that any such assignment by the Contractor shall not relieve the Contractor from any obligations, duty or responsibility under this Agreement. For the avoidance of doubt, all Materials and Plants shall, upon their incorporation into Works, be free from any and all Encumbrances without the SPV being required to make any payment to any person on account of any costs, compensation, expenses and charges for such Materials, Plants and Works.

ARTICLE 23

**LIABILITY AND INDEMNITY**

**23.1 General indemnity**

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

**23.2 Indemnity by the Contractor**

23.2.1 Without limiting the generality of Clause 23.1, the Contractor shall fully indemnify, hold harmless and defend the SPV and the SPV Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

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

23.2.2 Without limiting the generality of the provisions of this Article 23, the Contractor shall fully indemnify, hold harmless and defend the SPV Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the SPV 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 Contractor or by the Sub-contractors in performing the Contractor'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 Contractor shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Railway Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Contractor shall promptly make every reasonable effort to secure for the SPV a licence, at no cost to the Authority, authorising the continued use of the infringing work. If the Contractor is unable to secure such licence within a reasonable time, the Contractor 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.

### 23.3 Notice and contest of claims

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

### 23.4 Defence of claims

- 23.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Agreement, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.
- 23.4.2 If the Indemnifying Party has exercised its rights under Clause 23.3, 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).
- 23.4.3 If the Indemnifying Party exercises its rights under Clause 23.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:
- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
  - (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or



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

Provided that if Sub-clauses (b), (c) or (d) of this Clause 23.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

**23.5 No consequential claims**

Notwithstanding anything to the contrary contained in this Article 23, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

**23.6 Survival on Termination**

The provisions of this Article 23 shall survive Termination.

**ARTICLE 24**

**DISPUTE RESOLUTION**

**24.1 Conciliation of Disputes**

- 24.1.1 All disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the progress of the work or after its completion and whether before or after the determination of the contract, shall be referred by the Contractor to the "Authority" through "Notice of Dispute" provided that no such notice shall be served later than 30 days after the date of issue of Completion Certificate by the SPV's Engineer. SPV shall, within 30 days after receipt of the Contractor's "Notice of Dispute", notify the name of the conciliator(s) to the Contractor. In case SPV fails to fix the Conciliator within 30 days, the Contractor shall be free to approach the Dispute Adjudication Board (DAB) for adjudication of Dispute.
- 24.1.2 The Conciliator(s) shall assist the parties to reach an amicable settlement in an independent and impartial manner within the terms of the contract. If the parties reach agreement on a settlement of the dispute, they shall draw up and sign a written settlement agreement duly signed by SPV's Engineer, Contractor and conciliator(s). When the settlement agreement is signed, it shall be final and binding on the parties. The conciliators shall be paid fee as fixed by Ministry of Railways time to time, which shall be shared equally by the parties.
- 24.1.3 The parties shall not initiate, during the conciliation proceedings, any reference to DAB or arbitral or judicial proceedings in respect of a dispute that is the subject matter of the conciliation proceedings.
- 24.1.4 The conciliation shall be carried out as per 'The Arbitration and Conciliation Act, 1996' and the proceedings may be terminated as per Section 76 of the above Act.

**24.2 Dispute Adjudication Board (DAB)**

- 24.2.1 A dispute/s if not settled through conciliation, shall be referred to DAB. The DAB shall consist of a panel of three Retired Railway Officers not below senior administrative grade (SAG). The DAB shall be formed within 90 days of the signing of Contract Agreement. For this purpose, the SPV will maintain a panel of DAB members. The complete panel, which shall not be less than five members, shall be sent by SPV to the Contractor to nominate one member of the DAB from the panel as the Contractor's nominee within two weeks of receipt of the panel. On receipt of Contractor's nominee, the SPV shall nominate one member from the same panel as SPV's nominee for the DAB. Both above nominees shall jointly select presiding member of the DAB from the same panel.
- 24.2.2 The appointment of DAB shall be effectuated by way of a tri-partite agreement among the Authority, Contractor and the respective DAB members. The terms of the remuneration of each member shall be as fixed by Ministry of Railways from time to time. Each party shall be responsible for paying one-half of this remuneration.
- 24.2.3 If one or more of the members appointed refuses to act as DAB member, or is unable or unwilling to perform his functions as DAB member for any reason whatsoever or dies or in the opinion of the SPV fails to act without undue delay, the parties shall terminate the

mandate of such DAB member and thereupon new DAB member shall be appointed in the same manner, as the outgoing DAB member had been appointed.

- 24.2.4 The appointment of any member may be terminated by mutual agreement of both Parties, but not by the SPV or the Contractor acting alone. Unless otherwise agreed by both the Parties, the appointment of the DAB (including each member) shall expire upon expiry of this Contract Agreement.
- 24.2.5 Before start of DAB proceedings, each DAB member shall give the following certificate to the SPV and the Contractor:
- “I have no any past or present relationship in relation to the subject matter in dispute, whether financial, business, professional or other kind. Further, I have no any past or present relationship with or interest in any of the parties whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to my independence or impartiality.”*
- 24.2.6 DAB proceedings shall be conducted as decided by the DAB. The DAB shall give its decision within 90 days of a Dispute referred to it by any of the Parties, duly recording the reasons before arriving at the decision. The DAB shall decide the issue within terms and conditions of the contract. This time limit shall be extendable subject to the Parties' mutual agreement.
- 24.2.7 The DAB decision shall not be binding on both the Parties. In case any party is not satisfied by the decision of DAB, then the aggrieved party may approach Standing Arbitral Tribunal for arbitration proceedings. However, even if the aggrieved party had proceeded for Arbitration as per provisions of this agreement, 75% of the award amount, pending adjudication by the Standing Arbitral Tribunal/Court of Law, shall be made by a party to other party. In case payment is to be made by SPV to Contractor, the terms & conditions as incorporated in the Ministry of Railways letter No. 2016/CE(I)/CT/ARB/3(NITI Aayog)/Pt. dated 08<sup>th</sup> Mar,2017 as amended time to time shall be followed. However, in case Contractor has to pay to the Authority, then 75% of the award amount shall be deducted by the SPV from the running bills or other dues of the Contractor, pending adjudication by Standing Arbitral Tribunal/Court of Law.
- 24.2.8 No dispute shall be referred to Standing Arbitral Tribunal unless the same has been referred to DAB for adjudication. However, in case DAB is not formed due to any reason, the disputes can be directly referred to Standing Arbitral Tribunal to adjudicate the dispute.
- 24.2.9 In the specific cases of any misconduct by any of the members of the DAB, the parties shall have the right to specifically bring it to the notice of the DAB such conduct, through a statement filed with necessary documents in proof of such misconduct and the DAB, after taking NOTICE of such conduct initiate the replacement of the member concerned, in the same manner the member to be replaced was appointed.
- 24.2.10 Once the decision is given by DAB, DAB cannot review the decision at its own or on the request of one party, unless both parties agree for review of decision by DAB.
- 24.2.11 In case DAB decision is not challenged by either party within 180 days of receipt of decision of DAB, the decision shall be considered as final and parties would be barred for referring the same to Standing Arbitral Tribunal for adjudication.
- 24.2.12 The obligation of the SPV and the Contractor shall not be altered by reasons of issue being or under reference to DAB.
- 24.2.13 The DAB shall conduct the proceedings at [Delhi] or any other convenient venue which shall be decided by DAB in consultations with parties.

- 24.2.14 It is a term of this contract that the Parties shall not approach any Court of Law for settlement of such disputes or differences unless an attempt has first been made by the parties to settle such disputes or differences through DAB and Standing Arbitral Tribunal.

### **24.3 Standing Arbitral Tribunal**

- 24.3.1 The arbitration proceedings shall be conducted as per ‘The Arbitration and Conciliation Act, 1996’. The Arbitral Tribunal shall consist of a panel of three Retired Railway Officers not below senior administrative grade (SAG). The Standing Arbitral Tribunal shall be formed within 90 days of signing of Contract document. For this purpose, the SPV shall maintain a panel of arbitrators. The complete panel, which shall not be less than five members, shall be sent by SPV to the Contractor to nominate one arbitrator from the panel as Contractor’s nominee within two weeks of receipt of the panel. On receipt of Contractor’s nominee, the SPV shall appoint above contractor’s nominee as well as another from the same panel as SPV’s nominee as arbitrators. Both above arbitrators shall jointly select presiding arbitrator from the same panel.
- 24.3.2 If the Contractor fails to select the contractor’s nominee from the panel within two weeks of the receipt of the said panel, the SPV shall, after giving one more opportunity to contractor to nominate one as contractor’s nominee within next two weeks, appoint two arbitrators from the same panel. Both above arbitrators shall jointly select presiding arbitrator from the same panel.
- 24.3.3 If one or more of the Arbitrators appointed refuses to act as Arbitrator, withdraws from his office as Arbitrator, or vacates his office or is unable or unwilling to perform his functions as Arbitrator for any reason whatsoever or dies or in the opinion of the SPV fails to act without undue delay, the parties shall terminate the mandate of such arbitrator and thereupon new arbitrator shall be appointed in the same manner, as the outgoing arbitrator had been appointed.
- 24.3.4 Before start of arbitration proceedings, each appointed arbitrator shall give the following certificate to the SPV and the Contractor:
- “I have no any past or present relationship in relation to the subject matter in dispute, whether financial, business, professional or other kind. Further, I have no any past or present relationship with or interest in any of the parties whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to my independence or impartiality in terms of The Arbitration and Conciliation Act, 1996.”*
- 24.3.5 In the specific cases of any misconduct by any of the members of the TRIBUNAL, the parties shall have the right to specifically bring it to the notice of the TRIBUNAL such conduct, through a statement filed with necessary documents in proof of such misconduct and the TRIBUNAL, after taking NOTICE of such conduct initiate the replacement of the member concerned, in the same manner the member to be replaced was appointed.
- 24.3.6 Each party has to prepare and furnish to Standing Arbitral Tribunal and other party, once in a every six months, an account giving full and detailed particulars of all claims, which even after decision of DAB are unsettled, to which the parties may consider themselves entitled to during the last preceding six months. If any dispute has arisen as regards execution of the works under the contract, while submitting the said half yearly claims, the parties shall give full particulars of such dispute in the said submission. After signing Contract agreement,

- within 6 months, the parties shall submit all the claims from date of award of contract in first submission of claims.
- 24.3.7 The said communication will be the reference of the dispute to the ARBITRAL TRIBUNAL appointed under the present agreement.
- 24.3.8 The parties shall submit all the relevant documents in support of their claims and the reasons for raising the dispute to the TRIBUNAL.
- 24.3.9 The said claims of the parties so referred to ARBITRAL TRIBUNAL so far it relates to the disputed claims, shall be treated as Statement of Claims of the parties and the ARBITRAL TRIBUNAL shall call upon the other party to submit its reply. The ARBITRAL TRIBUNAL after giving an opportunity of being heard to both the parties, decide the dispute within a period of Four months from the date of communication of the dispute under clause 24.3.6 above. The Arbitral Tribunal will pass a reasoned award in writing, while deciding the Dispute. Once the award is declared, the Arbitral Tribunal cannot review the same except what is permissible in terms of provisions contained in Arbitration and Conciliation Act. The parties shall be entitled to the remedies under the Arbitration and Conciliation Act 1996 or any amendment thereof.
- 24.3.10 The parties agree that all the claims of any nature whatsoever, which the parties may have in respect of the work of the preceding six months, should be made in the said Statements of half yearly claims. If the parties do not raise the claim, if any, arising from the work done in the preceding six months in the statement of half yearly claim, to Standing Arbitral Tribunal, the parties shall be deemed to have waived and given up the claims. The ARBITRAL TRIBUNAL shall not entertain such disputes, which have not been raised in the statement of half yearly Claim before the Standing Arbitral Tribunal and such claims will stand excluded from the scope of arbitration and beyond the terms of reference to the ARBITRAL TRIBUNAL.
- 24.3.11 The parties agree that 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.
- 24.3.12 The obligation of the SPV and the Contactor shall not be altered by reasons of arbitration being conducted during the progress of work. Neither party shall be suspended the work on account of arbitration and payments to the contractor shall continue to be made in terms of the contract and /or as awarded (except when Award is challenged in the Court in which case the payments would be as per the court's orders )
- 24.3.13 The ARBITRAL TRIBUNAL shall remain in force during the entire period the PRINCIPAL CONTRACT is in force and until the closure of the PRINCIPAL CONTRACT with the final no claim certificate, which will be filed with ARBITRAL TRIBUNAL.
- 24.3.14 The Arbitral Tribunal shall conduct the Arbitration proceedings at [Delhi] or any other convenient venue which shall be decided by Tribunal in consultation with both parties.
- 24.3.15 The cost of arbitration shall be borne equally by the respective parties. The cost shall inter-alia include fee of the arbitrators as per the rates fixed by the Indian Railways from time to time.
- 24.3.16 It is a term of this contract that the Contractor shall not approach any Court of Law for settlement of such disputes or differences unless an attempt has first been made by the parties to settle such disputes or differences through conciliation, DAB and Standing Arbitral Tribunal.

