भारत सरकार (GOVERNMENT OF INDIA)
रेल मंत्रालय (MINISTRY OF RAILWAYS)
रेलवे बोर्ड (RAILWAY BOARD)

No. 2021/Stn.Dev.-I/08/24/EPC **New Delhi, Dated: 22 .11.2021**

The General Managers,
All Zonal Railways

Vice Chairman,
Rail Land Development Authority

Sub: RFP documents and EPC Agreement for Development/Redevelopment of Railway Stations on Indian Railways.

Ref: Railway Board's letter No. 2021/Stn.Dev.-I/08/18 dated 26.10.2021.

The documents for Request for Proposal (RFP) and Standard Engineering, Procurement and Construction (EPC) Agreement for Development/Redevelopment of Railway Stations, as approved by Board (M/Infra, M/Fin. & CRB&CEO) are attached herewith. The same will be uploaded on IR website on Station Development page also. Zonal Railways may take further necessary action accordingly.

2. This issues with the concurrence of Finance Directorate of Ministry of Railways.

22.11.21
(Rakesh Choudhary)
Executive Director/SD&T
Railway Board

No. 2021/Stn.Dev.-I/08/24/EPC **New Delhi, Dated: 22.11.2021**

Copy forwarded for information to:

1. The Deputy Comptroller & Auditor General of India (Railways), Room No. 224, Rail Bhawan, New Delhi.
2. The PFAs, all Indian Railways.

For Member Finance

Standard
Engineering, Procurement and Construction (EPC) Agreement for Railway Station

Ministry of Railways
Government of India

Contents

PART I
Preliminary

Recitals 11

1 Definitions and Interpretation 13
1.1 Definitions 13
1.2 Interpretation 21
1.3 Measurements and arithmetic conventions 23
1.4 Priority of agreements and errors/discrepancies 24
{1.5 Joint and several liability} 24

PART II
Scope of the Project

2 Scope of the Project 27
2.1 Scope of the Project 27

3 Obligations of the Contractor 28
3.1 Obligations of the Contractor 28
3.2 Obligations relating to sub-contracts and any other agreements 30
3.3 Employment of foreign nationals 31
3.4 Contractor's personnel 31
3.5 Advertisement on Project 32
3.6 Contractor's care of the Works 32
3.7 Electricity, water and other services 32
3.8 Unforeseeable difficulties 32
3.9 Training of Authority's personnel 33
3.10 Safety at work site 33
3.11 Operation of Existing Railway Station 33
3.12 Environmental Measures 33

4 Obligations of the Authority 34
4.1 Obligations of the Authority 34
4.2 Maintenance and operation of the existing facilities 35
4.3 Environmental and Forest Clearances 35
4.4 Machinery and equipment 37
4.5 Deleted 37
4.6 Deleted 37
[4.7 Provision of Power Blocksand Traffic Blocks] 37

5 Representations and Warranties 39
5.1 Representations and warranties of the Contractor 39
5.2 Representations and warranties of the Authority 39
5.3 Disclosure 41

6 Disclaimer 42
6.1 Disclaimer 44

PART III
Construction

7	**Performance Security**	44
7.1	Performance Security	44
7.2	Extension of Performance Security	45
7.3	Appropriation of Performance Security	45
7.4	Release of Performance Security	45
7.5	Retention Money	45
8	**Right of Way**	47
8.1	The Site	47
8.2	Procurement of the Site	47
8.3	Damages for delay in handing over the Site	48
8.4	Site to be free from Encumbrances	49
8.5	Protection of Site from encroachments	50
8.6	Special/temporary Right of Way	50
8.7	Access to the Authority and the Authority Engineer	50
8.8	Geological and archaeological finds	50
9	**Utilities and Trees**	52
9.1	Existing utilities and roads	52
9.2	Shifting of obstructing utilities	52
9.3	New utilities	53
9.4	Felling of trees	53
10	**Design and Construction of the Project**	54
10.1	Obligations prior to commencement of Works	54
10.2	Design and Drawings	55
10.3	Construction of the Project	59
10.4	Extension of time for completion	60
10.5	Incomplete Works	61
10.6	Equipment specificMaintenance Manual	61
11	**Quality Assurance, Monitoring and Supervision**	63
11.1	Quality of Materials and workmanship	63
11.2	Quality control system	63
11.3	Methodology	64
11.4	Inspection and technical audit by the Authority	64
11.5	External technical audit	64
11.6	Inspection of construction records	64
11.7	Monthly progress reports	64
11.8	Inspection	65
11.9	Samples	65
11.10	Tests	65
11.11	Examination of work before covering up	66
11.12	Rejection	66
11.13	Remedial work	67
11.14	Delays during construction	67

11.15	Quality control records and Documents	68
11.16	Video recording	68
11.17	Suspension of unsafe Construction Works	68
12	**Completion Certificate**	70
12.1	Tests on completion	70
12.2	Provisional Certificate	70
12.3	Completion of Punch List items	71
12.4	Completion Certificate	72
12.5	Rescheduling of Tests	72
12.6	Delayed authorisation	72
13	**Change of Scope**	73
13.1	Change of Scope	73
13.2	Procedure for Change of Scope	73
13.3	Payment for Change of Scope	75
13.4	Restrictions on Change of Scope	75
13.5	Power of the Authority to undertake works	75
14	**Traffic Regulation**	77
14.1	Traffic regulation by the Contractor	77
15	**Defects Liability**	78
15.1	Defects Liability Period	78
15.2	Remedy and rectification of Defects and deficiencies	78
15.3	Cost of remedying Defects	79
15.4	Contractor's failure to rectify Defects	79
15.5	Contractor to search cause	79
15.6	Extension of Defects Liability Period	79
16	**Authority Engineer**	81
16.1	Appointment of the Authority Engineer	81
16.2	Duties and functions of the Authority Engineer	81
16.3	Authorised signatories	82
16.4	Instructions of the Authority Engineer	82
16.5	Determination by the Authority Engineer	82
16.6	Remuneration of the Authority Engineer	83
16.7	Replacement of the Authority Engineer	83
16.8	Interim arrangement	83

PART IV
Financial Covenants

17	**Payments**	85
17.1	Contract Price	85
17.2	Advance Payment	85
17.3	Procedure for estimating the payment for the Works	87
17.4	Stage Payment Statement for Works	87
17.5	Stage Payment for Works	87
17.6	Payment of Damages	88

17.7 Time of payment and interest 88
17.8 Price adjustment for the Works 90
17.9 Restrictions on price adjustment 91
17.10 Final Payment Statement 91
17.11 Discharge 92
17.12 Final Payment Certificate 92
17.13 Change in law 92
17.14 Correction of Interim Payment Certificates 93
17.15 Authority's claims 93
17.16 Bonus for early completion 93

18 Insurance 94
18.1 Insurance for Works 94
18.2 Notice to the Authority 95
18.3 Evidence of Insurance Cover 95
18.4 Remedy for failure to insure 95
18.5 Waiver of subrogation 96
18.6 Contractor's waiver 96
18.7 Cross liabilities 96
18.8 Accident or injury to workmen 96
18.9 Insurance against accident to workmen 96
18.10 Application of insurance proceeds 97
18.11 Compliance with policy conditions 97

Part V
Force Majeure and Termination

19 Force Majeure 99
19.1 Force Majeure 99
19.2 Non-Political Event 99
19.3 Indirect Political Event 100
19.4 Political Event 100
19.5 Duty to report Force Majeure Event 101
19.6 Effect of Force Majeure Event on the Agreement 101
19.7 Termination Notice for Force Majeure Event 102
19.8 Termination Payment for Force Majeure Event 103
19.9 Dispute resolution 103
19.10 Excuse from performance of obligations 103

20 Suspension of Contractor's Rights 105
20.1 Suspension upon Contractor Default 105
20.2 Authority to act on behalf of Contractor 105
20.3 Revocation of Suspension 105
20.4 Termination 106

21 Termination 107
21.1 Termination for Contractor Default 107
21.2 Termination for Authority Default 109
21.3 Right of Authority to determine the Agreement 110
21.4 Requirements after Termination 110

21.5 Valuation of Unpaid Works 110
21.6 Termination Payment 110
21.7 Other rights and obligations of the Parties 112
21.8 Survival of rights 112

PART VI
Other Provisions

22 Assignment and Charges 114
22.1 Restrictions on assignment and charges 114
22.2 Hypothecation of Materials or Plant 114

23 Liability and Indemnity 115
23.1 General indemnity 115
23.2 Indemnity by the Contractor 115
23.3 Notice and contest of claims 116
23.4 Defence of claims 116
23.5 No consequential claims 117
23.6 Survival on Termination 117

24 Dispute Resolution 118
24.1 Conciliation of Disputes 118
24.2 Dispute Abjudication Board (DAB) 118
24.3 Standing Arbitral Tribunal 120

25 Miscellaneous 123
25.1 Governing law and jurisdiction 123
25.2 Waiver of immunity 123
25.3 Delayed payments 123
25.4 Waiver 124
25.5 Liability for review of Documents and Drawings 124
25.6 Exclusion of implied warranties etc. 124
25.7 Survival 124
25.8 Entire Agreement 125
25.9 Severability 125
25.10 No partnership 125
25.11 Third Parties 126
25.12 Successors and assigns 126
25.13 Notices 126
25.14 Language 127
25.15 Counterparts 127
25.16 Confidentiality 127
25.17 Copyright and Intellectual Property rights 127
25.18 Limitation of Liability 128

Schedules

A **Site of the Project** 131
1 The Site
Annex-I:Site
Annex-II: Dates for providing Right of Way
Annex-III: Master Plans/Layout plans
Annex-IV: Environment/ Forest Clearances

B **Scope of the Project** 136
1 Scope of the Project

C **Project Facilities/Utilities** 138
1 Project Facilities/Utilities

D **Specifications and Standards** 141

E **Applicable Permits** 142
1 Applicable Permits

F **Form of Bank Guarantee** 144
Annex-I: Form of Guarantee for Performance Security
Annex-II: Form of Guarantee for Withdrawal of Retention Money
Annex-III: Form of Guarantee for Advance payment

G **Contract Price Weightages** 154

H **Drawings** 163
1 Drawings
2 Additional drawings
Annex-I: List of Drawings

I **Project Completion Schedule** 165
1 Project Completion Schedule

J **Tests on Completion** 168

K **Provisional Certificate/ Completion Certificate** 169

L **Selection of Authority Engineer** 171
1 Selection of Authority Engineer
2 Terms of Reference

Annex-I: Terms of Reference for Authority Engineer

M **Forms of Payment Statements** 180
1 Stage Payment Statement for Works
2 Contractor's Claim for Damages

N **Insurance** 181
1 Insurance during Construction Period
2 Insurance for Contractor's Defects Liability
3 Insurance against injury to persons and damage to property
4 Insurance to be in joint names

O **Provision of Traffic Blocks and Power Blocks** 183

P **Machinery and equipment** 184

Appendices

I **List of bidspecific clauses** **187**
A. Clauses with non-numerical footnotes
B. Clauses with curly { } brackets
C. Clauses with blank spaces

[**II** **List of project specific clauses** **189**
A. Clauses with serially numbered footnotes
B. Clauses with square parenthesis]

Part I

Preliminary

ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

THIS AGREEMENT[1] is entered into on this the …….. day of ……, 20…..

BETWEEN

1 The President of India, represented by {***, *** Railway / Rail Land Development Authority}[2],and having its principal office at ******, (hereinafter referred to as the "**Authority**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

AND

2 {name of the selected bidder[3]}, 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 Authority has the responsibility to develop, operate and maintain the Indian Railways in the territorial jurisdiction of the ****[4] Railway zone[5].

(B) The Authority intends to [develop/redevelop] the railway station at……(the "**Railway Station**") on Engineering, Procurement, Construction ("**EPC**") basis in accordance with the terms and conditions to be set forth in an agreement to be entered into, at the site of the Railway Station at **********, India ("**Project**").

(C) The Authority had prescribed the Technical and Financial terms and conditions, and invited Request for Proposal (RFP) No. ----------dated ----------from the bidders for undertaking the Project.

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[1] Serially numbered footnotes in this Agreement are for guidance of the Authority and should be omitted from the draft EPC Agreement forming part of Bid Documents. Footnotes marked $ shall be retained in the draft Agreement.

[2] All provisions enclosed in curly parenthesis shall be retained in the Bid Documents and shall be modified as required after the selected bidder has been identified.

[3] Refers to the single entity or all the members of the Consortium/Joint venture including the Lead Member, which is the selected bidder

[4]All asterisks in this Agreement should be substituted by project-specific particulars in the draft Agreement forming part of the Bid Documents.

[5]All project-specific provisions in this Standard EPCAgreement have been enclosed in square parenthesis and may be modified, as necessary, before issuing the draft EPC Agreement forming part of Bid Documents.

(D) After evaluation of the bids received, the Authority had technically qualified certain bidders including, interalia, the {the selected bidder/consortium/JV comprising…….and……..(collectively the " **Consortium/JV**") with…….as its lead member the "**Lead Member**"}and accepted the financial bid of the selected bidder and issued its Letter of Acceptance No. *** dated *** (hereinafter called the "**LOA**") to the {selected bidder/ Consortium/JV} for the [development/redevelopment] of the Railway Station at the Contract Price specified hereinafter, requiring the selected bidder to inter alia: .

(i) deliver to the Authority a legal opinion from the legal counsel of the selected bidder with respect to the authority 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) submit Performance Security within 30 (thirty) days of the date of issue of LOA, and

(iii) execute this Agreement within 15(fifteen) days of the submission of Performance Security.

(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 Authority 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

In this Agreement, the following words and expressionsbeginning withgthe capital lettershall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them. The words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.:

"**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**"shallhave the meaning as set forth in Clause 19.1;

"**Associate**" 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 constructionof the Project during the subsistence of this Agreement;

"**Appointed Date**" means that date which is later of:

(a) the 15th day of the date of this Agreement,

(b) the date on which the Authority has provided the Right of Way and and forest clearances in phases of the area of the Site for the Project in

conformity with the provisions of Clause 4.3 and 8.2;

"Arbitration Act"means the Arbitration and Conciliation Act, 1996 and shallinclude 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;

"**Authority Default**"shall have the meaning as set forth in Clause 21.2;

"**Authority Engineer**" shall have the meaning as set forth in Clause 16.1;

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

"**Bank**" means

(i) a nationalized bank incorporated in India for the purposes of submission of Bank Guarantee against Advance Payment as per provisions of Clause 17.2;
(ii) a scheduled commercial bank incorporated in India for all other purposes; or
(iii)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 commence from next month after base month;

"**Bid**" means the documents in their entirety comprised in the bid submitted by the selected bidder/Consortium/JV in response to the Request for Proposalin accordance with the provisions thereof;

["**Bid Security**" means the bid security provided by the Contractor to the Authority in accordance with the Request for Proposal, and which is to remain in force until substituted by the Performance Security;][2]

"**Change in Law**" means the occurrence of any of the following after the Bid Due Date:

(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 Bid Due Date;

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[2]To be deleted if not applicable in line with the provisions of the RFP.

(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 Bid Due Date; 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 asset forth in Clause 13.2.1;

"**Change of Scope Order**"shall have the meaning asset 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;**}**[$]

"**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 and refers to the single entity, or, all the members of the Consortium/Joint venture including the Lead Member, which is the selected bidder;

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

"**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

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[$] This definition may be omitted if the Contractor is not a Consortium/Joint Venture.

any reasonable action by the Contractor that must be approved by the Authority or the Authority Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Authority 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 forthin Clause 15.1;

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

"**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 Project as set forth in Schedule-H, and shall include 'as built' drawings of the 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 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 Project, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, where applicable herein but excluding utilities referred to in Clause 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;

"**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 authority 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 Project or the performance of all or any of the services or obligations of the Contractor under or pursuant to this Agreement;

"**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 Article18, 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, trade marks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

"**Interim Payment Certificate**"or"**IPC**"means the interim payment certificate issued by the Authority 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 authority to bind the contractor and each member of the Consortium/Joint Venture; and together with the members of the Consortium/Joint Venture shall be deemed to be the Contractor for the purposes of this Agreement;}[$]

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h$ 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;

"**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 Project;

"**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 sections/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 Works for the development/redevelopment of Railway Station subject to and in accordance with the provosions of this Agreement and Applicable Laws, Applicable Permits and Good Industry Practice, 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 [station buildings, end blocks, concourses, sub-ways, HVAC/MEP systems, lifts/escalators, foot overbridges, platform shelters/surfaces, passenger amenities, railway quarters, 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, etc.]; 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 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;

"**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 inRecital '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 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 Project, as set forth in Schedule-D, and any modifications thereof, or additions thereto, as included in the design and engineering for the 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 any concourse, building blocks, foot over bridge, subwayunder this Project, 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 Goods & Services Tax (GST), excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, Materials, equipment and services incorporated in and forming part of the Project charged, levied or imposedby 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 havethe meaning as set forth in Clause 10.4.1;

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

"**User**" means a person who uses or intends to use the Railway Station or any part thereof;

"**Valuation of Unpaid works**" shall havethe meaning as set forth in Clause 21.5.1; and

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

"**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.

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 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 Authority 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 Authority 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 Authority 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 Authority shall be provided free of cost and in three copies, and if the Authority 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 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 Authority 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 Authority shall be entitled to rely upon any such action, decision or communication of the Lead Member. The Authority 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 Project on the Site set forth in Schedule-A and as specified in Schedule-B together with provision of Project Facilities/Utilities as specified in Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D, with Contractor's own Materials;

and

(b) performance and fulfilment 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 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 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 Authority or on account of a Force Majeure Event in which case the provisions of Article 19shall apply.

3.1.5 The Contractor shall remedy any and all loss or damage to the 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 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 violationof any of the provisions of this Agreement;

(f) support, cooperate with and facilitate the Authority 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, andprovide access to all these documents at all reasonable times to the Authority Engineer and its authorised personnel;

(i) cooperate with other contractors employed by the Authority 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 Authority 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 Authority may publish.

3.1.7 The Contractor shall undertake all necessary superintendence to plan, arrange, direct, manage, inspect and test the Works.

3.1.8 The Contractor shall be liable for complete designing of the Project and the Project Facilities and all allied utilities.

3.1.9 The Contractor shall maintain required staff and necessary Contractor's equipment and materials within the reach of the Site during the Defects Liability Period so that any defects arising are promptly attended.

3.1.10 The Contractor shall design the overall Project on Net Zero Energy Building (NZEB) concept, as far as practically possible.

3.1.11 The Contractor shall obtain certification for the project under either the Leadership in Energy and Environmental Design (LEED), Green Building Rating System™, USA or under the IGBC rating system. The Contractor shall obtainthe [Gold] level of certification.

References

a) Ministry of Environment and Forests

b) National Building Code (India)

c) Bureau of Energy Efficiency BEE (India)

d) Energy Conservation Building Code (India)

e) Leadership in Energy and Environmental Design (LEED), USA.

f) Indian Green Building Council (IGBC), India

(g) The Energy and Resource Institute (TERI) Recommendations and Mandates

(h) ISO 9001, International Standards Organization, Standard for Quality

(i) ISO 14001, International Standards Organization, Standard for Environmental Management System

3.2 Obligations relating to sub-contracts andany other agreements

3.2.1 The Contractor shall not sub-contract Works comprisingmore than 50% (fifty per cent) of the Contract Price and shall carry out Works for at least 50% (fifty 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 [Heating, Ventilation, and Air Conditioning (HVAC) system, Mechanical, Electrical and Plumbing (MEP) system, lifts and escalators]. The Parties agree that all obligations and liabilities under this Agreement for the entire 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 50% (fifty 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 Authority prior to entering into any such sub-contract.. Provided, however, that in any event the Contractor shall communicate the name and particulars to the Authority for any sub-contract including the relevant experience prior to entering into any such sub-contract. The Authority 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.

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

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 financialyear, 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 Authority 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 authority is enclosed). The Competent Authority for registration will be the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT), India.

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 Authority 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 Project. Provided that any such direction issued by the Authority Engineer shall specify the reasons for the removal of such person.

3.4.3 The Contractor shall, on receiving a direction from the Authority Engineer under the provisions of Clause 3.4.2, ensure and procure the removal of such person or persons from the Projectwith immediate effect. The Contractor shall further ensure that such persons have no further connection with the 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 Project

The Contractor shall not use the 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 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 Authority's personnel

3.9.1 The Contractor shall provide and complete the training to the personnel of the Authority in diagnostic, trouble shooting, repairing, operation and maintenance of the MEP and HVAC equipment. The number of persons to be trained shall not exceed [6 (six)] and the period of training shall be for a period of 2 (two) 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 Authority Engineer

3.9.2 The Contractor shall provide training to the personnel of the Authority in SCADA. The number of persons to be trained shall not exceed 6 (six) and the period of training shall be at least 2 (two) weeks. The training shall be completed before the issuance of the Provisional Certificate/ Completion Certificate.

3.9.3 A Maintenance Manual shall be prepared and got approved by the Contractor from the Authority before the start of Defect Liability Period (DLP). It shall be in force for the whole period of DLP subject to modifications made by the Authority from time to time.

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.

3.11 Operation of existing Railway Station

The Contractor shall ensure that the operations at the existing Railway Station is carried on without any hindrance on account of its activities. The Contractor shall undertake, ensure and comply with all safety requirements required for the safety of Users, pedestrians and equipment belonging to the Authority, as per Applicable Laws, regulations & best international practices.

3.12 Environmental Measures

The Contractor agrees to conduct its activities in connection with the Agreement insuch a manner so as to comply with the environmental requirements which includes,inter alia, all the conditions required to be satisfied under the environmentalclearances and applicable law, and assumes full responsibility for measures which arerequired to be taken to ensure such compliance.

ARTICLE 4

OBLIGATIONS OF THE AUTHORITY

4.1 Obligations of the Authority

4.1.1 The Authority 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 Authority 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 Authority 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 Clause 8.2 to the Site forthe Project; and

(b) all forest clearances as required under Clause 4.3;

4.1.4 In the event that (i) the Authority 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 Authority 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 Authority 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 Authority 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 Project.

4.1.6 The Authority 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 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 is 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 operationof the existing facilities

The Authority shall undertake the maintenance of the facilities existing prior to the Appointed Dateincluding Railway Station, railway lines, bridges, structures, electrical, signaling and communications works within the Right of Way.

4.3 Environmental and Forest Clearances

Prior environmental clearances under the EIA Notification 2006 for the Project is not requiredfor the Project in line with MoEF letter dated and annexed at Schedule F. However the Contractor has to prepare Environment Management Plan (EMP) for the Project and submit to the Authority for taking approval from competent authority. The EMP shall be prepared duly taking into account all factors related to environment management viz, air pollution, water load, water pollution, land degaradation etc. and Contractor shall provide the necessary documentations, submissions and clarifications to Authority for getting the approval of EMP before undertaking any physical development at Site. The Contractor represents and warrants that it shall follow all the guidelines and meet the environmental mitigation measures/compliances as per the Applicable Laws.

The Authority represents and warrants that the forest clearances of Site mentioned in clause 4.1.3 shall be obtained before Appointed Date or shall be obtained before the dates of providing Right of Way to the respective phases of the Site as per Clause 8.2. In the event of any delay in providing forest clearance, 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 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 forest clearances is specified in Schedule-A.[3]

4.4 Machinery and equipment

4.4.1 The Authority 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

(c) for any machinery or equipment which can be used only during the period of a Power Block or Traffic Block, no payment shall be due or payable for the day on which such block is not provided to the Contractor.

4.4.2 The Contractor shall by notice of at least three weeks convey to the Authority particulars of the machinery and equipment required for each day of the following one month.

4.4.3 In the event that the Authority 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.[4]

4.5 Deleted

4.6 Deleted

4.7 Provision of Power Blocks and Traffic Blocks

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[3]Delete if not applicable
[4]Delete if not applicableg

4.7.1 The Authority 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 Authority Engineer.

4.7.2 The Contractor shall, in consultation with the Authority Engineer, submit a weekly programme of Blocks, commencing from Monday, with a notice of at least 1 (one) week and the Authority 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 Authority Engineeer 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 Authority 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 Authority 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 Authority 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 Authority that:

(a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this 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) 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 thereunder 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 Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;

(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 Authority 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 Authority and any Sub-contractors, designers, consultants or agents of the Contractor.

5.2 Representations and warranties of the Authority

The Authority represents and warrants to the Contractor that:

(a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;

(b) it has taken all necessary actions under Applicable Laws to authorise the execution, delivery and performance of this Agreement;

(c) it has the financial standing and capacity to perform its obligations under this Agreement;

(d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

(e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Authority'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 authority to grant the Right of Way in respect thereof to the Contractor; and

(h) it shall have procured,Right of Way andforest clearances such that the Contractor can commence construction forthwith on the area of the Site to be handed over in phases in line with the provisions of Clause 8.2 and Clause 4.3

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, existing structures, suitability and availability of access routes to the Site and all information provided by the Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. Save as provided in Clause 4.1.2 and Clause 5.2, the Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Contractor confirms that it shall have no claim whatsoever against the Authority 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 Authority 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 Authority 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 BankGuarantee(the "**Performance Security**"),for an amount equal to [3% (three per cent) or 5% (five per cent), which ever is applicable] of the Contract Pricefrom 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 Authority shall release the Bid Security to the Contractor.][5] 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 [3% or 5% (three per cent or five per cent) which ever is applicable] of the estimated cost of the Structures, HVAC, MEP equipment, if any, comprising a new technology not currently in use in the Railways 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 Authority shall encash the Bid Security and appropriate the proceeds thereof as part-Damages, and thereupon all rights, privileges, claims and entitlements ofthe Contractor under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of theContractor, and this Agreement shall be deemed to have been terminated bymutual agreement of the Partiesalongwithfurther levy of the liquidatedDamages equivalent to the stipulated 'Performance Security', which shall be recoverable from Contractor's pending/future dues with the Authority/Indian Railways 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 thedate of issue of the 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

[5]To be retained as per the provisions related to submission of Bid Security

equivalent to a sum calculated at the rate of 0.002% (zero point zero zero twoper cent) of the Contract Pricefor each day of delayuntil the Performance Security is provided.

