



Building Rail Connectivities & Capacity Augmentation
Customer Funding
Model Concession Agreement



Ministry of Railway
Government of India

INDEX

Particulars	Page No.
DEFINITIONS AND INTERPRETATION	4
SCOPE AND TERM OF AGREEMENT.....	7
OBLIGATIONS OF THE PARTIES.....	8
REPRESENTATIONS AND WARRANTIES.....	10
FINANCIAL COVENANTS	12
FORCE MAJEURE	14
EVENT OF DEFAULT AND TERMINATION.....	16
ASSIGNMENT.....	19
LIABILITY AND INDEMNITY	20
DISPUTE RESOLUTION	22
MISCELLANEOUS	24
DEFINITIONS.....	28

CUSTOMER FUNDING FOR CAPACITY AUGMENTATION

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

BETWEEN

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

AND

2 {***}⁴, a company incorporated under the provisions of the Companies Act, [1956/2013] and having its registered office at [***], (hereinafter referred to as the “**CUSTOMER**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

WHEREAS:

- (A) The Customer is engaged in the business of *** and [owns and/or operates/or will own and/or operate] a *** at *** and requires [the rail connectivity/augmentation of rail network] from *** km to *** km for enabling the transportation of consignments to and from **.
- (B) Accordingly, the Customer has requested MOR to undertake [construction/augmentation] of the rail line from *** to *** km (“**Rail System**”) and has agreed to finance the cost of construction of the Rail System in accordance with the provisions of this Agreement.
- (C) MOR has examined the proposal of Customer and has found that the [construction/augmentation] of Rail System is financially viable.
- (D) MOR has accepted the proposal of the Customer and agreed to enter into this Agreement with the Customer for execution of the Project, subject to and on the terms and conditions set forth hereinafter.

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

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

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

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

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

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 12) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall, unless the context otherwise requires, have the meaning ascribed thereto in the Schedules.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) 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;
- (d) 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;
- (e) any reference to day shall mean a reference to a calendar day;
- (f) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (g) 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;
- (h) 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;
- (i) the words importing singular shall include plural and vice versa;
- (j) references to any gender shall include the other and the neutral gender;
- (k) “**lakh**” means a hundred thousand (100,000) and “**crore**” means ten million (10,000,000);

- (l) 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;
- (m) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of MOR hereunder or pursuant hereto in any manner whatsoever;
- (n) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party, as the case may be, in this behalf and not otherwise;
- (o) 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;
- (p) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement;
- (q) 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**”);
- (r) time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence; and
- (s) unless the context otherwise requires, words or expressions used in this Agreement but not defined herein, shall bear the same meaning as in the Railways Act,1989 or other rules, regulations and policies issued by MOR, from time to time or any modification thereof, in force at the date of this Agreement.

1.2.2 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.

1.2.3 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.

1.2.4 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, the Schedules shall prevail;
- (c) between any two Schedules, the Schedule relevant to the issue shall prevail; and

(d) between any value written in numerals and that in words, the latter shall prevail.

ARTICLE 2

SCOPE AND TERM OF AGREEMENT

2.1 Scope of the Agreement

Subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the Customer shall provide the Investment Amount in accordance with the Disbursement Schedule as set out in Schedule-B for Capacity Augmentation of the Rail System to be constructed, owned, operated and maintained by MOR. In consideration of the Customer providing the Investment Amount, MOR shall undertake such Capacity Augmentation and pay to Customer the Rebate in accordance with the terms set forth in this Agreement.

2.2 Term of the Agreement

The Parties agree that this Agreement shall come into force on the Effective Date and shall remain in force for a period of [***]⁵ years, unless, Terminated earlier or modified in accordance with the terms and conditions of this Agreement (“**Term**”).

⁵ The term of the Agreement may be determined on the basis of the Investment Amount, the estimated Freight and the rebate that may be availed by the Customer on an annual basis.