- 24.3.17 Even in case arbitration award is challenged by a party in the Court of Law, 75% of award amount, pending adjudication by Court of Law, shall be made by party to other party. In case payment is to be made by SPV to Contractor, the terms & conditions as incorporated in the Ministry of Railways letter No. 2016/CE(I)/CT/ARB/3(NITI Aayog)/Pt. dated 08<sup>th</sup> Mar,2017 as amended time to time shall be followed. However, in case Contractor has to pay to the Authority, then 75% of the award amount shall be deducted by the SPV from the running bills or other dues of the Contractor, pending adjudication by Court of Law.
- 24.3.18 The contract shall be governed by the law for the time being in force in the Republic of India. In case of any disputes/differences resulting in court cases between Contractor & Authority, the jurisdiction shall be of Courts at [Delhi] only.

ARTICLE 25  
**MISCELLANEOUS**

**25.1 Governing law and jurisdiction**

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

**25.2 Waiver of immunity**

Each Party unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance of this Agreement constitute commercial acts done and performed for commercial purposes;
- (b) agrees that should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

**25.3 Delayed payments**

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



**25.4 Waiver**

25.4.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

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

**25.5 Liability for review of Documents and Drawings**

Except to the extent expressly provided in this Agreement:

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

**25.6 Exclusion of implied warranties etc.**

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

**25.7 Survival**

25.7.1 Termination shall:

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



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

**25.8 Entire Agreement**

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

**25.9 Severability**

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

**25.10 No partnership**

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or SPV 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.

**25.11 Third parties**

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

**25.12 Successors and assigns**

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

**25.13 Notices**

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

- (a) in the case of the Contractor, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for the attention of the person set out below or to

such other person as the Contractor may from time to time designated by notice to the Authority; provided that notices or other communications to be given to an address outside Chandigarh may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the person as the Contractor may from time to time designate by notice to the Authority;

[\*\*\*\*\*]

- (b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the [Head of the Authority] with a copy delivered to the SPV Representative or such other person as the SPV may from time to time designate by notice to the Contractor; provided that if the Contractor does not have an office in Chandigarh, it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and
- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

#### **25.14 Language**

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

#### **25.15 Counterparts**

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

#### **25.16 Confidentiality**

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

#### **25.17 Copyright and Intellectual Property rights**

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

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

25.17.2 The Contractor's Documents and other design documents made by (or on behalf of) the Contractor shall not, without the Contractor's consent, be used, copied or communicated to a third party by (or on behalf of) the SPV for purposes other than those permitted under this Clause 25.17.

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

## **25.18 Limitation of Liability**

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

25.18.2 The total liability of one Party to the other Party under and in accordance with the provisions of this Agreement, save and except as provided in Articles 21 and 23, shall not exceed the Contract Price. For the avoidance of doubt, this Clause shall not limit the liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

ARTICLE 26  
DEFINITIONS

**26.1 Definitions**

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

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

**“Advance Payment”** shall have the meaning as set forth in Clause 17.2.1;

**“Affected Party”** shall have the meaning as set forth in Clause 19.1;

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

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

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

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

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

- (a) the 15<sup>th</sup> day from the date of signing of this Agreement,
- (b) the 30<sup>th</sup> day from the date on which the Contractor has delivered the Performance Security in accordance with the provisions of Article 7;
- (c) the date on which the SPV has provided the Right of Way and environmental and forest clearances of at least 95% (ninety five per cent) of the core land length and 90% (ninety percent ) of the non core land length of the Railway Project in conformity with the provisions of Clause 4.3 and 8.2;

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

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

“**SPV Default**” shall have the meaning as set forth in Clause 21.2;

“**SPV’s Engineer**” shall have the meaning as set forth in Clause 16.1;

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

“**Bank**” means a Nationalised bank incorporated in India when a Bank Guarantee for Advance Payment (Clause 17.2) is to be submitted and a Scheduled Commercial Bank incorporated in India for all other purposes, or any other bank acceptable to the Authority;

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

“**Base Month**” means the month just prior to Bid Due Date month. The Quarter for applicability of price adjustment shall be commence from next month after Base Month;

“**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;

[“**Bid Security**” means the bid security provided by the Contractor to the SPV in accordance with the Request for Proposal, and which is to remain in force until substituted by the Performance Security;]

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

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

“**Change of Scope**” shall have the meaning as set forth in Article 13;

“**Change of Scope Notice**” shall have the meaning as set forth in Clause 13.2.1;

“**Change of Scope Order**” shall have the meaning as set forth in Clause 13.2.4;

**“Completion Certificate”** shall have the meaning as set forth in Clause 12.4;

**{“Consortium/Joint Venture”** means the Consortium/Joint Venture of entities which have formed a consortium/joint venture for implementation of this Project; }<sup>\$</sup>

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

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

**“Contract Price”** means the amount as specified in Clause 17.1.1;

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

**“Contractor Default”** shall have the meaning as set forth in Clause 21.1;

**“Core Land”** means the part of Land essentially needed to open & operationalize the mainline for traffic including the Land required for laying the mainline tracks and its Signalling/ Telecom/ Overhead Electrification/ Power Supply Installations, Operational Buildings(station building, huts, gumties etc), as shown in item No. 3(a) of Annexure-I of Schedule-A;

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

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

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

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

**“Defects Liability Period”** shall have the meaning as set forth in Clause 15.1;

**“Dispute”** shall have the meaning as set forth in Clause 24.1.1;

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<sup>\$</sup> This definition may be omitted if the Contractor is not a Consortium/Joint Venture.

**“Dispute Resolution Procedure”** means the procedure for resolution of Disputes as set forth in Article 24;

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

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

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

**“Encumbrances”** means, in relation to the Railway Project, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Railway Project, where applicable herein but excluding utilities referred to in Clause 9.1;

**“EPC”** means engineering, procurement and construction;

**“Final Payment Certificate”** shall have the meaning as set forth in Clause 17.12.1;

**“Final Payment Statement”** shall have the meaning as set forth in Clause 17.10.1;

**“Force Majeure” or “Force Majeure Event”** shall have the meaning ascribed to it in Clause 19.1;

**“GAD” or “General Arrangement Drawings”** shall have the meaning as set forth in Clause 4.1.3 (c);]

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

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

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

**“IEEMA”** means Indian Electrical and Electronics Manufactures Association

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



**“Indemnified Party”** means the Party entitled to the benefit of an indemnity pursuant to Article 23 ;

**“Indemnifying Party”** means the Party obligated to indemnify the other Party pursuant to Article 23;

**“Indirect Political Event”** shall have the meaning as set forth in Clause 19.3;

**“Insurance Cover”** means the aggregate of the maximum sums insured under the insurances taken out by the Contractor pursuant to Article 18, and includes all insurances required to be taken out by the Contractor under Clauses 18.1 and 18.9 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

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

**“Interim Payment Certificate”** or **“IPC”** means the interim payment certificate issued by the SPV’s Engineer for payment to the Contractor in respect of Contractor’s claims for payment raised in accordance with the provisions of this Agreement;

**“Lead Member”** shall, in the case of a Consortium/Joint Venture, mean the member of such Consortium/Joint Venture who shall have the SPV to bind the contractor and each member of the Consortium/Joint Venture; and shall be deemed to be the Contractor for the purposes of this Agreement; }<sup>\$</sup>

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<sup>\$</sup> This definition may be omitted if the Contractor is not a Consortium/Joint Venture.



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

**“Maintenance Manual”** shall have the meaning ascribed to it in Clause 10.6;

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

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

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

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

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

**“Non-Core Land”** means the Land required for the project line other than the Core-Land, as shown in item No. 3(b) of Annexure-I of Schedule-A;

**“Non-Political Event”** shall have the meaning as set forth in Clause 19.2;

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

**“Performance Security”** shall have the meaning as set forth in Clause 7.1;

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

**“Political Event”** shall have the meaning as set forth in Clause 19.4;

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

**“Programme”** shall have the meaning as set forth in Clause 10.1.3;

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

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

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

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

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

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

**“Proof Consultant”** shall have the meaning as set forth in Clause 10.2.2;

**“Provisional Certificate”** shall have the meaning as set forth in Clause 12.2;

**“Punch List”** shall have the meaning as set forth in Clause 12.2.1;

**“Quality Assurance Plan”** or **“QAP”** shall have the meaning as set forth in Clause 11.2.1;

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

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

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

**“Retention Money”** shall have the meaning set forth in Clause 7.5.1;

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

**“RINL”** means Rashtriya Ispat Nigam Limited

**“Safety Consultant”** shall have the meaning as set forth in clause 10.2.11

**“Scheduled Completion Date”** shall be the date as set forth in Clause 10.3.1;

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

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

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

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

**“Stage Payment Statement”** shall have the meaning as set forth in Clause 17.4;

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

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

**“Suspension”** shall have the meaning as set forth in Article 20;

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

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

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

**“Termination Payment”** means the amount payable by either Party to the other upon Termination in accordance with Article 21;

**“Terms of Reference” or “TOR”** shall have the meaning as set forth in Clause 16.2.1;

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

**“Time Extension”** shall have the meaning as set forth in Clause 10.4.1;

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

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

**“Valuation of Unpaid works”** shall have the meaning as set forth in Clause 21.5.1;

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

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

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

## EPC Tender Document Volume 2

SIGNED, SEALED AND  
DELIVERED

For and on behalf of

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

(Signature)

(Name)

(Designation)

In the presence of:

1.

2.

{ COUNTERSIGNED and accepted by:

Name and particulars of other members of the Consortium/Joint Venture }

SIGNED, SEALED AND  
DELIVERED

For and on behalf of

THE CONTRACTOR by:

(Signature)

(Name)

(Designation)

## **Schedules**

SCHEDULE - A  
(See Clauses 2.1 and 8.1)

**SITE OF THE PROJECT**

**1 The Site**

- 1.1 Site of the Railway Project shall include the land, buildings, structures and track works as described in Annex-I of this Schedule-A.
- 1.2 The dates of handing over the Right of Way to the Contractor are specified in Annex-II of this Schedule-A.
- 1.3 An inventory of the Site including the land, buildings, structures, track works, trees and any other immovable property on, or attached to, the Site shall be prepared jointly by the SPV's Representative and the Contractor, and such inventory shall form part of the memorandum referred to in Clause 8.2.1 of this Agreement.
- 1.4 The alignment plans of the Railway Project are specified in Annex-III.
- 1.5 The status of the environment clearances and forest clearances obtained or awaited is given in Annex IV.

Annex - I  
(Schedule-A)

**Site<sup>16</sup>**

**1. Site**

**(i) Brief description of the project area**

Construction of Integrated Modal Logistic Hub railway siding at Nangal Choudhary consists of **Section Y: Part A**. The IMLH site is situated near Napla, Pavera, Chillaro, Talotand Bashirpur villages in the Mahendragarh district of Haryana.

The project site coordinates are as latitude 27° 58' 53" N and longitude 76°2' 49" E. 5.2. Starting Chainage is Ch: 6903.94 m (Dead End) and End Chainage is 9068.59 m (Dead End), excluding curve no. 6 & 7.