7.2 Extension of Performance Security

The Contractor may initially provide the Performance Security for a periodof [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 Authority 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 Authority 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 Authority 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 Authority 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 Authority 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 Authority 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[6]

7.5.1 From every payment for Works due to the Contractor in accordance with the provisions of Clause 17.5, the Authority shall deduct 6% (six per cent) thereof asguarantee 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 occurrence of a Contractor's Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Retention Money as Damages for such Contractor's Default.

7.5.3 The Contractor may, upon furnishing an irrevocable and unconditional bank guarantee from the Bank substantially in the form provided at Annex-II of Schedule-F, require the Authority to refund the Retention Money deducted by the Authority 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 per cent) of the Contract Price.Further, the Retention Money may be deposited as Bank Guarantee, issued by Bank after signing of the Agreement, but before the payment against the first Stage Payment. Provided further that validity of Bank Guarantee shall be extended from time to time depending upon extension granted for completion of the Project.

7.5.4 Within 15 (fifteen) days of the date of issue of the Completion Certificate, the Authority 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 Authority 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.

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[6]This is different from Performance Security

ARTICLE 8

RIGHT OF WAY

8.1 The Site

The site of the Project (the "**Site**") shall comprise the site described in Schedule-A in respect of which the Right of Way shall be progressively in accordance with Clause 8.2, provided by the Authority to the Contractor. The Authority shall be responsible for:

a) acquiring and providing Right of Way on the Site free from all encroachments and encumbrances, and free access thereto for the execution of this Agreement;

b) [obtaining forest clearance and assistance in approval of Environment Management Plan as per provisions of Clause 4.3.]

c) [This Right of Way will not include completely free access to locations where working may affect safety of train traffic (i.e relay room, locations boxes etc). In such cases, right of work will be arranged by the Authority Engineer on written request made by Contractor at least 7 days in advance, if such request is reasonable.]

8.2 Procurement of the Site

8.2.1 The Authority 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 Authority 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 Authority Representative and the Contractor shall inspect the specified parts of the Site, and prepare a memorandum which shall be deemed to constitute

a 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 this Clause 8.2, the Authority shall specify the parts of the Site in phases, if any, for which Right of Way shall be provided to the Contractor on the dates specified in Schedule-A for such phases. Such parts shall also be included in the Appendix prepared in pursuance of Clause 8.2.1.

8.2.3 The Authority shall provide the Right of Way to the Contractor, in respect of theland 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 (onehundred 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.

8.2.4 Released Material- In case of planned dismantling of any existing asset on Site as a part of the Project, the detailed plan and procedure for the dismantling activity with possible repercussions and disposal of released material and other relevant details, shall be submitted by the Contractor. Such work shall be taken up only after the approval of Authority. [The joint inventory of the existing material in the Site to be dismantled shall be listed prior to commencement of the dismantling/undertaking Works at such portions of the Site by the Authority Engineer, Contractor and AuthorityRepresentative. The structure, buildings and other properties/material which are disturbed or dismantled, shall be the property of the Authority, unless any materials (such as debris etc.) are specifically instructed by the Authority to be disposed off by the Contractor. Such materials of all kind and sort shall be transported and handed over in depot /placeswithin [5 km] of location of the Project,by the Contractor at its own cost, as per the direction of the Authority. The Contractor shall be fully responsible for safe guarding of such material while it is in its custody, till the time it is handed over to the Authority Representative.]

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 Authority 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 Authority 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 Site to which the Right of Way has not been provided:

Amount of Damages in Rs. per day per phase of part of the Site not handed over = 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 Authority to providethe Right of Way for and in respect of the phases of the Site as per Clause 8.2.

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 Authority 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 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 part of Works are withdrawn after commencement of the Construction of such part of Works, the Authority shall pay to the Contractor 100 % (one hundred per cent) of the fair value of the work done, as assessed by the Authority 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 Authority to the Contractor pursuant hereto free from all Encumbrances and occupations and without the Contractor being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the 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 Authority 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 Project and the performance of its obligations under this Agreement.

8.7 Access to the Authority and the Authority Engineer

8.7.1 The Right of Way given to the Contractor hereunder shall always be subject to the right of access of the Authority and the Authority 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 Authority 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 Authority 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 Authority forthwith of the discovery thereof and comply with such instructions as the Authority or the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Contractor hereunder shall be reimbursed by the Authority. It is also agreed that the Authority shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period.

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 authority 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 Authoritydirectly to theentity. 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 and not forming part of scope of work under Schedule B or Schedule C, where the shifting thereof can take place only after certain works for enabling its shifting have been completed by the Contractor, the Authority shall, through the Contractor, undertake and complete its shifting within 180 (one hundred and eighty) days after the Contractor has notified the Authority of the completion of the enabling works. The shifting of such utilies will be undertaken by the Contractor as per the provisions of Article 13. For avoidance of doubt for such utilities including its shifting which form part of scope of work under Schedule B or Schedule C, no payments over and above the Contract Price shall be payable.In the event of delay in shifting the utility, beyond the aforesaid period of 180 (one hundred and eighty) days, due to the delay on account of the Authority, the Contractor shall be entitled to Damages for the period of delay in accordance with the provisions of the Clause 9.2.1.

9.3 New utilities

9.3.1 The Contractor shall allow, subject to such conditions as the Authority may specify, access to, and use of the Site for laying telephone lines, water pipes,

electric cables or other public utilities. Where such access or use causes any financial loss to the 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 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 Authority shall obtain the Applicable Permits for felling of trees to be identified by the Authority for this purpose if and only if such trees cause a Material Adverse Effect on the construction of the Project. The cost of such felling and of the compensatory plantation of trees, if any, shall be borne by the Authority. Inthe 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 Authority and shall be disposed in such manner and subject to such conditions as the Authority 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 Authority within the time specified in the Agreement; andfor any period of delay in providing the Applicable Permits, the Contractor shall be entitled to Damages and Time Extension asprovided under Clause 9.2.1.

ARTICLE 10

DESIGN AND CONSTRUCTION OF THE 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 Authority 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 Project under and in accordance with Applicable Laws and Applicable Permits.

10.1.2 The Authority shall, within 15 (fifteen) days of the date of this Agreement, appoint anengineer (the "**Authority 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 Authority Engineer forthwith.

10.1.3 Within 30 (thirty) days of the Appointed Date, the Contractor shall submit to the Authority and the Authority 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,the general methods and arrangements for overall planning of design and construction, landscaping, acoustics, vibration minimization, traffic management, signages, Non-fare revenue (NFR) maximization from station area users, retail planning, interiors, façade, lighting 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 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 previousprogramme 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 Authority may, within a period of 15 (fifteen) 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-Ginto consideration in order to maximise the cash flowand progress. However the AuthorityEngineermay 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 Authority or due to the factors beyond the control of Contractor or to any unforeseen circumstances.

10.1.5Procurement of items should be planned by the Contractor in consultation with the AuthorityEngineer. Procurement plan should be prepared in such a manner that those materials which have limitedshelf life may be procured in a staggered manner so that materials are utilized/consumedbefore 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 confirming 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 Authority Engineer.

10.2.2 The Contractor shall appoint a proof checking consultant at its cost (the "**Proof Consultant**") after proposing to the Authority a panel of 3 (three) names of qualified, reputed and experienced firms and Authority will select oneProof Consultant from the above panel, provided, however, that if none of the name proposed in the panel is acceptable to the Authority and the reasons for the same are furnished to the Contractor, the Contactor shall propose to the Authority a revised panel of 3 (three)more names for obtaining the consent of the Authority. The Contractor shall also obtain the consent of the Authority for two key personnel of the Proof Consultant who shall have adequate experience and qualifications with respect tothe main components of the Project. The Authority 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 checkand endorse/counter-signthe detailed calculations, drawings and designs, which have been approved by the Design Director.

10.2.4 Deleted

10.2.5 Deleted

10.2.6 Deleted

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

(a) The Contractorshall 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 necessaryDrawings, duly approved/signed by the Design Directorand certified/signed by the Proof Consultant, to the Authority Engineer for review. Provided, however, that in respect of Structures, airspace development at railway stations including concourse, the Authority Engineer may require additional drawings for its review in accordance with Good Industry Practice;

(b) by submitting the Drawings for review to the Authority 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 Authority Engineer shall review the same and convey its observations to the Contractorwith 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, theContractorshall not be obliged to await the observations of the Authority 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 Structures, airspace development at railway stations including concourse 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-I of Schedule-D;

(d) if the aforesaid observations of the Authority 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 Agreementand resubmitted to the Authority Engineer for review. The Authority 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 Authority Engineer for review as aforesaid, the Authority Engineer may causethe 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 Authority Engineer hereunder, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure;

(e) no review and/or observation of the Authority Engineer and/or its failure to review and/or convey its observations on any Drawings shall relieve the Contractorof its obligations and liabilities under this Agreement in any manner nor shall the Authority Engineer or the Authority be liable for the same in any manner; and if errors, omissions, ambiguities, inconsistencies, inadequacies or other Defects are found in the Drawings, they shall, along with the affected 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 Authority against any damage, expense, liability, loss or claim, which the Authority 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 Authority 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 Authority 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 Authority 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 Authority and the Authority 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 Project and setback lines, if any, of the buildings and structures forming part of Project Facilities,and shall hand them over to the Authority against receipt thereof.

10.2.11 The Contractor shall also appoint a safety consultant (the "**Safety Consultant**") after proposing to the Authority a panel of 3 (three) names of qualified and experienced consultantshaving minimum 10 years experience in ensuring safety at work site from whom the Authority may choose 1 (one) to be the Safety Consultant. Provided, however, that if the panel is not acceptable to the Authority and the reasons for the same are furnished to the Contractor, the Contractor shall propose to the Authority a revised panel of 3 (three) names for obtaining the consent of the Authority. The Contractor shall also obtain the consent of the Authority for additional two key personnel of the Safety Consultant who shall have at least 5 years experience in ensuring safety at work site. The Authority 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 Projectduring construction phase ; and

(b) proof check the detailed safety plan covering all aspects of including safety of Users, workers and equipment.

10.3 Construction of the Project

10.3.1 The Contractor shall construct the 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.. The day mentioned in the Schedule I 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 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 Authority 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 Authority 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 Authority 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 Authority shall notify the Contractor of its decision to impose Damages in pursuance ofthe provisions of this Clause 10.3. Provided, however, that no deduction on account of Damages shall be effected by the Authority 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. Authority Engineer will advise such works to the Contractor. The Contractor shall be responsible to prepare and submit applications to Authority 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, or forest clearances, 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 Authority's personnel or the Authority'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 15 (fifteen) business days from the occurrence of an event or circumstance specified in Clause 10.4.1, inform the Authority 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 thefailure ofthe Contractor to issue to the Authority 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 forany 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 Authority shall be discharged from all liability in connection with the claim.

10.4.4 The Authority Engineer shall, on receipt of aclaim in accordance with the provisions of Clause 10.4.2, examine the claim expeditiously within the time frame specified herein. In the event the Authority Engineer requires any clarifications to examine the claim, the Authority 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 Authority Engineer requesting for clarification, furnish the same to the Authority Engineer within 10 (ten) days thereof. The Authority 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 Authority 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 thatwhen determining each extension oftime under this Clause 10.4, the Authority 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 Authority 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 Authority 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 anyTime Extension granted under this Agreement, the Contractor shall endeavour to complete the balance work expeditiously and shall pay Damages to the Authority 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 Authority 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 Authority 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 Authority 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 ControlMechanism, 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 Authority Engineer.

11.2.2 The Contractor shall, within 30 (thirty) days of the Appointed Date, submit to the Authority Engineer its Quality Control Mechanism, QAP, MTP and MSwhich 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 Authority 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 Standardsand Good Industry Practice; and

(c) internal quality audit system. The Contractor shall carry out internal audits of the Quality management System regulary, and at least once every 6 months. The Contractor shall submit to the AuthorityEngineer 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 Authority 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 Authority 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 Authority 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 Authority Engineer reasons for not/partially including the same.

11.4 Inspection and technical audit by the Authority

The Authority or any representative authorised by the Authority in this behalf may inspect and review the progress and quality of the construction of Works and issue appropriate directions to the Authority 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 Authority 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 Authority 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 Authority Engineer under this Agreement.

11.6 Inspection of construction records

The Authority 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 Authority and the Authority Engineer a monthly report on the progress of Works and shall promptly give such other relevant information as may be required by the AuthorityEngineeralong with all resources deployed and all problems faced during work.

11.8 Inspection

11.8.1 The Authority 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 Authority Engineer and its authorised agents access, facilities and safety equipment for carrying out their obligations under this Agreement.

11.8.3 The Authority Engineer shall submit a monthly inspection report (the "**Inspection Report**") to the Authority 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 Authority 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 Authority Engineer for review:

(a) manufacturer's test reports and standard samples of manufactured Materials; and

(b) samples of such other Materials as the Authority Engineer may require.

11.10 Tests

11.10.1 For determining that the Works conform to the Specifications and Standards, the Authority 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 Authority 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 Authority 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 Authority 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 Authority 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 tests records shall be provided to the Authority 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 Authority Engineer in this behalf. The Authority 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 Authority 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 Authority Engineer whenever any such work is ready and before it is covered up. The Authority Engineer shall then either carry out the examination, inspection or testing without unreasonable delay, or promptly give notice to the Contractor that the Authority 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 Authority 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 Authority Engineer within a period of 3 (three) business days from the date on which the Contractor's notice hereunder is delivered to the Authority Engineer, the Contractor shall be entitled to assume that the Authority 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 Authority Engineer may reject suchPlant, 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.

11.12.2If the Authority 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 Authority to incur any additional costs, such costs shall be recoverable by the Authority from the Contractor and may be deducted by the Authority 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 Authority Engineer or its failure to convey its observations or to examine, inspect, measure or test shall relieve the Contractorof its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner.

11.13 Remedial work

11.13.1Notwithstanding any previous test or certification, the Authority 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 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.

11.13.2If the Contractor fails to comply with the instructions issued by the Authority Engineer under Clause 11.13.1, within the time specified in the Authority Engineer's notice or as mutually agreed, the Authority Engineer may advise the Authority to have the work executed by another agency. The cost so incurred by the Authority for undertaking such work shall, without prejudice to the rights of the Authority to recover Damages in accordance with the provisions of this Agreement, be recoverable from the Contractor and may be deducted by the Authority 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 Authority Engineer shall have reasonably determined that the rate of progress of Works is such that Completion of the 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 Authority 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 Authority 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 Authority 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 Authority 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 Authority Engineer to this effect, or on its own volition in cases of emergency or urgency, the Authority may by notice require the Contractor to suspend forthwith the whole or any part of the Works if, in the reasonable opinion of the Authority 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 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 Authority and thereupon carry out remedial measures to secure the safety of suspended works, the Users, other persons and vehicles on or about the Project including pedestrians. The Contractor may by notice require the Authority Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Authority Engineer, the Authority 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 Authority 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 Project or a part thereof, the Contractor shall prepare and submit to the Authority 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]as the case may be, and notify the Authority Engineer of its intent to subject the Project to Tests, if required. After ensuring and procuring that the documents required to be submitted to the Commissioner for Railway Safety meet the requirements of Applicable Laws, the Authority Engineer shall, in consultation with the Contractor, determine the date and time of each of the Tests, and inform the Authority who may designate its representative to witness the Tests. The Contractor shall provide such assistance as the Authority Engineer may reasonably require for conducting the Tests. For avoidance of doubts, the parties agree that in the event of the Contractor and the Authority Engineer failing to mutually agree on the dates for conducting the Tests, the Contractor shall fix the dates by giving not less than10 (ten) days' notice to the Authority Engineer.Authority will carry outtests on completion within 30 days of receiving request from Contractor.And if Authority Engineer fails to carry out test within 30 days, the Authority 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. The Authority Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Project with Specifications and Standards and if it is reasonably anticipated or determined by the Authority Engineer during the course of any Test that the performance of the Project or any part thereof, does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Contractor to remedy and rectify any Defect or deficiency. Upon completion of each Test, the Authority Engineer shall provide to the Contractor and the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, the Parties expressly agree that the Authority 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 Project thereof with the Specifications and Standards.

12.2 Provisional Certificate

12.2.1 Upon completion of Tests, the Authority Engineer shall satisfy itself that the Tests have been successful and the Project is fit for opening / commissioning. A list of outstandingbut non-critical/non-safety items(called the "**Punch List**"),duly signed jointly by the Authority Engineer and the

Contractor shall be prepared. The Authority Engineer may issue a Provisional Certificate to the Contractor and the Authority in the form set forth in Schedule-K (the "**Provisional Certificate**"), pending the items figuring in the Punch List. The items figuring in the Punch Listshould be completed by contractor in a time frame as stipulated in clause-12.3. The Parties further agree that Provisional Certificate shall not be issued if the completed part of Works cannot be safely and reliably placed in service of the Users thereof.

12.2.2 Upon issuance of the Provisional Certificate, the Authority Engineer shall forward to the Authority (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,]as the case may be, for obtaining authorisation from the Commissioner for Railway Safety.

12.2.3 The Contractor shall assist the Authority during inspection and tests to be conducted by the Commissioner of Railway Safety for determining compliance of the Project with Applicable Laws and the provisions of this Agreement.

12.2.4 The Defects Liability Period for the Project shall commence from the date of issue of the Provisional Certificates.

12.2.5 The Parties hereto expressly agree that the Authority Engineer mayalso issue a "part Provisional Certificate" for part of the Projectready for commissioning/openingsubject 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 Project.

12.2.6 The risk of loss or damage to any Materials, Plant or Works in the Project or part thereof, as the case may be, and the care and custody thereof shall pass from the Contractor to the Authority upon issuance of Provisional Certificate for the Project or part thereof.

12.3 Completion of Punch List items

All items figuring in the Punch List shall be completed by the Contractor within 60 (sixty) days of the date of issuance of the Provisional Certificate for that partand for any delay thereafter, other than for reasons solely attributable to the Authority or due to Force Majeure, the Authority 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 of0.2% (zero point two per cent) of the cost of completing such itemsas estimated by the Authority 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 Punch List items. For the avoidance of doubt, it is agreed that if completion of any item in the Punch List is delayed

for reasons attributable to the Authority or due to Force Majeure, the completion date thereof shall be determined by the Authority 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 and issuance of authorisation by the Commissioner of Railway Safety and compliance of all CRS observations pertaining to Contractor if any, the Authority 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, Completion Certificate may also be issued for part-commissioing of 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 Authority 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 Authority Engineer certifies to the Authority 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 completionof all items of 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 Authority 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 Works;

(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 Authority 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.

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 Authority of executing, maintaining or operating the Project, (iii) improve the efficiency or value to the Authority of the completed 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 Authority to consider such Change of Scope. The Authority 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. 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 Authority determining that a Change of Scope is necessary, it may direct the Authority 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 the Authority Engineer, the Contractor shall, with due diligence, provide to the Authority and the Authority Engineer such information as is necessary, together with preliminary documentation in support of:

(a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and

(b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including the following details:

(i) break upof 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 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 change of scope order shall be estimated on the basis of analysis of rates (AOR) of Zonal Railway, for item other than building works and as per CPWD's AOR for building works andby applying the prevailingmarket 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 AOR then such rates shall be determined as per the prevailingmarket rates in accordance with Good Industry Practice by the Authority Engineer.

13.2.4 Upon reaching an agreement, the Authority 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 Authority 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 Authority 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 Authority 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 10% (ten 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 Authority 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 Authority 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[$], 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 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 Projectand also minimise adverse

[$] The Authority 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.

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 or Users and vehicles on or about the Site during the construction of the Project or a section thereof in accordance with Good Industry Practice, and Applicable Laws. It shall provide, erect and maintain all such barricades, signs, markings, flags, and lights as may be required by Good Industry Practice for the safety of the traffic using any public roads or access along or across the Project Site under construction.

14.1.2 All works shall be carried out in a manner creating least interference to traffic passing along or across the Project. 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 Authority 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 Authority 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 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 18 (eighteen) 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 MEP or HVACequipment comprising a new technology as specified in Schedule B, 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 Authority 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 Authority Engineer during the Defects Liability Period within a period of 15 (fifteen) days from the date of notice issued by the Authority Engineer in this behalf, or within such reasonable period as may be determined by the Authority 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 Deficencies 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 Authority Engineer. If the Contractor's staffis not able to rectify any fault as decided by the Authority Engineer, the Authority will be at full liberty to make its own efforts to get such defects rectified at Contractor's cost.

15.2.2 During a period of 2 (two) months from the date of issuance of Completion Certificate, the Contractor shall retain sufficient staff and spares at Project location for procuring prompt replacement, installation or re-installation of any defective parts. 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 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 Authority shall be entitled to get the same repaired, rectified or remedied at the Contractor's cost so as to make the Project conform to the Specifications and Standards and the provisions of this Agreement. All costs consequent thereon shall, after due consultation with the Authority and the Contractor, be determined by the Authority Engineer. The cost so determined, and an amount equal to 20% (twenty percent) of such cost as Damages, shall be recoverable by the Authority from the Contractor and may be deducted by the Authority from any monies due to the Contractor.

15.5 Contractor to search cause

15.5.1 The Authority 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 Authority 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 Authority Engineer shall, after due consultation with the Authority 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 Authority or to such other person as the Authority may direct.

ARTICLE 16

AUTHORITY ENGINEER

16.1 Appointment of the Authority Engineer

16.1.1 The Authority shall appoint a railway engineer/ Project Management Consultancy (PMC), to be the engineer under this Agreement (the "**Authority Engineer**").

16.1.2 The appointment of the Authority Engineer shall be made no later than 30 (Thirty) days from the date of this Agreement. The Authority shall notify the appointment or replacement of the Authority Engineer to the Contractor.

16.1.3 The staff of the Authority Engineer shall include suitably qualified engineers and other professionals who are competent to assist the Authority Engineer to carry out its duties.

16.2 Duties and functions of the Authority Engineer

16.2.1 The Authority 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 Authority before determining:

(a) any Time Extension;

(b) any additional cost to be paid by the Authority to the Contractor;

(c) the Termination Payment;

(d) providing Power Block or Traffic Block or necessary disconnections to the Contractor;

(e) approval of disconnections for modification of signalling and telecom works, or

(f) any other matter which is not specified in (a) to (e)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 Authority Engineer shall be effective or valid unless it is accompanied by an attested true copy of the approval of the Authority for and in respect of any matter specified in Clause 16.2.1.

16.2.3 The Authority Engineer shall submit regular periodic reports, at least once every month, to the Authority in respect of its duties and functions assigned to him for the project. Such reports shall be submitted by the Authority Engineer within 10 (ten) days of the beginning of every month.

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

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

16.3 Authorised signatories

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

16.4 Instructions of the Authority Engineer

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

16.4.2 The instructions issued by the Authority Engineer shall be in writing. However, if the Authority 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 Authority Engineer and shall obtain acknowledgement from the Authority Engineer of the communication seeking written confirmation. In case of failure of the Authority 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 Authority Engineer

16.5.1 The Authority Engineer shall consult with each Party in an endeavour to reach agreement wherever this Agreement provides for the determination of any matter by the Authority Engineer. If such agreement is not achieved, the Authority Engineer shall make a fair determination in accordance with this Agreement having due regard to all relevant circumstances. The Authority 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 Authority Engineer in accordance with the provisions of this Agreement. Provided, however, that if any Party disputes any instruction, decision, direction or determination of the Authority Engineer, the Dispute shall be

resolved in accordance with the Dispute Resolution Procedure as per article 24.

16.6 Remuneration of the Authority Engineer

The remuneration, cost and expenses of the Authority Engineer shall be borne by the Authority.

16.7 Replacement of the Authority Engineer

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

16.7.2 If the Contractor has reasons to believe that the Authority Engineer is not discharging its duties and functions in accordance with the provisions of this Agreement, it may make a written representation to the Authority and seek replacement of the Authority Engineer. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Contractor and Authority Engineer and make best efforts for an amicable resolution of the Dispute. After due consideration, The Authority will decide about the replacement of Authority 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 Authority Engineer is to be replaced, the Authority shall appoint forthwith another Authority Engineer in accordance with Clause 16.1.

16.8 Interim Arrangement

In the event that the Authority has not appointed an Authority Engineer, or the Authority Engineer so appointed has relinquished its functions, the Authority may, in the interim, designate and authorise any person to discharge the functions of the Authority 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 Authority Engineer, and such functions shall be discharged as and when an Authority 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 Authority to enforce compliance of the provisions of this Agreement.