ARTICLE 3

OBLIGATIONS OF THE PARTIES

3.1 Funding by the Customer

Subject to and on the terms and conditions of this Agreement, the Customer shall, at its own cost and expense, arrange and deposit the Investment Amount in the Escrow Account in accordance with the Disbursement Schedule and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.

3.2 Obligations of MOR

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

3.2.2 MOR undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:

- (a) expend the Investment Amount for the sole purposes of the Project envisaged under this Agreement and for no other purpose;
- (b) construct and undertake operation of the Rail System;
- (c) make payment to the Customer in the form of Rebate in accordance with the provisions of this Agreement; and
- (d) perform and fulfil of all other obligations in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations under this Agreement.

3.3 Construction of the Rail System

3.3.1 On or after the Effective Date, MOR shall undertake construction of the Rail System as specified in Schedule-A. The [*** days] from the Effective Date shall be the scheduled date for completion of the Rail System (the “**Scheduled Completion Date**”) and MOR agrees and undertakes that construction of the Rail System shall be completed on or before the Scheduled Completion Date.

3.3.2 The Rail System shall be deemed to be complete upon certification of the successful completion of the Construction Works by the Chief Engineer, Zonal Railway (“**COD**”). Accordingly, the Rail System shall enter into commercial service on the COD whereupon the Customer shall be entitled to use the Rail System and payment of the Rebate in accordance with the provisions of this Agreement.

3.3.3 If COD does not occur prior to the 180 (one hundred and eighty) days after the Scheduled Completion Date, MOR shall pay Damages to the Customer in a sum calculated at the rate of 1% (one per cent) of the Disbursed Amount for each period of 30 (thirty) days of delay until COD is achieved, provided such delay has not occurred as a result of breach of this Agreement by the Customer or due to Force Majeure.

3.3.4 The Parties expressly agree that in the event the COD does not occur, for any reason whatsoever, before the [3rd (third)] anniversary of the Scheduled Completion Date or the extended period provided in accordance with this Agreement, and the delay has not occurred as a result of breach of this Agreement by the Customer or due to Force Majeure, all rights, privileges, claims and entitlements of the Customer under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Customer, and the Agreement shall be deemed to have been terminated by mutual agreement of the Parties. In such event, the Authority shall make a Termination Payment to the Customer in an amount that would be payable under Clause 7.3.2 as if it were a MOR Default.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES

4.1 Representations and warranties of the Customer

The Customer represents and warrants to MOR that:

- (a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) it has the financial standing and capacity to perform its obligations in accordance with the terms of this Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (f) the 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 MOR contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
- (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 entering into this Agreement or for influencing or attempting to influence any officer or employee of MOR in connection therewith.

4.2 Representations and warranties of MOR

MOR represents and warrants to the Customer that:

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

4.3 Disclosure

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

ARTICLE 5

FINANCIAL COVENANTS

5.1 Project Cost

The Parties agree that the cost of Construction Works of the Rail System shall be Rs. *** (“**Estimated Project Cost**”) and the Customer shall finance [Rs. ***] (“**Investment Amount**”) in accordance with the provisions of this Agreement. MOR expressly acknowledges, agrees and undertakes that in the event the actual cost of construction of the Rail System exceeds the Estimated Project Cost, the Customer shall not be liable to finance any amount in excess of the Investment Amount, and the excess thereof shall be borne entirely and solely by MOR. It is further agreed that in the event the actual cost of construction of the Rail System is less than the Disbursed Amount, the balance thereof shall be refunded to the Customer within 90 (ninety) days of COD, but without any interest thereon.

5.2 Disbursement Schedule

- 5.2.1 The Customer shall deposit the Investment Amount in the Escrow Account in accordance with the instructions as set out in Schedule-B (“**Disbursement Schedule**”).
- 5.2.2 In the event the Customer fails to deposit any amount in accordance with the Disbursement Schedule, it shall pay Damages to MOR in a sum calculated at the rate of 1% (one per cent) of the Disbursed Amount for each period of 30 (thirty) days of delay.