**(i) Section Y: Part A-** Consisting of 4 lines, each line is divided into two parts with approx. CSR 756 m each along with a facility of crossovers at its center for the movement of freight from line to another. For the unloading/loading facility, two rail-level platforms are proposed with flooring of precast Heavy-Duty interlocked concrete blocks of an approved mix of M50 grade with Steel fiber reinforcement. The thickness of the blocks should not be less than 100 mm which has to be laid on well-compacted soil with 550 mm thick DLC layer, one layer of 75 mm WBM, Grading II/WMM, and two layers of 75 mm WBM, Grading I/WMM along with 50 mm thick sand layer. It is noted that the above-mentioned details of platform layers to be provided are for CBR value of 10% of existing soil subgrade. An additional layer of 500 mm murrum is to be provided if the CBR value of existing soil subgrade is less than 10% (Drawing enclosed). The turnouts of 1 in 8.5 are proposed for IMLH Railway Siding with thick web switches and fit for 50 kmph.

**(ii) Climate and rainfall data**

The climate of Nangal Choudhary in Mahendragarh district is tropical steppe, semi-arid and hot which is mainly dry with very hot summer and cold winter except during monsoon season when moist air of oceanic origin penetrates. The temperature during summer (March to June) goes as high as 41°C. The winters (November to February) are cold and the minimum temperature recorded is 5.6°C. The rainy season is generally from July to October. The normal annual rainfall is 500 mm which is unevenly distributed. The southwest monsoon sets in from the last week of June and withdraws at the end of September, contributed about 84% of annual rainfall. July and August are the wettest months. Rest 16% rainfall is received during the non-monsoon period in the wake of western disturbances and thunderstorms. Generally, rainfall in the area increases from southwest to northeast.

**(iii) Topography**

The IMLH project site is in almost plain terrain. The boundary of the IMLH site falls near the villages Ghataser, Tehla, and Talot. The southern boundary of the site abuts a hillock. Part of the hillock is within the project area and the rest is outside the boundary. Due to the

presence of this hillock, there is a minimum difference in the levels towards the southern side of the site.

### **(iv) Accessibility**

The IMLH site is accessible by State Highway 17 (SH-17). The highway provides easy connectivity to the site through Chillaro and Talot villages. The site also connects with the state Highway 17 through Naranaul providing access to the National Highway 8 connecting the site to Gurgaon, Delhi, and Uttar Pradesh. The nearest railhead is the Nizampur Station at a distance of about 2.5km west from the proposed IMLH site. Amarpur Jorasi is another nearby railway station located North-West at a distance of about 4km. Both the railway station lies on the Delhi-Mumbai rail link line of the Indian Railway. The proposed Rail Siding for the IMLH yard loading facility has been planned to take off from the New Dabla crossing station to the proposed loading & unloading facility. The location map of the project site is given in the figure enclosed with this tender document.

## **2. Land**

### **Availability of Land**

Approximately 99% of the land is made available and handed over to EPC agency within 2 Months from the date of signing of the agreement. 100% of the land will be made available in 12 months after the signing of the agreement.

If any parcel of the land cannot be made available in 12 months period, then minor modification will be proposed in the alignment and contractor has to execute with same terms and conditions of contract without any additional amount.

**Or**

The works related to that parcel of land can be offloaded by the **SPV** for which no compensation shall be payable to the executing agency. The **SPV** can award the work after the land acquisition is completed. the executing agency will also be free to bid for the work or can take the work on the existing awarded rates without any hike but with price escalation as per the PVC clause provided in the existing awarded contract. Land being handed over as per the above schedule will not entail any claims to the executing agency.

The land is handed over within 12 month period, the work has to be completed within the scheduled completion of the contract (i.e., 18 months) as per the phased work plan. Failing which liquidated damage shall be applicable.



### 3. Proposed Railway station and Platforms on Railway Project to be constructed:

The Site includes the following Railway stations

S. No.	Station	No. of Lines	Station Building Area	Details of Platforms	Remarks
1.	IMLH Nangal Choudhary yard.	(a) 4 lines of approx. CSR 1500 m	Approximately 150 m <sup>2</sup> of G +1 Station building.	<b>Total Platforms - 2 Nos:</b> 1.Loading/unloading platform of size 1619m x 30m	SECTION Y-PART A Works
2.			Total plinth area of station building ground floor and first floor is 300 m <sup>2</sup> .  Compressor room of minimum area 50 m <sup>2</sup> .  Surveyor room of minimum area 20 m <sup>2</sup> .  Rake testing room of minimum area 5 m <sup>2</sup> .  High Mast lights shall be constructed one at Part A (section Y) as per relevant codes of DFCCIL.	2.Loading/unloading platform of size 1696m x 30m	SECTION Y-PART A Works

Annex - II  
(Schedule-A)

**Dates for providing Right of Way**

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

Sl. No	From km to km	Length (km)	Distance of Railway Boundry from C/L of [UP/DN] line (in m)		Date of providing Right of Way
			Right Hand Side	Left Hand Side	
1	2	3	4	5	6
<b>Part A:</b>					
Right of Way being 95% (ninety five percent) of the core land length and 90 % (ninety percent) of the non core length of the Project, under Clauses 4.1.3 read with Clauses 8.2 and 8.3 of the Agreement	As mentioned in ESP /plan and Profile drawing/alignment drawing			Within 15 (fifteen) days of the signing of the Agreement or within 30 (thirty) days of the date of receiving the Performance Security from the Contractor, whichever is later.	
(i) Full Right of Way (full width)				With in 15 days	
(ii) Part Right of Way (part width)				With in 12 months from the signing of the agreement	

*(Schedule-A)*

**Plan and Profile**

The proposed alignment plan, L-sections, and Engineering Scale Plans (ESPs) of the Railway Project Line are attached. This is based on a survey conducted by the Authority. The Contractor shall verify the alignment plan, L-sections, and ESPs for ensuring technical feasibility within the Right of Way boundaries. (Any deviation [positive/negative] from the enclosed Engineering Scale Plans, Approved Alignment plan, L section will be treated as a Change of scope.)

**Railway Electrification**

The proposed sectioning arrangement of the Railway Electrification Project is attached. The Contractor shall verify the same for ensuring technical feasibility within the Right of Way boundaries.

Annex - IV  
(Schedule-A)

**Environment Clearances and Forest Clearances**

**NOT REQUIRED**

**1. Environment clearances\***

(a) The following environment clearances have been obtained:

\*\*\*

(b) The following environment clearances are awaited:

\*\*\*

**2. Forest clearances**

(a) The following forest clearances have been obtained:

\*\*\*

(b) The following forest clearances are awaited:

\*\*\*

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

**SCHEDULE - B**

*(See Clause 2.1)*

**Development of the Railway Project**

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

**Annex - I  
(Schedule-B)**

**Description of Railway Project<sup>17</sup>**

**1. Description of IMLH Nangal Choudhary Project**

In order to meet the increasing demand of existing freight capacity, IMLH Railway siding is proposed which consists of 8 lines divided into two parts. **Section Y: Part A** consists of 4 lines of CSR approx. 1500 m along with two rail-level goods platforms, the bidders may refer to ESPs of both the yards and approved plan and profile.

**2. Construction of Civil and Track work (The data mentioned in this schedule is tentative)**

**2.1. Alignment Details**

The take-off of point of Section Y: Part A is from Dead End Chainage 10653.73 m which is near the end of the curve number No. 6.

The levels of the IMLH Railway Siding are calculated using latest technology of Drone and Lidar Survey and accordingly L-section is prepared and enclosed with the tender document.

**2.2. Gradients**

This proposed alignment will follow different grades however the ruling gradient will be 1 in 200 and change of gradients is avoided at crossovers as per the recommendation of DFCCIL.

**3. Formation**

3.1. Formation of the Rail siding will cross through both the cutting and filling zones. Formation in the filling zone should be designed with a side slope of 2H: 1V (i.e., 2 horizontal and 1 vertical) with mechanically compacted of suitable good earth as per the code of RDSO/2007/GE:0014 and duly approved by the Engineer/SPV. Two-layer system of construction of railway embankment is to be adopted as per GE 14 code along with minimum thickness of 450 mm blanketing layer (SQ3 type) soil.

3.2. The formation of embankment in cutting and filling should also be designed as per SOD of DFCCIL Standards duly approved by Engineer/SPV.

**4. Following Terms of Reference to be followed during the Design and Construction Phase of works:**

Note Schedule of Dimension of DFCCIL with the latest slips and corrections has to be followed by the contractor for Civil, and electrical.

**i. Technical Parameters:**

**(a) Civil & Track work**

S. No.	Descriptions	Provisions
1.	Standard of Construction	Track substructure, Formation, Bridge Sub Structure Should be designed for a 32.5 MT Axle load. Track superstructure to be planned for 25 MT Axle load.  The consultant should incorporate specifications for Heavy Haul infrastructure like Track structure,  OHE Structure should be followed as per DFCCIL Standards.
2.	Gauge	Broad Gauge Standard (1676 mm)
3	Track structure	60 Kg / 880 grade (90 UTS) Rails in mainline as well as in loop lines
4.	Sleeper	a. PSC Sleeper RT 7008 shall be used on the main Line as well as Loop line except for bridges.  b. PSC Sleepers RT 8228 for Bridge Guard sleepers and RT 8229 to RT 8237 for Bridge approaches shall be used. These sleepers need to be provided to accommodate fixed guard rails.  c. Guard rail needs to be provided at all the bridges as per the drawing approved by DFCCIL.
5.	Sleeper density	1660 nos sleepers per km in the main line and 1540 nos in loop line.
6.	Ballast cushion	Mainline – 350mm. Loop lines – 300 mm. In terms of ACS 16 to LWR Manual, Ballast
7.	Fastenings	a. The fastening system Shall be as per the specifications of DFCCIL. in the section by DFCCIL.  b. Metal liner shall be RT 8254 and RT 8255  c. Rubber pad (10mm) RT 7010, ALT-1 For 10mm thick

		<p>composite grooved rubber sole plate for concrete sleepers.</p> <p>d. ERC RT -5919</p> <p>e. SGCI Insert RT 6901</p>
8.	Welding of rails	CWR/LWR to be provided.
9.	Points & Crossings	<p>1 in 8.5 Curved turnout with Thick web switch of asymmetrical rail section of ZU 1-60,1080 HH rail complete with fittings and fixtures, weldable CMS crossings manufactured from austenitic Manganese steel as defined in IRS T-29-2000 with fittings including check rails of UIC 33 rails with fittings complete on PSC layout suitable for a 25-tonne axle load of WDFC standard</p> <p>The 1 in 8.5 turnouts are to be provided as per approved ESP.</p>
10.	Formation	<p>a. Two-layer system of construction of railway embankment is to be adopted as per GE 14 code along with the minimum thickness of 450 mm blanketing layer (SQ3 type).</p> <p>b. Protective measures, as required ensuring safety in cutting must be incorporated as per prevailing standards,</p> <p>c. Catch water drains and side water drains must be provided in cutting.</p>
11.	Degree / Radius of Horizontal Curves	<p>a. Normally not to be sharper than 2.5 Degree (700m radius)</p> <p>b. In isolated &amp; exceptional cases, subject to prior approval of DFCCIL– Not exceed 6 Degree (292 Meter radius)</p>
12.	Ruling gradient	1 in 200 Compensated gradients.
13.	Gradient in yard	Consistent with the prevailing gradient in existing yards, however, the gradient shall be not steeper than 1 in 400
14.	Length of loop	Minimum 1500-meter CSR.
15.	Track centres	<p>Between DFC Tracks-7.0 M (Minimum)</p> <p>Between IR Track and DFC Track-8.0 (Minimum) Note-In Alignment Plan, the provision shall be kept for service Road for easy access. (However, to be followed as per approved ESP)</p>
16.	Maximum grade on approach to main river bridges	As flat as possible, consistent with site conditions and not steeper than 1in 200 compensated.