Part IV

Financial Covenants

ARTICLE 17

PAYMENTS

17.1 Contract Price

17.1.1 The Authority shall make payments to the Contractor for the Works on the basis of the lump sum price accepted by the Authority in consideration of the obligations specified in this Agreement for an amount as mentioned in Schedule-G (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, royalty, and fees that may be levied in accordance with the laws and regulations in force as on the Bid DueDate on the Contractor's equipment, Plant, Materials and supplies acquired for the purpose of this Agreement and 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 Project.

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

17.2 Advance Payment

17.2.1 Upon receiving request from Contractor, the Authority shall make an advance payment (the "**Advance Payment**"), upto 10% (ten percent)[14] of the Contract Price, for mobilisation expenses and for acquisition of equipment, which shall carry simple interest at the rate of Bank Rate plus 4 % ((four per cent) 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 Authority for the first instalment of the Advance Payment at any time after the Appointed Date, along with an irrevocableand unconditional guarantee from a Bank for an amount

[14]For large value and complex projects, the Advance Payment may be increased from 10% (ten per cent) to upto 15% (fifteen per cent) of the Contract Price.

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.

17.2.3 At any time, after 60 (sixty) days from the Appointed Date, the Contractor may apply to the Authority 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 thereofalong with proof of utilization of 1st instalment.

17.2.4 The instalments of Advance Payment shall generally be paid by the Authority 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 percent) of the Contract Price. The total amount recovered in each Interim Payment Certificate shall be equal to 30% (thirtyper 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 1st (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 for Contractor Default, the Advance Payment shall be deemed to carry interest at anannual rate of 4% (fourper cent) above the Bank Ratefrom 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 Authority prior to Termination.

17.3 Procedure for estimating the payment for the Works

17.3.1 The Authority shall make interim payments to the Contractor, as certified by the Authority Engineer on completion of a stage, fora 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 end blocks is reduced from Rs.10 crore to Rs. 8 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 end blocks and the payment due in respect of all other stage payments under the item end blocks 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 7th (seventh) day of a month to the Authority 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 Authority 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 Authority 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 Authority Engineer. Within 5(five) days of the receipt of recommendation of the Authority Engineer as above, the Authority 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 Authority Engineer shall determine and shall deliver to the Authority 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 Authority 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 Authority 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 Authority 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 Authority shall not be deemed to indicate the Authority acceptance, approval, consent or satisfaction with the work done.

17.5.6 In the event the amounts released by the Authority under Clause 17.5.1 exceed the amount finally determined by the Authority 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 Authority may claim Damages due and payable to it in accordance with the provisions of this Agreement.

17.6.2 The Authority 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 Authority shall pay to the Contractor the amount due under suchIPC 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 Authority to make payment to the Contractor within the specified time, the Authority 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 Authority shall pay to the Contractor any amount due under any payment certificate issued by the Authority 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 Authority 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 Authority Engineer within the aforesaid period of 30 (thirty) days, the Authority 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 than30 (thirty) daysfrom the date ofsubmission of the Final Payment Certificate for Works along with the discharge submitted to the Authority Engineer for certification in accordance with the provisions of Clause 17.12.

17.7.2 In the event of failure of the Authority to make payment to the Contractor within the time period specified in this Clause 17.7, the Authority shall be liable to pay to the Contractor interest at a rate equal to theBank Rate plus 3% (threeper cent),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 by the Authority 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.For avoidance of doubt, the price adjustment shall be paidon quarterly basis for the payments made in the respective quarter.

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 increase 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 andformulae specified below:

a) Price adjustment shall be applied on completion of the specified stage of the respective work in accordance with Schedule-G. The 1st Quarter will start from the month next to the Base month;

b) Price adjustment for change in costs of Project shall be paid in accordance with the following formula:

Variation = 0.85 Vx [PLB x (LBi – LBo)/LBo + PC x (Ci – Co)/Co + PS x (Si – So)/So + PF x (Fi –Fo)/Fo + PMACH x (MACHi – MACHo)/MACHo + POTH x (OTHi - OTHo)/OTHo];

Where;

V = Value of work done for the completion of a stage

PC, PF, PLB, PMACH, POTH, and PS are the percentages of cement, fuel and lubricants, labour, Plant Machinery and tools, other materials and steel/ components (including strands and steel cables), respectively for the Project as provided in schedule G;

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;

So = Rate of RINL for Rebar 8 mm (coil) as published on their website for the month of the Base Monthor any other reference index mutually acceptable in case RINL discontinues publication of the rates;

Si = Average rate of RINL for Rebar 8 mm (coil) as published on their website for the 3 months of the quarter under considerationor any other reference index mutually acceptable in case RINL discontinues publication of the rates.

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 ofreceiving the Completion Certificate under Clause 12.4, the Contractor shall submit to the Authority Engineer six copies of a final payment statement (the "**Final Payment Statement**"), with supporting documents, in the form prescribed by the Authority 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 Authority against each claim; and

(c) any further sums which the Contractor considers due to it from the Authority.

If the Authority Engineer disagrees with or cannot verify any part of the Final Payment Statement, the Contractor shall submit such further information as the Authority Engineer may reasonably require.The Authority 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 Authority 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 Authority 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 Authority 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 Authority Engineer, is finally due under this Agreement or otherwise. For the avoidance of doubt, before issuing the Final Payment Certificate, the Authority Engineer shall ascertain from the Authority all amounts previously paid by the Authority, all sums due to the Authority, and the balance, if any, due from the Authority to the Contractor or from the Contractor to the Authority, as the case may be.

17.12.2 The Authority 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 Authority with a copy to the Authority 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 Authority Engineer of such reduction in costs due to Change in Law.

17.13.3 The Authority Engineer shall, within15 (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 Authority Engineer may by an Interim Payment Certificate make any correction or modification in any previous Interim Payment Certificate issued by the Authority Engineer.

17.15 Authority's claims

If the Authority 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 per cent) 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 Authority 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 Authority 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 Authority 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 Authority 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 18shall 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 Authority notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty-five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the 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 Authority 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 Authority 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 18shall 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, Associates, 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 Authority and its assigns, undertakings and their subsidiaries, Associates, 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 Authority 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 Authority 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 Authority 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 Authority 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 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 Authority 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 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 Authority 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**" shallmean 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 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 authority 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 Project by the Contractor for an aggregate period exceeding 10 (ten) days in an Accounting Year;

(d) failure of the Authority 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 19with 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 Authority 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 Authority 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 Authority 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 Authority Engineer, of the Plant and Materialsprocured by the Contractor and transferred to the Authority 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 Authority 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 Authority 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 performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

ARTICLE 20

SUSPENSION OF CONTRACTOR'S RIGHTS

20.1 Suspension upon Contractor Default

Upon occurrence of a Contractor Default, the Authority 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 Authority 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 Authority to act on behalf of Contractor

During the period of Suspension hereunder, all rights and liabilitiesvested 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 Authority 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 Authority for all costs incurred during such period.The Contractor hereby licences and sub-licences respectively, the Authority 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 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 Authority shall have rectified or removed the cause of Suspensionwithin 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 Authority 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 Authority 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 Authority to revoke the Suspension and

issue a Termination Notice. The Authority 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 Authority 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 Authority or due to Force Majeure. The defaults referred to herein shall include:

(a) The Contractor fails to provide, extendor 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 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 Authority 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 Authority Engineer;

(i) the Contractor subcontracts the Works or any part thereof in violationof 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 Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;

(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 Authority 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 Authority may have under this Agreement, upon occurrence of a Contractor Default, the

Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Contractor; provided that before issuing the Termination Notice, the Authority 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 Authority may complete the Works and/or procure its completion through any other entity. The Authority 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 Authority Default

21.2.1 In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the "**Authority 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 Authority 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 Authority has failed to make payment of any amount due and payable to the Contractor within the period specified in this Agreement;

(c) the Authority has failed to provide, within a period of 180 (one hundred and eighty) days from the Appointed Date, the forest clearancesrequired for construction of the Project;

(d) the Authority 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 Authority 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 Authority 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 Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Authority to make a representation, and may after the expiry of such 15 (fifteen) days,

whether or not it is in receipt of such representation, issue the Termination Notice.

21.3 Right of Authority to determine the Agreement

Notwithstanding anything hereinabove, the Authority shall be entitled to determine and terminate the Agreement at any time should, in the Authoroty's opinion, cessation of the work becomes necessary owing to paucity of funds or from any other cause whatever, in which case, it will be treated as Authority Default and the Termination Payment shall be made as per Clause 21.6.2. Notice in writing from the Authority of such determination and the reasons therof shall be conclusive evidence therof. 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 provisionsof this Article 21, the Contractor shall comply with and conform to the following:

(a) deliver to the Authority all Plant and Materials which shall have become the property of the Authority 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 Authority 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 Authority 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 Authority 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 Authority for any losses, delays andcost 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 Authority Default under Clause 21.2 or 21.3, the Authority 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 Authority Engineer, of the Plant and Materialsprocured by the Contractor and transferred to the Authority 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 Authority 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 Authority with the necessary particulars, after the Valuation of Unpaid Works has been communicated by the Authority Engineer, and in the event of any delay, the Authority 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 Authority of its payment obligations in respect thereof hereunder.

21.6.4 The Contractor expressly agrees that Termination Payment under this Article 21shall 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 Project shall, as between the Contractor and the Authority, vest in the Authority 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 Authority 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 Authority 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 Authority 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 Authority 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 Authority and its officers, servants, agents, Government Instrumentalities and Government owned and/or controlled entities/enterprises, (the "**Authority 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 Authority 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 Authority and the Authority 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 Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other Intellectual Property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the 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 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 Authority a licence, at no cost to the Authority, authorising 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 23shall survive Termination.

ARTICLE 24

DISPUTERESOLUTION

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 Authority Engineer. Authority shall, within 30 days after receipt of the Contractor’s “Notice of Dispute”, notify the name of conciliator(s) to the Contractor. In case Authority fails to fix Conciliator within 30 days, Contractor shall be free to approach 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 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 Authority 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 signing of Contract Agreement. For this purpose, the Authority will maintain a panel of DAB members. The complete panel, which shall not be less than five members, shall be sent by Authority to the Contractor to nominate one member of the DAB from the panel as Contractor’s nominee within two weeks of receipt of the panel. On receipt of Contractor’s nominee, the Authority shall nominate one member from the same panel as Authority’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 Authority 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 Authority 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 Authority 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 award amount, pending adjudication by Standing Arbitral Tribunal/Court of Law, shall be made by party to other party. In case payment is to be made by Authority to Contractor, the terms & conditions as incorporated in the Ministry of Railways letter No. 2016/CE(I)/CT/ARB/3(NITI Aayog)/Pt. dated 08th 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 Authority 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 Authority and the Contactor 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 Authority shall maintain a panel of arbitrators. The complete panel, which shall not be less than five members, shall be sent by Authority 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 Authority shall appoint above contractor's nominee as well as another from the same panel as Authority'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 Authority 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 Authority 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 Authority 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 Authority 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 Authority to Contractor, the terms & conditions as incorporated in the Ministry of Railways letter No. 2016/CE(I)/CT/ARB/3(NITI Aayog)/Pt. dated 08th 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 Authority 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 [Delhi] 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 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).

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% (threepercent), save and except asotherwise 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 Authority or the Authority Engineer of any Document or Drawing submitted by the Contractor nor any observation or inspection of the construction of the 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 Authority 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 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.

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 attention of the person set out below or to such other person as the Contractor may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside [Delhi] may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the 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 Authority Representative or such other person as the Authority may from time to time designate by notice to the Contractor; provided that if the Contractor does not have an office in [Delhi] , it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; 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 Authority 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 Authority for purposes other than those permitted under this Clause 25.17.

25.17.3 As between the Parties, the Authority 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 Authority'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.

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

SIGNED, SEALED AND	SIGNED, SEALED AND
DELIVERED	DELIVERED
For and on behalf of	For and on behalf of
[...***, *** Railway] by:	THE CONTRACTOR by:
(Signature)	(Signature)
(Name)	(Name)
(Designation)	(Designation)

In the presence of:

1.

2.

{COUNTERSIGNED and accepted by:

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

SCHEDULES

Schedules [7]

(To be modified/Customized and filled Project specific)

[7] *[As the Schedules are voluminous, the Schedule D- Specifications & Standards may be attached in Part 2 of Schedules to EPC Agreement, Schedule H-Drawings may be attached in Part 3 of Schedules to EPC Agreement and rest of the Schedules may be attached as Part 1 of Schedules to EPC Agreement. The same can me modified and bound as a document in a manner as per the convenience of the Bidding document finalizing Authority]*

SCHEDULE - A

(See Clauses 2.1 and 8.1)

SITE OF THE PROJECT

1 The Site

1.1. Site of the Project shall include the land, buildings and structures as described in Annex-I of this Schedule-A.

1.2. The dates of handing over 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 Authority'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 master plan/layout plan of the Project are specified in Annex-III.

1.5. The status of the forest clearances obtained or awaited is given in Annex IV.

Annex-I:

ScheduleA

Site :

Refer drawing as per the below list:

Annex – II

(Schedule-A)

(Please refer to Clause 8.2.2)

Right of Way to the Site as per phases

Dates for providing Right of Way The following are complete details of the Right of Way showing the dates on which the Authority shall provide Right of Way for the different areas of the Site in phases to the Contractor:

S.No	Phase	Area	Drawing Reference number	Date

Appendix

Please refer to Clause 8.2.1

Annex-III:

ScheduleA

Master PlanProject/Layout Plan

Annex-IV:

ScheduleA

Environment/Forest Clearances

(Please refer Clause 4.3):

Environment Clearances and Forest Clearances

1. Environment clearances: The Contractor has to prepare Environment Managaement Planand submit to the Authority Engineer for approval of the cometent authority before any physical development[8].

2. Forest clearances: The forest clearances required for construction of the Project have been procured by the Authority prior to the Bid Due Date, save and except for the parts of the Project which do not exceed ***** (**** per cent) of the total area of the Site thereof.

    a) The following forest clearances have been obtained:

    ***

    b) The following forest clearances are awaited:

    ***

[8]Please refer to the MoEF guidelines for Station redevelopment project

SCHEDULE - B

(See Clause 2.1)

Scope of the Project

- (Provide scope of the Project as per Clause 2.1)

In conformity with the Specifications and Standards set forth in Schedule D, the scope of the Project together with the provision of Project Facilities/Utilities as specified in Schedule C is as below:

****

****

The scope of work as mentioned above is without prejudice to any of the obligations of the Contractor as set forth under the progvisions of this Agreement

- (Provide the details as per Clause 7.1.1)

  ****

- [AMC of SCADA

  (Please refer to Clause15.1.3) and provide details)

  **********]

SCHEDULE - C
(See Clause 2.1)

PROJECT FACILITIES/UTILITIES (SCOPE OF PROJECT)

Without prejudice to the other terms of this Agreement the Contractor shall develop/ redevelop the following services, amenities and facilities as a partofthe Project:

Station Development Utilities

Without prejudice to the other terms of this Agreement the Contractor shall develop/ redevelop the following services, amenities and facilities as a part of the Project:

Part A: WATER SUPPLY

****

Part B: SEWERAGE TREATMENT SYSTEM

****

Part C: STORM WATER DRAINAGE

****

Part D: RAIN WATER HARVESTING

****

Part E: FIRE FIGHTING

****

Part F: ELECTRICITY SUPPLY

****

Part G: VENTILATION AND AIR CONDITIONING SYSTEM

****

Part H: BUILDING MANAGEMENT SYSTEM (BMS)

****

Part I: SOLAR PANEL

****

(As other utilities/facilities as required for the Project)

Annex – 1
(Schedule-C)
Station Functional Requirements

****

SCHEDULE - D

(See Clause 2.1)

SPECIFICATIONS AND STANDARDS

Annex - I

(Schedule-D)

(Please refer Clause 10.2.7(c))

[Time Schedule for Review of Drawings:]	Item	[Extended timelines]
******	*******	*******

[*Refer Schedules to EPC Agreement -Part 2 for Specifications and Standards*]

SCHEDULE - E

(See Clause 3.1.6(a))

APPLICABLE PERMITS

1. **Applicable Permits**

1.1. The Contractor shall obtain; as required under the Applicable Laws; the following Applicable Permits:

(i) Permission of State Government for extraction of earth, boulders from quarry.
(ii) Permission of Pollution Control board for installation of crusher, concrete batching plant, bitumen/asphalt hot mix plant etc.
(iii) Permission of the relevant department of ******Government/State Government for drawing water from Underground/River/Reservoir
(iv) Clearance of Pollution Control board for installation of diesel generator sets;
(v) Final approval from ******
(vi) Fire safety clearance from fire authority
(vii) Forest clearance for cutting trees (if required);
(viii) Labour officer for labour license;
(ix) Taxation Department for VAT/PAN/TAN;

The aforesaid list is illustrative, and the Contractor is required to obtain all other Applicable Permits as required under any Applicable Law. The contractor shall at all times, obtain and maintain all Applicable Permits which are required by Applicable Law to undertake the Project.

2. Approvals obtained/ applied by the Authority

1. Approval of Master Plan from Indian Railways;

Note: Notwithstanding any approvals obtained by Authority as specified in this Schedule, the Contractor shall at all times be liable to obtain all the requisite approvals, clearances and other Applicable Permits as per Applicable Law and otherwise comply with all Applicable Laws including all Applicable Permits and approvals as identified in Schedule 29-B and/or as may be required from time to time. Authority for the faster implementation of the Project has started the process of getting approvals for the Project. The following is the status of various approvals:

Details of In-Principal Approvals/ Clearances for Project			
S.no	**Applicable Permits/Approvals**	**Approving Authority**	**Status**

Details of In-Principal Approvals/ Clearances for Project			
S.no	**Applicable Permits/Approvals**	**Approving Authority**	**Status**
1	Environment Impact Assessment Clearance		
2	Master Plan Approval from Railways	CE (P&D) ***** Railway	
3	Master Plan /Traffic Circulation Plan from *******	******	
4	Height clearance of building structure	Airports Authority of India (AAI), New Delhi	
5	Ancient Monument protection	Archaeological Survey of India (ASI)	
6	Firefighting scheme Approval	Fire Department, ******	
7	Master Plan Approval from ******	******	******
8	NOC	******Metro Rail Corporation	******

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 development/redevelopment of the Railway Station at **……..-……..** 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 dueand 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 Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

2. A letter from the Authority, under the hand of an officer not below the rank of [***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 Authority 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 Authority and the Contractor, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Contractor for any reason whatsoever.

3. In order to give effect to this Guarantee, the Authority 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 Authority to proceed against the Contractor before presenting to the Bank its demand under this Guarantee.

5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the 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 Authority 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 Authority 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 Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.

6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the 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 Authority on the

Bank under this Guarantee all rights of the Authority 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 Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.

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 Authority 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 Authority pursuant to the provisions of the Agreement.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of the Bank by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

(i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.

[$] 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 issuing branch should be mentioned on the covering letter of 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 development/redevelopment of the Railway Station at ****-**** 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 Authority 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 Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

2. A letter from the Authority, under the hand of an officer not below the rank of [*** 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 Authority 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 Authority and the Contractor,

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

3. In order to give effect to this Guarantee, the Authority 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 Authority to proceed against the Contractor before presenting to the Bank its demand under this Guarantee.

5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Retention Money and any of the rights and powers exercisable by the Authority 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 Authority 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 Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.

6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority 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 Authority on the Bank under this Guarantee all rights of the Authority 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 Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.

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 Authority 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 Authority pursuant to the provisions of the Agreement.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of the Bank by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

(i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.

(ii) The address, telephone number and other details of the head office of the Bank as well as of issuing branch should be mentioned on the covering letter of issuing branch.

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 development/redevelopment of the Railway Station at***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 Authority 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 scheduled 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 Authority shall claim, without the Authority being

[$]The Guarantee Amount should be equivalent to 110% of the value of the applicable installment.

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 the repayment of the instalment 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 Authority 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 Authority and the Contractor, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Contractor for any reason whatsoever.

3. In order to give effect to this Guarantee, the Authority 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 Authority to proceed against the Contractor before presenting to the Bank its demand under this Guarantee.

5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the 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 Authority 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 Authority 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 Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.

6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority 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 Authority on the

Bank under this Guarantee all rights of the Authority 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 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 Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.

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 Authority 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 Authority pursuant to the provisions of the Agreement.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of the Bank by:
(Signature)

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

NOTES:

(i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.

(ii) The address, telephone number and other details of the head office of the Bank as well as of issuing branch should be mentioned on the covering letter of issuing branch.

[$] 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 to be effective till complete and full repayment thereof).

SCHEDULE - G

(See Clauses10.1.4 ,17.3 and 17.8)

Contract Price Weightages for Payment Purpose

1. The Contract Price for this Agreement is Rs. ----------. The payment for the different items and stages shall made as per their respective percentage weightages as mentioned below.

2. Proportions of the Contract Price for different items / component and stages of Construction of the Projectmay be as specified below:

2.1 **Weightage in percentage to the Contract Price for Concourse:** ******%

S. No.	Stages for Payment for Concourse	Percentage weightage	Payment Procedure
1	Foundation: On completion of 50 % Foundation work(open foundations/ pile foundations including pile caps) and testing	[***%]	Payment may be made on completion of each component/stage of a Concourse as per the weightage given in this schedule. Payment on " Pro rata basis" may be made if 80% of work of a stage has been completed and Authority Engineer is satisfied that the delay in completion of the
2	Foundation: On completion of 100 %Foundation work(open foundations/pile foundations including pile caps) and testing	[***%]	
3	On completion of columns from foundation up to flooring level of the concourse	[***%]	
4	On completion of structural members of concourse flooring like girders and slab	[***%]	

5	On completion of structural work of Column from flooring to roof level and roofing of concourse.	[***%]	stage is not due to contractor's default.
6	On completion of side cladding, roofing, staircase and all electrical installation works complete in all respects.	[***%]	
7	On completion of floor finishes, furnishings, HVAC, announcement systems, signages complete in all respects.	[***%]	
8	Completion, handing over and approval from Authorities.	[***%]	
	Total	**100%**	

2.2 **Weightage in percentage to the Contract Price for FOB other than Concourse:** ******%

S. No.	Stages for Payment for FOB other than Concourse	Percentage weightage	Payment Procedure
1	Foundation: On completion of Foundation work (open foundations/pile foundations including pile caps) and testing.	[***%]	Payment may be made on completion of each component/stage of a FOB other than Concourse as per the weightage given in this schedule.
2	On completion of columns from foundation up to flooring level of the FOB	[***%]	
3	On completion of structural members of FOB flooring like girders and slab	[***%]	

4	On completion of structural work of Column from flooring to roof level and roofing of FOB	[***%]	Payment on " Pro rata basis" may be made if 80% of work of a stage has been completed and Authority Engineer is satisfied that the delay in completion of the stage is not due to contractor's default.
5	On completion of side cladding, roofing, staircase and all electrical installation works complete in all respects	[***%]	
6	On completion of floor finishes, announcement systems, signages complete in all respects	[***%]	
7	Completion, handing over and approval from Authorities	[***%]	
	Total	**100%**	

2.3 **Weightage in percentage to the Contract Price for Building Blocks:** ******%

S. No.	Stages for Payment for Building Blocks	Percentage weightage	Payment Procedure
1	Foundation: On completion of 50 % Foundation work (open foundations/pile foundations including pile caps) and testing.	[***%]	Payment may be made on completion of each component/stage of a Building Block as per the weightage given
2	Foundation: On completion of 100 % Foundation work (open foundations/pile foundations including pile caps) and testing	[***%]	

3	On Completion of Foundation & plinth beam in all aspects as per approved drawings, technical specifications based on DBR etc. complete	[***%]	in this schedule. Payment on " Pro rata basis" may be made if 80% of work of a stage has been completed and Authority Engineer is satisfied that the delay in completion of the stage is not due to contractor's default.
4	On completion of columns and slabs of ground floor	[***%]	
5	On completion of columns and slabs of second and third floor	[***%]	
6	On completion of superstructure above third floor	[***%]	
7	On completion of side cladding, roofing, staircase and all electrical installation works complete in all respects.	[***%]	
8	On completion of floor finishes, HVAC, announcement systems, signages complete in all respects.	[***%]	
9	On completion of furnishing and finishes, and approval from Railway Authorities complete in all respects.	[***%]	
10	Completion, handing over and approval from Authorities	[***%]	
	Total	**100%**	

2.4 **Weightage in percentage to the Contract Price for Subways:** ******%

S. No.	Stages for Payment for Subways	Percentage weightage	Payment Procedure
1	On 50 % excavation of subways and protection system including RH girders.	[***%]	Payment may be made on completion of each component/stage of subways as per the weightage given in this schedule. Payment on " Pro rata basis" may be made if 80% of work of a stage has been completed and Authority Engineer is satisfied that the delay in completion of the stage is not due to contractor's default.
2	On 100 % excavation of subways and protection .	[***%]	
3	On completion of 50% of structural concreting work in the subway	[***%]	
4	On completion of 100% of structural concreting work in the subway, excluding approach ramps	[***%]	
5	On removal of RH girders, completion of subway safety works and subway lighting, ventilation and announcement works.	[***%]	
6	On completion of finishing complete in all respects	[***%]	
	Total	**100%**	

2.5 **Weightage in percentage to the Contract Price for Other Engineering works:** ******%

S. No.	Stages for Payment for Other Engineering works	Percentage Weightage	Payment Procedure
1	Construction of platforms walls, and footings of platform shelters including platform fencing/Wall	[***%]	Payment may be made on completion of each component/stage of other engineering works as per the weightage given in this schedule. Payment on " Pro rata basis" may be made if 80% of work of a stage has been completed and Authority Engineer is satisfied that the delay in completion of the stage is not due to contractor's default.
2	Earthwork and surfacing of platform	[***%]	
3	Erection of columns and trusses for PF shelter	[***%]	

4	Completion of roofing, electrical works, announcement systems, signages on the platforms	[***%]	
5	Construction of specified passenger amenities/furniture complete in all respect on the platforms	[***%]	
6	Construction of staff quarters and Railway offices complete in all respects including fixing doors, windows, sanitary, water supply works, electrification, lifts, escalators and all other specified and incidental works	[***%]	
7	On completion of circulation area, parking area, boundary wall	[***%]	
8	On completion of internal roads, drainage, water supply works including bore well, pump house, power supply, lighting, landscaping and all other incidental works in Railway Station.	[***%]	
9	Signage, information boards and posts	[***%]	
10	Drainage system of the Railway Station	[***%]	

	Total	**100%**	

2.6 **Weightage in percentage to the Contract Price for inventory for civil works:** ******%

S. No.	Stages for Payment for inventory for civil works	Percentage Weightage	Payment Procedure
1	Supply of 25% material as per the inventory	[***%]	Payment shall be made only on completion of supply of specified inventory for each stage.
2	Supply of 50% material as per the inventory	[***%]	
3	Supply of 75% material as per the inventory	[***%]	**a)**
4	Supply of 100% material as per the inventory	[***%]	**b)**
	Total	**100%**	

2.7 **Weightage in percentage to the Contract Price for integrated testing & commissioning:** ******%

S. No.	Stages for Payment for integrated testing & commissioning	Percentage Weightage	Payment Procedure
1	Successful completion of Integrated testing and commissioning	[100%]	On issue of Completion Certificate. In case the Completion Certificate is for part of the Project, the payment may be made for the part of the Project specified in the Part Completion Certificate
	Total	**100%**	

Note – The Above list is illustrative and may require modification as per the scope of the work

3. For the purpose of Price Adjustment as above, the percentages of various commodities shall be taken as follows (Please refer Clause 17.8.4)

Cement (PC)	Fuel and lubricants (PF)	Labour (PLB)	Machinery and Plants (PMACH)	Other Materials (POTH)	Steel (PS)	Total
***%	***%	***%	***%	***%	***%	100 %

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 Authority Engineer; free of cost; all Drawings developed by the Contractor.