5.3 Termination due to failure to adhere to Disbursement Schedule

Notwithstanding anything to the contrary contained in this Agreement, in the event the Customer fails to deposit any amount within [60 (sixty)] days from the due date set forth in the Disbursement Schedule, for any reason whatsoever, MOR shall be entitled to terminate this Agreement in accordance with Article 7 and forfeit the Disbursed Amount and appropriate the same as Damages. In the event of such termination all rights, privileges, claims and entitlements of the Customer under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Customer.

5.4 Escrow Account

- 5.4.1 The Customer and MOR shall, within [30 (thirty)] days from the Effective Date, execute an escrow agreement with the Customer’s bank (the “**Escrow Bank**”) substantially in the form specified in Schedule-C (the “**Escrow Agreement**”) for the establishment and operation of the escrow account (the “**Escrow Account**”) in favour of MOR.
- 5.4.2 The Customer shall deposit or cause to be deposited the Investment Amount into the Escrow Account in accordance with the Disbursement Schedule.
- 5.4.3 The Customer shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, inter alia, that the fund deposited by it in the Escrow Account shall be paid out therefrom to MOR towards payments relating to construction of the Rail System.

5.5 Rebate

- 5.5.1 Subject to the provisions of this Agreement, MOR upon achieving COD for the Rail System and in consideration of the Customer undertaking to perform and discharge its obligations in accordance with the terms, conditions and covenants set forth in this Agreement, agrees and undertakes, on an annual basis in each Accounting Year during the Term of this Agreement, to pay the Customer an annual maximum rebate from the Freight for amount equivalent to the sum of 7% of the Disbursed Amount and the interest computed in accordance with the provisions of Clause 5.5.2 (the “**Rebate**”) subject to the Rebate not exceeding the Freight amount in the Accounting Year. For the avoidance of doubt, the provisions relating to computation of Rebate has been illustrated in Schedule-D.
- 5.5.2 The Parties agree that MOR shall pay an annual interest on the Disbursed Amount at the rate equal to [**%]⁶ per annum and such interest shall be computed and payable on an annual basis after COD.
- 5.5.3 Notwithstanding anything to contrary contained in this Agreement, MOR’s obligation to pay the Rebate shall arise subject to and only upon occurrence of the COD and upon the Customer furnishing with every claim for Rebate, a statement showing the Rebate availed and the amount pending to be availed.
- 5.5.4 In the event of Freight in an Accounting Year being less than the Rebate amount, the interest component will be set off first from the amount paid. In such case, the repayment period will suitably get modified.

5.6 Payment of Rebate

- 5.6.1 From the COD, on the 7th (seventh) Business Day of the first month of every Accounting Year, the Customer shall submit to the zonal railway a statement of Rebate due and payable in respect of the preceding Accounting Year, accompanied by necessary documentation pertaining to Freight booked via Rail System. This documentation will be in form of copies of Railway Receipts (RRs). For the purpose of this calculation, all traffic booked via the Rail System will be considered. The details of origin and destination which will be considered for computing the Freight will be as per the details provided in Schedule ‘E’. The Schedule ‘E’ can be amended during the currency of agreement with mutual consent.
- 5.6.2 Within 30 (thirty) days of receipt of the statement, the Zonal Railway shall pay the Rebate amount. In the event of any delay in the payment of the Rebate, MOR shall pay interest at a rate equal to [3% (three per cent)] above the Bank Rate on the Rebate amount due and payable. Zonal Railway will undertake post payment audit of Rebate paid annually and make suitable adjustments in future payments if required.
- 5.6.3 It is agreed between the Parties that the Customer shall pay all applicable taxes and duties, in accordance with Applicable Laws. Any payment to be made by MOR shall be subject to any tax deduction at source, if required to be made by MOR as per Applicable Laws.

⁶ Interest will be equal to the prevailing rate of the dividend payable by Railways at the time of signing of the Agreement.

ARTICLE 6

FORCE MAJEURE

6.1 Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall mean occurrence in India of any or all of the following which is beyond the reasonable control of the Party, and which could not have prevented or overcome by exercise of due diligence and following Good Industry Practice and has Material Adverse Effect on the Party.