17.	Level	a)	The existing level crossing shall be extended.
	crossing	b)	Existing RUB shall be extended.
		c)	No New Level Crossing is to be provided.
18.	Width of	Embankment & Cutting Single Track Top width of embankment 8.10 m, Side Scope 2:1 Formation top cross slope shall be 1:30	
	formation		
19.	Speed	100 Kmph for Goods Trains	
20.	Type of loading	Freight loading – All types of commodities including containers	
		(Double stack container)	
		Track substructure, Formation, Bridge Sub Structure to be designed for 32.5 MT Axle load. Track super structure to be planned for 25 MT Axle load	
21.	Platform at IMLH Nangal Choudhary	Rail level platforms to be provided with thickness of the blocks should not be less than 100 mm which have to be laid on well compacted soil with 550 mm thick DLC layer, one layer of 75 mm WBM, Grading II/WMM and two layers of 75 mm WBM, Grading I/WMM along with 50 mm thick sand layer. It is noted that the above-mentioned details of platform layers to be provided are for CBR value of 10% of existing soil subgrade. Additional layer of 500 mm murrum is to be provided if the CBR value of existing soil subgrade is less than 10%.	
22.	IMLH Nangal Choudhary yard.	The work shall be carried out as per the approved ESP of IMLH Yard.	
23.	Station Buildings	<p>The station building shall be Constructed at IMLH Nangal Choudhary station with an area of 300 m<sup>2</sup> in double storey building as per the specifications of DFCCIL. A proper staircase is to be provided at the roof top.</p> <p>The plinth of the station building should be at least two feet above ground level or as per the instructions of the Engineer/SPV.</p> <p>Proper drawing to be prepared and got approved by all stakeholders</p>	
24.	Drawings with Bid Document	<ol style="list-style-type: none"> <li>1. Duly approved ESP of IMLH Nangal Choudhary including New Dabala Yard</li> <li>2. Approved plan and L section of the alignment.</li> </ol>	

**(b) Terms of Reference (TOR) For Electrical Work:**

- a) wherever the feeder lines of state government or any departments are running parallel to the DFCCIL track or is crossing the existing railway line the same should be made underground by the contractor as per the guidelines of the State Government/DFCCIL/IR.
- b) The necessary drawings to be made along with the designs for electrical works will have to be prepared and got approved by DFCCIL before taking up to the work. General electrification work of station building to be carried by the contractor after preparing and getting approval of the detail drawings.
- c) While carrying out all the works of infringement removal and new works for electrical the DFCCIL specifications should be followed with latest amendments.
- d) For electrification of the new rail link at IMLH yard following the latest specification guidelines with modifications be followed. The work to be undertaken after getting the approval of the drawings from DFCCIL based on the approved ESP.

**5. Operational Requirements of IMLH Nangal Choudhary**

The train will be running on absolute block system. All the lines will be signalled. The rest of the lines will be operated at IMLH Manual operated points.

**6. Track layouts in station yards**

Station yards shall be constructed as per the final engineering scale plans (ESP) The Site details showing the station yard drawings for all stations are enclosed with this tender document.

**(a) Building Works:**

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

**7. Service buildings**

- (i) Service buildings shall be constructed at each station as follows:

S. No.	Station Building Location	Service building	Area at ground floor level	Remarks
1.	At IMLH Nangal Chaudhary	(G+1) Station Building	Approximately 150 m <sup>2</sup> of G +1 Station building.  The total plinth area ground floor and first floor is 300 m <sup>2</sup> .	Contractor shall prepare structural drawing and take approval from civil, electrical and S&T departments of SPV/DFCCIL/Railways before commencement of work.

### (ii) Out-door power supply, distribution, and lighting works

Cable duct size as per DFCCIL specifications with concrete slab cover shall be provided at Panel room and EI room.

Auto Change Over to be installed on door side wall of ASM office.

Tube Shall be double tube light type of Led of 15 W to be on at supply in Battery//IPS//Office/EI/I Rooms.

Manual Change over the facility for AC's in ASM Room to be given.

S&T cables and optical fibre will relocated/re-laid as per the schematic drawing attached for cutting and filling. The contractor will have to design the structures and will have get them approved from the Engineer in charge and DFCCIL.

There are locations where an RCC retaining wall needs to be provided to accommodate single-line track service apart from shifting of S&T cables, and OHE Structures. At such a location RCC wall will have to be provided for which approval will have to be from the Engineer in Charge and DFCCIL.

The station building needs to be designed and constructed which must be approved by the client, furnished, and provided with general lighting, VIP room, ASM room, panel room etc., as per DFCCIL standards. The VIP Room and ASM should be Air Conditioned etc.

### (iii) Water supply and distribution

- a. Construction of bore wells, pump house, and overhead tanks shall be as per the Guidelines State Government Railway/DFCCIL.
- b. The Concessionaire shall select the best option to provide high-quality drinking water at all times. Water supply for the municipality shall be monitored to ensure potable water is provided at the station meets the standard called for in this section. The concessionaire shall provide in-house water treatment systems at the stations. The drinking water quality shall meet the potable water standards established by World Health Organization (WHO) Guidelines for drinking Water ISBN 924 1546387 and the Indian Bureau of Standards IS 10500 - 1991. The same high-quality water can then be supplied on the trains, further eliminating

the need for storage of bottled water on the trains and disposal of the plastic bottles. The Concessionaire shall meet the Packaged Water standards established by the Bureau of Standards, in order to improve the customer faith and confidence in the water supplied at the Railway Stations, and to eliminate the use of bottled water.

**(iv) Drainage system**

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

**(a) Sewerage system**

Select methods for wastewater collection that would be cost-effective and protective of human health and environment. Separate collection and treatment systems shall be used for domestic wastewater and storm water/gray water. Domestic wastewater will comprise of: the waste generated from the sanitary facilities at the Stations, and that is generated from the tracks during cleaning of the toilets. The sanitary sewage shall be discharged into the station wastewater treatment system. Treated water to be used for ventilating and air conditioning system, firefighting and landscaping, with remainder if any to be discharged into the public sewer system. The collection systems shall be so designed as to make the entire Railway Station area aesthetically pleasing – no visible collection pipes, no ponding, stagnant water at the platforms and other areas of the Station, clean and functional toilet facilities, hidden, as far as possible and practical, and easy to access and clean storm water collection system.

**8. Signage information boards and posts**

All signage, information boards and posts shall be provided.

**9. Drainage along the railway line**

- (a) Adequate drainage arrangement should be made by providing cross slope at top of formation and side drains/catch water drains, wherever required.
- (b) Stable slopes and adequate drainage arrangements in cutting areas should be provided as per details given in ‘Guidelines for Cutting in Railway Formations - No. GE: G-2, August 2005 with latest amendments.
- (c) Apart from the above main & other recommendations, other provisions given in ‘Guidelines For Earthwork in Railway Projects’, GE:-1, July 2003 with latest amendments such as construction procedure, drainage, erosion control etc. should also be followed
- (d) The removal and replacement may be required to be carried out even in ‘cutting’ areas where the naturally occurring soils were found to be of a low shear strength and high moisture content. Subsurface drainage may have to be introduced in most of such areas.

**10. Embankment/slope protection works**

- (a) Ground Improvement Techniques for Soft soil must be carried out like Stabilization & Ground Improvement Methods Using Geosynthetics, Lime Slurry pressure Injection/ Ion Exchange etc., to be provided.

- (b) Top of formation should be finished to a cross slope of 1 in 30 from centre of formation to both sides in case of single line as well as double line. In case of multiple lines, the cross slope should be from one end to other toward cess/drain provided in between. (Ref: para 4.2.4 of Guidelines for Earthwork in Railway Projects, July 2003 with latest amendments)
- (c) Once the top surface of the formation has been finished to proper slope and level, movement of material vehicle for transportation of ballast, sleepers etc. should be avoided, these movements will cause development of unevenness, ruts on the surface which will accumulate water and weaken the formation. (Ref: para 6.7.1 of Guidelines for Earthwork in Railway Projects, July 2003 with latest amendments)
- (d) At locations, where the water table is high and the fill soil is fine grained, it may be desirable to provide a granular layer of about 30 cm thickness at the base, above subsoil across the full width of formation. (Ref: para 6.7.1 (l) of Guidelines for Earthwork in Railway Projects, July 2003 with latest amendments)
- (e) Blanket material should conform to specifications.
- (f) In case of all new construction, minimum height of embankment should not be less than 1 m. (Ref: para 4.2.9 of Guidelines for Earthwork in Railway Projects, July 2003 with latest amendments)
- (g) In case of double line, central drain between two tracks should be avoided. It is not only difficult to construct but also difficult to maintain due to continuous vibrations caused by traffic, problem of proper curing of concrete etc. (Ref: para 6.5.1 of Guidelines for Earthwork in Railway Projects, July 2003 with latest amendments)
- (h) In case of double line, if distance between adjacent tracks is large enough, suitable slope should be provided in ground to make rain water flow in natural manner. (Ref: para 6.5.1 of Guidelines for Earthwork in Railway Projects, July 2003 with latest amendments).
- (i) In cuttings, properly designed side drains and catch water drains of adequate capacity should be provided. (Ref: para 6.5.2.1 of Guidelines for Earthwork in Railway Projects, July 2003 with latest amendments)
- (j) In the yard, surface drains should generally be open for ease of cleaning & inspection.
- (k) Overhauling & deep screening of ballast should be carried out at the prescribed intervals.
- (l) Drains provided should be cleaned and repaired regularly, preferably before monsoon.

#### **11. Compulsory afforestation and tree plantation**

In case any tree is required to be cut then under compensatory forestation trees have to be planted at the nominated given by the Govt.

#### **12. Change of Scope**

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

**PROJECT FACILITIES<sup>18</sup>****1. Project Facilities****(i) Project Facilities**

- (i) The Contractor shall provide the Project Facilities in accordance with the provisions of this Agreement. Such Project Facilities shall include:
- a. Subordinate and Officer rest houses.
  - b. Tree plantation, evergreen trees and shrubs to be planted as per the location given by the Engineer in Charge/Consultant (100 numbers) in addition tree plantation must be done for compensatory afforestation against cutting of trees coming along the alignment, if any.,
  - c. Adequate Lighting during project execution. And thereafter lighting should be provided at the approach of the IMLH. High mast lights to be provided for shunting operation and pathways during night time.
  - d. Rainwater harvesting.
  - e. Project network with project monitoring software like MS project along with closed user telecom group, fax and e-mail facilities and mobile communication network for project monitoring. Progress of the project have to be submitted on weekly basis to the client.
  - f. Generator set with adequate efficiency should be provided at camp office.

**Following are the items are to be provided by the contractor for site office:**

S. No.	Items	Quantity
1	Air Conditioners	3
2	Photocopier with network facility	1
3	Conference table (4000mm*1500mm)	1
4	Conference Chairs	10
5	Glass fronted lockable book case	4
6	1500 mm x 900 mm single pedestal desks	8
7	Swivel office chair with armrests	12
8	Visitors Chair	16
9	4-drawer filing cabinet	4
10	Plan chest for keeping drawings (A0)	1
11	Steel lockable cupboard 6ft high internal shelves	4
12	Heavy Duty Paper Shredders	1
13	2 litres kettle	2
14	Portable water dispenser with hot/cold taps	1
15	Cup and Saucers	20 sets
16	First aid kits	2
17	Safety helmets	15

18	Fire extinguisher	2
19	WIFI connection to be provided with ups system	1
20	Day glow safety jacket	15
21	Pair of industrial safety Google	6 pairs
22	Silent DG set of minimum 20 KVA	1
23	Telephone set with STD facility	1
24	Desktop	2
25	Laptop	3
26	Printer machine	

The above list is not exhaustive. Facilities to be provided shall be for satisfactory functioning of the office for its intended purpose to the satisfaction of the Engineer in Charge.

The contractor will pay electricity charges, landline telephone charges, wifi charges etc., to the main site office.

The contractor will provide a drinking water supply (by way of RO-filtered water cans)

The contractor will provide consumables like tea powder, milk, diesel for genset etc.,

The contractor will provide watch, ward, and other office assistance by providing 2 persons)

Undertaking maintenance of repairs of facilities like AC, water dispensers, etc., for their regular usage. When the equipment becomes unserviceable, the same shall be replaced with a new one at the contractor's cost to the satisfaction of the Engineer in Charge.



## SCHEDULE - D

*(See Clause 2.1)*

### SPECIFICATIONS AND STANDARDS

#### 1. Construction

The Contractor shall comply with the Specifications and Standards set forth in Annex-I of this Schedule-D for construction of the Integrated Multimodal Logistics Hub (IMLH) Project. The time limit for the review and clearances by the **SPV** for design and drawings submitted by the Contractor shall be as indicated in Annexure-II.