The designs and drawings provided by the Authority to the Bidder are preliminary in nature. The Selected Bidder/Contractor accepts that it is solely responsible for the verification of any design, data, design, documents or information provided by the AUTHORITY, its consultants or any Government Authority and that it shall accept and act thereon at its own cost and risk.

[*The Drawings are attached as Part 3 of Schedules to EPC Agreement.*]

The Selected Bidder/Contractor shall be solely responsible for the contents of its Bid, adequacy and correctness of the Design and Drawing, data and detailed engineering prepared or procured by the Contractor for implementing the Project.

2 Additional Drawings

If the Authority 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 Authority Engineer, as if such drawings formed part of Annex-I of this Schedule-H.

Annex-I:

List of Drawings

SCHEDULE - I

(See Clause 10.3.2)

PROJECT COMPLETION SCHEDULE

1. Project Completion Schedule

1.1During 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 (the "Project Completion Schedule"). Within 15 (fifteen) days of the date of each Project Milestone; the Contractor shall notify the Authority of such compliance along with necessary particulars thereof.

1.2 Scheduled Completion Date for the Project is **[*********]**days from the Appointed Date

2. The Project Milestone to be read as D+ (number of days from Appointed Date as shown in the table below).

2.1 **Scheduled Completion Date for Concourse:**

S. No.	**Stages for Completion for Concourse**	**Completion Period in Days**
1	Foundation: completion of 100 % Foundation work(open foundations/pile foundations including pile caps) and testing	D + *****
2	Completion of structural work of Column from flooring to roof level and roofing of concourse.	D + *****
3	Completion, handing over and approval from Authorities.	D + *****

2.2 **Scheduled Completion Date for FOB other than Concourse:**

S. No.	**Stages for Completion for FOB other than Concourse**	**Completion Period in Days**
1	Completion of columns from foundation up to flooring level of the FOB	D + *****
2	Cmpletion of structural work of Column from flooring to roof level and roofing of FOB	D + *****
3	Completion, handing over and approval from Authorities	D + *****

2.3 **Scheduled Completion Date for Building Blocks:**

S.	**Stages for Completion for Building Blocks**	**Completion**

No.		Period in Days
1	Foundation: On completion of 100 % Foundation work (open foundations/pile foundations including pile caps) and testing	D + *****
2	Completion of superstructure of all floors	D + *****
3	Completion of floor finishes, HVAC, announcement systems, signages complete in all respects.	D + *****
4	Completion, handing over and approval from Authorities	D + *****

2.4 **Scheduled Completion Date for Subways:**

S. No.	Stages for Completion for Subways	Completion Period in Days
1	100 % excavation of subways and protection.	D + *****
2	Completion of 100% of structural concreting work in the subway, excluding approach ramps	D + *****
3	Removal of RH girders, completion of subway safety works and subway lighting, ventilation and announcement works.	D + *****
4	Completion of finishing complete in all respects	D + *****

2.5 **Scheduled Completion Date for Other Engineering works:**

S. No.	Stages for Completion for Other Engineering works	Completion Period in Days
1	Construction of platforms walls, and footings of platform shelters including platform fencing/Wall	D + *****
2	Completion of roofing, electrical works, announcement systems, signages on the platforms	D + *****
3	Construction of staff quarters and Railway offices complete in all respects including fixing doors, windows, sanitary, water supply works, electrification, lifts, escalators and all other specified and incidental works	D + *****
4	Completion of circulation area, parking area, boundary wall	D + *****
5	Completion of internal roads, drainage, water supply works including bore well, pump house, power supply, lighting, landscaping and all other incidental works in Railway Station.	D + *****
6	Complete Signage, information boards and posts	D + *****
7	Complete Drainage system of the Railway Station	D + *****

2.6 **Scheduled Completion Date for inventory for civil works:**

S. No.	Stages for Completion for inventory for civil works	Completion Period in Days
4	Supply of 100% material as per the inventory	D + *****

2.7 **Scheduled Completion Date for integrated testing & commissioning:**

S. No.	Stages for Completion for integrated testing & commissioning	Completion Period in Days
1	Successful completion of Integrated testing and commissioning	D + *****

Note – The Above list is illustrative and may require modification as per the scope of the work

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 prior to the likely completion of Construction of Project; notify the Authority Engineer and the Authority of its intent to subject the Project to Tests; and no later than 7 (seven) days prior to the actual date of Tests; furnish to the Authority Engineer and the Authority detailed inventory and particulars of all works and equipment forming part of Project.

1.2 The Contractor shall notify the Authority Engineer of its readiness to subject the Project to Tests at any time after 10 (ten) days from the date of such notice; and upon receipt of such notice; the Authority Engineer shall; in consultation with the Contractor; determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Authority 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 Authority Engineer shall conduct a visual and physical check of construction as per the provisions of Specifications and Standards outlined under Schedule D to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.

2.2 Environmental audit: The Authority Engineer shall carry out a check to determine conformity of the Project with the environmental requirements set forth in Applicable Laws and Applicable Permits.

2.3 Safety Audit: The Authority Engineer shall carry out; or cause to be carried out; a safety audit to determine conformity of the 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 Authority 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 Authority Engineer shall issue the Provisional Certificate in accordance with the provisions of Article 12.

———

SCHEDULE - K

(See Clause 12.2 and 12.4)

PROVISIONAL CERTIFICATE

1 I; ……. (Name of the Authority Engineer); acting as the Authority Engineer; under and in accordance with the Agreement dated ……. (The "Agreement"); for development/redevelopment of the ……. (The "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 Project with the provisions of the Agreement.

2 Works that are incomplete on account of ProjectTime Extension 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. In addition; certain minor works are incomplete and these are not likely to cause material inconvenience to the Users of the Project or affect their safety. The Contractor has agreed and accepted that as a condition of this Provisional Certificate; it shall complete such minor works within [30 (thirty)] days hereof as per Clause 12.3. These minor works have also been specified in the aforesaid Punch List.

3 In view of the foregoing; I am satisfied that the Project can be safely and reliably placed in service of the Users thereof; and in terms of the Agreement; the Project is hereby provisionally declared fit for entry into operation on this the …… day of …….. 20…...

ACCEPTED, SIGNED, SEALED AND DELIVERED	SIGNED, SEALED AND DELIVERED
For and on behalf of	For and on behalf of
CONTRACTOR by:	Authority ENGINEER by:
(Signature)	(Signature)

COMPLETION CERTIFICATE

1 I; ……. (Name of the Authority Engineer); acting as the Authority Engineer; under and in accordance with the Agreement dated …… (The "Agreement"); for development/redevelopment of the ……. (The "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 Project with the provisions of the Agreement; and I am satisfied that the Project can be safely and reliably placed in service of the Users thereof.

2 It is certified that, in terms of the aforesaid Agreement, all works forming part of the Project have been completed, and the 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 Authority Engineer by:

(Signature)

(Name)

(Designation)

(Address)

SCHEDULE - L

(See Clause 16.1.1)

SELECTION OF AUTHORITY ENGINEER

1 Selection of Authority Engineer

1.1 Authority shall appoint a railway engineer/ Project Management Consultancy (PMC), to be the engineeras set forth in Article 16, to be the engineer under this Agreement (the "**Authority Engineer**").

Generally, a railway officer of Selection Grade (SG)/Junior Administrative Grade (JAG)/Project Management Consultant (PMC) shall be appointed as Authority Engineer.Authority shall notify the Contractor in writing of the appointment and identity of the Authority Engineer and of any replacement thereof from time to time.

2 Terms of Reference

The Terms of Reference for the AuthorityEngineer (the "**TOR**") shall substantially conform with Annex 1 to this Schedule L.

3 Appointment of Government entity as Authority Engineer

Notwithstanding anything to the contrary contained in this Schedule; the Authority may in its discretion appoint a government-owned entity as the Authority Engineer.

Annex – I
(Schedule - L)

DUTIES & RESPONSIBILITIES FOR AUTHORITY ENGINEER

1. Scope

1.1. These Terms of Reference (the "TOR") for the Authority Engineer are being specified pursuant to the EPC Agreement dated..... (The "Agreement); which has been entered into between the [name and address of the Authority] (the "Authority") and..... (the "Contractor") for the ……; and a copy of which is Annexured hereto and marked as Annexure-A to form part of this TOR

1.2. The TOR shall apply to construction of the***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 TOR shall; except where the context otherwise requires; be deemed to be references to the Articles; Clauses and Schedules of the Agreement; and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.

2.3. The rules of interpretation stated in Clauses 1.2; 1.3 and 1.4 of the Agreement shall apply;mutatis mutandis; to this TOR.

3. General

3.1. The AuthorityEngineer 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 Authority Engineer shall perform the duties and exercise the authority in accordance with the provisions of this Agreement; but subject to obtaining prior written approval of the Authority(where Authority 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 Authority to the Contractor;

(c) the Termination Payment;

(d) providing Power Block orTraffic Block or necessary disconnections to the Contractor;

(e) approval of disconnections for modification of signalling and telecom works,

(f) Any other matter which is not specified in (a); (b) , (c), (d) or (e) above and which creates an obligation or liability on either Party for a sum exceeding Rs. Rs.5,000,000 (Rupees fifty lakh).

3.3. The Authority Engineer shall submit regular periodic reports; at least once every month; to the Authority in respect of its duties and functions assigned to him for the Project. Such reports shall be submitted by the Authority Engineer within 10 (ten) days of the beginning of every month.

3.4. The Authority Engineer shall aid and advise the Authority on any proposal for Change of Scope under Article 13.

3.5. In the event of any disagreement between the Parties regarding the meaning; scope and nature of Good Industry Practice; as set forth in any provision of the Agreement; the Authority 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 Authority Engineer shall verify the as built drawings submitted by the Contractor after completion of the works. These drawings will be signed by the Authority Engineer after due verification.

4. *4.* **Construction Period**

4.1. During the Construction Period; the Authority 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; topographical surveys; and the recommendations of the Safety Consultant in accordance with the provisions of Clause 10.1.6.The Authority Engineer shall complete such review and send its observations to the Authority and the Contractor within 21(twenty one) days of receipt of such Drawings***;*** provided, however that in case of Structures, airspace development at railway stations including concourse 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;**.**;. 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 AuthorityEngineer 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 Authority 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 Authority 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.

4.5.

4.6. The Authority Engineer shall review the monthly progress report furnished by the Contractor and send its comments thereon to the Authority and the Contractor within 7 (seven) days of receipt of such report.

4.7. The Authority Engineer shall inspect the Construction Works and theProject 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 Authority Engineer shall conduct the pre-construction review of manufacturer's test reports and standard samples of manufactured Materials; and such other Materials as the Authority Engineer may require.

4.9. For determining that the Works conform to Specifications and Standards; the Authority 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 the ScheduleD-Specifications and Standards, shall be deemed to be tests conforming to Good Industry Practice for quality assurance.

4.10. The Authority 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 Authority 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 Authority Engineer shall require the Contractor to carry out remedial measures.

4.13. The Authority Engineer may instruct the Contractor to execute any work which is urgently required for the safety of the 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 Authority Engineer shall undertake a review of the progress of construction and identify potential delays; if any. If the Authority Engineer shall determine that completion of the 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 Authority Engineer shall review the same and send its comments to the Authority and the Contractor forthwith.

4.15. The Authority 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. Authority Engineer may recommend to the Authority suspension of the whole or part of the Works if the work threatens the safety of the public .pedestrians orUsers. After the Contractor has carried out remedial measure; the Authority Engineer shall inspect such remedial measures forthwith and make a report to the Authority 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 Users; and requires the Authority Engineer to inspect such works; the Authority Engineer shall inspect the suspended works within 3 (three) days of receiving such notice; and make a report to the Authority forthwith; recommending whether or not such suspension may be revoked by the Authority.

4.18. The Authority 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 Authority 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 Authority Engineer shall determine the costs; and/or their reasonableness; that are required to be determined by it under the Agreement.

5.2. The Authority Engineer shall determine the period of Time Extension that is required to be determined by it under the Agreement.

5.3. The Authority Engineer shall consult each Party in every case of determination in accordance with the provisions of Clause 16.5.

6. Payment

6.1. The Authority Engineer shall withhold payments for the affected works for which the Contractor fails to revise and resubmit the Drawings to the Authority Engineer in accordance with the provisions of Clause 10.2.7 (d).

6.2. Authority 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 17.5; deliver to the Authority and the Contractor an Interim Payment Certificate certifying the amount due and payable to the Contractor; after adjustments in accordance with the provisions of Clause 17.5.1.

7. Other duties and functions

The Authority 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 AuthorityEngineer to the Contractor pursuant to this TOR; and a copy of all the test results with comments of the Authority Engineer thereon; shall be furnished by the Authority Engineer to the Authority forthwith.

8.2. The AuthorityEngineer 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 Authority 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 **Project** as actually designed; engineered and constructed; including an as-built survey illustrating the layout of the ***Project*** and setback lines; if any; of the buildings and structures forming part of Project Facilities; and shall hand them over to the Authority against receipt thereof.

8.4. The Authority Engineer shall inform the Authority and the Contractor of any event of Contractor's Default within one week of its occurrence.

SCHEDULE - M

(See Clauses 17.4, 17.5.1, and 17.7.1)

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 Authority 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.

___

SCHEDULE - N

(See Clause 18.1)

INSURANCE

1. Insurance during 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 Authority 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 Authority's property arising out of the Contractor's performance of this Agreement excluding:

(a) the Authority 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.

___

SCHEDULE - O

(See Clauses 4.7)

Provision of Traffic Blocks and Power Blocks

1. Provision of Traffic Blocks Power Blocks and Disconnections

1.1 The authority 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 Authority Engineer. The maximum aggregate duration of blocks for the 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 Authority shall arrange for disconnections of S&T system as determined by Authority Engineer, to enable the Contractor to execute the construction work which affects existing Singalling and Telecommunication installations.

—

SCHEDULE - P

(See Clauses 4.4)

Machinery and equipment

1. The Authority shall provide the following machinery and equipment to the Contractor at the daily rates shown againsteach machinery and equipment:

Serial No.	**Particulars of each type of machinery and equipment**	**Daily rate in rupees in rounded figures.**

Note:For Machines and T&P whose hire charges on not mentioned above, the monthly rate for those machines/ equipment shall be equal to 2% (two per cent) of the cost of such machine or equipment, as published in the latest Pink Book of Ministry of Railways. If the cost of any machine or equipment has not been published in the latest Pink Book, then the last purchase price thereof, shall be applicable for determining the charges for such machine or equipment.

The End of Schedules.

Appendices

APPENDIX-I

LIST OF BID-SPECIFIC CLAUSES[$]

A. Clauses with non-numerical ($) footnotes:

1. Clause 1.5 : Joint and several liability pertaining to Consortium/Joint Venture
2. Clause 3.2.1 : Obligation relating to sub-contracts and any other agreements
3. Clause 13.5.1 : Power of the Authority to undertake works
4. Article 1 : Definition of Consortium/Joint Venture
5. Schedule-F, Annexure-I : Item (C)-8
6. Schedule-F, Annexure-III : Item (B) and Item (C)-8

B. Clauses with curly { } brackets:

1. Recital : Para 2
2. Clause 1.5 : Joint and several liability
3. Clause 3.2.1 : Obligations relating sub-contracts and any other agreements
4. Clause 5.1 (l) : Representations and warranties of the Contractor
5. Article 1 : Definition of “Associate”, “Consortium/Joint Venture” and “Lead Member”
6. Contract Agreement : ‘Signature’ page
7. Schedule-F, Annexure-I : Item (B) and Item (C) 1
8. Schedule-F, Annexure-III : Item (B)

C. Clauses with Blank Spaces (.....), (***)

1. First line of the Concession Agreement
2. Recital : Para 2
3. Recital : Item A, B, C and D
4. Clause 3.9 : Training of Authority’s Personnel
5. Schedule-F, Annexure-I : Item A, B and C

6. Schedule-F, Annexure-I : Signing Date
7. Schedule-F, Annexure-II : Item A and C
8. Schedule-F, Annexure-II : Signing Date
9. Schedule-F, Annexure-III : Item A, B and C
10. Schedule-F, Annexure-III : Signing Date
11. Schedule-L, Annexure-I : Clause 1.1 : Scope

[$] This Appendix-I contains a list of clauses that would need to be suitably modified for reflecting bid-specific provisions after the contractor has been selected. This Appendix-I may be included in the draft EPC Agreement forming part of the bid documents. It may, however, be deleted when the Contract Agreement is to be executed.

APPENDIX-II

LIST OF PROJECT SPECIFIC CLAUSES[20]

A. Clauses with serially numbered footnotes

1. First line of Contract Agreement (footnote no.1)
2. Recital : Para 2 (footnote no.2 & 3)
3. Recital : Para 2 : Item A (footnote 4 & 5)
4. Clause 3.9.2 : Training of Authority's Personnel (footnote no.6)
5. Clause 4.1.3(b) and (c) : Obligation of the Authority (footnote no. 7 & 8)
6. Clause 4.3 : Environmental and forest clearances (footnote no.9)
7. Clause 4.4.3 : Machinery and equipment (footnote no.10)
8. Clause 4.5 : Electricity transmission lines (footnote no.11)
9. Clause 7.1.1 : Performance Security (footnote no.12)
10. Clause 7.5 : Retention Money (footnote no.13)
11. Clause 17.2.1 : Advance Payment (footnote no.14)
12. Clause 17.8.4 : Price adjustment for the works (footnote no.15)
13. Schedule-A, Annexure-I : Site (footnote no.16)
14. Schedule-B, Annexure-I : Description of Project (footnote no.17)
15. Schedule-C : Project facilities (footnote no.18)
16. Schedule-D, Annexure-I : Specifications and standards for construction (footnote no.19)

B. Clauses with square [ ] parenthesis:

1. Recital : Para 1
2. Recital (B)
3. Clause 3.2.1 : Obligations relating to sub-contracts and any other agreements
4. Clause 3.4.1 : Contractor's Personnel
5. Clause 3.9 : Training of Authority's Personnel

6. Clause 4.1.3(c) : Obligations of the Authority
7. Clause 4.1.4 : Obligations of the Authority
8. Clause 4.4.1(c) : Machinery and equipment
9. Clause 4.5 : Electricity transmission lines
10. Clause 4.7 : Provision of power blocks and traffic blocks
11. Clause 8.1(a) : The Site
12. Clause 10.3.1 : Construction of Project
13. Clause 10.4.1(a) : Extension of time for completion
14. Clause 12.2.1 : Provisional certificate
15. Clause 15.1.2 : Defects liability period
16. Clause 17.8.4 : Price adjustment for the works (formulae for price adjustment)
17. Clause 18.1.6 : Insurance for works
18. Clause 20.1 : Governing Law and Jurisdiction
19. Clause 25.13(a) and (b) : Notices
20. Article 1 : Definitions

    "GAD" or "General Arrangement Drawings"

    "Project Assets"
21. Signature of the Authority on the last page of the Agreement
22. Schedule-A, Annexure-I : Site
23. Schedule-A, Annexure-II : Date for providing Right of Way
24. Schedule-A, Annexure-III : Alignment Plans
25. Schedule-B, Annexure-I : Description of Project
26. Schedule-C : Project Facilities
27. Schedule-D, Annexure-I : Specifications and Standards for Construction
28. Schedule-F, Annexure-I : Form of Bank Guarantee for Performance Security
29. Schedule-F, Annexure-II : Form of Guarantee for Withdrawal of Retention Money

30. Schedule-F, Annexure-III : Form of Guarantee for Advance Payment

31. Schedule-G : Contract Price Weightages

32. Schedule-I : Project Completion Schedule

33. Schedule-J : Tests on Completion

34. Schedule-N : Insurance

35. Schedule-O : Provision of traffic blocks and power blocks

36. Clause 8.2.4.

[20] This Appendix-II contains a list of clauses that would need to be suitably modified prior to issue of bid documents for reflecting project specific provisions. This Appendix-II should be omitted before issuing the draft Concession Agreement, forming part of the bid documents.



Request for Proposal

for

DEVELOPMENT/ REDEVELOPMENT OF RAILWAY STATION

on

ENGINEERING, PROCUREMENT AND CONSTRUCTION (EPC)

(RFP No……)

Bid Document
Volume I – Instructions to Bidders (ITB) and
Volume II- Draft EPC Agreement

(Name of Authority with address)

November 2021

TABLE OF CONTENTS

Section	Contents		Page No.
	Request for Proposal		4
	Disclaimer		5
	Glossary		6
1	**Introduction**		7
	1.1	Background	7
	1.2	Brief description of Bidding Process	8
	1.3	Schedule of Bidding Process	10
2	**Instructions to Bidders**		11
	A	**General**	11
	2.1	General terms of Bidding	12
	2.2	Eligibility and qualification requirement of Bidder	14
	2.3	Proprietary Data	18
	2.4	Cost of Bidding	18
	2.5	Site visit and verification of information	19
	2.6	Verification and Disqualification	19
	B	**Documents**	21
	2.7	Contents of the RFP	21
	2.8	Clarifications	22
	2.9	Amendment of RFP	22
	C	**Preparation and Submission of Bids**	23
	2.10	Format and Signing of Bid	23
	2.11	Documents comprising Technical &Financial Bid	23
	2.12	Bid Due Date	24
	2.13	Late Bids	25
	2.14	Procedure of e-tendering	25
	2.15	Online opening of Bids	26
	2.16	Rejection of Bids	26
	2.17	Validity of Bids	26
	2.18	Confidentiality	26
	2.19	Correspondence with the Bidder	27
	D	**Bid Security/Bid Security Declaration**[1]	27
	2.20	Bid Security/Bid Security Declaration	27
	2.21	Performance Security	28

[1] Either of the two to be retained as per the provisions/orders related to submission of Bid Security OR Bid Security Declaration

3	**Evaluation of Technical and Opening & Evaluation of financial Bids**		30
	3.1	Evaluation of Technical Bids	30
	3.2	Opening and Evaluation of financial Bids	31
	3.3	Selection of Bidder	31
	3.4	Contacts during Bid Evaluation	32
	3.5	Correspondence with the Bidder	33
4	**Fraud and Corrupt Practices**		34
5	**Pre-Bid Conference**		36
6	**Miscellaneous**		37
	Appendices		
IA	Letter comprising the Technical Bid		38
IB	Letter comprising the Financial Bid		42
II	Format for Power of Attorney for signing of Bid		56
III	Format for Power of Attorney for Lead Member of Consortium/ Joint Venture		58
IV	Format for Joint Bidding Agreement for Consortium/Joint Venture		60
V	Format for Bid Security or Bid Security Declaration[2]		65
VI	Format for Affidavit		69
VIII	List of Bid Specific Clause		71
VIII	List of Project Specific Clauses		72
	Annexure of Appendix 1A		
I	Details of Bidder		43
II	Technical Capacity of the Bidder		45
III	Financial Capacity of the Bidder		47
IV	Details of Eligible Project		49
V	Statement of legal		52
VI	Guidelines of the Department of Disinvestment		53
VII	Restrictions under Rule GFR 2017 in respect of sharing of land border		55

[2] To be retained as applicable

REQUEST FOR PROPOSAL

[NAME AND ADDRESS OF THE AUTHORITY]

RFPNo.……..** Dated ……**

RFP for [Name of Work] on EPC mode

The President of India represented by the [********, **********] (the **"Authority"**), having its principaloffice at ********, [**********, India"] is engaged in the development of railways and related infrastructure, and as part of this endeavour, the Authority has decided to undertake the [Redevelopment/Development] of ******** Railway Station at …….(the **"Project"**) through Engineering, Procurement and Construction (the **"EPC"**) contract, and has decided to carry out an open and competitive e Bidding Process for selection of a Bidder to whom the Project may be awarded. A brief description of the Project, including the existing situation and basic details of the Project components, is provided as a part of this Request for Proposal.

