



Manufacturing-cum-Maintenance Agreement
for
Vande Bharat Trains

Make in India, Make for World
under
AatmaNirbhar Bharat

by
Ministry of Railways
Government of India



Table of Contents

MANUFACTURING-CUM-MAINTENANCE AGREEMENT	13
Article 1. Definitions and Interpretation	15
1.1 Definitions	15
1.2 Interpretation.....	15
1.3 Measurements and arithmetic conventions.....	17
1.4 Priority of agreements, clauses and schedules.....	18
1.5 Joint and several liability	18
PART II	19
Scope of the Agreement	19
Article 2. Scope of the Agreement	20
2.1 Scope of the Agreement.....	20
Article 3. Award of contract	21
3.1 The Contract	21
3.2 Agreement Period	21
Article 4. {Not Used}	22
Article 5. Obligations of the Technology Partner	23
5.1 Obligations of the Technology Partner	23
5.2 Obligations relating to Project Agreements.....	24
5.3 Obligations relating to change in Consortium Member.....	25
5.4 Obligations relating to employment of foreign nationals	25
5.5 Obligations relating to employment of trained personnel	25
5.6 Obligations relating to branding of Trains.....	26
5.7 Obligations regarding risk of loss or damage	26
5.8 Obligations relating to information.....	26
Article 6. Obligations of the Government	27
6.1 Obligations of the Government.....	27
Article 7. Representations and Warranties	28
7.1 Representations and warranties of the Technology Partner.....	28
7.2 Representations and warranties of the Government	29
7.3 Disclosure	30
Article 8. Disclaimer	31

8.1 Disclaimer.....	31
PART III.....	32
Development and Operations.....	32
Article 9. Performance Security	33
9.1 Performance Security.....	33
9.2 Appropriation of Performance Security.....	33
9.3 Release of Performance Security	34
9.4 References to Performance Security	34
Article 10. Manufacturing Unit	35
10.1 Site for Manufacturing Unit	35
10.2 Upgradation and development of the Manufacturing Unit.....	35
10.3 Obligations prior to upgradation of the Maintenance Unit	35
10.4 Payment.....	36
Article 11. {Not Used}.....	38
Article 12. Trainset Depots.....	39
12.1 Depot Sites.....	39
12.2 Trainset Depots.....	39
12.3 Obligations prior to upgradation of the Trainset Depots.....	41
12.4 Payment.....	41
Article 13. Supply of Prototype.....	42
13.1 Design of Prototype.....	42
13.2 Tests at the Manufacturing Unit	43
13.3 Supply of Prototype.....	43
13.4 Tests on Government’s railway lines	44
13.5 Acceptance of Prototype.....	44
13.6 Independent Safety Assessor (ISA).....	44
13.7 Payment for Prototype.....	45
Article 14. Delivery of Trains.....	46
14.1 Delivery of Trains.....	46
14.2 Tests.....	46
14.3 Inspection by the Government.....	46
14.4 Safety Inspection	47
14.5 Point of delivery	47

14.6 Transfer of Title.....	47
Article 15. Supply Programme	48
15.1 Supply Programme	48
15.2 Option Clause	48
15.3 Damages for delay	48
Article 16. Change of Scope	49
16.1 Change of Scope.....	49
16.2 Procedure for Change of Scope	49
16.3 Payment for Change of Scope	50
16.4 Restrictions on certain works	50
16.5 Power of the Government to undertake works	50
Article 17. Maintenance of Trains.....	52
17.1 Maintenance of Trains.....	52
17.2 Maintenance Period.....	52
17.3 Maintenance Manual	52
17.4 Spares and Consumables.....	52
17.5 Scheduled Maintenance	53
17.6 Unscheduled Maintenance	53
17.7 Washing Lines.....	55
17.8 Stabling of Trains.....	56
17.9 Maintenance Requirements.....	56
17.10 Prompt response and Helpline	56
17.11 Damages for breach of Maintenance Obligations	57
17.12 De-commissioning due to Emergency	57
17.13 Epidemic Defect Warranty.....	57
17.14 Government’s right to take remedial measures.....	58
17.15 Overriding powers of the Government	58
17.16 Restoration of loss or damage to the Trains.....	59
17.17 Modifications to the Trains	59
17.18 Operation by the Government.....	59
17.19 Excuse from performance of obligations	60
17.20 Maintenance Report	60
17.21 Predictive Maintenance.....	61

17.22	Maintenance Management Information System	61
17.23	Obsolescence Management.....	62
	Article 18. Safety Requirements	63
18.1	Safety Requirements.....	63
18.2	Guiding principles	63
18.3	Obligations of the Technology Partner.....	63
18.4	Safety measures during upgradation of Manufacturing Unit and Trainset Depots	63
18.5	Annual Safety Report	63
	Article 19. Monitoring of Maintenance.....	65
19.1	Monthly status reports	65
19.2	Report of unusual occurrence	65
19.3	Inspection	65
19.4	Tests.....	65
19.5	Remedial measures	66
19.6	Responsibility of the Technology Partner	66
	Article 20. Key Performance Indicators	67
20.1	Key Performance Indicators	67
20.2	Availability	67
20.3	Declaration of Availability	68
20.4	Reliability	68
20.5	Upkeep of Cars	69
20.6	KPI based adjustments in Maintenance Fee	69
20.7	Monthly Report	70
	Article 21. Operational Routes	71
21.1	Operational routes for Trains.....	71
21.2	Washing of Trains	71
	Article 22. Manpower and Training.....	72
22.1	Maintenance Organisation.....	72
22.2	Government Staff	72
22.3	Training	73
22.4	Training Facilities.....	74
22.5	Costs of training	75
	PART IV	76