#### 2. Design Standards

The Integrated Multimodal Logistics Hub (IMLH) Project including Project Facilities shall conform to design requirements set out in the following documents:

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

#### 3. Latest Version

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

#### 4. Terms used in Manuals

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

#### 5. Absence of specific provision

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

- a. DFCCIL Codes and Manuals
- b. Indian Railway Codes and Manuals
- c. Bureau of Indian Standards (BIS)
- d. Euro Codes or British Standards or American Standards
- e. Any other specifications/standards proposed by the Contractor and reviewed by the SPV's Engineer.]

#### 6. Alternative Specifications and Standards

- 3.1. The requirements specified in the Manuals are the minimum. The Contractor shall, however, be free to adopt international practices, alternative specifications, materials and



standards to bring in innovation in the design and construction provided they are better or comparable with the standards prescribed in the Manuals. The specifications and techniques which are not included in the Indian Railway Manuals/ RDSO specifications shall be supported with authentic specifications and standards specified in paragraph 5 above. Such a proposal shall be submitted by the Contractor to the **SPV's** Engineer. In case, the **SPV's** Engineer is of the opinion that the proposal submitted by the Contractor is not in conformity with any of the international standards or codes, then he shall record his reasons and convey the same to the Contractor for compliance

Annex - II  
(Schedule-D)

(See Clause 10.2.7(c))

**Time Schedule for Review of Drawings by the Authority:  
Time Schedule for Review of Drawings by the Engineer/SPV:**

<b>S. No.</b>	<b>Description of Item</b>	<b>Preparation/ Validation by contractor</b>	<b>Review by Engineer/SPV</b>	<b>Review by DFCCIL if required</b>
1	Alignment Design Report	60 days	30 days	Nil
2	L Section	30 days	30 days	Nil
3	LWR Plans	60 days	30 days	Nil
4	Engineering Scale Plans (ESP)	NIL	Nil	Approved copy attached.
5	Building Plans	30 days	15 days	15 days
6	Drainage Plans	45 days	20 days	15 days
7	Protection works design and drawings	30 days	20 days	Nil

**Time Schedule for Review of Drawings by the SPV for electrification works:**

<b>Sl. No.</b>	<b>Description Item</b>	<b>Preparation by Contractor in Days</b>	<b>SPV Review in Days</b>	<b>Review by DFCCIL Review by DFCCIL if required</b>
1	Final Layout Plan based on Pegging Plan supplied by consultant	30	15	15
2	Cross-Sectional Drawing	30	21	Nil
3	Structure Erection Drawings	45	21	21
4	Long Section drawings of OHE under over line structures and overhead crossings.	60	30	30
5	Any Special arrangement including Bridge Masks or Structural modifications.	60	45	30
6	All PSI drawings/Design.	60	21	Nil
7	Bonding Plan of Yard area drawings/design	30	21	21
8	All other drawings not mentioned above, were mandatory review by consultant/client. DFCCIL is necessary to comply with provision of Manuals/ Codes.	60	30	As per case-to-case basis.

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**SCHEDULE - E**

*(See Clause 3.1.6(a))*

**APPLICABLE PERMITS**

**1 Applicable Permits**

1.1 The Contractor shall obtain, as required under Applicable Laws, the following Applicable Permits:

- (a) Permission of the State Government for extraction of boulders from quarry;
- (b) Permission of Village Panchayats and Pollution Control Board for installation of crushers;
- (c) Licence for use of explosives;
- (d) Permission of the State Government for drawing water from river/reservoir;
- (e) Licence from inspector of factories or other competent SPV for setting up batching plant;
- (f) Clearance of Pollution Control Board for setting up batching plant;
- (g) Clearance of Village Panchayats and Pollution Control Board for setting up asphalt plant;
- (h) Permission of Village Panchayats and State Government for borrow earth; and
- (i) Any other permits or clearances required under Applicable Laws.

1.2 Applicable Permits, as required, relating to environmental protection and conservation shall have been or shall be procured by the SPV in accordance with the provisions of this Agreement.

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SCHEDULE - F

(See Clauses 7.1.1, 7.5.3 and 17.2)

**FORM OF BANK GUARANTEE**

Annex-I

(See Clause 7.1.1)

**Performance Security**

[The General Manager],

....., .....[Railway],

.....

**WHEREAS:**

- (A) .....(insert name and address of the contractor) (hereinafter called the “**Contractor**”) and (insert name and address of the project authority), (hereinafter called the “**Authority**”) have entered into an agreement (hereinafter called the “**Agreement**”) for the construction of the new railway line between .....-..... in the ..... Railway zone on Engineering, Procurement and Construction (the “**EPC**”) basis, subject to and in accordance with the provisions of the Agreement
- (B) The Agreement requires the Contractor to furnish a Performance Security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the {Construction Period/ Defects Liability Period } (as defined in the Agreement) in a sum of Rs..... cr. (Rupees ..... crore) (the “**Guarantee Amount**”).
- (C) We, ..... through our branch at ..... (the “**Bank**”) have agreed to furnish this bank guarantee (*hereinafter called the “**Guarantee**”*) by way of Performance Security.

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

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Contractor’s obligations during the {Construction Period/ Defects Liability Period} under and in accordance with the Agreement, and agrees and undertakes to pay to the [mention Finance of Authority], upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Contractor, such sum or sums up to an aggregate sum of the Guarantee Amount as the SPV shall claim, without the SPV being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

2. A letter from the Authority, under the hand of an officer not below the rank of [\*\*\*in the \*\*\*]Railway, that the Contractor has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the SPV shall be the sole judge as to whether the Contractor is in default in due and faithful performance of its obligations during and under the Agreement and its decision that the Contractor is in default shall be final and binding on the Bank, notwithstanding any differences between the SPV and the Contractor, or any dispute between them pending before any court, tribunal, arbitrators or any other SPV or body, or by the discharge of the Contractor for any reason whatsoever.
3. In order to give effect to this Guarantee, the SPV shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Contractor and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the SPV to proceed against the Contractor before presenting to the Bank its demand under this Guarantee.
5. The SPV 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 Contractor contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the SPV against the Contractor, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the SPV of the liberty with reference to the matters aforesaid or by reason of time being given to the Contractor or any other forbearance, indulgence, act or omission on the part of the SPV or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the SPV 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 Contractor under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below

and unless a demand or claim in writing is made by the SPV on the Bank under this Guarantee all rights of the SPV under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.

8. The Guarantee shall cease to be in force and effect on \*\*\*\*\$. Unless a demand or claim under this Guarantee is made in writing before expiry of the Guarantee, the Bank shall be discharged from its liabilities hereunder.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the SPV in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the SPV that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for up to the date specified in paragraph 8 above or until it is released earlier by the SPV 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.

\_\_\_\_\_

<sup>\$</sup> Insert date being 2 (two) years from the date of issuance of this Guarantee (in accordance with Clause 7.2 of the Agreement).

- (ii) The address, telephone number, and other details of the head office of the Bank as well as of the issuing branch should be mentioned on the cover letter of the issuing branch.



Annex – II  
(Schedule - F)  
(See Clause 7.5.3)

**Form of Guarantee for Withdrawal of Retention Money**

[General Manager,\*\*\*

\*\*\*Railway,

.....]

WHEREAS:

- (A) [insert name and address of the contractor] (hereinafter called the “**Contractor**”) has executed an agreement (hereinafter called the “**Agreement**”) with the [name and address of the project authority], (hereinafter called the “**Authority**”) for the construction of the new railway line between \*\*\*\*\_\*\*\*\* in the \*\*\*\* Railway zone on Engineering, Procurement and Construction (the “**EPC**”) basis, subject to and in accordance with the provisions of the Agreement.
- (B) In accordance with Clause 7.5.3 of the Agreement, the Contractor may withdraw the retention money (hereinafter called the “**Retention Money**”) after furnishing to the SPV a bank guarantee for an amount equal to the proposed withdrawal.
- (C) We, ..... through our branch at ..... (the “**Bank**”) have agreed to furnish this bank guarantee (hereinafter called the “**Guarantee**”) for the amount of Rs. .... cr. (Rupees.....crore) (the “**Guarantee Amount**”).

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

1. The Bank hereby unconditionally and irrevocably undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Contractor, such sum or sums up to an aggregate sum of the Guarantee Amount as the SPV shall claim, without the SPV being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an officer not below the rank of [\*\*\* in the \*\*\*Railway], that the Contractor has committed default in the due and faithful performance of all or any of its obligations for under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the SPV shall be the sole judge as to whether the Contractor is in default in due and faithful performance of its obligations during and under the Agreement and its decision that the Contractor is in default shall be final, and binding on the Bank,

notwithstanding any differences between the SPV and the Contractor, or any dispute between them pending before any court, tribunal, arbitrators or any other SPV or body, or by the discharge of the Contractor for any reason whatsoever.

3. In order to give effect to this Guarantee, the SPV shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Contractor and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the SPV to proceed against the Contractor before presenting to the Bank its demand under this Guarantee.
5. The SPV 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 Retention Money and any of the rights and powers exercisable by the SPV against the Contractor, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the SPV of the liberty with reference to the matters aforesaid or by reason of time being given to the Contractor or any other forbearance, indulgence, act or omission on the part of the SPV or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the SPV in respect of or relating to the Retention Money.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the SPV on the Bank under this Guarantee all rights of the SPV under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Guarantee shall cease to be in force and effect 15 (fifteen) days after the date of the Completion Certificate specified in Clause 12.4 of the Agreement.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the SPV in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred branch, which shall be

deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the SPV that the envelope was so posted shall be conclusive.

11. This Guarantee shall come into force with immediate effect and shall remain in force and effect up to the date specified in paragraph 8 above or until it is released earlier by the SPV 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.

Annex – III  
(Schedule - F)  
(See Clause 17.2)

**Form of Guarantee for Advance Payment**

[\*\*\*],

[\*\*\*]Railway,

[New Delhi – 110001].WHEREAS:

- (A) [name and address of the contractor] (hereinafter called the “**Contractor**”) has executed an agreement (hereinafter called the “**Agreement**”) with the [name and address of the project authority], (hereinafter called the “**Authority**”) for the construction of the new railway line between \*\*\*in the \*\*\*Railway zone on Engineering, Procurement and Construction (the “**EPC**”) basis, subject to and in accordance with the provisions of the Agreement.
- (B) In accordance with Clause 17.2 of the Agreement, the SPV shall make to the Contractor advance payment (herein after called “**Advance Payment**”) equal to 10% (ten per cent) of the Contract Price; and that the Advance Payment shall be made in two installments subject to the Contractor furnishing an irrevocable and unconditional guarantee by a Bank for an amount equivalent to 110% (one hundred and ten percent) of such installment to remain effective till the complete and full repayment of the installment of the Advance Payment as security for compliance with its obligations in accordance with the Agreement. The amount of {first/second} installment of the Advance Payment is Rs. ....cr. (Rupees .....crore) andthe amount of this Guarantee is Rs. .... cr. (Rupees ..... crore)(the“**Guarantee Amount**”)§.
- (C) We, ..... through our branch at ..... (the “**Bank**”) have agreed to furnish this bank guarantee (hereinafter called the“**Guarantee**”) for the Guarantee Amount.

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 repayment on time of the aforesaid instalment of the Advance Payment under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Contractor, such sum or sums up to an aggregate sum of the Guarantee Amount as the SPV shall claim, without the SPV being required

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§The Guarantee Amount should be equivalent to 110% of the value of the applicable installment.

to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

2. A letter from the Authority, under the hand of an officer not below the rank of [\*\*\*in the \*\*\*Railway], that the Contractor has committed default in the due and faithful performance of all or any of its obligations for the repayment of the installment of the Advance Payment under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the SPV shall be the sole judge as to whether the Contractor is in default in due and faithful performance of its obligations during and under the Agreement and its decision that the Contractor is in default shall be final and binding on the Bank, notwithstanding any differences between the SPV and the Contractor, or any dispute between them pending before any court, tribunal, arbitrators or any other SPV or body, or by the discharge of the Contractor for any reason whatsoever.
3. In order to give effect to this Guarantee, the SPV shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Contractor and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the SPV to proceed against the Contractor before presenting to the Bank its demand under this Guarantee.
5. The SPV 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 Advance Payment or to extend the time or period of its repayment or to postpone for any time, and from time to time, any of the rights and powers exercisable by the SPV against the Contractor, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the SPV of the liberty with reference to the matters aforesaid or by reason of time being given to the Contractor or any other forbearance, indulgence, act or omission on the part of the SPV or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the SPV in respect of or relating to the Advance Payment.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below

and unless a demand or claim in writing is made by the SPV on the Bank under this Guarantee all rights of the SPV under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.