The scope of work shall broadly cover survey, investigations, design and development/redevelopment of Railway Station including but not limited to undertaking civil works and MEP works for station building. The brief particulars of the Project, bidding process and the Estimated Project Cost is provided in Clause 1.1.2 of this RFP

The complete Bid document can be viewed / downloaded from official portal of the (Name of Authority)e-Procurement Portal. Bidder mustsubmit its Financial Bidand Technical Bidat e-Procurement Portalon or before the Bid Due Date.Bids received online shall be opened on the time as mentioned in the Key Information Table at Clause 1.1.2 of RFP.

Bid through any other mode shall not be entertained. However, Power of Attorney and Joint Bidding Agreement etc. shall be submitted physically by the Bidder on or before the time mentioned atClause 1.1.2 of this RFP. Please note that the [Ministry/Authority/ Executing Agency] reserves the right to accept or reject allor any of the Bids without assigning any reason whatsoever.

[Officer In-charge
Ministry of Railway
…….***
…….***
Phone/ Fax……**
e-mail……**]

DISCLAIMER

The information contained in this Request for Proposal document (the "**RFP**") or subsequently provided to Bidder(s), whether verbally or in documentary or any other form by or on behalf of the Authority or any of its employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an Agreement and is neither an offer nor invitation by the Authority to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in making their financial offers (**Bids**) pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for the Authority, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in the Bidding Documents, especially the [ProjectReport], may not be complete, accurate, adequate or correct.Each Biddershould, therefore, conduct its own investigations and analysis and should checktheaccuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Bidder(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Authority accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The Authority, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way for participation in this RFP.

The Authority also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP. The Authority may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP.

The issue of this RFP does not imply that the Authority is bound to select theBidder or Contractor, as the case may be, for the Project and the Authority reserves the right to reject all or any of the Bids without assigning any reason whatsoever.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees,expenses associated with any demonstrations or presentations which may be required by the Authority or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and the Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation/ submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

GLOSSARY

Agreement/EPC Agreement	As defined in Clause 1.1.3
Authority	As defined in Clause 1.1.1
Bank Guarantee	As defined in Clause 2.20.1
Bid(s)	As defined in draft EPC agreement
Bidders	As defined in Clause 1.2.1
Bidding Documents	As defined in Clause 1.1.6
Bid Due Date	As defined in Clause 1.1.6
Bidding Process	As defined in Clause 1.2.1
Bid Security/Bid Security Declaration[3]	As defined in Clause 1.2.4
Bid Price or Bid	As defined in Clause 1.2.6
Contractor	As defined in Clause 1.1.3
Construction Period	As defined in Clause 1.2.6
Conflict of Interest	As defined in Clause 2.2.1(c)
Defect Liability Period	As defined in Clause 1.2.6
Eligible Projects	As defined in Clause 2.2.2.1
EPC	As defined in Clause 1.1.1
Estimated Project Cost	As defined in Clause 1.1.4
ProjectReport	As defined in Clause 1.2.3
Financial Capacity	As defined in Clause 2.2.2.2
Government	Government of *********
Consortium/Joint Venture	As defined in Clause 2.2.1(a)
Jt. Bidding Agreement	As defined in Clause 2.1.11(f)
Lead Member	As defined in Clause 2.1.11 (c)
Lowest Bidder	As defined in Clause 1.2.6
LOA	As defined in Clause 3.3.4
Net Worth	As defined in Clause 2.2.2.5 (ii)
Performance Security	As defined in Clause 2.21.1
Project	As defined in Clause 1.1.1
Re. or Rs. or INR	Indian Rupee
RFP or Request for Proposals	As defined in the Disclaimer
Selected Bidder	As defined in Clause 3.3.1
Technical Capacity	As defined in Clause 2.2.2.1
Tie Bids	As defined in Clause 3.3.2

The words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto herein.

[3] Either of the two to be retained as per the provisions/orders related to submission of Bid Security OR Bid Security Declaration

[NAME AND ADDRESS OF THE EXECUTINGAGENCY]

SECTION 1

INTRODUCTION

1.1 Background

1.1.1 The President of India represented by the *******Ministry of Railways, ********** (the **"Authority"**), having its principal office at ********, [New Delhi,110001, India"] is engaged in the development of railways and related infrastructure, and as part of this endeavour, the Authority has decided to undertake the [Development/Redevelopment] of ……Railway Station at ……..(the **"Project"**) through Engineering, Procurement and Construction (the **"EPC"**) contract,and has decided to carry out a single stagebidding process for selection of a Bidder to whom the Project may be awarded.

1.1.2 The brief particulars of the Project and the Bidding Process are as follows in the Key Information Table (KIT):

SNo.	Particular	Details
1.	Name of the Work	[Request for Proposal (RFP) for Development/ Redevelopment of ********* Station] on Engineering, Procurement and Construction (EPC) mode.
2.	Estimated Project Cost	INR [******Crore (Rupees in words)][4]
3.	Construction Period	[**********] months
4.	Bid Due Date and time	By [1100 hrs] (IST) on [<Insert date>]
5.	Physical submission of all documents listed in clause no. 2.11.2	By Bid Due Date + 3 working days
6.	Date and Time of Opening of Bid	At [***hrs] (IST) on the (Bid Due Date + 3 working days)
7.	Mode of tendering	Single stage two packet
8.	Mode of submission of Bids	Online submission on e-Procurement Portal
9.	E-Procurement Portal	www.ireps.gov.in
10.	RFP document Fee	NIL
11.	Bid Security OR Bid Security Declaration[5]	[Rs ****** (*****)] *{[0.5%] of the Estimated Project Cost subjected to maximum INR 2.0 (two) Crore}* OR

[4]This amount of estimated project cost should normally include the likely construction cost plus cost of survey, investigation, design,and contingencies.

[5] Either of the two to be retained as per the provisions/orders related to submission of Bid Security OR Bid Security Declaration

		As per Appendix VI
12.	Bank Account Details of the Authority	Name of Beneficiary:****** Name of the Bank:******* Account No.: Address of the Branch: IFSC code:
13.	Officer and Address to Submit the physical documents as per clause 2.11.4 of RFP	Name of Officer: ********** Address: ********** Phone : ********** E mail : **********
14.	Validity of the Bid	[120] days from the Bid Due Date
15.	Pre-bid Conference Details	Date: Time: Venue:
16.	Last date of receiving Queries	…….
17.	Performance Security	[3% / 5% (three/five percent)] of Contract Price in terms of Clause 2.21.1
18.	Submission of Performance Security	Within 30 days of issue of Letter of Award (LOA)
19.	Signing of Agreement	Within 15days of submission of Performance Security.
20.	Documents enclosed with the RFP	a) Draft EPC Agreement for the Project b) Project Report of the Project
21.	Technical Consultant of the Project	**********
22.	Transaction Adviser for the Project	**********
23.	Legal Consultant for the Project	**********

1.1.3 The Selected Bidder (the "**Contractor**") shall be responsible for Engineering, Procurement and Construction of the Project under and in accordance with the provisions of an Engineering, Procurement and Construction agreement (the "**EPC Agreement**") to be entered into between the Selected Bidder and the Authority in the form provided by the Authority as part of the Bidding Documents pursuant hereto.The scope of work of EPC broadly comprises Design, Detailed Engineering, Surveys (Pre-Engineering, Pre-Construction and Post-Construction), Procurement, Fabrication, Transportation, Construction (Civil, Structural, Mechanical, Electrical, HVAC, Fire Fighting and other related services) and Installation, Testing, Pre - commissioning, Commissioning and handing over as per the terms of the EPC Contract. The detailed scope is provided as part of Volume II: EPC Agreement of this RFP.

1.1.4 The estimated cost of the Project (the **"Estimated Project Cost"**) has been specified in the Clause 1.1.2 above. The assessment of actual costs, however, will have to be made by the Bidders.

1.1.5 The draft EPC Agreement sets forth the detailed terms and conditions for award of theProject to the Contractor, including the scope of the Contractor's services and obligations.

1.1.6 The Authority shall receive Bids pursuant to this RFP in accordance with the terms set forth in this RFP and other documents to be provided by the Authority pursuant to this RFP, as modified, altered, amended and clarified from time to time by the Authority (collectively the "**Bidding Documents**"), and all Bids shall be prepared and submitted in accordance with such terms on or before the BidDue Date as specified in the KIT a provided in Clause 1.1.2 for submission of Bids (the "**Bid Due Date**").

1.2 **Brief description of Bidding Process**

1.2.1 The Authority has adopted a single stage two packet system (referred to as the "**Bidding Process**") for selection of the Bidder for award of the Project. The 1st part(the "**Technical Bid**") of the process involves qualification (the "**Qualification**") of the interested parties/Consortium/Joint Venture who submits a Bid in accordance with the provisions of this RFP (the "**Bidder**", which expression shall, unless repugnant to the context, include the members of the Consortium/Joint Venture). The 2nd part of the process involves opening of Financial proposals (the **"Financial Bid"**) of the bidders qualified in Technical Bid. The Technical and Financial Bid shall collectively be referred as Bid (the **"Bid").** The Bidder would be required to furnish all information specified in this RFP. At the Qualification stage, the Technical Bids of Bidders would be evaluated and only those Bidders that are qualified by the Authority shall be eligible for the 2nd part of the Bidding Process comprising opening and evaluation of theirFinancial Bids.GOI has issued guidelines (see Annexure VI of Appendix-1A of RFP) for qualification of Bidders seeking to acquire stakes in any public sector enterprise through the process of disinvestment. These guidelines shall apply mutatis mutandis to this Bidding Process. The Authority shall be entitled to disqualify any Bidder in accordance with the aforesaid guidelines at any stage of the Bidding Process. Bidders must satisfy themselves that they are qualified to Bid, and should give an undertaking to this effect in the form at Appendix-IA

1.2.2 The Bid shall be valid for the period as per the Key Information Table.

1.2.3 The Bidding Documents including the draft EPC Agreement for the Project is enclosed for the Bidders. The feasibility prepared by the Authority/ consultants of the Authority (the "**ProjectReport)** is also enclosed. The ProjectReportof the Project is being provided only as a preliminary reference document by way of assistance to the Bidders who are expected to carry out their own surveys, investigations and other detailed examination of the Project before submitting their Bids. Nothing contained in the ProjectReportshall be binding on the Authority nor confer any right on the Bidders, and the Authority shall have no liability whatsoever in relation to or arising out of any or all contents of the ProjectReport. The aforesaid documents and any addenda issued subsequent to this RFP document, will be deemed to form part of the Bidding Documents.

1.2.4 (A Bidder is required to submit, along with its Bid, a Bid Securityof the amount as mentioned in the KIT (the "**Bid Security**"), refundable after issuance of LOA to the Selected Bidder. The Selected Bidder'sBidSecurity shall be retained till it has provided a Performance Security as per the provision of this RFP and LOA.The Bidder will have to provide BidSecurity through [e- payment Gateway of e-Procurement Portal/Authority OR in form of Bank Guarantee as per the format at Appendix V]. The Bid shall be summarily rejected if it is not accompanied by the prescribed amount of BidSecurity.The Bid document shall be available free of cost through the e-Procurement Portal as mentioned in the KIT.

OR

A Bidder is required to submit, along with its Bid, Bid Security Declaration as per Annexure - V of Appendix – IA (the, **Bid Security Declaration**) accepting that if they withdraw or modify their Bids during period of validity etc. they will be barred from submission of Bids in any Works/Service tender issued by Indian Railway for a period upto 5 (five) years. The Bid shall be summarily rejected if it is not accompanied by Bid Security Declaration. The Bid document shall be available free of cost through e-Procurement Portal.)[6]

1.2.5 Bidders are advised to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the contract including implementation of the Project.

1.2.6 Bids will be evaluated for the Project on the basis of the lowest cost required by a Bidder for implementing the Project (the "**Bid Price**"). The total time allowed for completion of construction under the Agreement (the "**Construction Period**") and the period during which the Contractor shall be liable for rectification of any defect or deficiency in the Project after completion of the Construction Period (the "**Defect LiabilityPeriod**") shall be pre-determined,and are specified in the draft EPC Agreement forming part of the Bidding Documents.

In this RFP, the term **"Lowest Bidder"** shall mean the Bidder who qualifies the Technical Bid criteria (Qualification Stage) and is quoting the lowest BidPrice, subject to the provisions of Clause 1.2.7, the Project will be awarded to the Lowest Bidder.

1.2.7 Generally, the Lowest Bidder shall be the selected Bidder. In case such Lowest Bidder withdraws or is not selected for whatsoever reasonexcept the reason mentioned in Clause 2.1.12 (e), the Authority shall annul the Bidding Process and invite fresh Bids.

1.2.8 Other details of the process to be followed under this Bidding Process and the terms thereof are spelt out in this RFP.

1.2.9 Any queries or request for additional information concerning this RFP shall be submitted in writing by speed post/courier/special messenger or by e-mail, through **e-Procurement Portal**, so as to reach the officer designated in Clause 2.11.4 by the specified date. The envelopes/ communication shall clearly bear the following identification/ title:

[6]Either of the two to be retained as per the provisions/orders related to submission of Bid Security OR Bid Security Declaration

"Queries / Request for Additional Information: RFP for**** - Project".

1.3 Schedule of Bidding Process

The Authority shall endeavour to adhere to the schedule provided in the KIT at Clause 1.1.2:

SECTION-2

INSTRUCTIONS TO BIDDERS

A. GENERAL

2.1. General terms of Bidding

2.1.1 No Bidder shall submit more than one Bid for the Project.

2.1.2 A Bidder biddingindividually or as a member of a Consortium/Joint Venture shall not be entitled to submit another Bid either individually or as a member of any Consortium/Joint Venture, as the case may be.

2.1.3 Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the draft EPC Agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Agreement. Further, the statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Contractor set forth in the Agreement or the Authority's rights to amend, alter, change, supplement or clarify the scope of work, the work to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Authority

2.1.4 The Bid shall be furnished in the format exactly as per Appendix-IA & IB i.e. Technical Bid as per Appendix IA and Financial Bid as per Appendix IB and it shall be signed by the Bidder's authorised signatory. The BidPrice shall be quoted online at the **e-Procurement Portal**. In the event of any difference between figures and words, the amount indicated in words shall be taken into account.

2.1.5 The Bidder should submit a Power of Attorney as per the format at Appendix-II, authorising the signatory of the Bid to commit the Bidder.

2.1.6 In case the Bidder is a Consortium/Joint Venture, the Members thereof should furnishaPowerof Attorney in favour of the Lead Member in the format at Appendix-III and Joint Bidding Agreement in the format at Appendix-IV

2.1.7 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.

2.1.8 The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language.

2.1.9 This RFP is not transferable.

2.1.10 Any award of Project pursuant to this RFP shall be subject to the terms of Bidding Documents. The Bidding Documents including this RFP and all attached documents, provided by the Authority are and shall remain or becomes the property of Authority

and are transmitted to the Bidders solely for the purpose of preparation and submission of the Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provision of this Clause 2.1.10 shall also apply mutatis mutandis to Bids and all other documents submitted by the Bidders, and the Authority will not return to the Bidders any Bid, documents or any information provided along therewith.

2.1.11 In case the Bidder is a Consortium/Joint Venture, it shall comply with the following additional requirements:

(a) number of members in a Consortium/Joint Venture shall not exceed 3 (Three);

(b) subject to the provisions of clause (a) above, the Bid should contain the information required for each member of the Consortium/Joint Venture;

(c) members of the Consortium/Joint Venture shall nominate one member as the Lead Member (the "**Lead Member**"). Lead Member shall have minimum 51% (fifty one per cent) share holding in Consortium/Joint Venture.The Technical Capacity as per Clause 2.2.2.1 and/orthe Financial Capacity as per Clause 2.2.2.2 is to be satisfied by any member/s of Consortium/Joint Venture having minimum 26% (twenty six per cent) share holding individually in Consortium/Joint Venture. The nomination of Lead Member shall be supported by a Power of Attorney, as per the format at Appendix-III, signed by all the other members of the Consortium/Joint Venture. Consortium/Joint Venture as whole shall cumulatively/collectively fulfil the 100% (One hundred per cent) Technical Capacity as per Clause 2.2.2.1 and 100% (One hundred per cent) Financial Capacity as per Clause 2.2.2.2.

(d) the Bid should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and defect liability obligations;

(e) the Lead Member shall carry out works directly under its own supervision and through its own personnel for at least 50% (fifty per cent) of the Bid Price in accordance with provision of draft EPC Agreement.

(f) members of the Consortium/Joint Venture shall have entered into a binding Joint Bidding Agreement, substantially in the form specified at Appendix IV (the "**Jt. Bidding Agreement**"), for the purpose of making the Bid. The Jt. Bidding Agreement, to be submitted along with the Bid, shall, *inter alia*:

(i) convey the commitment(s) of the Lead Member in accordance with this RFP, in case the contract to undertake the Project is awarded to the Consortium/Joint Venture; and clearly outline the proposed roles & responsibilities, if any, of each member.
(ii) include a statement to the effect that all members of the Consortium/Joint Venture shall be liable jointly and severally for all obligations of the Contractor in relation to the Project until the Defect Liability Period is achieved in accordance with the draft EPC agreement;

(g) Approval for change of constitution of Consortium/Joint Venture shall be at sole discretion of the Authority. The constitution of the Consortium/Joint Venture shall not be allowed to be modified after submission of the Bid by the Consortium/Joint Venture, except when modification becomes inevitable due to Succession laws etc., provided further that there is no change in qualification of minimum eligibility criteria by Consortium/JV. However, the Lead member shall continue to be the Lead Member of the Consortium/Joint Venture. Failure to observe this requirement would render the offer invalid. Similarly, after the contract is awarded, the constitution of Consortium/Joint Venture shall not be allowed to be altered during the currency of contract except when modification becomes inevitable due to Succession laws etc., provided further that it does not change the minimum eligibility criteria. Failure to observe this stipulation shall be deemed to be breach of contract with all consequential penal action as per contract condition.

2.1.12 While Bidding is open to persons from any country, the following provisions shall apply:

(a) Where, on the due date of the Bid, not less than 25% (twenty five percent) of the aggregate issued, subscribed and paid up equity share capital/capital contribution/partnership contribution in theLowestBidder or its member is held by persons resident outside India or where a Bidder or its member is controlled by persons resident outside India, then the eligibility and award of the project to such Lowest Bidder shall be subject to approval of the competent authority from national security and public interest perspective as per the instructions of the Government of India applicable at such time. The decision of the authority in this behalf shall be final and conclusive and binding on the Bidder.

(b) Further, where the LOA of a project has been issued to an agency, not covered under the category mentioned above, and it subsequently wishes to transfer its share capital in favour of another entity who is a resident outside India or where a Bidder or its member is controlled by persons resident outside India and thereby the equity capital of the transferee entity exceeds 25% or above, any such transfer of equity capital shall be with the prior approval of the competent authority from national security and public interest perspective as per the instructions of the Government of India applicable at such point in time.

(c) The holding or acquisition of equity control, as above shall include direct or indirect holding, acquisition, including by transfer of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Authority shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 or any substitute thereof, as in force on the date of such acquisition.

(d) The Bidder shall promptly inform the Authority of any change in the shareholding, as above, and failure to do so shall render the Bidder liable for disqualification from the Bidding Process.

(e)In case the LowestBidder under (a) above is denied the security clearance, for whatsoever reasons, then the Bidders emerging as secondLowest, third lowest

eligible Bidders (in that order) may be given a counter-offer (one by one sequentially) to match the Bid of Lowest Bidder. In the event of acceptance of the counter-offer by another eligible Bidder, the project may be awarded to such Bidder. In case no Bidder matches the Bid of the Lowest Bidder, the BidProcess shall be annulled and fresh Bids invited.

(f) Any bidder from the countries sharing a land border with India will be eligible to bid in any procurement whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the bidder is registered with the Competent Authority. The Competent Authority for registration will be the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT), Government of India. For interpretation of this clause Department of Expenditure, Ministry of Finance, Government of India letter F.No.6/18/2019-PPD dated 23/07/2020 shall be referred which is enclosed as Annexure-VII of Appendix-IA

2.1.13 Notwithstanding anything to the contrary contained herein, in the event that the Bid Due Date falls within three months of the closing of the latest Financial Year of a Bidder, it shall ignore such Financial Year for the purposes of its Bid and furnish all its information and certification with reference to the 5 (five) years or 1 (one) year, as the case may be, preceding its latest Financial Year. For the avoidance of doubt, Financial Year shall, for the purposes of a Bid hereunder, mean the Accounting Year followed by the Bidder in the course of its normal business.

2.1.14 a)Any entity which has been barred by the Central Government or State Government or any entity controlled by it, from participating in any project, and the bar subsists as on the date of Bid, would not be eligible to submit an Bid, either individually or as member of a Consortium/Joint Venture.

(b) A Bidder including any member or Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty or damages by a judicial authority or a judicial pronouncement against the Bidder, member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder, member or Associate.

(c) if Bidder's any constituent is entity incorporated in a country, where an entity incorporated in India does not have similar rights of bidding for contracts.

The Authority reserves the right to reject an otherwise eligible Bidder on the basis of the information provided under this Clause 2.1.14. The decision of the Authority in this case shall be final.

2.2. Eligibility and qualification requirements of Bidder

2.2.1For determining the eligibility of Bidder the following shall apply:

(a) The Bidder may be a single entity or a group of entities (the **"Consortium"**or the **"Joint Venture"**), coming together to implement the Project. The term Bidder used herein would apply to both a single entity and a Consortium/Joint Venture.

(b) Bidder may be a natural person, private entity, or any combination of them with a formal intent to enter into a Consortium/Joint Venture agreement or under an existing agreement to form a Consortium/Joint Venture. A Consortium/Joint Venture shall be eligible for consideration subject to the conditions set out in Clause 2.1.11 above.

(c) (A Bidder shall not have a conflict of interest **("Conflict of Interest")** that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified and liable for forfeiture of the Bid Security or Performance Security as the case may be. A Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:)

OR

(A Bidder shall not have a conflict of interest ("Conflict of Interest") that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified and liable for barring from submission of Bids in any Works/Service tender issued by Indian Railway for a period upto 5 (five) years or forfeiture and appropriation of Performance Security as the case may be. A Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:)[7]

(i) the Bidder, its Consortium/Joint Venture member (or any constituent thereof) and any other Bidder, its member or any member of its Consortium/Joint Venture thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, or its Consortium/Joint Venture member thereof (or any shareholder thereof having a shareholding of more than 5% (five percent) of the paid up and subscribed share capital of such Bidder, or its Consortium/Joint Venture member, as the case may be), in the other Bidder, its Consortium/Joint Venture member is less than 5% (five percent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 4A of the Companies Act 2013. For the purposes of this Clause 2.2.1(c), indirect shareholding held through one or more intermediate persons shall be computed as follows:

(aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the "**Subject Person**") shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and

(bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or

(ii) a constituent of such Bidder is also a constituent of another Bidder; or

[7] Either of the two to be retained as per the provisions/orders related to submission of Bid Security OR Bid Security Declaration

(iii) such Bidder, or any of its Consortium/Joint Venture member thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, or any of its Consortium/Joint Venture member thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its member or any of its Consortium/Joint Venture member thereof; or

(iv) such Bidder has the same legal representative for purposes of this RFP as any other Bidder; or

(v) such Bidder, or any of its Consortium/Joint Venture member thereof has a relationship with another Bidder, or any of its Consortium/Joint Venture member thereof, directly or through common third party/parties, that puts either or both of them in a position to have access to each others' information about, or to influence the Bid of either or each other; or

(vi) such Bidder, or any of its Consortium/Joint Venture members thereof has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.The consultants engaged by the Authority for this Project are mentioned in the KIT.