- (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 project site);
- (b) strikes or boycotts (other than those involving the MOR’s contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Rail System for a continuous period of 7 (seven) and an aggregate period exceeding 30 (thirty) days in an Accounting Year;
- (c) any delay or failure of an overseas contractor to deliver equipment in India if such delay or failure is caused outside India by any event specified in Sub-clause (a) above and which does not result in any offsetting compensation being payable to the MOR by or on behalf of such contractor;
- (d) any judgement or order of any court of competent jurisdiction or statutory authority made against the MOR in any proceedings for reasons other than (i) failure of the MOR 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;
- (e) the discovery of geological conditions, toxic contamination or archaeological remains on the project site that could not reasonably have been expected to be discovered through an inspection; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

6.2 Duty to report Force Majeure Event

Upon occurrence of a Force Majeure Event, MOR shall by notice report such occurrence to the Customer forthwith. Any notice pursuant hereto shall include full particulars of:

- (a) the nature and extent of each Force Majeure Event;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the MOR’s performance of its obligations under this Agreement;
- (c) the measures which the MOR is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant.

6.3 Excuse from performance of obligations

If MOR 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) MOR shall make all reasonable efforts to mitigate or limit damage 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 MOR is able to resume performance of its obligations under this Agreement, it shall promptly resume performance of its obligations hereunder.

ARTICLE 7

EVENT OF DEFAULT AND TERMINATION

7.1 Customer Default

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

- (a) failure to disburse Investment Amount as per the Disbursement Schedule;
- (b) an Escrow Default has occurred and the Customer fails to cure the default within a Cure Period of 15 (fifteen) days;
- (c) the Customer repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (d) the Customer is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Customer or for the whole or material part of its assets that has a material bearing on the Project;
- (e) the Customer has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of MOR, a Material Adverse Effect on MOR;
- (f) a resolution for winding up of the Customer is passed, or any petition for winding up of the Customer 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 Customer is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Customer are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Customer under this Agreement and provided that 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 Customer;
- (g) any representation or warranty of the Customer herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Customer is at any time hereafter found to be in breach thereof; or
- (h) the Customer submits to MOR any statement, notice or other document, in written or electronic form, which has a material effect on MOR’s rights, obligations or interests and which is false in material particulars.

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

7.2 MOR Default

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

- (a) MOR abandons or manifests intention to abandon the construction or operation and maintenance of the Rail System without the prior written consent of the Customer;
- (b) MOR does not provide the Rebate for a continuous period of [***] Accounting Years in accordance with the terms of this Agreement; or
- (c) MOR repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

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

7.3 Termination Payment

7.3.1 Upon Termination on account of a Customer Default occurring prior to the COD, MOR shall be entitled to forfeit the Disbursed Amount and appropriate the same as Damages.

7.3.2 Upon Termination on account of MOR Default, MOR shall pay to the Customer, by way of Termination Payment, an amount equal to [120% (one hundred and twenty per cent) of the Disbursed Amount], which shall become due and payable to the Customer within 90 (ninety) days of a demand being made by the Customer to MOR with the necessary particulars, and in the event of any delay, MOR shall pay interest at a rate equal to [3% (three per cent)] above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 120 (hundred and twenty) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by MOR of its payment obligations in respect thereof hereunder.

7.3.3 The Parties expressly agrees that Termination Payment under this Article 7 shall constitute a full and final settlement of all claims of the Party on account of Termination of this Agreement for any reason whatsoever and that neither Party or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

7.4 Survival of rights

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

ARTICLE 8

ASSIGNMENT

8.1 Restrictions on assignment

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

8.2 Assignment by MOR

Notwithstanding anything to the contrary contained in this Agreement, MOR may, after giving [60 (sixty)] days' notice to the Customer, assign and/ or transfer any of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of MOR, capable of fulfilling all of MOR's then outstanding obligations under this Agreement. For the present MOR has nominated the Zonal Railway as its nominee to perform on its behalf and exercise all its rights under this Agreement and the reference to MOR in this Agreement shall include the Zonal Railway.