8. The Guarantee shall cease to be in force and effect on \*\*\*\*.\*<sup>\$</sup> Unless a demand or claim under this Guarantee is made in writing on or before the aforesaid date, the Bank shall be discharged from its liabilities hereunder.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the SPV in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the SPV that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect up to the date specified in paragraph 8 above or until it is released earlier by the SPV 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.

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<sup>\$</sup> Insert a date being 90 (ninety) days after the end of one year from the date of payment of the Advance payment to the Contractor (in accordance with Clause 17.2 of the Agreement).

SCHEDULE - G  
(See Clauses 10.1.4 and 17.3)

**Contract Price Weightages**

1.1 The Contract Price for this Agreement is Rs. \*\*\*\*\*. [It is assigned for different components of the Railway Project as follows:]<sup>20</sup>

**For works consisting of civil works with railway electrification**

Civil and track works	91.00 % of the Contract Price
Electrification works	9.00 % of the Contract Price

**NOTE :**

- a. Line number 3 at IMLH Nangal Choudhary Rail siding is of Ballast less track, details of the payment procedure have been mentioned separately.
- b. The construction of the Railway Embankment and blanket shall follow the Guidelines of GE 14 code.
- c. Two-layer system of construction of Railway embankment construction shall be adopted as per GE 14 Railway code.
- d. SQ 1 type of soil cannot be used in railway earthwork construction works and only SQ 3 type of soil shall be used for blanket work.

1.2 Proportions of the Contract Price for different stages of Construction of the Railway Project shall be as specified below:

<b>1. Civil and track works</b>				
<b>Item</b>	<b>Weightage in percentage to the Contract Price</b>	<b>Stage for Payment</b>	<b>Percentage weightage</b>	<b>Payment Procedure</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
<b>1.1 Earthwork</b>	7.0 %	<b>1.1.1</b> Earthwork in embankment/cutting including compaction up to $H*/4$ from ground level complete in all respects.	35%	(a) The unit of measurement is linear length. Payment of each stage shall be made on a pro-rata basis on completion of a stage in a continuous length of a minimum of 50 m.
		<b>1.1.2</b> Earthwork in embankment/cutting including compaction from $H/4$ to $H/2$ from ground level complete in all respects.	25%	(b) Provided that payment for the blanketing layer shall be made on completion pipe culverts (item 1.5) in the length for which stage payment is claimed. For the avoidance of doubt, payment for pipe culverts shall be payable separately in accordance with item 1.5.
		<b>1.1.3</b> Earthwork in embankment/cutting including compaction from $H/2$ to $3H/4$ from ground level complete in all respects	20%	
		<b>1.1.4</b> Earthwork in embankment/cutting including compaction from $3H/4$ level to $H$ from ground level	20%	

\*H = Height of formation from ground level minus blanketing thickness



		complete in all respects.		Note:- The whole Project length may be divided in sections depending on average Formation Height/depth Upto 3 m, 3 to 6 m, and above. In each section Km number shall be grouped according to average formation.
		<b>Total</b>	<b>100%</b>	(c)
<b>1.2</b>	3.00%	1.2.1 Blanketing work complete in all respects  1.2.2 Slope Protection by Turfing of Formation Slope	95 %  5%	The unit of measurement is linear length. Payment of each stage shall be made on a pro-rata basis on completion of a stage in a continuous length of a minimum of 50 m.
		<b>Total</b>	<b>100%</b>	
<b>1.3 Track works</b>	<b>26.00 %</b>	1.4.01 Supply of new Rails and PSC Sleepers and stacking at designated places as per the specifications a)Quantity of the material be supplied under this item shall be based on technical design  b)The materials are in accordance for the works  c)The materials have been delivered to the site and are properly stored and protected against loss damage and		Payment against materials supply of Rails and PSC sleeper for the works shall be as under:  In respect of rails and concrete sleepers brought by the contractor to the site for incorporation in the permanent works, the contractor shall be paid <b>80%</b> of the respective items against the schedule against the indemnity bond and a balance <b>20%</b> shall be paid when these materials use as per the Engineers requirement.

		deterioration.  Proper records of receipts and use of materials are maintained by the contractor and such records are available for inspection by the Engineer		
		1.3.1.a Supply of Rails	40 %	The unit of measurement is MT
		1.3.1.b Supply of Sleepers	10 %	The unit of measurement is Nos.
		1.3.1.c Turnout Sleepers	3%	Payment against materials supply of Turnout Sleeper and Turnouts including switches, Xings & Fittings.
		1.3.1.d On supply of T/O switches, Xings, and fittings,	12%	The unit of measurement is set for Turnout sleepers and Turnouts. For the material brought by the contractor to the site for incorporation in the permanent works, the contractor shall be paid <b>80%</b> of the respective items against the schedule against the indemnity bond, and a balance of <b>20%</b> shall be paid when these materials are used as per the engineer's requirement. The payment may be will be released after taking an indemnity bond. The unit of measurement of cum ballast is only for releasing interim payment. After completion of track work qty of materials will be reconciled based on a installation at the site.

		1.3.2 Supply of ballast and staking	7 %	<p>Payment against materials supply of ballast and staking for the works shall be as under:</p> <p>The unit of measurement is cum. For the material brought by the contractor to the site for incorporation in the permanent works, the contractor shall be paid <b>80%</b> of the respective items against the schedule against the indemnity bond, and a balance of <b>20%</b> shall be paid when these materials are used as per the engineer's requirement.</p> <p>The payment may be will be released after taking an indemnity bond. The unit of measurement of cum ballast is only for releasing interim payment. After completion of track work qty of ballast will be reconciled based on a minimum ballast cushion of 250</p>
		Laying Track Skelton work including laying and compaction initial layer of ballast on PSC sleepers laid on the initial layer of compacted ballast rail threading fixing all rail sleeper fittings etc	18 %	
		Flash butt welding of joints ultrasound testing of rails & welds adequate machine tamping of track to make fit for the operation of freight track complete linkage	10%	

		of the track to ensure continuous and completed linkage of the track. Which includes providing signages & other misc. works etc.		
		<b>Total</b>	<b>100%</b>	
<b>1.4 Track work (Ballastless Track)</b>	<b>9.00%</b>	<b>Ballastless Track:</b> Laying of track slab and installation of track work for plain track with UIC 60kg head hardened rails with all fittings and fastenings etc		
		- Supply of Rails		Covered under item No 1.4.1
		Laying of track slab and installation of track work for plain track with UIC 60kg head hardened rails with all fittings and fastenings etc.	<b>100%</b>	The unit of measurement is linear length. Payment of each stage shall be made on a pro-rata basis on completion of a stage in a continuous length of a minimum 50 m
<b>1.5 Rail-Level Platforms</b>	<b>41.50%</b>	Construction of a platform with 100 mm thick CC blocks on a 50 mm sand cushion over the prepared bed		Supply of 100 mm thick CC Blocks in M50 Grade brought by the contractor to the site for incorporation in the permanent works. The unit of measurement is square meters, Payment shall be made on a pro-rata basis upon completion of each platform.  For the material brought by the contractor to the site for incorporation in the permanent works, the contractor

				<p>shall be paid <b>40%</b> of the respective items against the schedule against the indemnity bond, and the balance <b>60%</b> shall be paid when these materials are used as per the engineer's requirement.</p> <p>payment may be released after taking an indemnity bond. The unit of measurement of cum ballast is only for releasing interim payment.</p>
			<b>30 %</b>	Supply of 100 mm thick CC Blocks in M50 Grade brought by the contractor to the site for incorporation in the permanent works, the contractor shall be paid 80% of the respective items against the schedule against the indemnity bond and the balance 20% shall be paid when these materials use as per the Engineers requirement.
			<b>1 %</b>	The unit of measurement is square meters, Payment shall be made on a pro-rata basis upon completion of each platform on achieving 100% of the desired height of Murrum compacted to 98% of MDD in two layers.
			<b>6%</b>	Construction of Platform wall. The measurement is in meters. The payment shall be made on pro-rata basis on the completion of work
			<b>13 %</b>	The unit of measurement is square meters, Payment shall be made on a pro-rata basis upon completion of work.

				each platform on achieving 100% of height in three layers of WBM Grading II/WMM.
			<b>30 %</b>	The unit of measurement is square meters, Payment shall be made on a pro-rata basis upon completion of each platform Achieving 100% of the desired height of Dry lean Concrete
			<b>20%</b>	The unit of measurement is square meters, Payment shall be made on a pro-rata basis upon completion of each platform on achieving 100% of the desired height Paving Block
		<b>Total</b>	<b>100%</b>	
<b>1.6 Railway Buildings</b>	1.00 %	Construction of railway station buildings and service buildings <b>Gomities</b> complete in all respects including fixing doors, windows, sanitary, water supply works, electrification, and all other specified and incidental works.	100 %	The unit of measurement is the plinth area in square meters. For the buildings having more than one story, the total area. Unit cost shall be determined on a pro-rata basis concerning the total area of all stations including 1 <sup>st</sup> floors and service buildings
<b>1.7 Engineering facilities.</b>	0.50 %	<b>Site office and other Engineering facilities</b>	100 %	The Payment shall be made on a pro-rata basis.
<b>1.8 Miscellaneous works</b>	1.0 %	<b>Miscellaneous works</b>	100 %	The Payment shall be made on a pro-rata basis

<b>1.9 Integrated testing and commissioning.</b>	2.00 %	<b>1.15</b> Successful completion of Integrated testing and commissioning.	100%	On the issue of the Completion Certificate. In case the Completion Certificate is for part of the Railway Project, the payment shall be made for the route km covered by the Completion Certificate pro rata to the total route km for the Project.
<b>Total</b>	91%			

## 2. Railway Electrification Works

Item	Weightage in percentage to the Contract Price}	Stage for Payment	Percentage weightage	Payment Procedure
1	3	4	5	6
<b>2.1 Overhead Equipment Work</b>	9.00 %	1.1 Completion of Design & drawing and Foundation work for block sections including stations and yards  1.2 Supply of steel (Mast and Portals components only)  1.3 Completion of Steel	5%  25%  20%	Payment for each stage shall be made after completion of a previous stage for a Section and its yards, measured in track kilo metre(TKM) pro rata with reference to the total TKM.  For items 1.2 and 1.5 of stage payment, payment for supplies for additional sections, to the extent of a maximum 10% of the total TKM, in addition to the payment admissible under item 1.0 above may be done. Payment against supplies under this item shall

		erection (Mast & Portal) & grouting with painting of location Numbers		be made for quantities as per the approved layout.
		1.4 Completion of erection of Bracket, Guy Rod, anti-creep (Complete pre-wiring activity), Height gauge & protection screen	10%	
		1.5 Supply of Contact & Catenary wire only	20%	
		1.6 Completion of wiring along with the erection of balance weight, dropping & clipping including antitheft charging	10%	For item No. 1.6 Stage payment will be released on completion of work
		1.7 Commissioning	10%	For item No. 1.7 Stage payment will be released on completion of work
		<b>Total</b>	<b>100%</b>	



**SCHEDULE - H**  
*(See Clause 10.2.7)*

**DRAWINGS**

**1 Drawings**

In compliance of the obligations set forth in Clause 10.2 of this Agreement, the Contractor shall furnish to the SPV's Engineer , free of cost, all Drawings listed in Annex-I of this Schedule-H.