Financial Covenants	76
Article 23. Train Price	77
23.1 Train Price	77
23.2 Base Price	77
23.3 Indexed Price	77
23.4 Computation of Train Price	77
23.5 Incentive on Train weight.....	78
23.6 Delayed supplies.....	78
23.7 Development Advance	78
Article 24. Maintenance Security	80
24.1 Maintenance Security	80
24.2 Appropriation of Maintenance Security	80
24.3 Release of Maintenance Security	81
Article 25. Maintenance Fee	82
25.1 Maintenance Fee.....	82
25.2 Determination of Maintenance Fee	82
25.3 Payment of Maintenance Fee	82
25.4 Distance based adjustments in Maintenance Fee	83
Article 26. Billing and Payment	84
26.1 Billing and payment	84
26.2 Disputed Amounts	85
26.3 Delayed payments	85
26.4 Discount for early payment	85
26.5 Taxes and Duties	85
Article 27. Supply of Spares and Consumables	87
27.1 Supply of Spares.....	87
27.2 Payable Spares.....	87
27.3 Cost of installation.....	88
Article 28. Condemnation of Trains	89
28.1 Condemnation of Trains	89
28.2 Termination of Maintenance Obligations.....	89
Article 29. Handover of Project Assets	90
29.1 Handover of Project Assets	90

29.2 Provision of Spares upon Termination	90
Article 30. Insurance.....	91
30.1 Insurance during Agreement Period	91
30.2 Insurance Cover	91
30.3 Notice to the Government	91
30.4 Evidence of Insurance Cover.....	91
30.5 Remedy for failure to insure	92
30.6 Waiver of subrogation	92
30.7 Technology Partner’s waiver.....	92
30.8 Application of insurance proceeds	92
30.9 Compliance with conditions of insurance policies	92
Article 31. {Not Used}.....	93
PART V.....	94
Force Majeure and Termination	94
Article 32. Force Majeure	95
32.1 Force Majeure	95
32.2 Non-Political Event.....	95
32.3 Indirect Political Event.....	96
32.4 Political Event	96
32.5 Duty to report Force Majeure Event	97
32.6 Effect of Force Majeure Event on the Agreement	97
32.7 Allocation of costs arising out of Force Majeure.....	98
32.8 Termination Notice for Force Majeure Event.....	98
32.9 Termination Payment for Force Majeure Event.....	98
32.10 Dispute resolution	99
32.11 Excuse from performance of obligations	99
32.12 Relief for Unforeseen Events	99
Article 33. Compensation for breach of Agreement	100
33.1 Compensation for default by the Technology Partner.....	100
33.2 Compensation for default by the Government	100
33.3 Extension of Agreement Period.....	100
33.4 Compensation to be in addition	100
33.5 Mitigation of costs and damage.....	100

Article 34. Suspension of Technology Partner’s Rights	101
34.1 Suspension upon Technology Partner Default	101
34.2 Government to act on behalf of Technology Partner	101
34.3 Revocation of Suspension	101
34.4 Termination	102
Article 35. Termination	103
35.1 Termination for Technology Partner Default	103
35.2 Termination for Government Default	105
35.3 Termination Payment	105
35.4 Certain limitations on Termination Payment	106
35.5 Other rights and obligations of the Government	106
35.6 Survival of rights	107
Article 36. Divestment of Rights and Interest	108
36.1 Divestment requirements	108
36.2 Inspection and cure	109
36.3 Cooperation and assistance on handover	109
36.4 Vesting Certificate	109
36.5 Other provisions	109
Article 37. Defects Liability after Termination	111
37.1 Liability for defects after Termination	111
PART VI	112
Other Provisions	112
Article 38. Assignment and Charges	113
38.1 Restrictions on assignment and charges	113
38.2 Permitted assignment and charges	113
38.3 Assignment to IRFC	113
Article 39. Change in Law	114
39.1 Increase in costs	114
39.2 Reduction in costs	114
39.3 Protection of NPV	115
39.4 Restriction on cash compensation	115
39.5 Revision of Train Price	115
Article 40. Liability and Indemnity	116

40.1	General indemnity	116
40.2	Indemnity by the Technology Partner	116
40.3	Notice and contest of claims.....	117
40.4	Defence of claims	117
40.5	No consequential claims.....	118
40.6	Limitation of Liability	118
40.7	Survival on Termination.....	119
	Article 41. {Not Used}	120
	Article 42. Dispute Resolution	121
42.1	Dispute resolution.....	121
42.2	Conciliation	121
42.3	Arbitration	121
42.4	Adjudication by a tribunal	122
	Article 43. Disclosure	123
43.1	Disclosure of Specified Documents	123
43.2	Disclosure of Documents relating to safety.....	123
43.3	Withholding disclosure of Protected Documents	123
	Article 44. Redressal of Complaints	124
44.1	Complaints Register	124
44.2	Redressal of complaints.....	124
	Article 45. Miscellaneous.....	125
45.1	Governing law and jurisdiction	125
45.2	Waiver of immunity	125
45.3	Delayed payments	125
45.4	Waiver	125
45.5	Liability for review of Documents and Drawings	126
45.6	Exclusion of implied warranties etc.	126
45.7	Survival	126
45.8	Entire Agreement	127
45.9	Severability	127
45.10	No partnership.....	127
45.11	Third parties	127
45.12	Successors and assigns.....	127

45.13 Notices.....	127
45.14 Language.....	128
45.15 Counterparts.....	128
Article 46. Definitions	129
46.1 Definitions.....	129
Schedules.....	140
A. Specifications and Standards.....	141
B. Proposed Sites of the Manufacturing Unit and Trainset Depots	143
C. Performance Security	154
D. List of Conditions affecting Upkeep.....	157
E. List of Design/Drawings of Car Body Shells and Bogie of Vande Bharat Train (Chair Car Version).....	159
F. Tests.....	160
G. Maintenance Requirements	161
H. Safety Requirements.....	166
I. Bank Guarantee for Advance Payments	175
J. Vesting Certificate	177
K. Driving Simulator	178

Part I
Preliminary

MANUFACTURING-CUM-MAINTENANCE AGREEMENT

THIS AGREEMENT is entered into on this {the day of....., 20.....}^{\$}

BETWEEN

1 **THE PRESIDENT OF INDIA** represented by Executive Director, Stores(RS), Ministry of Railways (Railway Board), Government of India and having its offices at Rail Bhavan, Raisina Road, New Delhi - 110001 (hereinafter referred to as the “**Government**” 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},having its registered office at, (hereinafter referred to as the “**Technology Partner**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

The Government and the Technology Partner shall be collectively referred to as “**Parties**” and individually as a “**Party**”.