ARTICLE 9

LIABILITY AND INDEMNITY

9.1 General indemnity

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

9.2 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 9 (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.

9.3 Defence of claims

- 9.3.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 9, 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.

- 9.3.2 If the Indemnifying Party has exercised its rights under Clause 9.3, 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).
- 9.3.3 If the Indemnifying Party exercises its rights under Clause 9.3, 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 9.3.3 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.

9.4 No consequential claims

Notwithstanding anything to the contrary contained in this Article 9, 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.

9.5 Survival on Termination

The provisions of this Article 9 shall survive Termination.

ARTICLE 10

DISPUTE RESOLUTION

10.1 Dispute resolution

- 10.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 10.2.
- 10.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

10.2 Conciliation

In the event of any Dispute between the Parties, either Party may require such Dispute to be referred to [Insert the designation of the Person authorized in this behalf] and the Chairman of the Board of Directors of the Customer for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 10.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 10.3.

10.3 Arbitration

- 10.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 10.2, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 10.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be [Delhi], and the language of arbitration proceedings shall be English.
- 10.3.2 There shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the 2 (two) arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.
- 10.3.3 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 10 shall be final and binding on the Parties as from the date it is made, and the Customer and MOR agree and undertake to carry out such Award without delay.
- 10.3.4 The Customer and MOR agree that an Award may be enforced against the Customer and/or MOR, as the case may be, and their respective assets wherever situated.
- 10.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

10.4 Adjudication by Regulatory Authority or Commission

In the event of constitution of a statutory Regulatory Authority or Commission with powers to adjudicate upon disputes between the Customer and MOR, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 10.3, be adjudicated upon by such Regulatory Authority or Commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

ARTICLE 11

MISCELLANEOUS

11.1 Governing law and jurisdiction

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

11.2 Waiver of immunity

Each Party unconditionally and irrevocably:

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

11.3 Waiver

11.3.1 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.

11.3.2 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.

11.4 Consequential loss and Exclusion of implied warranties etc.

- 11.4.1 Notwithstanding anything to the contrary contained in this Agreement, in no event shall any Party, its officers, employees or agents be liable to any other Party (on the basis of contract, indemnity, warranty or tort including negligence and strict or absolute liability or breach of statutory duty or otherwise) for any matter arising out of, or in connection with, this Agreement in respect of any Consequential Loss suffered by such other Party. For the purposes of this provision, "Consequential Loss" means any indirect or consequential loss (including loss of profit, loss of revenue, loss of contract, loss of goodwill, liability under other agreements, or liability to third parties) resulting from such breach and whether or not the Party committing the breach ought to have known, that such indirect or consequential loss would be likely to be suffered as a result of such breach and includes the payment or repayment of any amounts (or any acceleration thereof) to lenders or creditors of the aggrieved Party from time to time, but excludes death or personal injury resulting from the negligence of the Party liable, its officers, employees or agents.
- 11.4.2 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.

11.5 Survival

- 11.5.1 Termination shall:
- (a) not relieve the Customer or MOR, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and
 - (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.
- 11.5.2 All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

11.6 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.

11.7 Severability

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

11.7 No partnership

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

11.8 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.

11.9 Successors and assigns

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

11.10 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 Customer, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Customer may from time to time designate by notice to MOR; provided that notices or other communications to be given to an address outside [Delhi] may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Customer may from time to time designate by notice to MOR;
- (b) in the case of MOR, be given by facsimile or e-mail and by letter delivered by hand and be addressed to [Insert the designation of the person authorized in this behalf] with a copy delivered to MOR Representative or such other person as MOR may from time to time designate by notice to the Customer; provided that if the Customer does not have an office in [***] it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and
- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

11.11 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.