**2 Additional Drawings**

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

Annexure-I

*(Schedule-H)*

**List of Drawings**

**The list of Drawings and Documents to be furnished by the Contractor shall include, but not be limited to:**

**General & Civil Engineering and Electrical works:**

1. Approved Existing Detailed Design Yard Layout Plan for New Dabla Crossing Station and Take off of IMLH Siding.
2. Approved Yard Layout Plan of IMLH at Nangal Choudhary (ESP) – Phase-1
3. Plan and L-Section of IMLH Siding from the Take-off point from New Dabla Station to IMLH Yard
4. Proposed Sectioning Diagram for IMLH Siding
5. OHE Pegging Plans
6. Plan of Station Building
7. Cross-sectional details Platforms.

SCHEDULE -I  
(See Clause 10.3.2)  
**Project Completion Schedule**

**Project Completion Schedule -Physical**

**1. Project Completion Schedule**

The duration of the project to complete Section Y Part-A works is 18 months works and the maintenance period is 12 months. Following are the activities year-wise.

**2. First year**

- a) First-year completion work shall occur on the date falling on the 365th days\* from the Appointed Date (the “first year”).

(The number of days of the first year up to 31.03.2025 will depend upon EPC tender and date of issue LOA, the appointed date)

- b) Phased working is planned for available land for the project including GT investigation.

- (i) phased working according to available land for IMLH Nangal Choudhary rail Connectivity Project.

S.No.	Type of work	The activity of first-year	Milestones
1.	Design and proof checking and getting approval from the client.	For all civil and electrical departments.	<b>First year (1 to 12 months) 65 % physical progress</b>
2.	Geotechnical investigations.	100 % work of soil investigation to determine index properties.	
3.	Earthwork	50 % of earthwork in the IMLH yard where land is available (PART A SECTION Y).	
4.	Track/linking works.	45 % of Ballasted Track IMLH of Nangal Choudhary 75 % completion of Construction of one Ballast-less track.	

5.	Platforms work including its components like water booth, Signage, etc.,	Completion of one rail-level platform in all aspects and obtaining approval from the client.
6.	Drain works.	45% of IMLH Nangal Choudhary
7.	Station Building works.	25% of IMLH Nangal Choudhary
8.	Electrical works.	30% of IMLH Nangal Choudhary

### 3. Second year (13th to 18th months)

- a) Second year shall commence from the 366th days day from the Appointed Date (the second year)

#### Second year (13th to 18th months), Physical achievement:

S. No.	Description of work	Description of Activity	Milestones
1.	Earthwork including cutting, filling and Blanketing works.	100% earthwork complete up to formation level including Turfing works along slope embankment where land is available inside IMLH yard. (Part A, section Y)	(13 <sup>th</sup> to 18 <sup>th</sup> Months) balance physical progress.
3.	Station Building.	Completion of Building in all aspects and obtaining approval from the client. Construction of end Gomtias.	
4.	Track/linking works.	Laying of track in the yard of IMLH Nangal Choudhary line numbers 1,2,3 & 4.  Successful integrated commissioning and testing of complete IMLH Nangal Choudhary Project.	

5.	Platforms work including its components like water booth, Signage, etc.,	Loading/ unloading platform number 2 (Part A: Section Y)
6.	Drain works.	Balance work of Drains construction
7.	Electrical works.	100 % Completion of electrical works in all aspects. and taking approval from the client.
8.	Testing trial and commissioning.	Completion of integrated testing and commissioning.

## **1 Project Completion Schedule - Financial**

During the Construction period, the Contractor shall comply with the requirements set forth in this Schedule-I for each of the Project Milestones and the **Scheduled Completion Date**. Within 15 (fifteen) days of the date of each Project Milestone, the Contractor shall notify the SPV 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 90<sup>th</sup> day from the Appointed Date (the “**Project Milestone-I**”).
- 2.2 Prior to the occurrence of Project Milestone-I, the Contractor shall have commenced construction of the Railway Project and submitted to the SPV duly and validly prepared Stage Payment Statements for an amount not less than 5 % (ten percent) of the Contract Price.

### **3 Project Milestone-II**

- 3.1 Project Milestone-II shall occur on the date falling on the 180<sup>th</sup> day from the Appointed Date (the “**Project Milestone-II**”).
- 3.2 Prior to the occurrence of Project Milestone-II, the Contractor shall have continued with construction of the Railway Project and submitted to the SPV duly and validly prepared Stage Payment Statements for an amount not less than 15% (Fifteen percent) of the Contract Price.

### **4 Project Milestone-III**

- 4.1 Project Milestone-III shall occur on the date falling on the 270<sup>th</sup> day from the Appointed Date (the “**Project Milestone-III**”).
- 4.2 Before the occurrence of Project Milestone-III, the Contractor shall have continued with construction of the Railway Project and submitted to the SPV duly and validly prepared Stage Payment Statements for an amount not less than 30 % of the Contract Price.

### **5. Project Milestone-IV**

- 5.1 Project Milestone-III shall occur on the date falling on the 360<sup>th</sup> day from the Appointed Date (the “**Project Milestone-IV**”).
- 5.2 Before the occurrence of Project Milestone-IV, the Contractor shall have continued with construction of the Railway Project and submitted to the SPV duly and validly prepared Stage Payment Statements for an amount not less than 50 % of the Contract Price.

### **6. Project Milestone-V**

- 6.1 Project Milestone-III shall occur on the date falling on the 450<sup>th</sup> day from the Appointed Date (the “**Project Milestone-V**”).
- 6.2 Before the occurrence of Project Milestone-III, the Contractor shall have continued with construction of the Railway Project and submitted to the SPV duly and validly prepared Stage Payment Statements for an amount not less than 80 % of the Contract Price.

**Project Milestone-VI**

- 6.1 Project Milestone-III shall occur on the date falling on the 540<sup>th</sup> day from the Appointed Date (the “**Project Milestone-VI**”).
- 6.2 Before the occurrence of Project Milestone-III, the Contractor shall have continued with construction of the Railway Project and submitted to the SPV duly and validly prepared Stage Payment Statements for an amount not less than 100 % of the Contract Price.

**7. Material Advance:**

The material advance shall be paid on submission of the Tax Invoice, required test reports, and submission of the Indemnity bond in between the milestones payments.

Note:

**8 Scheduled Completion Date**

- 8.1 The Scheduled Completion Date shall be 540 days from the Appointed Date.
- 8.2 On or before the Scheduled Completion Date, the Contractor shall have completed construction in accordance with this Agreement.

**9 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 - J

*(See Clause 12.1.2)*

### **Tests on Completion**

#### **1 Schedule for Tests**

- 1.1 The Contractor shall, no later than 30 (thirty) days before the likely completion of construction, notify the SPV's Engineer and the SPV of its intent to subject the Railway Project to Tests, and no later than 10 (ten) days before the actual date of Tests, furnish to the SPV's Engineer and the SPV detailed inventory and particulars of all works and equipment forming part of Works.
- 1.2 The Contractor shall notify the SPV's Engineer of its readiness to subject the Railway Project to Tests at any time after 10 (ten) days from the date of such notice, and upon receipt of such notice, the SPV's Engineer shall, in consultation with the Contractor, determine the date and time for each Test and notify the same to the SPV who may designate its representative to witness the Tests. The SPV's Engineer shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with Article 12 and this Schedule-J.

#### **2 Tests**

- 2.1 Visual and physical test: The SPV's Engineer shall conduct a visual and physical check of construction to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.
- 2.2 Integrated Testing of the system followed by a period of trial running. The test sequence may be as shown below:-
  - a) Tests on Equipment
  - b) Installation Test and sub-system individually
  - c) System Integrated Test
  - d) Final Acceptance Test
  - e) Trial Running
- 2.3 Safety Audit: The SPV's Engineer shall carry out, or cause to be carried out, a safety audit to determine conformity of the Railway Project with the safety requirements and Good Industry Practice.

#### **3 Agency for conducting Tests**

All Tests set forth in this Schedule-J shall be conducted by the SPV's Engineer or such other agency or person as it may specify in consultation with the Authority.

#### **4 Completion Certificate**

Upon successful completion of Tests, the SPV's Engineer shall issue the Provisional Certificate in accordance with the provisions of Article 12. For the avoidance of doubt, the Completion Certificate shall not be issued by the SPV's Engineer unless authorization of the Commissioner for Railway Safety has been obtained. \_\_\_\_



SCHEDULE - K  
(See Clause 12.2 and 12.4)

**1. PROVISIONAL CERTIFICATE**

- 1 I/We, ..... (Name of the SPV's Engineer ), acting as the SPV's Engineer, under and in accordance with the Agreement dated ..... (the "**Agreement**"), for construction of the ..... section (km ....to km ...) in the State of .....in .....-..... Railway (the "**Railway Project**") on Engineering, Procurement and construction (EPC) basis through ..... (Name of Contractor), hereby certify that the Tests in accordance with Article 12 of the Agreement have been undertaken to determine compliance of the Railway Project with the provisions of the Agreement.
- 2 Certain minor works are incomplete and these are not likely to cause material inconvenience to the Users of the Railway Project or affect their safety or the movement of rail traffic in any manner. These works have been specified in the Punch List appended hereto, and the Contractor has agreed and accepted that it shall complete all such works in the time and manner set forth in the Agreement.
- 3 In view of the foregoing, I/We am/are satisfied that the Railway Project from km ..... to km ..... can be safely and reliably placed in service of the SPV for railway freight and passenger traffic, subject to authorisation by the Commissioner of Railway Safety in accordance with Applicable Laws. In terms of the Agreement, the Railway Project is hereby provisionally declared fit for entry into operation on this the ..... day of ..... 20.....

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

(Signature)

SIGNED, SEALED AND  
DELIVERED  
For and on behalf of  
SPV'S ENGINEER by:

(Signature)

## 2. COMPLETION CERTIFICATE

1 I/We, ..... (Name of the SPV's Engineer ), acting as the SPV's Engineer , under and in accordance with the Agreement dated ..... (the "**Agreement**"), for construction of the .....section (km ..... to km ..... ) of .....in the State of ..... in .....-..... Railway (the "**Railway Project**") on Engineering, Procurement and Construction (EPC) basis through ..... (Name of Contractor), hereby certify that the Tests in accordance with Article 12 of the Agreement have been successfully undertaken to determine compliance of the Railway Project with the provisions of the Agreement, and the authorisation by the Commissioner for Railway Safety under Applicable Laws has been obtained.

2 It is certified that, in terms of the aforesaid Agreement, all works forming part of Railway Project have been completed, and the Railway Project is hereby declared fit for entry into operation on this the ..... day of ..... 20.....

SIGNED, SEALED AND DELIVERED

For and on behalf of

the SPV's Engineer by:

(Signature)

(Name)

(Designation)

(Address)

SCHEDULE - L  
(See Clause 16.1.1)

**SELECTION OF SPV'S ENGINEER**

**1 Selection of SPV's Engineer**

- 1.1 SPV has been appointed PMC i.e Engineer as IPRCL

**2 Terms of Reference**

The Terms of Reference for the SPV's Engineer (the “**TOR**”) shall substantially conform with Annex 1 to this Schedule L.

Annex – I  
(Schedule - L)

**DUTIES & RESPONSIBILITIES FOR SPV’S ENGINEER**

**1 Scope**

- 1.1 These Duties & Responsibilities (DR) shall apply to construction and maintenance (wherever applicable) of the Railway Project.

**2 Definitions and interpretation**

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

**3. General**

- 3.1 The SPV’s Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.
- 3.2 The SPV’s Engineer shall perform the duties and exercise the SPV in accordance with the provisions of this Agreement, but subject to obtaining prior written approval of the SPV (where SPV’s Engineer is designated as the Authority, the compliance of these conditions have to be ensured by him/her) before determining:
- (a) any Time Extension;
  - (b) any additional cost to be paid by the SPV to the Contractor;
  - (c) the Termination Payment;
  - (d) providing Power Block or Traffic Block to the Contractor;
  - (e) approval of signalling plan and signalling plan and route control chart;
  - (f) approval of disconnections for modification of signalling and telecom works;
  - (g) any other matter which is not specified in (a) to (f) above and which creates an obligation or liability on either Party for a sum exceeding Rs.5,000,000/- (Rupees fifty lakh).