WHEREAS:

- (A) The Government had resolved to procure Trains for inter-city travel through a manufacturing-cum-maintenance contract (the “**Project**”) in accordance with the terms and conditions to be set forth in the manufacturing- cum - maintenance agreement (the “**Agreement**”).
- (B) The Government had prescribed the technical and commercial terms and conditions, and invited bids from the bidders for undertaking the Project.
- (C) After evaluation of the bids received, the Government had accepted the bid of the {selected bidder(s)/Consortium} (the “**Selected Bidder**”) and issued its Letter of Acceptance No. dated (hereinafter called the “**LOA**”) to the Selected Bidder requiring, *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;
 - (ii) submit Performance Security within 30 (thirty) days of the issue of LoA; and

^{\$}The provisions in curly parenthesis and blank spaces shall be retained in the draft Agreement and shall be suitably modified/ filled after completion of the bid process to reflect the particulars relating to the selected bidder and other post-bid particulars.

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

(D) The Technology Partner has fulfilled the requirements specified in Recital (C) 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, and intending to be legally bound hereby, the Parties agree as follows:

Article 1. Definitions and Interpretation

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 46) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of the State, 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, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and **“construct”** or **“build”** shall be construed accordingly;
- (g) references to **“upgradation”** include, unless the context otherwise requires, renovation, refurbishing, augmentation, equipping (with M&Ps and other facilities) and other activities incidental thereto, and **“upgrade”** shall be construed accordingly;
- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;

- (i) any reference to “**hour**” shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five),6.00(six),7.00(seven) and so on being hours on the hour of the clock and 5.30(five thirty),6.30(six thirty),7.30(seven thirty) and so on being hours on the half hour of the clock;
- (j) any reference to day shall mean a reference to a calendar day;
- (k) reference to a “**business day**” shall be construed as reference to a day (other than a Sunday) on which banks in Delhi are generally open for business;
- (l) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (m)any reference to “**quarter**” shall mean a reference to the period of three months commencing from April 1, July 1, October 1, and January 1, as the case may be;
- (n) 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;
- (o) 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;
- (p) the words importing singular shall include plural and vice versa;
- (q) references to any gender shall include the other and the neutral gender;
- (r) “**lakh**” means a hundred thousand (100,000) and “**crore**” means ten million (10,000,000);
- (s) “**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;
- (t) 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;
- (u) 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 (u) shall not operate so as to increase liabilities or obligations of the Government hereunder or pursuant hereto in any manner whatsoever;
- (v) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by

any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party in this behalf and not otherwise;

- (w) 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;
- (x) 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;
- (y) 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
- (z) time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Technology Partner to the Government shall be provided free of cost in soft copy as well as in three hard copies, and if the Government is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two hard 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; provided that the drawings, engineering dimensions and tolerances may exceed 2 (two) decimal places as required.

1.4 Priority of agreements, clauses and schedules

- 1.4.1 This Agreement, and all other agreements and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:
- (a) this Agreement; and
 - (b) all other agreements and documents forming part hereof or referred to herein, i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.
- 1.4.2 Subject to the provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:
- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
 - (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
 - (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
 - (d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
 - (e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
 - (f) between any value written in numerals and that in words, the latter shall prevail.

1.5 Joint and several liability

- 1.5.1 If the Technology Partner has formed a Consortium 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 Technology Partner shall ensure that no change in the composition of the Consortium 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, the Lead Member shall represent all the members of the Consortium and shall at all times be liable and responsible for discharging the functions and obligations of the Technology Partner. The Technology Partner shall ensure that each member of the Consortium 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 Consortium¹.}

¹ This Clause 1.5 may be omitted if the Technology Partner is not a Consortium

PART II
Scope of the Agreement

Article 2. Scope of the Agreement

2.1 Scope of the Agreement

The scope of the Agreement (the “**Scope of the Agreement**”) shall mean and include, the following, in accordance with the provisions of this Agreement, during the Agreement Period:

- (a) design, manufacture, supply, testing and commissioning of the [_____] number of Sleeper Trains conforming to the Specifications and Standards set forth in Schedule-A;
- (b) up-gradation of the available existing infrastructure/facilities and development of additional infrastructure/facilities at nominated Manufacturing Unit site of Government’s {Marathwada Rail Coach Factory (MRCF)/Latur or Integral Coach Factory (ICF)/Chennai} including operation & maintenance of the same to meet the requirement of manufacturing, testing, commissioning and supply of the Trains;
- (c) up-gradation of the available existing infrastructure/facilities and development of additional infrastructure/facilities at nominated Trainset Depot sites of Government’s including operation & maintenance of the same for maintenance of the supplied Trains;
- (d) comprehensive maintenance of the supplied Trains;
- (e) supply, installation, testing, commissioning, maintenance and operation of Driving Simulator at the Trainset Depots for training of Train operating and maintenance manpower; and
- (f) any other obligations to meet the objective either implied or deemed necessary as per the Agreement.