11.12 Counterparts

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

ARTICLE 12

DEFINITIONS

12.1 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;

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

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

“**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;

“**Award**” shall have the meaning set forth in Clause 10.3.3;

“**Bank**” means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore);

“**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;

“**COD**” shall have the meaning set forth in Clause 3.3.2;

“**Capacity Augmentation**” means the construction and completion of all works specified in Schedule-A;

“**Customer**” shall be either consignor or consignee;

“**Customer Default**” shall have the meaning set forth in Clause 7.1;

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

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

“**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; and

- (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement;

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

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

“**Disbursed Amount**” shall mean the principal amount of the Investment Amount disbursed by the Customer to MOR in accordance with the Disbursement Schedule;

“**Disbursement Schedule**” shall have the meaning set forth in Clause 5.2;

“**Dispute**” shall have the meaning set forth in Clause 10.1.1;

“**Dispute Resolution Procedure**” means the procedure for resolution of Disputes set forth in Article 10;

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

“**Escrow Account**” shall have the meaning set forth in Clause 5.4;

“**Escrow Bank**” shall have the meaning set forth in Clause 5.4;

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

“**Estimated Project Cost**” shall have the meaning set forth in Clause 5.1;

“**Force Majeure**” or “**Force Majeure Event**” shall have the meaning ascribed to it in Clause 11.1;

“**Freight**” means the charge(s) levied by and payable to MOR for the transportation of consignment between Origin to Destination⁷ having booked route via the Rail System⁸ or such other line as agreed between the Parties from time to time, excluding taxes if any, and set forth in Schedule-A of this Agreement;

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

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

“**Indemnified Party**” means the Party entitled to the benefit of an indemnity pursuant to Article 9;

“**Indemnifying Party**” means the Party obligated to indemnify the other Party pursuant to Article 9;

“**Investment Amount**” shall have the meaning set forth in Clause 5.1;

⁸ The origination and destination points as identified in schedule E.

“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;

“MOR” means the Ministry of Railways, Government of India;

“MOR Default” shall have the meaning set forth in Clause 7.2.;

“MOR Indemnified Persons” shall have the meaning set forth in Clause 9.1.1;

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

“Project” means the [construction/Capacity Augmentation], operation and maintenance of the Rail System by MOR, and includes all ancillary and incidental works, services and equipment relating to or in respect of the Rail System;

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

“Rebate” shall have the meaning set forth in Clause 5.5;

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

“Scheduled Completion Date” shall have the meaning set forth in Clause 3.1.1;

“Term” shall have the meaning set forth in Clause 2.2;

“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, under and in accordance with this Agreement, by MOR to the Customer upon Termination; and

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

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

SIGNED, SEALED AND
DELIVERED

For and on behalf of
Ministry of Railways by:

(Signature)
(Name)
(Designation)

THE COMMON SEAL OF CUSTOMER has been affixed pursuant to the resolution passed by the Board of Directors of the Customer at its meeting held on the day of 20..... hereunto affixed in the presence of, Director, who has signed these presents in token thereof and, company Secretary / Authorised Officer who has countersigned the same in token thereof^s:

In the presence of:

1.

2.

SCHEDULE-A
DESCRIPTION OF RAIL SYSTEM

SCHEDULE-B

DISBURSEMENT SCHEDULE

The Customer shall disburse the Investment Amount in accordance with the following Disbursement Schedule:

Sr. No.	Particulars of Event	% of Investment Amount
1.	[***]	[***]
2.	[***]	[***]
3.		
4.		
		100%

SCHEDULE-C

ESCROW AGREEMENT

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

AMONGST

- 1 Limited, a company incorporated under the provisions of the Companies Act, [1956/2013] and having its registered office at (hereinafter referred to as the “**Customer**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
- 2 (name and particulars of the Escrow Bank) and having its registered office at (hereinafter referred to as the “**Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
- 3 The President of India represented by [*** (*Designation of the Signatory*)], Ministry of Railways (Railway Board), Government of India and having its principal offices at [*****] (hereinafter referred to as the “**MOR**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

WHEREAS:

- (A) MOR has entered into an agreement dated with the Customer (the “**Customer Funding Agreement**”), for financing and construction of [the rail connectivity/augmentation of rail network] from *** km to *** km, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) The Customer Funding Agreement requires the Customer to establish an Escrow Account, *inter alia*, on the terms and conditions stated therein.