2.2.2 **Qualification requirements of Bidders:**To be eligible for Qualification an individualBidder or a Consortium/Joint Venture as whole as per Clause 2.1.11(c), shall fulfil the following conditions of eligibility:

2.2.2.1 **Technical Capacity-** For demonstrating Technical Capacity and experience (the **"Technical Capacity"**), the Bidder shall, over the past 5 (five) Financial Years preceding the Bid Due Date,received payments for construction of Eligible Project(s) such that the amount is atleast;

(a) 60% (sixty percent) of Estimated Project Cost from One Eligible Project,
OR,
(b) 40% (forty percent) of Estimated Project Cost from each of the Two Eligible Projects
OR,
(c) 30% (thirty percent) of Estimated Project Cost from each of the Three Eligible Projects

For the purpose of Technical Capacity, the projects shall qualify as Eligible Projects, the "**Eligible Projects**" if they meet both of the following criteria;

1) Projects where works contract are directly given to the Bidder by a Govt. Department; or by a Public listed company having average annual turnover of Rs 500 crore and above in last 3 financial years excluding the current financial year, listed on National Stock Exchange or Bombay Stock Exchange, registered at least 5 years back from the date of submission of Bid by the Bidder to the Authority.
AND
2) Projects where the Bidder have received payments for not less than 75 (seventy-five) per cent value of awarded project cost of such project as per the original agreement under the following categories:

(i) **Passenger terminals** shall mean having a minimum passenger handling capacity of 5000 persons /day in railway stations, metro stations, airport terminals (with or without related airport infrastructure works), ports, integrated check posts, and bus terminals;

(ii) **Social and Commercial infrastructure** shall mean:

(a) Commercial real estate project (such aseducational institution, hospital, hotel, convention centre, mall/shopping complex, sports complex, office complex) at a single site with a minimum built up area of 15,000 (Fifteen thousand) square metres;

or

(b) Residential real estate project /residential township at a single site with a minimum built up area of 30,000 (Thirty thousand) square metres;

2.2.2.2 **Financial Capacity**: The Bidder shall have a minimum Net Worth (the **"Financial Capacity"**) of 15% (Fifteen percent) of the Estimated Project Cost at the close of the preceding Financial Year.

2.2.2.3Submission in support of Technical Capacity

(i) The Bidder should furnish the details of Eligible Projectsfor the last 5 (five) Financial Years immediately preceding the Bid Due Date.

(ii) The Bidder must provide the necessary information relating to Technical Capacity as per format at Annex-II of Appendix-IA.

(iii)The Bidder should furnish the required Project-specific information and evidencein support of its claim of Technical Capacity, as per format at Annex - IV ofAppendix-IA.

2.2.2.4 Submission in support of Financial Capacity

(i) The Technical Bid must be accompanied by the Audited Annual Reports of the Bidder (of each member or Associate/s thereof, whose Technical Capacity or Financial Capacity is being claimed, in case of a Consortium/Joint Venture) for the last 5 (five) Financial Years, preceding the year in which the Bid is submitted.

(ii) In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide the Audited Annual Reports for 5 (five) years preceding the year for which the Audited Annual Report is not being provided.

(iii) The Bidder must establish the minimum Net Worth specified in Clause 2.2.2.2, and provide details as per format at Annex-III of Appendix-IA.

2.2.2.5 The Bidder shall enclose with its Technical Bid, to be submitted as per the format at Appendix-IA, complete with its Annexes, the following:

(i) Certificate(s) from its statutory auditors[$] or the concerned client(s) stating the payments received during the past 5 years, in respect of the Eligible Projects. In case a particular job/ contract has been jointly executed by the Bidder (as part of a Consortium/Joint Venture), it should further support its claim for the payments received as per the share in work done for that particular job/ contract by producing a certificate from its statutory auditor or the client; and

(ii) Certificate(s) from its statutory auditors specifying the net worth of the Bidder(including Associates, if any), as at the close of the preceding Financial Year, and also specifying that the methodology adopted for calculating such net worth conforms to the provisions of this Clause 2.2.2.5 (ii). For the purposes of this RFP, net worth (the **"Net Worth"**) shall mean the capital/aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

2.2.2.6 In computing the Technical Capacity and Net Worth of the Bidder/ Member of Consortium/Joint Venture under Clauses 2.2.2.1 and 2.2.2.2, the Technical Capacity and Net Worth of their respective Associates would also be eligible hereunder. For purposes of this RFP, Associate means, in relation to the Bidder/ Member of Consortium/Joint Venture, a person who controls, is controlled by, or is under the common control with such Bidder/member (the "**Associate**"). 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 by operation of law.

2.3 Proprietary data

All documents and other information supplied by the Authority or submitted by a Bidder to the Authority shall remain or become the property of the Authorityand are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 2.3 shall also apply *mutatis mutandis* to Bids and all other documents submitted by the Bidders, and the Authority will not return to the Bidders any Bid, document or any information provided along therewith.

2.4 Cost of Bidding

The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the Bidding Process. The Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome

[$] In case duly certified audited annual financial statements containing explicitly the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.2.2.5 (i). In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Bidder provide the certificates required under this RFP.

of the Bidding Process.

2.5 Site visit and verification of information

2.5.1 Bidders are encouraged to submit their respective Bids after visiting the Project site and ascertaining for themselves the site conditions, traffic, location, surroundings, climate, availability of power, water & other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them. Bidders are advised to visit the site and familiarise themselves with the Project within the stipulated time of submission of the Bid. No extension of time is likely to be considered for submission of Bids.

2.5.2 It shall be deemed that by submitting a Bid, the Bidder has:

(a) made a complete and careful examination of the Bidding Documents, Schedules annexed to draft EPC agreement;

(b) received all relevant information requested from the Authority;

(c) accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 2.5.1 above. No claim shall be admissible at any stage on this account.

(d) satisfied itself about all matters, things and information including matters referred to in Clause 2.5.1 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance withthe Bidding Documents and performance of all of its obligations thereunder;

(e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.5.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Authority, or a ground for termination of the Agreement by the Contractor;

(f) acknowledged that it does not have a Conflict of Interest; and

(g) agreed to be bound by the undertakings provided by it under and in terms hereof.

2.5.3 The Authority shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFP, including any error or mistake therein or in any information or data given by the Authority.

2.6 Verification and Disqualification

2.6.1 The Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP and the Bidder shall, when so required by the Authority, make available all such information, evidence and documents as may be necessary for such verification. Any such verification, or lack of such verification, by the Authority shall not relieve the Bidder of its obligations

or liabilities hereunder nor will it affect any rights of the Authority thereunder.

2.6.2 (The Authority reserves the right to reject any Bid and appropriate the Bid Security if:

OR

The Authority reserves the right to reject any Bid and bar the bidder from submission of Bids in any Works/Service tender issued by Indian Railway for a period upto 5(five) years, if:)[8]

(a) at any time, a material misrepresentation is made or uncovered, or

(b) the Bidder does not provide, within the time specified by the Authority, the supplemental information sought by the Authority for evaluation of the Bid.

Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium/Joint Venture, then the entire Consortium/Joint Venture and each member of the Consortium/Joint Venture may be disqualified/ rejected. If such disqualification/rejection occurs after the Bids have been opened and the lowest Bidder gets disqualified / rejected, then the Authority reserves the right to annul the Bidding Process and invites fresh Bids.

2.6.3 In case it is found during the evaluation or at any time before signing of the EPC Agreement or after its execution and during the period of defect liabilitysubsistence thereof, that one or more of the eligibility and /or qualification requirements have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the contractor either by issue of the LOA or entering into of the Agreement, and if the Selected Bidder has already been issued the LOA or has entered into the Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Authority to the Selected Bidder or the Contractor, as the case may be, without the Authority being liable in any manner whatsoever to the Selected Bidder or the Contractor.

(In such an event, the Authority shall be entitled to forfeit and appropriate the BidSecurity or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and / or the draft EPC Agreement, or otherwise.

OR

In such an event, the Authority shall be entitled to bar the Bidder from submission of Bids in any Works/Service tender issued by Indian Railway for a period upto 5 (five years) or forfeit and appropriate the Performance Security, as the case may be, as Damages, withoutprejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and / or the draft EPC Agreement, or

[8] Either of the two to be retained as per the provisions/orders related to submission of Bid Security OR Bid Security Declaration

otherwise.)[9]

2.6.4. A Bidder shall be liable for disqualification and [forfeiture of Bid Security OR barring the bidder from submission of Bids in any Works/Service tender issued by Indian Railway for a period upto 5 (five) years][10], if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Bidder, its member or any Associate thereof, as the case may be, in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the EPC Agreement.

(In the event any such adviser is engaged by the selected Bidder or Contractor, as the case may be, after issue of the LOA or execution of the Agreement for matters related or incidental to the project, then notwithstanding anything to the contrary contained herein or in the LOA or the Agreement and without Prejudice to any other right or remedy or the Authority, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the Authority may have there under or otherwise, the LOA or the Agreement, as the case may be, shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Selected Bidder or Contractor for the same.

OR

In the event any such adviser is engaged by the selected Bidder or Contractor, as the case may be, after issue of the LOA or execution of the Agreement for matters related or incidental to the project, then notwithstanding anything to the contrary contained herein or in the LOA or the Agreement and without Prejudice to any other right or remedy or the Authority, including barring the bidder from submission of Bids in any Works/Service tender issued by Indian Railways for a period upto 5 (five) years or forfeiture and appropriation of Performance Security, as the case may be, which the Authority may have there under or otherwise, the LOA or the Agreement, as the case may be, shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Selected Bidder or Contractor for the same.)[11]

For the avoidance or doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of this RFP. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

B. DOCUMENTS

2.7 Contents of the RFP

2.7.1 This RFP comprises the Disclaimer setforth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.9.

[9] Either of the two to be retained as per the provisions/orders related to submission of Bid Security OR Bid Security Declaration

[10] Either of the two to be retained as per the provisions/orders related to submission of Bid Security OR Bid Security Declaration

[11] Either of the two to be retained as per the provisions/orders related to submission of Bid Security OR Bid Security Declaration

Volume –I

Invitation for BIDs

Section 1. Introduction
Section 2. Instructions to Bidders
Section 3. Evaluation of Bids
Section 4. Fraud and Corrupt Practices
Section 5. Pre-Bid Conference
Section 6. Miscellaneous

Appendices

IA. Letter comprising the Technical Bid including Annexure I to VII
IB. Letter comprising the Financial Bid
II. Power of Attorney for signing of Bid
III. Power of Attorney for Lead Member of Consortium/Joint Venture
IV. Joint Bidding Agreement for Joint Venture/Consortium
V Bid Security/Bid Security Declaration[12]
VI Affidavit to be uploaded by the Bidder along with the Bid

Volume –II
Draft EPC Agreement Document with schedules

Volume – III
ProjectReport

2.8 Clarifications

2.8.1 Bidders requiring any clarification on the RFP may notify the Authority in writing by e-mail in accordance with Clause 1.2.9. They should send in their queries on or before the date mentioned in the KIT. The Authority shall endeavourto respond to the querieswithin the period specified therein, but no later than 7 (seven)daysprior to the Bid Due Date. The responses shallbe uploaded on the **e-Procurement Portal** without identifying the source of queries.

2.8.2 The Authority shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification.

2.8.3 The Authority may also on its own motion, if deemed necessary, issue interpretations & clarifications to all Bidders. All clarifications & interpretations issued by the Authority shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by Authority or its employees or representatives shall not in any way or manner be binding on the Authority.

2.9 Amendment of RFP

[12] Either of the two to be retained as per the RFP provisions

2.9.1 At any time prior to the Bid Due Date, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of Addenda.

2.9.2 Any addendum issued hereunder will behosted on the **e-Procurement Portal**

2.9.3 In order to afford the Bidders a reasonable time for taking an addendum into account, or for any other reason, the Authority may, in its sole discretion, extend the Bid Due Date[13].

C. PREPARATION AND SUBMISSION OF BIDS

2.10 Format and Signing of Bid

2.10.1 The Bidder shall provide all the information sought under this RFP. The Authority will evaluate only those Bids that are received online in the required formatsand complete in all respects and Original Copy of Power of Attorney and Joint Bidding Agreement etc. are received in hard copies within time mentioned in KIT at Clause 1.1.2 of this RFP.

2.10.2 The Bid shall be typed and signed by the authorised signatory of the Bidder. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialled by the person(s) signing the Bid.

2.11 Documents comprising Technical and Financial Bid

2.11.1 The Bidder shall first upload all the project details including Technical Capacity, Financial Capacity, Net Worth details, turnover details, and all other details required in this RFP for technical qualification. The Bidder shall ensure that all the details are updated as on the due date of submission of this Bid.

The Bidder shall then apply for the RFP by submitting the documents mentioned below along with the supporting documents which shall comprise of the Technical Bid on the**e-Procurement Portal**:

Technical Bid

(a) Appendix-IA (Letter comprising the Technical Bid) including Annexure I-V and supporting certificates / documents.
(b) Power of Attorney for signing the Bidh as per the format at Appendix-II;
(c) if applicable, Power of Attorney for Lead Member of Consortium/Joint Venture as per the format at Appendix-III;
(d) if applicable, Joint Bidding Agreement for Consortium/Joint Venture as per the format at Appendix-IV;
(e) (Bid Security though [e- payment Gateway of e-Procurement Portal/Authority] OR in the form of Bank Guarantee in the format atAppendix-V from a Bank (to be submitted physically as well);
OR

[13]While extending the Bid Due Date on account of an addendum, the Authority shall have due regard for the time required by Bidders to address the amendments specified therein. In the case of significant amendments, at least 7 (seven) days shall be provided between the date of amendment and the Bid Due Date .

Bid Security Declaration in the formatat Appendix-V), to be submitted physically as well[14]

(f) Deleted;

(g) An undertaking from the person having Power of Attorney referred to in Sub. Clause-(b) above that they agree and abide by the BidDocuments uploaded by Authority and amendments uploaded, if any in the format at Appendix-VI; and

(h) copy of Memorandum and Articles of Association, if the Bidder is a body corporate, and if a partnership then a copy of its partnership deed.

(i) Copies of duly audited complete annual accounts of the Bidder or of each member (in case of Joint Venture/Consortium) for preceding 5 years.

Financial Bid

(l) Appendix-IB (Letter comprising the Financial Bid) shall be submitted online through e-Procurement Portal on or before the Bid Due Date

2.11.2 The Bidder shall submit the following documents physically within time as mentioned in Clause 1.3 :

(a) Original Power of Attorney for signing the Bid as per format at Appendix-II;

(b) if applicable, Original Power of Attorney for Lead Member of Consortium/Joint Venture as per the format at Appendix-III;

(c) if applicable, Original Joint Bidding Agreement for Consortium/Joint Venture as per the format at Appendix-IV;

(d) (Bid Security in the form of Original Bank Guarantee in the format at Appendix-Vfrom a Bank;
OR
Bid Security Declaration in original in the format at Appendix V)[15]

(e) Original Affidavit in the format at Appendix VI.

2.11.3 The documents listed at Clause 2.11.2 shall be placed in an envelope, which shall be sealed. The envelope shall clearly bear the identification "**Bid for the ***** Project**" and shall clearly indicate the name and address of the Bidder. In addition, the Bid Due Date should be indicated on the right hand top corner of the envelope.

2.11.4 The envelope shall be addressed to the officer and address as mentioned in the KIT:

2.11.5 If the envelope is not sealed and marked as instructed above, the Authority assumes no responsibility for the misplacement or premature opening of the contents of the Bid submitted and consequent losses, if any, suffered by the Bidder.

2.11.6 Bids submitted by fax, telex, telegram or e-mail shall not be entertained and shall be summarily rejected.

2.12 Bid Due Date

[14] Either of the two to be retained as per the provisions/orders related to submission of Bid Security OR Bid Security Declaration

[15] Either of the two to be retained as per the provisions/orders related to submission of Bid Security OR Bid Security Declaration

Bid comprising of the documents listed at Clause 2.11.1 of the RFP shall be submitted online through **e-Procurement Portal**on or before the Bid Due Date and Documents listed at Clause 2.11.2 of the RFP shall be physically submitted on or before the day mentioned in the KIT at the address provided in Clause 2.11.4 in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person specified at Clause 2.11.4..

2.13 Late Bids

e-Procurement Portalshall not allow submission of any Bid after the prescribed date and time at KIT in Clause 1.1.2. Physical receipt of documents listed at Clause 2.11.2 of the RFP after the prescribed date as mentioned in the KIT at Clause 1.1.2shall not be considered and the Bid shall be summarily rejected.

2.14 Procedure for e-tendering

2.14.1 Accessing/ Purchasing of BidDocuments

2.14.1.1 It is mandatory for all the Bidders to have class-III Digital Signature Certificate (DSC)(in the name of Authorized Signatory / Firm or Organization / Owner of the Firm or Organization) from any of the licensed Certifying Agency (Bidders can see the list of licensed CAs from the link www.cca.gov.in) to participate in e-tendering.

DSC should be in the name of the authorized signatory as authorized in Appendix II of this RFPor person executing/delegating such Appendix III in favour of Authorized Signatory. It should be in corporate capacity (that is in Bidder capacity / in case of Consortium/JV in the Lead Member capacity, as applicable). The Bidder shall submit document in support of the class III DSC.In other cases, the Bid shall be considered Non-responsive.

2.14.1.2 To participate in the Bidding, it is mandatory for the Bidders to get registered their firm / Consortium/Joint Venture with **e-Procurement Portal** to have user ID & password which has to be obtained free of cost. Following may kindly be noted:

(a) registration with e-Procurement Portal should be valid at least up to the date of submission of Bid.

(b) Bids can be submitted only during the validity of registration.

It is also mandatory for the Bidders to get their firms registered with e-tendering portal. The Bidders shall update their project and other details on the portal on a regular basis and apply to the tenders via the portal.

2.14.1.3 If the firm / Consortium/Joint Venture is already registered with e-tendering service provider, and validity of registration is not expired, then the firm / Consortium/Joint Venture is not required a fresh registration.

2.14.1.4 The complete BidDocument can be viewed / downloaded by the Bidder from e-Procurement Portal.

2.14.2 Preparation & Submission of Bids:

2.14.2.1 The Bidder may submithis Bid online following the instructions appearing on the screen. The detailed guidelines for e-procurement are also available on e-Procurement Portal.

2.14.2.2 [The documents listed at Clause 2.11.1 shall be prepared and scanned in different files/sub files (in PDF such that file size is not more than 3.75MB) and uploaded during the on-line submission ofBid]

2.14.2.3 Bid must be submitted online only through e-Procurement Portal using the digital signature of authorized representative of the Bidder on or before the Bid Due Date.

2.14.3 Modifications/ Substitution/ withdrawal of Bids

2.14.3.1 The Bidder may modify, substitute or withdraw its Bid after submission prior to the Bid Due Date. No Bid can be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date & Time.

2.14.3.2 For modification of Bid, Bidder has to detach its old Bid from e-procurement portal and upload / resubmit digitally signed modified Bid. For withdrawal of Bid, Bidder has to click on withdrawal icon at e-Procurement Portal and can withdraw its Bid. Before withdrawal of a Bid, it may specifically be noted that after withdrawal of a Bid for any reason, Bidder cannot re-submit Bid again.

2.15 Online Opening of Bids.

2.15.1 Opening of Bids will be done through online process.

2.16 Rejection of Bids

2.16.1 Notwithstanding anything contained in this RFP, the Authority reserves the right to reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

2.16.2 The Authority reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.

2.17 Validity of Bids

The Bids shall be valid for a period of not less than the period specified in the KIT. The validity of Bids may be extended by mutual consent of the respective Bidders and the Authority.

2.18 Confidentiality

Information relating to the examination, clarification, evaluation and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the Authority in relation to, or matters arising out of, or concerning the

Bidding Process. The Authority will treat all information, submitted as part of the Bid, in confidence and will require all those who have access to such material to treat the same in confidence. The Authority may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or the Authority or as may be required by law or in connection with any legal process.

2.19 Correspondence with the Bidder

Save and except as provided in this RFP, the Authority shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of any Bid.

D. BID SECURITY/BID SECURITY DECLARATION[16]

2.20 Bid Security/Bid Security Declaration

2.20.1 (The Bidder shall furnish as part of its Bid, a Bid Security ,referred to in Clause 1.2.4hereinabove through [e- payment Gateway of Authority OR in form of Bank Guarantee from a Bank as per format at Appendix V]. A scanned copy of the e-payment receipt OR Bank Guarantee, as the case may be, shall be uploaded on e-Procurement Portalwhile applying to the tender.

OR

The Bidder shall furnish as part of its Bid, a Bid Security Declaration referred to in Clause 1.2.4 hereinabove. A scanned copy of the Bid Security Declaration shall be uploaded on e-procurement portal while applying to the Bid.)[17]

2.20.2 (Any Bid not accompanied by the Bid Securityshall be summarily rejectedbythe Authority as non-responsive.

OR

Any Bid not accompanied by the Bid Security Declaration shall be summarily rejected by the Authority as non-responsive.)[18]

2.20.3 (The Selected Bidder's Bid Security will be returned, without any interest, upon the Biddersigning the Contract Agreement and furnishing thePerformance Security in accordance with the provisions thereof. The Authority may, at the Selected Bidder's option, adjust the amount of Bid Security in the amount of Performance Security to be provided by him in accordance with the provisions of the Agreement.

OR

[16] Either of the two to be retained as per the provisions/orders related to submission of Bid Security OR Bid Security Declaration
[17] Either of the two to be retained as per the provisions/orders related to submission of Bid Security OR Bid Security Declaration
[18] Either of the two to be retained as per the provisions/orders related to submission of Bid Security OR Bid Security Declaration

DELETED)[19]

2.20.4 (The Authority shall be entitled to forfeit and appropriate the Bid Security as Damages inter alia in any of the events specified in Clause 2.20.5 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Authority will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this RFP. No relaxation of any kind on Bid Security shall be given to any Bidder.

OR

The Authority shall be entitled to bar the Bidder from submission of Bids in any Works/Service tender issued by Indian Railway for a period upto 5 (five) years as Damages inter alia in any of the events specified in Clause 2.20.5 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Authority will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this RFP. No relaxation of any kind on Bid Security declaration shall be given to any Bidder.)[20]

2.20.5 (The Bid Security shall be forfeited and appropriated by the Authority as damages payable to the Authority for, inter-alia, time cost and effort of the Authority without prejudice to any other right or remedy that may be available to the Authority under the Bidding documents and / or under the Agreement, or otherwise, under the following conditions:

OR

The Bidder will be barred from submission of Bids in any Works/Service tender issued by Indian Railway for a period upto 5 (five) years by the Authority without prejudice to any other right or remedy that may be available to the Authority under the Bidding documents and / or under the Agreement, or otherwise, under the following conditions:)[21]

(a)If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Section 4 of this RFP;

(b)) If a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by mutual consent of the respective Bidder(s) and the Authority;

(c) In the case of Selected Bidder, if it fails within the specified/extended time limit by Authority -
   (i) to sign and return the duplicate copy of LOA;
   (ii) to furnish the Performance Security as per Article 7 of draft EPC Agreement; or

[19] Either of the two to be retained as per the provisions/orders related to submission of Bid Security OR Bid Security Declaration

[20] Either of the two to be retained as per the provisions/orders related to submission of Bid Security OR Bid Security Declaration

[21] Either of the two to be retained as per the provisions/orders related to submission of Bid Security OR Bid Security Declaration

(iii) to sign the EPC Agreement within the timeline mentioned in the KIT;

2.21 **Performance Security**

2.21.1 (Within 30 (thirty) days of issue of LOA, the selected Bidder shall furnish to the Authority an irrevocable and unconditional guarantee from a Bank in the form set forth in draft EPC agreement (the "**Performance Security**") for an amount as mentioned in the KIT

2.21.2 For detailed provisions of Performance Security refer Article 7 of draft EPC agreement.

SECTION-3

EVALUATION OF TECHNICAL BIDS AND OPENING & EVALUATION OF FINANCIAL BIDS

3.1 Evaluation of Technical Bids

3.1.1 The Authority shall open the Bids received online as per the timeline mentioned in the KIT, at the place specified in Clause 2.11.4(i); and in the presence of the Bidders who choose to attend. The Authority shall prepare minutes of the Bid opening, including information disclosed to those present at the time of Bid opening.

3.1.2 Technical Bids of those Bidders, who have not submitted their Bid online, shall not be considered for opening and evaluation.

3.1.3 If any information furnished by the Bidder is found to be incomplete, or contained in formats other than those specified herein, the Authority may, in its sole discretion, exclude the relevant information for consideration of eligibility and Qualification of the Bidder.

3.1.4 To facilitate evaluation of Technical Bids, the Authority may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Technical Bid. Such clarification(s) shall be provided within the time specified by the Authority for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.The Bids will be examined and evaluated inaccordancewiththe provisionssetoutinthisSection3. The Authority willsubsequently flag issues, if any with the data updated by the Bidders.

3.1.5 If a Bidder does not provide clarifications sought under Clause 3.1.4 above within the prescribed time, its Bid may be liable to be rejected. In case the Bid is not rejected, the Authority may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of the Authority.