Article 3. Award of contract

3.1 The Contract

- 3.1.1 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and the Applicable Permits, the Government hereby awards to the Technology Partner the right to manufacture, supply and maintain the Trains for the period specified herein (the “**Contract**”), and the Technology Partner hereby accepts the Contract and agrees to implement the same subject to and in accordance with the terms and conditions set forth herein.
- 3.1.2 Subject to and in accordance with the provisions of this Agreement, the Contract hereby granted shall oblige or entitle (as the case may be) the Technology Partner to the following in accordance with the provisions of this Agreement:
- (a) manufacture, assemble and supply Trains to the Government ;
 - (b) maintain the Trains;
 - (c) equip and upgrade the Manufacturing Unit;
 - (d) access and use of the Manufacturing Unit for manufacturing Trains;
 - (e) equip and upgrade the Trainset Depots;
 - (f) access and use of the Trainset Depots and Washing Lines for performing its Maintenance Obligations;
 - (g) perform and fulfil all of the Technology Partner’s obligations under and in accordance with this Agreement;
 - (h) save as otherwise provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Technology Partner under this Agreement; and
 - (i) neither assign, transfer or sublet or create any lien or Encumbrance on this Agreement nor transfer, or create encumbrance on the Manufacturing Unit, Depot Sites and Washing Lines, as the case may be, save and except as expressly permitted by this Agreement.

3.2 Agreement Period

This Agreement shall come into effect on the date hereof, and shall expire upon completion of the Maintenance Period of all Trains, unless terminated earlier in accordance with the provisions of this Agreement.

Article 4. {Not Used}

Article 5. Obligations of the Technology Partner

5.1 Obligations of the Technology Partner

- 5.1.1 The Technology Partner shall supply the Trains to the Government and undertake comprehensive maintenance of the same in accordance with the terms and conditions of this Agreement.
- 5.1.2 The Technology Partner shall equip and upgrade operate and maintain the Manufacturing Unit in accordance with the terms and conditions of this Agreement;
- 5.1.3 The Technology Partner shall equip, upgrade, operate and maintain the Trainset Depots at the Depot Sites in accordance with the terms and conditions of this Agreement.
- 5.1.4 The Technology Partner shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.5 Save and except as otherwise provided in this Agreement or Applicable Laws, as the case may be, the Technology Partner shall, in discharge of all its obligations under this Agreement, conform with and adhere to Good Industry Practice at all times.
- 5.1.6 The Technology Partner 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, 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 Trains, Manufacturing Unit and Trainset Depots;
 - (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 and procure that its Sub-contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Technology Partner'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 violative of any of the provisions of this Agreement;
 - (f) take all reasonable precautions for the prevention of accidents on or around the Manufacturing Unit and Trainset Depots along with providing all reasonable assistance and emergency medical aid to accident victims; and
 - (g) hand over the assets of Manufacturing Unit and Trainset Depots to the Government upon completion of the Supply Period or Termination of this Agreement, as the case may be, in accordance with the provisions thereof.

5.2 Obligations relating to Project Agreements

- 5.2.1 It is expressly agreed that the Technology Partner shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Technology Partner from its obligations or liability hereunder.
- 5.2.2 The Technology Partner shall submit to the Government the drafts of all Project Agreements or any amendments or replacements thereto for its review and comments, and the Government shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Technology Partner within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Technology Partner shall submit to the Government a true copy thereof, duly attested by a Director of the Technology Partner, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Government to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Government. No review and/or observation of the Government and/or its failure to review and/or convey its observations on any document shall relieve the Technology Partner of its obligations and liabilities under this Agreement in any manner nor shall the Government be liable for the same in any manner whatsoever.
- 5.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Technology Partner shall not assign or in any manner create an Encumbrance on the Manufacturing Unit, Depot Sites and Washing Lines, as the case may be, without prior written approval of the Government, which approval the Government may, in its discretion, deny if such assignment or Encumbrance has or may have a material adverse effect on the rights and obligations of the Government under this Agreement or Applicable Laws.
- 5.2.4 The Technology Partner shall procure that each of the Project Agreements contains provisions that entitle the Government to step into such agreement, in its sole discretion, in substitution of the Technology Partner in the event of Termination or Suspension (the “**Covenant**”). For the avoidance of doubt, it is expressly agreed that in the event the Government does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Government and the Covenant shall expressly provide for such eventuality. The Technology Partner expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Government an acknowledgment and undertaking, in a form acceptable to the Government, from the counter party(s) of each of the Project Agreements, whereunder such counter party(s) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Government in the event of Termination or Suspension.

5.2.5 Notwithstanding anything to the contrary contained in this Agreement, the Technology Partner agrees and acknowledges that selection or replacement of an O&M Sub-contractor and execution of the O&M Contract shall be subject to the prior approval of the Government from national security and public interest perspective, the decision of the Government in this behalf being final, conclusive and binding on the Technology Partner, and undertakes that it shall not give effect to any such selection or contract without prior approval of the Government. For the avoidance of doubt, it is expressly agreed that approval of the Government hereunder shall be limited to national security and public interest perspective, and the Government shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Government shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Technology Partner or its Sub-contractors from any liability or obligation under this Agreement.

5.3 Obligations relating to change in Consortium Member

5.3.1 The Technology Partner shall not substitute/drop any Consortium Member, except with the prior written approval of the Government. Such change may be permitted by the Government, only where:

- (a) the Lead Member continues to be the Lead Member of the Consortium with minimum share of 26% in the Project;
- (b) the Technology Partner (including all Consortium Members), continue to meet the Eligibility requirements specified in the bid document;
- (c) all such Consortium Members whose credentials are used to meet the Eligibility requirements shall have minimum share of 15% in the Project.