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

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“**Agreement**” means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

“**Cure Period**” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Customer, and shall commence from the date on

which a notice is delivered by MOR, to the Customer asking the latter to cure the breach or default specified in such notice;

“**Customer Funding Agreement**” means the Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

“**Escrow Account**” means an escrow account established in terms of and under this Agreement, and shall include Sub-Accounts;

“**Escrow Default**” shall have the meaning ascribed thereto in Clause 6.1;

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

“**Payment Date**” means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

“**Sub-Accounts**” means the respective Sub-Accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective Sub Accounts and paid out therefrom on the Payment Date(s).

1.2 Interpretation

1.2.1 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Customer Funding Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Customer Funding Agreement.

1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.3 The rules of interpretation stated in Clauses 1.2 of the Customer Funding Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

2.1.1 The Customer hereby appoints the Escrow Bank to act as trustee for MOR and the Customer in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

2.1.2 The Customer hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for MOR and the Customer, and applied in accordance with the terms of this Agreement. No person other than MOR, and the Customer shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

2.2 Acceptance of Escrow Bank

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

2.3 Establishment and operation of Escrow Account

- 2.3.1 Within 30 (thirty) days from the date of the Customer Funding Agreement, the Customer shall open and establish the Escrow Account with the (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.
- 2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.
- 2.3.3 The Escrow Bank and the Customer shall, after consultation with the MOR, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Customer. For the avoidance of doubt, such fee and expenses shall be appropriated from the Escrow Account in accordance with Clause 4.1.

2.5 Rights of the parties

The rights of MOR and the Customer in the monies held in the Escrow Account are set forth in their entirety in this Agreement and MOR and the Customer shall have no other rights against or to the monies in the Escrow Account.

3 DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Customer

The Customer agrees and undertakes that it shall deposit the Investment Amount into the Escrow Account in accordance with the Disbursement Schedule.

3.2 Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Customer in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4 WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals during Term

- 4.1.1 At the beginning of every month, or at such shorter intervals as the MOR and the Customer may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):
- (a) all payments relating to construction of the Rail System, subject to and in accordance with the conditions, if any, set forth in the Customer Funding Agreements;
 - (b) all payments and Damages certified by MOR as due and payable to it by the Customer pursuant to the Customer Funding Agreement; and
 - (c) balance, if any, in accordance with the instructions of the Customer.
- 4.1.2 No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Customer shall provide to the Escrow Bank, with prior written approval of the MOR's, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the MOR, if fresh information received during the course of the year makes such modification necessary.

4.2 Withdrawals upon Termination

Upon Termination of the Customer Funding Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- (a) all payments and Damages certified by MOR as due and payable to it by the Customer pursuant to the Customer Funding Agreement, repayment of any claims in connection with or arising out of Termination;
- (b) any other payments required to be made under the Customer Funding Agreement; and
- (c) balance, if any, in accordance with the instructions of the Customer.

4.3 Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

5 OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

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

5.2 Notification of balances

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

5.3 Communications and notices

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

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

5.4 No set off

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

5.5 Regulatory approvals

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

6 ESCROW DEFAULT

6.1 Escrow Default

6.1.1 Following events shall constitute an event of default by the Customer (an "**Escrow Default**") unless such event of default has occurred as a result of Force Majeure or any act or omission of MOR:

- (a) the Customer commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
- (b) the Customer causes the Escrow Bank to transfer funds to any account of the Customer in breach of the terms of this Agreement and fails to cure such breach by

depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days;
or

- (c) the Customer commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

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

7 TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Customer in respect of the Disbursement Schedule, or any of its obligations to MOR remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.2 Substitution of Escrow Bank

The Customer may, by not less than 45 (forty five) days prior notice to the Escrow Bank and MOR, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to MOR and arrangements are made to the satisfaction of MOR for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank.