- 3.3 The SPV's Engineer shall submit regular periodic reports, at least once every month, to the SPV in respect of its duties and functions assigned to him for the project. Such reports shall be submitted by the SPV's Engineer within 10 (ten) days of the beginning of every month.
- 3.4 The SPV's Engineer shall aid and advise the SPV on any proposal for Change of Scope under Article 13.
- 3.5 In the event of any disagreement regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the SPV's Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on Good Industry Practice and authentic literature.
- 3.6 The SPV's Engineer shall verify the as built drawings submitted by the Contractor after completion of the works. These drawings will be signed by the SPV's Engineer after due verification.

#### **4. Construction Period**

- 4.1 During the Construction Period, the SPV's Engineer shall review the Drawings furnished by the Contractor along with supporting data, including the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites and topographical surveys. The SPV's Engineer shall complete such review and send its observations to the SPV and the Contractor within 15 (fifteen) days of receipt of such Drawings; provided, however that in case of an Important Bridge, a Major Bridge or Structure, and interlocking and telecom switching equipment the aforesaid period of 15 (fifteen) days may be extended up to 30 (thirty) days. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.
- 4.2 The SPV's Engineer shall review any revised Drawings sent to it by the Contractor and furnish its comments within 10 (ten) days of receiving such Drawings.
- 4.3 The SPV's Engineer shall review the Quality Assurance Plan submitted by the Contractor and shall convey its comments to the Contractor within a period of 21 (twenty-one) days stating the modifications, if any, required thereto.
- 4.4 The SPV's Engineer shall complete the review of the methodology proposed to be adopted by the Contractor for executing the Works, and convey its comments to the Contractor within a period of 10 (ten) days from the date of receipt of the proposed methodology from the Contractor. The SPV's Engineer shall draw the non-interlocking programme for works involving existing yards and issue a jointly agreed NI programme for each such yard.
- 4.5 The SPV's Engineer shall grant written approval to the Contractor, where necessary, for interruption and diversion of the flow of traffic in the existing lane(s) of the Railway Project for purposes of maintenance during the Construction Period in.
- 4.6 The SPV's Engineer shall review the monthly progress report furnished by the Contractor and send its comments thereon to the SPV and the Contractor within 7 (seven) days of receipt of such report.

- 4.7 The SPV's Engineer shall inspect the Construction Works and the Railway Project and shall submit a monthly Inspection Report bringing out the results of inspections and the remedial action taken by the Contractor in respect of Defects or deficiencies.
- 4.8 The SPV's Engineer shall conduct the pre-construction review of manufacturer's test reports and standard samples of manufactured Materials, and such other Materials as the SPV's Engineer may require.
- 4.9 For determining that the Works conform to Specifications and Standards, the SPV's Engineer shall require the Contractor to carry out, or cause to be carried out, tests at such time and frequency and in such manner as specified in the Agreement and in accordance with Good Industry Practice for quality assurance. For purposes of this Paragraph 4.9, the tests specified in \*\*\*\*\* Manuals or any modification/substitution thereof shall be deemed to be tests conforming to Good Industry Practice for quality assurance.
- 4.10 The SPV's Engineer shall test check prescribed in this agreement for each category or type of test for quality control by the Contractor.
- 4.11 The timing of tests referred to in Paragraph 4.9, and the criteria for acceptance/rejection of their results shall be determined by the SPV's Engineer in accordance with the Quality Control Manuals. 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 Contractor for its own quality assurance in accordance with Good Industry Practice.
- 4.12 In the event that results of any tests conducted under Clause 11.10 establish any Defects or deficiencies in the Works, the SPV's Engineer shall require the Contractor to carry out remedial measures.
- 4.13 The SPV's Engineer may instruct the Contractor to execute any work which is urgently required for the safety of the Railway Project, whether because of an accident, unforeseeable event or otherwise; provided that in case of any work required on account of a Force Majeure Event, the provisions of Clause 19.6 shall apply.
- 4.14 In the event that the Contractor fails to achieve any of the Project Milestones, the SPV's Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the SPV's Engineer shall determine that completion of the Railway Project is not feasible within the time specified in the Agreement, it shall require the Contractor 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 Contractor, the SPV's Engineer shall review the same and send its comments to the SPV and the Contractor forthwith.
- 4.15 The SPV's Engineer shall obtain from the Contractor a copy of all the Contractor's quality control records and documents before the Completion Certificate is issued pursuant to Clause 12.4.

- 4.16 SPV's Engineer may recommend to the SPV suspension of the whole or part of the Works if the work threatens the safety of the public and pedestrians. After the Contractor has carried out remedial measure, the SPV's Engineer shall inspect such remedial measures forthwith and make a report to the SPV recommending whether or not the suspension hereunder may be revoked.
- 4.17 In the event that the Contractor carries out any remedial measures to secure the safety of suspended works and the public, and requires the SPV's Engineer to inspect such works, the SPV's Engineer shall inspect the suspended works within 3 (three) days of receiving such notice, and make a report to the SPV forthwith, recommending whether or not such suspension may be revoked by the Authority.
- 4.18 The SPV's Engineer shall carry out, or cause to be carried out, all the Tests specified in Schedule-J and issue a Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 4.18 and all matters incidental thereto, the SPV's Engineer shall act under and in accordance with the provisions of Article 12 and Schedule-J.

## **5. Determination of costs and time**

- 5.1 The SPV's Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.
- 5.2 The SPV's Engineer shall determine the period of Time Extension that is required to be determined by it under the Agreement.
- 5.3 The SPV's Engineer shall consult each Party in every case of determination in accordance with the provisions of Clause 16.5.

## **6. Payments**

- 6.1 The SPV's Engineer shall withhold payments for the affected works for which the Contractor fails to revise and resubmit the Drawings to the SPV's Engineer in accordance with the provisions of Clause 10.2.7 (d).
- 6.2 SPV's Engineer shall -
  - (a) within 10 (ten) days of receipt of the Stage Payment Statement from the Contractor pursuant to Clause 17.4, determine the amount due to the Contractor and recommend the release of 80 (eighty) percent of the amount so determined as part payment, pending issue of the Interim Payment Certificate; and
  - (b) within 20 (twenty) days of the receipt of the Stage Payment Statement referred to in Clause 17.4, deliver to the SPV and the Contractor an Interim Payment Certificate certifying the amount due and payable to the Contractor.

**7. Other duties and functions**

The SPV's Engineer shall perform all other duties and functions as specified in the Agreement.

**8. Miscellaneous**

- 8.1 A copy of all communications, comments, instructions, Drawings or Documents sent by the SPV's Engineer to the Contractor pursuant to this TOR, and a copy of all the test results with comments of the SPV's Engineer thereon, shall be furnished by the SPV's Engineer to the SPV forthwith.
- 8.2 The SPV's 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.
- 8.3 Within 90 (ninety) days of the Project Completion Date, the SPV's Engineer shall obtain a complete set of as-built Drawings, in 2 (two) hard copies and in micro film form or in such other medium as may be acceptable to the Authority, reflecting the Railway Project as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Railway Project and setback lines, if any, of the buildings and structures forming part of Project Facilities; and shall hand them over to the SPV against receipt thereof.
- 8.4 The SPV's Engineer shall inform the SPV and the Contractor of any event of Contractor's Default within one week of its occurrence.



**SCHEDULE - M**

*(See Clauses 17.4.1, 17.6.1, and 17.6.1)*

**Forms of Payment Statements**

**1. Stage Payment Statement for Works**

The Stage Payment Statement for Works shall state:

- (a) the estimated amount for the Works executed in accordance with Clause 17.3.1 subsequent to the last claim;
- (b) amounts reflecting adjustments in price for the aforesaid claim;
- (c) the estimated amount of each Change of Scope Order executed subsequent to the last claim;
- (d) amounts reflecting adjustment in price, if any, for (c) above in accordance with the provisions of Clause 13.2.3 (a);
- (e) total of (a), (b), (c) and (d) above;
- (f) Deductions:
  - (i) Any amount to be deducted in accordance with the provisions of the Agreement except taxes;
  - (ii) Any amount payable by the Contractor to the SPV under the provisions of the Agreement; and
  - (iii) Any amount towards deduction of taxes at source under Applicable Laws.
  - (iv) Total of (i) to (iii) above.
- (g) Net claim: (e) – (f) (iv);
- (h) The amounts received by the Contractor up to the last claim:
  - (i) For the Works executed (excluding Change of Scope orders);
  - (ii) For Change of Scope Orders, and
  - (iii) Taxes deducted at source under Applicable Laws

**2. Contractor's claim for Damages**

**Note:** The Contractor shall submit its claims in a form acceptable to the Authority.

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SCHEDULE - N  
(See Clause 18.1)

**INSURANCE**

**1. Insurance during the Construction Period**

- 1.1 The Contractor shall effect and maintain at its own cost, from the Appointed Date till the date of issue of the Completion Certificate, the following insurances for any loss or damage occurring on account of Non-Political Event of Force Majeure, malicious act, accidental damage, explosion, fire, and terrorism:
- (a) insurance of Works, Plant and Materials and an additional sum of [15% (fifteen per cent)] of such replacement cost to cover any additional costs of and incidental to the rectification of loss or damage including professional fees and the cost of demolishing and removing any part of the Works and of removing debris of whatsoever nature; and
  - (b) insurance for the Contractor's equipment and Documents brought onto the Site by the Contractor, for a sum sufficient to provide for their replacement at the Site.
- 1.2 The insurance under paragraph 1.1 (a) and (b) above shall cover the SPV and the Contractor against all loss or damage from any cause arising under paragraph 1.1 other than risks which are not insurable at commercial terms.

**2. Insurance for Contractor's Defects Liability**

The Contractor shall effect and maintain insurance cover for the Works from the date of issue of the Completion Certificate until the end of the Defects Liability Period for any loss or damage for which the Contractor is liable and which arises from a cause occurring prior to the issue of the Completion Certificate. The Contractor shall also maintain other insurances for maximum sums as may be required under Applicable Laws and in accordance with Good Industry Practice.

**3. Insurance against injury to persons and damage to property**

- 3.1 The Contractor shall insure against its liability for any loss, damage, death or bodily injury, or damage to any property (except things insured under Paragraphs 1 and 2 of this Schedule) or to any person (except persons insured under Clause 18.9), which may arise out of the Contractor's performance of this Agreement. This insurance shall be for a limit per occurrence of not less than the amount specified below with no limit on the number of occurrences.
- The insurance cover shall be not less than: Rs. [.....]
- 3.2 The insurance shall be extended to cover liability for all loss and damage to the SPV's property arising out of the Contractor's performance of this Agreement excluding:
- (a) the SPV's right to have the construction works executed on, over, under, in or through any land, and to occupy this land for the Works; and

- (b) damage which is an unavoidable result of the Contractor's obligations to execute the Works.

**4. Insurance to be in joint names**

The insurance under paragraphs 1 to 3 above shall be in the joint names of the Contractor and the Authority.

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**SCHEDULE - O**

*(See Clauses 4.6 & 4.7)*

**Provision of Traffic Blocks and Power Blocks**

**1. Provision of Traffic Blocks Power Blocks and Disconnections**

- 1.1 The SPV shall provide Power Blocks or Traffic Blocks or Power Blocks, or both, during day or night, as the case may be, to enable the Contractor to execute the construction works of overhead equipment, or such other work as may be determined by the SPV's Engineer . The maximum aggregate duration of blocks for the Railway Project shall be [\*\*\*] hours.
- 1.2 The Contractor is entitled to execute the construction work within the block period specified in this Schedule-O. The total duration of Power Block or Traffic Block or both, as the case may be, shall not exceed 20% of the period specified in this Agreement. In case such total duration exceeds 20% the Contractor shall pay Damages at the rate of [Rs.\*\*\*] per hour or part thereof for the exceeded Block periods.
- 1.3 The SPV shall arrange for disconnections of S&T system as determined by SPV's Engineer , to enable the Contractor to execute the construction work which affects existing Singalling and Telecommunication installations.

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SCHEDULE - P

*(See Clauses 4.4)*

**Machinery and equipment**

1. The SPV shall not provide the any of the machinery and equipment to the Contractor. The contractor has to arrange machinery and equipment's at by their own:

## **The End of Schedules.**