5.4 Obligations relating to employment of foreign nationals

The Technology Partner acknowledges, agrees and undertakes that employment of foreign personnel by the Technology Partner 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 Technology Partner and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Technology Partner or any of its sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Technology Partner from the performance and discharge of its obligations and liabilities under this Agreement.

5.5 Obligations relating to employment of trained personnel

5.5.1 The Technology Partner shall ensure that the personnel engaged by it or by its Sub-contractors in the performance of its obligations under this Agreement are at all times appropriately qualified, skilled, experienced and trained in their respective functions in conformity with Good Industry Practice. The Government, for reasons to be specified in writing, direct the Technology Partner to remove any member of the Technology

Partner's or Sub-contractor's personnel. Provided that any such direction issued by the Government shall specify the reasons for the removal of such person.

5.6 Obligations relating to branding of Trains

The Trains or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Technology Partner or its shareholders, save to the extent of displaying the name or brand of the Technology Partner at two places on the interior of each Car with each such display restricted to a maximum area of one square foot.

5.7 Obligations regarding risk of loss or damage

- 5.7.1 The Technology Partner shall bear the risk of loss in relation to each Car so long it is in the possession of the Technology Partner for the performance of its Maintenance Obligations hereunder.
- 5.7.2 For the purpose of protecting the Government's interest in all Cars/Trains, under this Agreement, but which are in the possession, care or custody of the Technology Partner, the Technology Partner shall take or cause to be taken all steps necessary under Applicable Laws to protect the Government's title and to protect the Government against claims by other parties with respect thereto in accordance with the terms and provisions of this Agreement.

5.8 Obligations relating to information

- 5.8.1 Without prejudice to the provisions of Applicable Laws and this Agreement, upon receiving a notice from the Government for any information that it may reasonably require or that it considers may be necessary to enable it to perform any of its functions, the Technology Partner shall provide such information to the Government forth with and in the manner and form required by the Government.
- 5.8.2 After receiving a notice from the Government for reasoned comments on the accuracy and text of any information relating to the Technology Partner's activities under or pursuant to this Agreement which the Government proposes to publish, the Technology Partner shall provide such comments to the Government in the manner and form required by the Government.

Article 6. Obligations of the Government

6.1 Obligations of the Government

- 6.1.1 The Government shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2 The Government agrees to provide support to the Technology Partner 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) provide unexclusive access to the Manufacturing Unit, Trainset Depots and Washing Lines as per details specified in Schedule B;
 - (b) provide a rail track and electrified traction lines connecting the Trainset Depots and Washing Lines to the existing railway network of the Government;
 - (c) provide manpower for manufacturing and maintenance of the Trains;
 - (d) provide, or cause to be provided, free electricity and water at the Manufacturing Unit, Trainset Depots and Washing Lines;
 - (e) upon written request from the Technology Partner, and subject to the Technology Partner complying with Applicable Laws, provide all reasonable support and assistance to the Technology Partner in procuring Applicable Permits, required from any Governmental Instrumentality for implementation and operation of the objectives set forth in this Agreement;
 - (f) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
 - (g) support, cooperate with and facilitate the Technology Partner in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
 - (h) upon written request from the Technology Partner and subject to the provisions of Clause 5.4, provide reasonable assistance to the Technology Partner and any expatriate personnel of the Technology Partner or its Sub-contractors to obtain applicable visas and work permits for the purposes of discharge by the Technology Partner or its Sub-contractors their obligations under this Agreement.

Article 7. Representations and Warranties

7.1 Representations and warranties of the Technology Partner

The Technology Partner represents and warrants to the Government 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 shall 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 are 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 those of the Selected Bidder/ any member of the Consortium} or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (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) it shall at no time change any Consortium Member except in accordance with the provisions of Clause 5.3;
- (k) all assets of the Manufacturing Unit, Trainset Depots and Washing Lines shall be handed over to the Government on the respective Divestment Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Government;
- (l) no representation or warranty by it contained herein or in any other document furnished by it to the Government 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;
- (m) 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 Agreement or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Government in connection therewith;
- (n) all information provided by the {Selected Bidder/Consortium Members} in response to the tender or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and
- (o) all undertakings and obligations of the Technology Partner arising from the tender or otherwise shall be binding on the Technology Partner as if they form part of this Agreement.

7.2 Representations and warranties of the Government

The Government represents and warrants to the Technology Partner 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 Government's ability to perform its obligations under this Agreement;
- (f) it has complied with Applicable Laws in all material respects; and
- (g) upon the Technology Partner submitting a written request stating the credentials of its personnel, it shall enable such personnel to travel on board the Trains for the purpose

of undertaking its Maintenance Obligations in accordance with the provisions of this Agreement and Good Industry Practice.

7.3 Disclosure

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

Article 8. Disclaimer

8.1 Disclaimer

- 8.1.1 The Technology Partner acknowledges that prior to the execution of this Agreement, the Technology Partner has, after a complete and careful examination, made an independent evaluation of the tender, Scope of the Agreement, Specifications and Standards, Sites for Manufacturing Unit, Trainset Depots Washing Lines, existing structures, local conditions, physical qualities of ground, subsoil and geology and all information provided by the Government 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 7.2, the Government makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumption, statement or information provided by it and the Technology Partner confirms that it shall have no claim whatsoever against the Government in this regard.
- 8.1.2 The Technology Partner acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Government shall not be liable for the same in any manner whatsoever to the Technology Partner and its Associates or any person claiming through or under any of them.
- 8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement.
- 8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Government to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Government contained in Clause 8.1.1 and shall not in any manner shift to the Government any risks assumed by the Technology Partner pursuant to this Agreement.
- 8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Agreement shall be borne by the Technology Partner and the Government shall not be liable in any manner for such risks or the consequences thereof.