The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3 Closure of Escrow Account

The Escrow Bank shall, at the request of the Customer and MOR made on or after the payment by the Customer of all outstanding amounts under the Customer Funding Agreement including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8 INDEMNITY

8.1 General indemnity

8.1.1 The Customer will indemnify, defend and hold MOR and Escrow Bank, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Customer of any of its obligations under this Agreement or on account of failure of the Customer to comply with Applicable Laws and Applicable Permits.

8.1.2 The Escrow Bank will indemnify, defend and hold the Customer harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Customer's obligations under the Customer Funding Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

8.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 8.1 or in respect of which it is entitled to reimbursement (the “**Indemnified Party**”), it shall notify the other Party responsible for indemnifying such claim hereunder (the “**Indemnifying Party**”) within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

9 DISPUTE RESOLUTION

9.1 Dispute resolution

9.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”) or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

9.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be [Delhi] and the language of arbitration shall be English.

10 MISCELLANEOUS PROVISIONS

10.1 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 [Delhi] shall have jurisdiction over all matters arising out of or relating to this Agreement.

10.2 Waiver of sovereign immunity

MOR unconditionally and irrevocably:

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

- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

10.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

10.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

10.5 Waiver

10.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

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

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

10.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

10.7 Survival

10.7.1 Termination of this Agreement:

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

10.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

10.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10.1 of this Agreement or otherwise.

10.9 Successors and assigns

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

10.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

10.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

10.12 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

10.13 Original Document

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

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

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

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

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

SIGNED, SEALED AND
DELIVERED
For and on behalf of
The President of India *** by:

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

In the presence of:

- 1.
- 2.

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

SCHEDULE-D

ILLUSTRATION FOR PAYMENT OF REBATE

Sl. No.	Year	Payment Due Date	Balance Principal amount (at the beginning of Financial Year)	Rebate Paid		
				Principal	Interest	Total
1	2017-18	07.05.18	100	7	5	12
2	2018-19	07.05.19	93	7	4.65	11.65
3	2019-20	07.05.20	86	7	4.3	11.3
4	2020-21	07.05.21	79	7	3.95	10.95
5	2021-22	07.05.22	72	7	3.6	10.6
6	2022-23	07.05.23	65	7	3.25	10.25
7	2023-24	07.05.24	58	7	2.9	9.9
8	2024-25	07.05.25	51	7	2.55	9.55
9	2025-26	07.05.26	44	7	2.2	9.2
10	2026-27	07.05.27	37	7	1.85	8.85
11	2027-28	07.05.28	30	7	1.5	8.5
12	2028-29	07.05.29	23	7	1.15	8.15
13	2029-30	07.05.30	16	7	0.8	7.8
14	2030-31	07.05.31	9	7	0.45	7.45
15	2031-32	07.05.32	2	2	0.1	2.1

Assumptions for the purpose of illustration:

- (i) Total cost of Project =Rs. 200 Crore.
- (ii) Disbursed Amount = Rs. 100 Crore
- (iii) Interest rate = 5%

(iv) Project start Date = 01.04.2014

(v) Commencement of operation Date (COD)= 01.04.2017

(vi) Maximum annual rebate amount=Rs 7 Crore, 7% of (ii)

(vii) Simple interest accrual date = 01.04.2017

Schedule 'E'
(Clause 5.6.1)

Details of origin and/or destination for which RRs to be considered for computing freight paid:

Table 1: Fixed origin on Rail System and any destination

S.No.	Origin {Name of station(s) from where traffic to be booked}	Destination
		{ Any station on IR }

Table 2: Fixed destination on Rail System and any origin

S.No.	Origin	Destination {Name of station to which traffic to be booked}
	{ Any station on IR }	

**Table 3: Any origin and destination via route containing the Rail
System as defined in the agreement.**

S.No.	Origin {Name of booking station}	Destination {Name of booked station}