3.1.6 Tests of responsiveness

3.1.6.1 As a first step towards evaluation of Technical Bids, the Authority shall determine whether each Technical Bid is responsive to the requirements of this RFP. A Technical Bid shall be considered responsive only if:

(a) Technical Bid is received online as per the format at Appendix-IA including Annexure I, II, III, IV, V and Appendix-VI;
(b) All Documents listed at Clause 2.11.2 are received physicallywithin time as mentioned in the KIT;
(c) (Technical Bid is accompanied by the Bid Security as specified in Clause 1.2.4 and 2.20;
OR
Technical Bid is accompanied by the Bid Security Declaration as specified in Clause 1.2.4 and 2.20;)[22]

[22] Either of the two to be retained as per the provisions/orders related to submission of Bid Security OR Bid Security Declaration

(d) The Power of Attorney is uploaded on e-Procurement Portal as specified in Clauses 2.1.5;
(e) Technical Bid is accompanied by Power of Attorney for Lead Member of Consortium/Joint Venture and the Joint Bidding Agreement as specified in Clause 2.1.6, if so required;
(f) Technical Bid is accompanied by Affidavit as specified in 2.11.1;
(g) Technical Bid contains all the information (complete in all respects);
(h) Technical Bid does not contain any condition or qualification; and

3.1.6.2 The Authority reserves the right to reject any Technical Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Bid.

3.1.7 In the event that a Bidder claims credit for an Eligible Project, and such claim is determined by the Authority as incorrect or erroneous, the Authority may reject / correct such claim for the purpose of qualification requirements.

3.1.8 The Authority will evaluate the Technical Bids for their compliance to the eligibility and qualification requirements pursuant to Clauses 2.2.1 & 2.2.2 of this RFP.

3.1.9 After evaluation of Technical Bids, the Authority will notify thetechnically responsiveBidders whose Financial Bids shall be opened. The Authority shall notify other Bidders that they have not been technically responsive. The Authority will not entertain any query or clarification from Bidders who fail to qualify.

3.2 Opening and Evaluation of Financial Bids

The Authority shall inform the venue and time of online opening of the Financial Bids to the technically responsive Bidders through e-Procurement Portal and e-mail. The Authority shall open the online Financial Bids of the technically responsive Bidders only on scheduled date and time in the presence of the authorised representatives of the Bidders who may choose to attend. The Authority shall publicly announce the Bid Prices quoted by the technically responsive Bidder. Thereafter, the Authority shall prepare a record of opening of Financial Bids.

3.3 Selection of Bidder

3.3.1 Subject to the provisions of Clause 2.16.1, the Bidder whose Bid is adjudged as responsive in terms of Clause 3.1.6 and who quotes lowest price shall be declared as the selected Bidder (the "**Selected Bidder**").

3.3.2 In the event that two or more Bidders quote the same Bid Price (the "**Tie Bids**"), the Authority shall identify the Selected Bidder by draw of lots, which shall be conducted, with prior notice, in the presence of the Tie Bidders who choose to attend.

3.3.3 In the event that the Lowest Bidder is not selected for any reason except the reason mentioned in Clause 2.1.12 (e), the Authority shall annul the Bidding Process and invite fresh Bids.

3.3.4 After selection, a Letter of Acceptance(the "**LOA**") shall be issuedin duplicate, by the Authority to the Selected Bidder and the Selected Bidder shall, within 7(seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA

in acknowledgement thereof.

(In the event the duplicate copy of the LOA duly signed by the Selected Bidder and Original copy of Joint Venture/Consortium Agreement is/or not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA.

OR

In the event the duplicate copy of the LOA duly signed by the Selected Bidder and Original copy of Joint Venture/Consortium Agreement is/are not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, bar the Bidder from submission of Bids in any Works/Service tender issued by Indian Railway for a period upto 5 (five years).)[23]

3.3.5 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the Bidder to submit Performance Security within the period prescribed/extended by Authority and then execute the Agreement within the period prescribed in the KIT. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Agreement.

3.3.6 (The Bid security of other than SelectedBidder shall be returned within 7 working days of issue of LOA. The Authority shall be responsible to return the Bid Security, as above, and the Bidders shall not be required to ask for the same.

OR

DELETED)[24]

3.3.7 In case, Selected Bidder is Consortium, then Selected Bidder have to deposit the Original copy of Consortium Agreement duly registered as per prevailing Law to the Authority before the execution of the Agreement.

3.3.8 In case, Selected Bidder is a Joint Venture, then on issue of LOA, the Joint Venture Agreement between members of the Joint Venture to whom work has been awarded, with the same shareholding pattern as was declared in the Joint bidding agreement document submitted along with RFP, shall be got registered before the Registrar/Sub- Registrar under "The Indian Company Act-2013 (in case of Company) or before the Registrar/Sub- Registrar under the " The Indian Partnership Act-1932 (in case of Partnership firm) or under LLP Act-2008 (in case of LLP) and deposit the Original copy of Joint Venture Agreement to the Authoritybefore the execution of the Agreement.

3.4 Contacts during Bid Evaluation

Bids shall be deemed to be under consideration immediately after they are opened and

[23]Either of the two to be retained as per the provisions/orders related to submission of Bid Security OR Bid Security Declaration

[24] Either of the two to be retained as per the provisions/orders related to submission of Bid Security OR Bid Security Declaration

until such time the Authority makes official intimation of award/ rejection to the Bidders. While the Bids are under consideration, Bidders and/ or their representatives or other interested parties are advised to refrain, save and except as required under the Bidding Documents, from contacting by any means, the Authority and/ or their employees/ representatives on matters related to the Bidsunder consideration.

3.5 Correspondence with Bidder

Save and except as provided in this RFP, the Authority shall not entertain any correspondence with any Bidder in relation to the acceptance or rejection of any Bid.

3.6 Any information contained in the Bid shall not in any way be construed as binding on the Authority, its agents, successors or assigns, but shall be binding against the Bidder if the Project is subsequently awarded to it on the basis of such information.

SECTION-4

FRAUD AND CORRUPT PRACTICES

4.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Agreement, the Authority may reject a Bid, withdraw the LOA, or terminate the Agreement, as the case may be, without beingliable inany manner whatsoever to the Bidder, if it determines that the Bidder, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process.

(In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Agreement, or otherwise.

OR

In such an event, the Authority shall be entitled to bar the bidder from submission of Bids in any Works/Service tender issued by Indian Railway for a period upto 5 (five) years or to forfeit and appropriate the Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Agreement, or otherwise.)[25]

4.2 Without prejudice to the rights of the Authority under Clause 4.1 hereinabove and the rights and remedies which the Authority may have under the LOA or the Agreement, or otherwise if a Bidder or Contractor, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the Agreement, such Bidder shall not be eligible to participate in any tender or RFP issued by the Authority during a period of upto 5 (five) years from the date such Bidder, or Contractor, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

4.3 For the purposes of this Section 4, the following terms shall have the meaning hereinafter respectively assigned to them:

(a) "corrupt practice" means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the EPC Contract or arising there from, before or after

[25] Either of the two to be retained as per the provisions/orders related to submission of Bid Security OR Bid Security Declaration

the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under Clause 2.6.4, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the EPC Contract, as the case may be, any person in respect of any matter relating to the Project or the LOA or the EPC Contract, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project;

(b) "fraudulent practice" means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;

(c) "coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the Bidding Process;

(d) "undesirable practice" means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and

(e) "restrictive practice" means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

SECTION-5

PRE-BID CONFERENCE

5.1 Pre-Bid conference of the Bidders shall be convened at the designated date, time and placeas specified in the KIT.A maximum of two representatives of prospective Bidders shall be allowed to participate on production of authority letter from the Bidder.

5.2 A site visit may be conducted by Bidder at the Railway Station area and gather sufficient information and details for the purposes of bidding for the Project. During the course of Pre-Bid conference(s), the Bidders will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

SECTION-6

MISCELLANEOUS

6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at [New Delhi] shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.

6.2 The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;

(a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;

(b) consult with any Bidderin order to receive clarification or further information;

(c) retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Bidder; and/ or

(d) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.

6.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection with the Bidding Process and waives, to the fullest extent permitted by applicable laws, any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

APPENDIX –IA

LETTER COMPRISING THE TECHNICAL BID

(Refer Clause 2.1.4, 2.11 and 3.1.6)

[**The Chief Engineerof concerned Authority**]

[Address of concerned Authority]

Sub: Bid for *** ** Project

Dear Sir,

With reference to your RFP document dated *** **[$], I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.

2. I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Contractor for the aforesaid Project, and we certify that all information provided in the Bid and it's the Annexure I to VII along with the supporting documents are true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.

3. This statement is made for the express purpose of our selection as EPC Contractor for the development, construction of the aforesaid Project and rectification of defects in Project during the Defect Liability Period.

4. I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Bid.

5. I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.

6. I/ We certify that in the last three years, we/ any of the {Consortium/Joint Venture} partners have neither failed to perform for the works of Railways, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against us, nor been expelled or terminated by Ministry of Railway or its implementing agenciesfor breach on our part.

7. I/ We declare that:
   (a) I/ We have examined and have no reservations to the Bidding Documents, including any Addendum issued by the Authority; and
   (b) I/We do not have any conflict of interest in accordance with Clauses 2.2.1 (c) and 2.6.4 of the RFP document; and
   (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in

respect of any tender or request for proposal issued by or any Agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and

(d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice; and

(e) the undertakings given by us along with the Bid in response to the RFP for the Project were true and correct as on the date of making the Bid and are also true and correct as on the Bid Due Date and I/we shall continue to abide by them.

8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.16.2 of the RFP document.

9. I/We believe that we/our {Consortium/Joint Venture} satisfy(s) the Technical Capacity, Net Worth criteria and meet(s) the requirements as specified in the RFP document.

10. I/ We declare that we/ any member of the {Consortium/Joint Venture} or our/{Consortium/Joint Venture member}, are not a member of any other Consortium/Joint Venture submitting a Bid for the Project.

11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any member of the {Consortium/Joint Venture} or any of our/their { Consortium/Joint Venture} member have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.

12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any member of the { Consortium/Joint Venture} or any of our/their { Consortium/Joint Venture} memberhave not been charge-sheeted by any agency of the Government or convicted by a Court of Law.

13. I/ We further certify that no investigation by a regulatory authority is pending either against us/any member of {Consortium/Joint Venture} or against our CEO or any of our directors/ managers/ employees.

14. I/ We further certify that we are not disqualified in terms of the additional criteria specified by the Department of Disinvestment in their OM No. 3/9/2016-DoD-II-B dated 28.09.2017, a copy of which forms part of the RFP at Annexure VI of Appendix-IA thereof.

15. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the guidelines referred to above, we shall intimate the Authority of the same immediately.

16. I/We further acknowledge and agree that in the event such change in control occurs after signing of the Agreement upto its validity. It would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the Agreement shall be liable to be terminated without the Authority being liable to us in any manner whatsoever.

17. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.

18. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into an Agreement in accordance with the draft EPC Agreement that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft EPC agreement and agree to abide by the same.

19. I/ We have studied all the Bidding Documents carefully and also surveyed the [project]. We understand that except to the extent as expressly setforthin the Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including the award of Agreement.

20. (I/ We offer a Bid Security of Rs.**** (Rupees **** only) to the Authority in accordance with the RFP Document.

    OR

    I/We submit a Bid Security Declaration to the Authority in accordance with the RFP Document.)[26]

21. (The Bid Security in the form of a e-payment receiptOR in the form of Bank Guarantee is attached.

    OR

    The Bid Security Declaration is attached.)[27]

22. The documents accompanying the Technical Bid, as specified in Clause 2.11.1 of the RFP, have been submitted in separate files.

23. I/ We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/we shall have any claim or right of whatsoever nature if the Project / Contract is not awarded to me/us or our Bid is not opened or rejected.

24. The Bid Price has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft EPC Agreement, our

[26] Either of the two to be retained as per the provisions/orders related to submission of Bid Security OR Bid Security Declaration

[27] Either of the two to be retained as per the provisions/orders related to submission of Bid Security OR Bid Security Declaration

ownestimates of costs and after a careful assessment of the site and allthe conditions that may affect the project cost and implementation of the project.

25. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.

26. I/We, the {Consortium/Joint Venture} agree and undertake to be jointly and severally liable for. all the obligations of the EPC Contractor under the Contract Agreement}.

27. I/ We shall keep this offer valid for [120 (one hundred and twenty) days] from the Bid Due Date specified in the RFP.

28 I/ We hereby submit our Bidfor undertaking the aforesaid Project in accordance with the terms of the RFP document and the draft EPCAgreement.

29. I/We have read the clause regarding restriction on procurement from a bidder of a country which shares a land border with India and certify that I/We am/are not from such a country or, if from such a country, has been registered with the competent Authority. I/We hereby certify that I/we fulfills all the requirements in this regard and am/are eligible to be considered (evidence of valid registration by the competent authority is enclosed).

In witness thereof, I/we submit this Bid under and in accordance with the terms of the RFPdocument.

Yours faithfully,

Date: (Signature, name and designation
Place: of the Authorised signatory)

Name & seal of Bidder/Lead Member

Note: Paragraphs in curly parenthesis may be omitted by the Bidder, if not applicable to it, and 'Deleted' may be indicated there

APPENDIX – IB

Letter comprising the Financial Bid
(Refer Clauses 2.1.4, 2.11 and 3.1.6)

Dated:

[**The Chief Engineer of concerned Authority]**

Sub: Bid for *** ** Project

Dear Sir,

With reference to your RFP document dated *** **, I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Financial Bid for the aforesaid Project. The Bid is unconditional and unqualified.

2. I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Contractor for the aforesaid Project, and we certify that all information provided in the Bid are true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.

3. The Bid Price has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft EPC Agreement, our ownestimates of costs and after a careful assessment of the site and allthe conditions that may affect the project cost and implementation of the project.

4. I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.

5. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into an Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.

6. I/ We shall keep this offer valid for [120 (one hundred and twenty)] days from the Bid Due Date specified in the RFP.

7. I/ We have quoted Bid Priceon e-Procurement Portal for undertaking the aforesaid Project in accordance with the terms of the RFP document and the draft EPC Agreement.

Yours faithfully,

Date:
Place:

(Signature, name and designation of the Authorised Signatory)
Name & seal of Bidder/Lead Member:.....
Class III DSC ID of Authorised Signatory:.....

Appendix IA
Annex-I

ANNEX-I
Details of Bidder

1. (a) Name:
(b) Country of incorporation:
(c) Address of the corporate headquarters and its branch office(s), if any, in India:
(d) Date of incorporation and/ or commencement of business:

2. Brief description of the Bidder including details of its main lines of Business and proposed role and responsibilities in this Project:

3. Details of individual(s) who will serve as the point of contact/ communication for the Authority:
(a) Name:
(b) Designation:
(c) Company:
(d) Address:
(e) Telephone Number:
(f) E-Mail Address:
(g) Fax Number:

4. Particulars of the Authorised Signatory of the Bidder:
(a) Name:
(b) Designation:
(c) Address:
(d) Phone Number:
(e) Fax Number:
(f) Class III Digital Signature Certificate ID number

5. In case of a {Consortium/Joint Venture}:
(a) The information above (1-4) should be provided for all the Members of the {Consortium/Joint Venture}
(b) A copy of the Jt. Bidding Agreement, as envisaged in Clause 2.1.11(f) should be attachedto the Application.
(c) Information regarding the role of each Member should be provided as per table below:

Sl.	**Name of Member**	**Role*** {Refer Clause 2.1.11(d)}[$]	**Share holding of members in** Consortium/Joint Venture{Refer Clauses 2.1.11(a), (f) }
1.			
2.			
3.			

* The role of each member, as may be determined by the Bidder, should be indicated.

[$] All provisions contained in curly parenthesis shall be suitably modified by the Bidders to reflect the particulars relating to such Bidder.

……contd

Appendix IA
Annex-I

(d) The following information shall also be provided w.r.t para 2.1.14foreach member of the {Consortium/Joint Venture}:

Name of Bidder/ member of Consortium/Joint Venture:

Sl. No.	Criteria	Yes/No
1.	Has the Bidder/ constituent of the {Consortium/Joint Venture} been barred by the Ministry of Railway or its implementing agencies for the works of Railway, from participating in Bidding.	
2	If the answer to 1 is yes, does the bar subsist as on Bid due date.	

6(a) I/ We certify that in the last three years, we/ any of the {Consortium/Joint Venture} partners have neither failed to perform for the works of Railways as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitral award against us, nor been expelled or terminated by Ministry of Railway or its implementing agencies for breach on our part.

(b) I/ We certify that we/ any of the {Consortium/Joint Venture} partners do not fall in any of the categories of being a Non-Performing entity given at Clause 2.1.14 of Instructions to Bidders in the projects of Ministry of Railways or its implementing agencies and furnished the complete details.

7(a) I/ We further certify that no investigation by a regulatory authority is pending either against us/any member of {Consortium/Joint Venture} or our sister concern or against our CEO or any of our directors/managers/employees.

(b) I/ We further certify that no investigation by any investigating agency in India or outside is pending either against us/ any member of {Consortium/Joint Venture} or our sister concern or against our CEO or any of our directors/managers/employees.

I/ We certify that the list is complete and covers all the projects of Ministry of Railways or its implementing agencies and that we/ any of the {Consortium/Joint Venture} partners do not fall in any of the above categories of being a Non-Performing entity.

(Signature, name and designation of the authorised signatory)

For and on behalf of……..

Note: Paragraphs in curly parenthesis may be omitted by the Bidder, if not applicable to it, and 'Deleted' may be indicated there

ANNEX-II

Technical Capacity of the Bidder[@]

(*Refer to Clauses 2.2.2.1, 2.2.2.3 and 2.2.2.6 of the RFP*)

Bidder type [#]	Project Code*	% Share	Construction Experience[**] (Rs. crore)[$$]	Technical capacity[£]
			Payments received for construction of Eligible Projects	
(1)	**(2)**	**(3)**	**(4)**	**(5)**=3*(4)
Single entity Bidder or Members of the Consortium / Joint Venture	**a**			
	b			
	c			
	d			
	e			
	f			
			Aggregate Technical capacity =	

[@] *Provide details of only those EligibleProjects that have been undertaken by the Bidder, or its member in case of Consortium/Joint Venture, under its own name and/ or by an Associate specified in Clause 2.2.2.6. In case the Bid Due Date falls within 3 (three) months of the close of the latest Financial Year, refer to Clause 2.1.13. For the Eligible Projects please refer Clause 2.2.2.1*

[#] *In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate, in terms of Clause 2.2.2.6, shall be provided.*

* *Refer Annex-IV of this Appendix-IA. Add more rows if necessary.*

** *Construction shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract/ EPC contract for the project. In no case shall the cost of land be included while computing the Technical Capacity from an Eligible Project.*

[$$] *The conversion rate of USD into Rupees shall be the daily representative exchange rates published by the Reserve Bank of India or entity authorized by RBI to do so for the relevant date. Where relevant date should be as on the date 60 (Sixty) days prior to the Bid Due Date. In case of any other currency, the same shall first be converted to US Dollars as on the date 60 (sixty) days prior to the Bid Due Date, and the amount so*

derived in US Dollars shall be converted into Rupees at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.

NOTE: i) In case of a {Consortium/Joint Venture}, information in Annex-II of Appendix-IA shall be provided separately for all members so as to establish Technical Capacity. *(Refer Clause 2.1.11 (c).*

ii) Paragraphs in curly parenthesis may be omitted by the Bidder, if not applicable to it, and 'Deleted' may be indicated there

ANNEX-III

Financial Capacity of the Bidder

(*Refer to Clauses 2.2.2.2, 2.2.2.5(ii), 2.2.2.4(iii) of the RFP*)

(In Rs. crore[$])

Bidder type [$$]	**Net Cash Accruals**					**Net Worth[£]**
	Year 1	**Year 2**	**Year 3**	**Year 4**	**Year 5**	**Year 1**
Single entity Bidder or Member of the Consortium/Joint Venture						
TOTAL						

NOTE: In case of a {Consortium/Joint Venture}, information in Annex-III of Appendix-IA shall be provided separately for all Members so as to establish the Financial Capacity. *(Refer Clause 2.1.11 (c).*

Name & address of Bidder's Bankers:

[$] For conversion of other currencies into rupees, see note below Annex-II of Appendix-IA.

[$$] In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate, in terms of Clause 2.2.2.6, shall be provided.

[£] The Bidder should provide details of its own Financial Capacity or of an Associate specified in Clause 2.2.2.6.

Instructions:

1. The Bidder shall attach copies of the balance sheets, financial statements and Annual Reports for 5 (five) years preceding the Bid Due Date. The financial statements shall:
   (a) reflect the financial situation of the Bidder and its Associates where the Bidder is relying on its Associate's financials;
   (b) be audited by a statutory auditor;
   (c) be complete, including all notes to the financial statements; and
   (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

2. Net Cash Accruals shall mean Profit after Tax + Depreciation.

3. Net Worth (the "Net worth") shall meanthe aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

4. Year 1 will be the latest completed Financial Year, preceding the Bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Bid Due Date falls within 3 (three) months of the close of the latest Financial Year, refer to Clause 2.1.13.

5. In the case of a {Consortium/Joint Venture}, a copy of the Jt. Bidding Agreement shall be submitted in accordance with Clause 2.1.11 (f) of the RFP document.

6. The Bidder shall also provide the name and address of the Bankers to the Bidder.

7. The Bidder shall provide an Auditor's Certificate specifying the net worth of the Bidder and also specifying the methodology adopted for calculating such net worth in accordance with Clause 2.2.2.5 (ii) of the RFP document.

ANNEX-IV

Details of Eligible Projects

(*Refer to Clauses 2.2.2.1, 2.2.2.3 and 2.2.2.6 of the RFP*)

Project Code:
Entity: Bidder/Member(including associates if any) of Consortium/Joint Venture

Item (1)	**Refer Instruction** (2)	**Particulars of the Project** (3)
Title & nature of the project		
Deleted	5	
Year-wise payments received for construction	6	
Entity for which the project was constructed[28]	7	
Location		
Project cost	8	
Date of commencement of project/ contract		
Date of completion/ commissioning	9	
Equity shareholding (with period during which equity was held)	10	
Whether credit is being taken for the Eligible Projectof an Associate (Yes/ No)	16	

Note: In case of a {Consortium/Joint Venture}, information in Annex-IV of Appendix-IA shall be provided separately for all Members so as to establish the Technical Capacity. (Refer Clause 2.1.11 (c).

Instructions:

1. Bidders are expected to provide information in respect of each Eligible Projects in this Annex. Information provided in this section is intended to serve as a backup for information provided in the Bid. Bidders should also refer to the Instructions below.

2. The Project Codes would be a, b, c, d etc.

3. A separate sheet should be filled for each Eligible Project.

[28] Please refer Clause 2.2.2.1 for Eligible Project in reference to the Client being Govt. department or private firm

4. In case the Eligible Project relates to an Associate, write "Associate".

5. Deleted

6. The total payments received are to be stated for each Eligible Project in Annex-II of this Appendix-IA. The figures to be provided here should indicate the break-up for the past 5 (five) Financial Years. Year 1 refers to the Financial Year immediately preceding the Bid Due Date; Year 2 refers to the year before Year 1, Year 3 refers to the year before Year 2, and so on (Refer Clause 2.1.13). Receipts for construction works should only include capital expenditure, and should not include expenditure on repairs and maintenance.

7. Deleted

8. Deleted

9. Deleted

10. Deleted

11. Experience for any activity relating to an Eligible Project shall not be claimed twice. In other words, no double counting in respect of the same experience shall be permitted in any manner whatsoever.

12. Certificate from the Bidder's statutory auditor[$] or its respective clients must be furnished as per formats below for each Eligible Project. In jurisdictions that do not have statutory auditors, the auditors who audit the annual accounts of the Bidder/ Associate may provide the requisite certification.

13. Deleted

14. If the Bidder is claiming construction experience , it should provide a certificate from its statutory auditors or the client in the format below:

Certificate from the Statutory Auditor/ Client regarding construction works[Φ]

Based on its books of accounts and other published information authenticated by it, {this is to certify that …….. *(name of the Bidder/ Associate)* was engaged by …….. *(title of the project company)* to execute …… *(name of project)* for …….. *(nature of project)}*. The construction of the project commenced on …….. *(date)* and the project was/ is likely to be commissioned on …… *(date, if any)*. It is certified that ……. *(name of the Bidder/ Associate)* received Rs. …….. cr. (Rupees …… crore) by way of payment for the aforesaid construction works.

We further certify that the payment for the aforesaid construction works is for not less than 75 (seventy-five) per cent value of awarded project cost as per the original agreement of such project.

[$] In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary.

[Φ] Provide Certificate as per this format only. Attach Explanatory Notes to the Certificate, if necessary. Statutory auditor means the entity that audits and certifies the annual accounts of the company.

We further certify that the estimated capital cost as per the original agreement of the project is Rs. …… cr. (Rupees ……crore), of which the Bidder/ Associate received Rs. …… cr. (Rupees …… crore), in terms of Clauses 2.2.2.1 of the RFP, during the past five Financial Years as per year-wise details noted below:

…….

……

{It is further certified that the receipts indicated above are restricted to the share of the Bidders who undertook these works as a partner or a member of Consortium/Joint Venture.}[♠]

Name of the audit firm:
Seal of the audit firm: (Signature, name and designation of the authorised signatory).
Date:

15. In the event that credit is being taken for the Eligible Projectof an Associate, as defined in Clause 2.2.2.6, the Bidder should also provide a certificate in the format below:

Certificate from Statutory Auditor/ Company Secretary regarding Associate[$]

Based on the authenticated record of the Company, this is to certify that more than 50% (fifty per cent) of the subscribed and paid up voting equity of …… (*name of the Associate*) is held, directly or indirectly[£], by …….. (*name of Bidder*). By virtue of the aforesaid share-holding, the latter exercises control over the former, who is an Associate in terms of Clause 2.2.2.6 of the RFP.
A brief description of the said equity held, directly or indirectly, is given below:

{*Describe the share-holding of the Bidder in the Associate*}

Name of the audit firm:
Seal of the audit firm: (Signature, name and designation of the authorised signatory).
Date:

16. It may be noted that in the absence of any detail in the above certificates, the information would be considered inadequate and could lead to exclusion of the relevant project in computation of Technical and Financial capacity[Θ].