PART III
Development and Operations

Article 9. Performance Security

9.1 Performance Security

- 9.1.1 The Technology Partner shall, for the performance of its obligations hereunder during the Supply Period, provide to the Government no later than 30 (thirty) days from the date issue of LoA, an irrevocable and unconditional guarantee from a Bank for a sum calculated at the rate of Rs 2 crore (Rupees two crore) per Train subject to a maximum limit Rs 200 (two hundred) crore in the form set forth in Schedule-C (the “**Performance Security**”). Until such time the Performance Security is provided by the Technology Partner pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Government shall release the Bid Security to the Technology Partner. Provided, however, that the Technology Partner may provide a Performance Security hereunder for a period of 3 (three) years and shall, no later than 60 (sixty) days prior to the expiry thereof, substitute it by a like Performance Security.
- 9.1.2 In the event the Technology Partner fails to provide the Performance Security within 30 (thirty) days of LoA, it shall pay Damages calculated at the rate of 0.25% (zero point two five per cent) of the Performance Security amount for each week or part thereof subject to a maximum of 10% of the Performance Security.
- 9.1.3 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Technology Partner within a period of 180 (one hundred and eighty) days from the date of this Agreement, the Government may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Technology Partner under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Technology Partner, and the Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

9.2 Appropriation of Performance Security

Upon occurrence of a Technology Partner Default or failure to meet any conditions specified in Para C of the Recital, the Government 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 for and in respect of such Technology Partner Default or for failure to meet any conditions specified in Para C of the Recital. Upon such encashment and appropriation from the Performance Security, the Technology Partner shall, within 15 (fifteen) 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 Technology Partner shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Government shall be entitled to terminate this Agreement in accordance with Article 35. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Technology Partner shall be entitled to an additional Cure Period of 120 (one hundred and twenty) days for remedying the Technology Partner Default or for satisfying any conditions specified in Para C of the Recital, and in the event of the Technology Partner not curing its default

within such Cure Period, the Government shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 35.

9.3 Release of Performance Security

The Performance Security shall remain in force and effect during the Supply Period and shall be released upon the Maintenance Security coming into force and effect; provided, however, that the Performance Security shall not be released if the Technology Partner is in breach of this Agreement. Upon request made by the Technology Partner for release of the Performance Security along with the particulars which establish satisfaction of the requirements specified under this Clause 9.3, the Government shall release the Performance Security forthwith.

9.4 References to Performance Security

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

Article 10. Manufacturing Unit

10.1 Site for Manufacturing Unit

All the Trains to be supplied against this Agreement shall be manufactured at the nominated facilities at Government's {Marathwada Rail Coach Factory (MRCF)/Latur or Integral Coach Factory (ICF)/Chennai} (the "**Manufacturing Unit**"). The details of site along with available existing infrastructure/facilities at the Manufacturing Unit whose access and right to use shall be provided to the Technology Partner for manufacture of the Trains are set forth in Schedule B.

10.2 Upgradation and development of the Manufacturing Unit

10.2.1 The Technology Partner shall develop the Manufacturing Unit by equipping the same with required M&Ps and developing/upgrading other facilities, to make it suitable for manufacturing/assembly of at least 30 Trains per annum and testing thereof. The Manufacturing Unit shall have the following and such other facilities as may be necessary for the said capacity:

- a) Shell Integration Activity (assembly of under frame, side wall and end wall in body jig);
- b) Assembly of the shell on bogie (given that the fully assembled bogie, in full or in partially Knocked Down form shall be supplied by the Technology Partner or their selected vendor(s) from their premises);
- c) Load Testing of bogies, if required;
- d) Cabling/wiring of the cars(the harnesses sourced from vendor(s));
- e) assembly shops for assembling the various sub-assemblies of a Train- including toilets, illumination, seats/berths, ventilation, panelling, amenities, etc;
- f) paint shop, as required;
- g) necessary testing facilities for energizing the Trains, carrying out high voltage tests and requisite function tests;
- h) suitable warehousing facilities to stock the bought out components;
- i) standby power back up facility suitable to its requirements;
- j) an administrative office, canteen, rest rooms and staff facilities as required under Applicable Laws;
- k) internal telecommunication infrastructure catering to basic telephony and other value added telecom services;
- l) required training facilities; and
- m) any minor construction or alteration, if required, may be carried out by the Technology Partner at its own cost and expense to meet manufacturing/assembling/testing of the Trains.

10.2.2 All provisions of Clauses 12.2.5 to 12.2.9 related to Trainset Depots shall apply *mutatis mutandis* for the Manufacturing Unit also.

10.3 Obligations prior to upgradation of the Maintenance Unit

10.3.1 No later than 45 (forty five) days from the Appointed Date, the Technology Partner shall submit to the Government a detailed Plan about the proposed Upgradation and Development Work at the Manufacturing Unit as per Clause 10.2 above. The detailed

Plan shall include general arrangement drawings (GAD), Layout, methodology, quality assurance procedures and development time schedule for the proposed Work. Upon review of the detailed Plan, Government may provide its comments on the same to ensure compliance with the provisions of this Agreement and Standards.

- 10.3.2 The Government will provide to the Technology Partner, access to the site for the Manufacturing Unit as per Clause 10.1, within 45 (forty five) days from the date of Appointed Date. The access granted by this Agreement to the Contractor shall always be subject to existing functions of the Government for and in respect of the adjacent land and other shared facilities (if any). It is expressly agreed that the access granted hereunder shall terminate automatically and forthwith, upon the completion of the Supply Period or Termination of this Agreement, whichever is earlier.
- 10.3.3 The Technology Partner shall complete the development/upgradation of the Manufacturing Unit as per the provisions of Clause 10.2.1 above in accordance with the development time schedule so as ensure manufacture and supply of the Prototype and series supply as per the specified time schedule. Subject to provision of timely access to the site for the Manufacturing Unit as per Clause 10.3.2 above, the Technology Partner agrees and undertakes that the required infrastructure/facilities shall be completed within the specified time schedule. In the event of delay by the Government in provision of site of Manufacturing Unit or infrastructure, as the case may be, the Technology Partner's obligation to complete the development/upgradation of the Manufacturing Unit along with time schedule for supply of Trains, shall be extended by a period equal to the delay hereunder.
- 10.3.4 The Technology Partner shall undertake and perform all such acts, deeds and things as may be necessary or required before commencement of up-gradation/development under and in accordance with the provisions of this Agreement, the Applicable Laws and Applicable Permits.
- 10.3.5 Government shall provide free Electricity and water supply at the Manufacturing Unit for manufacture and supply of the Trains as per Good Industry Practices.

10.4 Payment

- 10.4.1 Lump sum payments of {Rs 30 (thirty) / 75 (seventy five²)} crore or total cost of Project Assets provided by the Technology Partner, whichever is lower, shall be paid to the Technology Partner upon developing/upgrading the Manufacturing Unit {MRCF/Latur or ICF/Chennai)}. The above payment will become due and payable upon commencement of manufacturing/assembly activity of carbody of Trains at the Manufacturing Unit and successful commissioning of at least 80% worth of the planned facilities to be provided by the Technology Partner at the Manufacturing Unit. The Technology Partner shall submit documentary evidence to establish the cost of all such Project Assets to the Government.
- 10.4.2 The above lump sum payment together with the payment towards Train Price as per Article 23 shall deem to include all cost towards development/upgradation of the Manufacturing Unit in terms of the provisions specified in this Article. On completion of

²Rs 30 crore in case of MRCF/Latur and Rs 75 crore in case of ICF/Chennai

the Supply Period or Termination of this Agreement, whichever is earlier, all such M&Ps, jigs & fixtures along with all other facilities for manufacturing/assembly and testing of the Trains at the Manufacturing Unit shall be handed over to the Government in accordance with the provisions specified in Article 29 and 36.

Article 11. {Not Used}

Article 12. Trainset Depots

12.1 Depot Sites

- 12.1.1 Government shall provide earmarked space and facilities in its nominated Government Depots to the Technology Partner for undertaking maintenance of the Trains under Maintenance Obligation (the “**Depot Sites**”).
- 12.1.2 Details like locations, site conditions and other details with respect to each Depot Site are specified in Schedule B. It is agreed that the locations of the Depot Sites specified in Schedule B are indicative at this stage and locations of the Depot Sites actually provided to a Technology Partner shall be decided during Design Stage, depending upon number of Trains under Maintenance Obligation, site availability and operational requirements.
- 12.1.3 The Government will provide basic civil structure with electrical fittings, EoT cranes (only in Workshop Bay), track, OHE, Signalling for the following covered facilities at each of the Depot Sites:
- i. Inspection Bay with inspection pits (~ 2 Lines of full Train length per Depot) ,
 - ii. Workshop Bay with pits (if required, capacity will be determined based on maintenance schedule and holding of the Depots),
 - iii. shed for drop table,
 - iv. shed for pit wheel lathe

Further Government will also make available unfurnished covered space of about 1200 m² at each Trainset Depot to the Technology Partner for setting up offices and Stores.

12.2 Trainset Depots

- 12.2.1 Technology Partner shall upgrade and equip the Depot Sites by providing Depot M&Ps and all other required facilities as per the Good Industry Practices to set up modern maintenance facilities for discharging its Maintenance Obligations under and in accordance with the provisions of this Agreement (the “**Trainset Depots**”).
- 12.2.2 Subject to the provisions of Clause 12.1.3 and 12.3.5, the Technology Partner shall install and operate at the Trainset Depots, all the required maintenance infrastructure and equipment necessary for performing its Maintenance Obligations as per the Good Industry Practices. The machinery & plants and other special tools, jigs, fixtures, gauges, testing and diagnostic equipment etc. provided at the Trainset Depots shall be sufficient to undertake comprehensive maintenance of the Trains including all inspections, scheduled/unscheduled maintenance and overhauling of the Train equipment like bogies, carbody, wheels sets, traction motors etc. in depots. The Technology Partner shall submit a list of all such equipment along with documentary evidence of their procurement price.
- 12.2.3 Each Trainset Depot ordinarily shall have following minimum facilities:

SN	Facilities
1	Inspection Bay with minimum 2 Lines of 16/20 car length having 3 tier arrangement for enabling simultaneous inspection cum maintenance of the under-frame, interior and the roof of the Train

2	Drop table to facilitate repair or replacement of bogies, wheels, traction motors, transformers etc.
3	Tandem Pit Wheel lathe
4	Train Washing and heavy cleaning facilities
5	Wayside Wheel profile and defects measurement system
6	Work and test benches
7	Material handling facilities
8	Pneumatic lines;
9	Evacuation plant for sucking out dust/dirt;
10	Battery charging facilities;
11	Measuring, testing and recording devices;
12	Special tools, jigs and fixtures, as necessary;
13	Training facilities along with Driving Simulators and other computer-based training aids
14	Hardware and software for the Maintenance Management Information System (MMIS).