[♠] This certification should only be provided in case of jobs/ contracts, which are executed as part of a partnership/ Consortium. The payments indicated in the certificate should be restricted to the share of Bidder in such partnership/ Consortium/Joint Venture. This portion may be omitted if the contract did not involve a partnership/ Consortium/Joint Venture". In case where work is not executed by partnership/ Consortium/Joint Venture, this paragraph may be deleted.

[$] In the event that the Bidder/Consortium/Joint Venture members exercises control over an Associate by operation of law, this certificate may be suitably modified and copies of the relevant law may be enclosed and referred to.

[£] In the case of indirect share-holding, the intervening companies in the chain of ownership should also be Associates i.e., the share-holding in each such company should be more than 50% in order to establish that the chain of "control" is not broken.

[Θ] Deleted.

ANNEX-V
Statement of Legal Capacity

*(On the letterhead of the Bidder/Lead Member of {*Consortium/Joint Venture*})*

Ref. Date:

To,
****
****

Dear Sir,

We hereby confirm that we/ our members in the {Consortium/Joint Venture} (constitution of which has been described in the Bid) satisfy the terms and conditions laid out in the RFP document.

We have agreed that …… (insert member's name) will act as the Lead Member of our {Consortium/Joint Venture}.*

We have agreed that …….. (insert individual's name) will act as our representative/ will act as the representative of the {Consortium/Joint Venture} on its behalf* and has been duly authorized to submit the RFP. Further, the authorised signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of……..

**Please strike out whichever is not applicable.*

Note: Paragraphs in curly parenthesis may be omitted by the Bidder, if not applicable to it, and 'Deleted' may be indicated there

ANNEX-VI

Guidelines of the Department of Disinvestment
(Refer Clause1.2.1)

No. 3/9/2016-DoD-II-B
Government of India
Department of Investment & Public Asset Management
Block 14, CGO Complex
New Delhi.

Dated: 28th September, 2017.

OFFICE MEMORANDUM

Sub: Guidelines for qualification of Bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment

Government has examined the issue of framing comprehensive and transparent guidelines defining the criteria for bidders interested in PSE-disinvestment so that the parties selected through competitive bidding could inspire public confidence. Earlier, criteria like net worth, experience etc. used to be prescribed.
Based on experience and in consultation with concerned departments, Government has decided to prescribe the following additional criteria for the qualification/ disqualification of the parties seeking to acquire stakes in public sector enterprises through disinvestment:

(a) In regard to matters other than the security and integrity of the country, any conviction by a Court of Law or indictment/ adverse order by a regulatory authority that casts a doubt on the ability of the bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. 'Grave Offence' is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case-to-case basis after considering the facts of the case and relevant legal principles, by the Government of India. 'Grave Offence' would include the below noted cases:
    a. Only those orders of SEBI are to be treated as coming under the category of 'Grave Offences' which directly relate to 'Fraud' as defined in the SEBI Act and / or regulations.
    b. Only those orders of SEBI that cast a doubt on the ability of the bidder to manage the public-sector unit, when it is disinvested, are to be treated as adverse.
    c. Any conviction by Court of Law.

d. In cases in which SEBI also passes a prosecution order, disqualification of the bidder should arise only on conviction by the Court of Law.

(b) In regard to matters relating to the security and integrity of the country, any charge-sheet by an agency of the Government/ conviction by a Court of Law for an offence committed by the bidding party or its Associate Company as defined in Companies Act, 2013 would result in disqualification. The decision in regard to the relationship inter se between the concerns would be taken based on the relevant facts and after examining whether the two concerns are substantially controlled by the same person/ persons.

(c) In both (a) and (b), disqualification shall continue for a period that Government deems appropriate.

(d) Any bidder, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order, based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.

(e) The disqualification criteria would come into effect immediately and would apply to all bidders for various disinvestment transactions, which have not been completed as yet.

(f) Before disqualifying a bidder, a Show Cause Notice why it should not be disqualified would be issued to it and it would be given an opportunity to explain its position.

(g) These criteria will be prescribed in the advertisements seeking Expression of Interest (EOI) from the interested parties. The interested parties would be required to provide the information on the above criteria, along with their Expressions of Interest (EOI). The bidders shall be required to provide with their EOI an undertaking to the effect that no investigation by a regulatory authority, which if decided against the bidder, may disqualify the bidder in terms of (a) & (b) above or the eligibility criteria prescribed in the EoI, is pending against them. In case any investigation is pending in case which if decided against the bidder, may disqualify the bidder in terms of (a) & (b) above on the eligibility criteria prescribed in the EoI against the bidder or the concern in which the bidder has substantial interest or against its CEO or any of its Directors/Managers/, full details of such investigation including the name of the investigating agency, the charge/ offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, a similar undertaking shall be filed along with EOI.

sd/-
(Aseem Kumar Jha)
Under Secretary to the Government of India

ANNEX-VII
RESTRICTIONS UNDER RULE 144 OF GFR 2017

CIRCULAR TO BE PLACED HERE

APPENDIX-II

Format for Power of Attorney for signing of Bid

(Refer Clause 2.1.5)

Know all men by these presents, We…….. (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorize Mr./ Ms (name), …… son/daughter/wife of …… and presently residing at ……., who is presently employed with us/ the Lead Member of our { **Consortium/Joint Venture**} and holding the position of ……. , as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Bid for the Project proposed or being developed by the [Railways] (the "**Authority**") including but not limited to signing and submission of all Bids and other documents and writings, participate in Pre-Bid and other conferences and providing information/ responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the EPC agreement and undertakings consequent to acceptance of our Bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our Bid for the said Project and/ or upon award thereof to us and/or until the entering into of the EPC Contract with the Authority.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE, ……., THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS …… DAY OF ……. 2…..

For ……..
(Signature, name, designation and address)
of person authorized by Board Resolution
(in case of Firm/ Company)/ partner in case of
Partnership firm

Witnesses:
1.
2.

Accepted
……
(Signature)
(Name, Title and Address of the Attorney)

(Notarized)
Person identified by me/ personally appeared before me/
Attested/ Authenticated*
(*Notary to specify as applicable)
(Signature Name and Address of the Notary)

Seal of the Notary
Registration No. of the Notary

Date:……

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued.However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalized by the Indian Embassy if it carries a conforming Appostille certificate.*

Note: Paragraphs in curly parenthesis may be omitted by the Bidder, if not applicable to it, and 'Deleted' may be indicated there

APPENDIX-III

Format for Power of Attorney for Lead Member of {Consortium/Joint Venture}

(Refer Clause 2.1.6)

Whereas the [Railways] (the "**Authority**") has invited Bids for the ***** Project (the "Project").

Whereas, …….., …….., and …….. (collectively the "{**Consortium/Joint Venture**}") being Members of the { **Consortium/Joint Venture**} are interested in Bidding for the Project in accordance with the terms and conditions of the Request for Proposal (RFP) and other Bid documents including agreement in respect of the Project, and

Whereas, it is necessary for the Members of the {Consortium/Joint Venture} to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the {**Consortium/Joint Venture**}, all acts, deeds and things as may be necessary in connection with the {**Consortium's/Joint Venture**}Bid for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, …… having our registered office at ……., M/s. ….. having our registered office at …, M/s. … having our registered office at ….., and ….. having our registered office at ……., (hereinafter collectively referred to as the "Principals") do hereby irrevocably designate, nominate, constitute, appoint and authorize M/s ……. having its registered office at ……., being one of the Members of the {Consortium/Joint Venture**}**, as the Lead Member and true and lawful attorney of the Consortium/Joint Venture (hereinafter referred to as the "Attorney"). We hereby irrevocably authorize the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the { Consortium/Joint Venture} and any one of us during the Bidding process and, in the event the {Consortium/Joint Venture} is awarded the contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the { Consortium/Joint Venture}, all or any of such acts, deeds or things as are necessary or required or incidental to the pre-qualification of the { Consortium/Joint Venture} and submission of its Bid for the Project, including but not limited to signing and submission of all applications, Bids and other documents,signing bank Guarantee for (Bid securityOR Bid security Declaration **)**[29]and writings, participate in pre Bid and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent toacceptance of the Bid of the { Consortium/Joint Venture} and generally to represent the { Consortium/Joint Venture} in all its dealings with the Authority, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the {Consortium/Joint Venture}Bid for the in all respect Project and/ or upon award thereof till the EPC Contract is entered into with the Authority & Compelled.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ {Consortium/Joint Venture}.

[29] Either of the two to be retained as per the provisions/orders related to submission of Bid Security OR Bid Security Declaration

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ……. DAY OF ……. 2..…

For …….. (Signature) …….. (Name & Title)	For …….. (Signature) …….. (Name & Title)	For …….. (Signature) …….. (Name & Title)

(Executants)

(To be executed by all the Members of the {Consortium/Joint Venture})

Witnesses:
1.
2.

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued.However, the Power of Attorney provided by Bidders from countries that have signed Legislation Convention 1961 are not required to be legalized by the Indian Embassy if it carries a conforming Appostillecertificate.*

Note: Paragraphs in curly parenthesis may be omitted by the Bidder, if not applicable to it, and 'Deleted' may be indicated there

APPENDIX IV

Format for Joint Bidding Agreement for {Consortium/Joint Venture}

(Refer Clause 2.1.11)

(To be executed on Stamp paper of appropriate value)

THIS JOINT BIDDING AGREEMENT is entered into on this the …… day of …… 20…

AMONGST

1. {…… Limited, and having its registered office at …… } (hereinafter referred to as the "**First Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

2. {…… Limited, having its registered office at …… }and (hereinafter referred to as the "**Second Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

3. {…… Limited, and having its registered office at ……} (hereinafter referred to as the "**Third Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)

The above mentioned parties of the FIRST, {SECOND and THIRD} PART are collectively referred to as the **"Parties"** and each is individually referred to as a **"Party**"

WHEREAS,

(A) The President of India represented by the Ministry of Railways, **********(hereinafter referred to as the "**Authority**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) (the **"Authority"**), having its principal office at ********, [New Delhi,110001, India"] is engaged in the development of railways and related infrastructure, and as part of this endeavour, has invited Bids (the **Bids**") by its Request for Proposal No. …… dated ……(the "**RFP**") for award of contract for undertaking the [Development/Re-Development of ******* Railway Station at ******](the **"Project"**) through an Engineering, Procurement and Construction (the "**EPC**") Contract.

(B) The Parties are interested in jointly Bidding for the Project as members of a { Consortium/Joint Venture} and in accordance with the terms and conditions of the RFP document and other Bid documents in respect of the Project, and

(C) It is a necessary condition under the RFP document that the members of the {Consortium/Joint Venture} shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Application.

NOW IT IS HEREBY AGREEDas follows:

1. Definitions and Interpretations

In this Agreement, the capitalized terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFP.

2. {Consortium/Joint Venture}

2.1 The Parties do hereby irrevocably constitute a Consortium/Joint Venture (the "{**Consortium/Joint Venture}**") for the purposes of jointly participating in the Bidding Process for the Project.

2.2 The Parties hereby undertake to participate in the Bidding Process only through this {Consortium/Joint Venture} and not individually and/ or through any other {Consortium/Joint Venture} constituted for this Project, either directly or indirectly.

3. Covenants

The Parties hereby undertake that in the event the {Consortium/Joint Venture} is declared the Selected Bidder and awarded the Project, it shall enter into an EPC Contract with the Authority for performing all its obligations as the Contractor in terms of the EPC Contract for the Project.

4. Role of the Parties

The Parties hereby undertake to perform the roles and responsibilities as described below:

(a) Party of the First Part shall be the Lead member of the {Consortium/Joint Venture} and shall have the power of attorney from all Parties for conducting all business for and on behalf of the {Consortium/Joint Venture} during the Bidding Process and for performing all its obligations as the Contractor in terms of the EPC Contract for the Project;

(b) Party of the Second Part shall be {the member of the Consortium/Joint Venture}; and

(c) Party of the Third Part shall be {the member of the Consortium/Joint Venture.}

5. Joint and Several Liability

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFP and the EPC Contract, till such time as the completion of the Project is achieved under and in accordance with the EPC Contract.

6. Share of work in the Project

The Parties agree that the proportion of construction in the EPC Contract to be allocated among the members shall be as follows:

First Party:
{Second Party:}
{Third Party:}

Further, the Lead Member shall itself undertake and perform at least 50 (fifty) per cent of the works as per the draft EPC Agreementif the Contract is allocated to the {Consortium/Joint Venture}

7. Representation of the Parties

Each Party represents to the other Parties as of the date of this Agreement that:

(a) Such Party is duly organized, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;

(b) The execution, delivery and performance by such Party of this Agreement has been authorized by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the {Consortium/Joint Venture} Member is annexed to this Agreement, and will not, to the best of its knowledge:

(i) require any consent or approval not already obtained;

(ii) violate any Applicable Law presently in effect and having applicability to it;

(iii) violate the memorandum and articles of association, by-laws or other applicable organizational documents thereof;

(iv) violate any clearance, permit, concession, grant, license or other governmental authorization, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or

(v) create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or

prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;

(c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and

(d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

8. Termination

(This Agreement shall be effective from the date hereof and shall continue in full force and effect until Project completion (the "Defects Liability Period") is achieved under and in accordance with the EPC Contract, in case the Project is awarded to the {Consortium/Joint Venture} However, in case the {Consortium/Joint Venture} is either not pre-qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Bidderis not pre-qualified or upon return of the Bid Security by the Authority to the Bidder, as the case may be.

OR

This Agreement shall be effective from the date hereof and shall continue in full force and effect until Project completion (the "Defects Liability Period") is achieved under and in accordance with the EPC Contract, in case the Project is awarded to the {Consortium/Joint Venture} However, in case the {Consortium/Joint Venture} is either not pre-qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Bidderis not pre-qualified .)[30]

9. Miscellaneous

9.1 This Joint Bidding Agreement shall be governed by laws of {India}.

9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.

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

For and on behalf of

LEAD MEMBER by: SECOND PART THIRD PART

[30] Either of the two to be retained as per the provisions/orders related to submission of Bid Security OR Bid Security Declaration

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

In the presence of:

Notes:

1. The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executants(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
2. Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the {Consortium/Joint Venture} Member.
3. For a Joint Bidding Agreement executed and issued overseas, the document shall be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.

APPENDIX-V[31]

BID SECURITY

Bank Guarantee for BID Security
(Refer Clauses 2.20)

B.G. No. Dated:

1. In consideration of you, ****, having its office at ****, (hereinafter referred to as the "Authority", which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of …… and having its registered office at …… (and acting on behalf of its JV/Consortium) (hereinafter referred to as the "Bidder" which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the*** ** Project on EPC basis (hereinafter referred to as "the Project") pursuant to the RFP Document dated …… issued in respect of the Project and other related documents including without limitation the draft EPC contract Agreement (hereinafter collectively referred to as "Bidding Documents"), we (Name of the Bank) having our registered office at …… and one of its branches at …….. (hereinafter referred to as the "Bank"), at the request of the Bidder, do hereby in terms of Clause 1.2.4 read with Clause 2.20 of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Authority an amount of Rs. *** ** (Rupees *** ** only) (hereinafter referred to as the "Guarantee") as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by the Authority stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and

[31] Either of the two to be retained as per the provisions/orders related to submission of Bid Security OR Bid Security Declaration

without any reference to the Bidder or any other person and irrespective of whether the claim of the Authority is disputed by the Bidder or not, merely on the first demand from the Authority stating that the amount claimed is due to the Authority by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its BID open during the BID validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. *** **(Rupees *** ** only).

4. This Guarantee shall be irrevocable and remain in full force for a period of [180 (one hundred and eighty)] days from the BID Due Date inclusive of a claim period of 60 (sixty) days or for such extended period as may be mutually agreed between the Authority and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.

5. We, the Bank, further agree that the Authority shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents including, inter alia, the failure of the Bidder to keep its BID open during the BID validity period set forth in the said Bidding Documents, and the decision of the Authority that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Authority and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other Authority.

6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.

7. In order to give full effect to this Guarantee, the Authority shall be entitled to treat the Bank as the principal debtor. The Authority shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the BIDs or the BID validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to the Authority, and the Bank shall not be released from its liability under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the

Authority or any indulgence by the Authority to the said Bidder or by any change in the constitution of the Authority or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.

8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.

9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorised to receive the said notice of claim.

10. It shall not be necessary for the Authority to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Authority may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.

11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Authority in writing.

12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.

13. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. *** crore (Rupees *** ** crore only). The Bank shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before [*** (indicate date falling [180 days] after the BID Due Date)].

14. This guarantee shall also be operatable at our…….. Branch at [New Delhi], from whom, confirmation regarding the issue of this guarantee or extension / renewal thereof shall be made available on demand. In the contingency of this guarantee being invoked and payment thereunder claimed, the said branch shall accept such invocation letter and make payment of amounts so demanded under the said invocation

15. The guarantor/bank hereby confirms that it is on the SFMS (Structural Finance Messaging System) platform & shall invariably send an advice of this Bank Guarantee to the designated bank of [Ministry/…….], details of which is as under:

S. No.	Particulars	Details
1.	Name of Beneficiary	******

2. Name of Bank ******
3. Account No. ******
4. IFSC Code ******

Signed and Delivered by ……. Bank
By the hand of Mr./Ms …….., its …….. and authorised official.
(Signature of the Authorised Signatory)
(Official-Seal)

APPENDIX-V[32]

BID SECURITY DECLARATION

Bid Security Declaration Format

(Refer Clauses 2.1.7 and 2.20.1)

(To be forwarded on the letterhead of the Bidder/ Lead Member of Consortium)

Ref. Date:
Tender No.:

To

…….
…….

Sub: Bid for ……. Project

I/We hereby declare that:

1. I/We am/are aware that I/we have been exempted from submission of Bid Security in lieu of this Bid Security Declaration.
2. I/We understand thatbid must be supported by a Bid-Security Declaration.
3. I/We understand and accept that if I/We withdraw my/our bid within the bid validity period or if awarded the bid and on being called upon to submit the Performance Guarantee/Performance security, fail to submit the same within the stipulated time period as mentioned in the bidding document or on being called upon to sign the contract agreement, fail to sign the same within such period mentioned in the bidding document,I/We , i.e. **********(the name of bidder) accept that I/We shall be

[32] Either of the two to be retained as per the provisions/orders related to submission of Bid Security OR Bid Security Declaration

banned from submission of Bids in any Works/Service tender issued by Indian Railways for a period upto 5 (five) years]

I/We agree that the decision of the Authority regarding invocation of the Bid Security Declaration shall be finaland binding on me/us and shall not be called upon in question under any circumstances.

Name and Signature of Authorized Signatory of Bidder along with seal of Bidder

APPENDIX-VI

FORMAT FOR AFFIDAVIT TO BE UPLOADED BY BIDDERALONGWITH THE BID

(To be executed in presence of Public notary on non-judicial stamp paper of the value of [Rs.100/-]. The stamp paper has to be in the name of the Bidder)**.

I ……. (Name and designation)** appointed as the attorney/authorized signatory of the Bidder (including its constituents), M/s. _____ (herein after called the Bidder) for the purpose of the Bidding documents for the work of _____ as per the RFP No._____ of (---------- --- Railway), do hereby solemnly affirm and state on the behalf of the Bidder including its constituents/Associates as under :

1. I/We the Bidder(s), am/are signing this document after carefully reading the contents.
2. I/We the Bidder(s) also accept all the conditions of the tender and have signed all the pages in confirmation thereof.
3. I/We hereby declare that I/We have downloaded the Bidding documents from Indian Railway website [www.ireps.gov.in]. I/we have verified the content of the document from the website and there is no addition, no deletion or no alteration to the content of the Bidding document. In case of any discrepancy noticed at any stage i.e. evaluation of bids, execution of work or final payment of the contract, the master copy available with the Authority shall be final and binding upon me/us.
4. I/We declare and certify that I/We have not made any misleading or false representation in the forms, statements and attachments in proof of the qualification requirements.
5. I/We also understand that my/our offer will be evaluated based on the documents/credentials submitted along with the offer and same shall be binding upon me/us.
6. I/We declare that the information and documents submitted along with the bid by me/us are correct and I/We are fully responsible for the correctness of the information and documents submitted by us.
7. I/We undersigned that if the certificates regarding eligibility criteria submitted by us are found to be forged/false or incorrect at any time during process for evaluation of bids, it shall lead to forfeiture of the Bid Security/EMD[33]besides banning of business for a period upto 5 (five)yearsor as per Bid Security Declaration[34]. Further, I/We (*insert name of the Bidder*)**_____ and all my/our constituents understandthat my/our Bidshall be summarily rejected.

[33] Please retain as applicable
[34] Please retain as applicable

8. I/We also understand that if the certificates submitted by us are found to be false/forged or incorrect at any time after the award of the contract, it will lead to termination of the contract, along with forfeiture of EMD/Bid Security/Retention Money[35] and Performance Securitybesides any other action provided in the contract including banning of business for a period upto 5 (five) years on entire Indian Railways.

DEPONENT
SEAL AND SIGNATURE OF THE BIDDER
VERIFICATION

I/We above named Bidderdo hereby solemnly affirm and verify that the contents of my/our above affidavit are true and correct. Nothing has been concealed and no part of it is false.

DEPONENT
SEAL AND SIGNATURE OF THE BIDDER

Place :
Dated

**The contents in Italic are only for guidance purpose. Details as appropriate, are to be filled in suitably by the Bidder. Attestation before Magistrate/Notary Public.

[35] Please retain as applicable

APPENDIX-VII

LIST OF BID-SPECIFIC CLAUSES[$]

A. Clauses and appendices with non-numerical footnotes

1. Deleted
2. Clause 2.2.28: Qualification requirement
3. Appendix IA: Letter Comprising the Bid for –Qualification.
4. Appendix IA, Annex-I
5. Appendix IA, Annex-II
6. Appendix IA, Annex-III
7. Appendix IA, Annex-IV& V
8. Appendix II,& III
9. Appendix IV& V
10. Appendix VI

B. Clauses and appendices with curly brackets

1. Appendix IA: Letter Comprising the Bid for Qualification: Para's6, 9, 10, 11, 12, 13, 26
2 Appendix IA, AnnexI
3. Appendix IA Annex-II, III, IV and V

C. Clauses and appendices with blank spaces

1. RFP
2., 2.11.1, 2.12. 2.14.1.2, 2.14.2.3
2. Appendix IA, Annex-I, IV, V.
3. Appendix II, III, IV

[$] This Appendix-VII contains a list of clauses and appendices that would need to be suitably modified for reflecting applicant-specific provisions. This Appendix-VII may, therefore, be included in the RFP document to be issued to prospective Bidders. The blank spaces in Appendices may be filled up by the Bidders and the footnotes may be deleted when it submits its Bid.

APPENDIX-VIII

LIST OF PROJECT-SPECIFIC CLAUSES[36]

A. Clauses and appendices with serially numbered footnotes

1. NIT (Footnote No. 1, 2, 3)
2. Clause 1.2.4 : Brief description of Bidding Process (Footnote No. 4)
3. Clause 2.2.2.2 Eligibility of Bidders(Financial Capacity) (Footnote No. 5 &6)
4. Deleted
5. Clause 2.9.3: Amendment of RFP (Footnote No. 9)
7. Appendix VII: List of project-specific clauses (Footnote No. 10)

B. Clauses and appendices with square parenthesis

1. NIT
2. Clause 1.1.1 : Background
3. Clause 1.1.2: Background
4. Clause 1.2.4 : Brief description of Bidding Process
5. Clause 1.3: Schedule of Bidding Process
6. Clause 2.1.4 : General terms of Bidding Process
7. Clause 2.2.2 1/ii: Eligibility of Bidders (Technical Capacity)
8. Clause 2.2.2.2: Eligibility of Bidders (Financial Capacity)
9Deleted
10. Appendix I: Letter Comprising the Bid for Qualification (Name, Designation, Address,)

C . Clauses and appendices with asterisk

1. NIT
2. Clause 1.1.1 and 1.2.4: Brief description of Bidding Process
3. Clause 1.2.4 and 1.2.9: Brief description of Bidding Process
4. Clause 1.3 : Schedule of Bidding Process
5. Deleted
6Deleted
7. Clause 2.11.1. 2.11.3 and, 2.11.4: Documents Comprising Technical & Financial Bid
8. Clause 2.13.3: Sealing and Marking of Bid
9. Clause 3.1.1: Evaluation
10. Appendix IA: Letter Comprising the Bid for Qualification (address, subject heading)
11. Appendix IB, Letter Comprising the Bid for Financial bid
12. Appendix IB, Annex-V: Statement of Legal Capacity (Name, Designation)

[36] This Appendix-VIII contains a list of clauses and appendices that would need to be suitably modified, prior to issue of the RFP document, for reflecting project-specific provisions. This Appendix-VIII should be omitted before issuing the RFP document to prospective Bidders.