- 12.2.4 One or more Trainset Depots shall have, in addition, covered Workshop Bay with 2/3 lines and jacks for simultaneous lifting of 8 car train formation and all other required facilities to undertake IOH and POH of the Trains.
- 12.2.5 All the above items supplied by the Technology Partner, shall be accompanied by drawings, manuals and full operating instructions to enable them to be used by suitably skilled staff in a non-hazardous manner and to achieve the desired result in terms of accuracy and quality.
- 12.2.6 Technology Partner shall be responsible for the maintenance and operation of all such plant and machineries of the Trainset Depots which are used for maintenance of the supplied Trains including those provided by the Government like EOT or any other M&Ps as per the details indicated in Schedule B.
- 12.2.7 Technology Partner shall also be responsible for internal security, day to day cleaning and housekeeping of the Trainset Depots including maintenance and operation of the Mechanical, Electrical, Pneumatic, Plumbing, Fire Fighting systems at the Trainset Depots so as to keep such facilities in healthy condition and in accordance with the Applicable Laws.
- 12.2.8 Technology Partner shall be responsible for internal shunting of Trains within Depot except those shunting which involves placement/withdrawal of Trains on the mainline.
- 12.2.9 For the avoidance of doubt, it is clarified that Government may utilise the facilities at Trainset Depots for maintenance of trains, other than those which are under the Maintenance Obligation of the Technology Partner, on terms and conditions as may be mutually agreed between the Parties.

12.3 Obligations prior to upgradation of the Trainset Depots

- 12.3.1 No later than 2 (two) months from the date of finalization of a Depot Site as per Clause 12.1.2 above, the Technology Partner shall submit to the Government details about all the facilities to be provided/upgraded, its general arrangement drawings, Layout, methodology, quality assurance procedures and development time schedule for completion of the Trainset Depots duly considering the Train delivery schedule.
- 12.3.2 The Government will provide to the Technology Partner access to the Depot Sites as per requirements to equip, upgrade, maintain and operate the Trainset Depots. The access granted by this Agreement to the Technology Partner shall always be subject to existing functions of the Government for and in respect of the land adjacent to the Depot Sites are not obstructed. It is expressly agreed that the access granted hereunder shall terminate automatically and forthwith, upon the Termination of this Agreement for any reason whatsoever.
- 12.3.3 Before granting the access, the Government Representative and the Technology Partner shall, on a mutually agreed date and time, inspect the Depot Sites and prepare a memorandum containing an inventory of the Depot Sites including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Depot Sites. Such memorandum shall have appended thereto an appendix (the “**Appendix**”) specifying in reasonable detail those parts of the Depot Sites to which access has not been granted to the Technology Partner.
- 12.3.4 The Technology Partner shall undertake and perform all such acts, deeds and things as may be necessary or required before commencement of upgradation work under and in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permit.
- 12.3.5 All works related to tracks, OHE and Signalling for developing the Trainset Depots as per the approved Layout including maintenance thereof shall be undertaken by the Government at its own expense.
- 12.3.6 Government shall provide free Electricity and water Supply at the Trains Depots for maintenance of the Trains as per Good Industry Practices.

12.4 Payment

- 12.4.1 Lump sum payments of Rs 35 (thirty five) crore or total cost of Project Assets provided by the Technology Partner, whichever is lower, shall be paid to the Technology Partner upon upgrading each Trainset Depot. The above payment will become due and payable upon commencement of regular maintenance of Trains at the Trainset Depots and successful commissioning of at least 80% worth of the planned facilities to be provided by the Technology Partner at the Trainset Depots. The Technology Partner shall submit documentary evidence to establish the cost of all such Project Asset to the Government.
- 12.4.2 The above lump sum payment together with the payment towards Maintenance Fee as per Article 25 shall deem to include cost towards procurement and provisioning of all the Project Assets provided by the Technology Partner and accordingly at the end of the Maintenance Period all such Project Assets shall be handed over to the Government.

Article 13. Supply of Prototype

13.1 Design of Prototype

13.1.1 Technology Partner has option to use either its own design or alternatively it can use IR's design (of chair car version) for the following items for manufacture of the supplied Sleeper Trains:

- (i) Car body shell
- (ii) Bogie

List of existing design/drawings of chair car version of the above two items are attached as part of Schedule E. Technology Partner opting to use IR design for these items shall suitably modify the same for Sleeper Trains and responsibility to ensure compliance with overall Specifications and Standards shall solely rest with the Technology Partner. All such design/drawings shall remain the property of the Government and Technology Partner cannot use the same for any other purpose without written approval from the Government.

For avoidance of doubt, subject to meeting the supply timelines specified in Clause 15.1.1, the Technology Partner, otherwise eligible to supply Trains as per its own design, may initially supply upto 15 Trains as per IR design as above and remaining quantity of Trains shall be supplied as per its own design.

13.1.2 In order to ensure satisfactory execution of the Contract, completion of works within specified targets, and quality in design, manufacturing and execution of Works, the Technology Partner shall, within 30 days of the Appointed Date, develop and submit a list of Management Plans and Design Documents. The submission plan shall consider phase-wise submission of the Plans, Designs and other documents considering the delivery schedule specified in Clause 15.1.

13.1.3 Two sets of duly licensed simulation software along with requisite hardware, capable of simulating the performance and running characteristics of the Train and the details of the section (gradients, curvatures, speed restrictions, stoppages etc.) on which running simulation is to be done with validated results. The output of such simulation software shall include speed versus time curve, distance versus time curve, sectional running times, energy consumption, energy regeneration, specific energy consumption, emergency braking distance, attacking and exit speed for a specified length and gradient, average speed of the Train for a given length of section and for different weights of trains and different topography of the section and other features in conformity with Good Industry Practice.

13.1.4 The Government shall depute a team of experts for undertaking a review of the Designs and Drawings and for submitting a report (the "**Design Report**") to the Parties within 4(four) weeks from the date of receiving of such Designs and Drawings. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement, safety requirements and interface management with other sub-systems. It is further agreed that any failure or omission of the Government to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such Designs and Drawings by the Government.

- 13.1.5 Pursuant to the Design Report or otherwise, the Technology Partner shall carry out such modifications in the designs as may be necessary for conforming with the Specifications and Standards.
- 13.1.6 The Government expressly agrees that it shall, subject to the provisions of this Agreement and Applicable Laws, maintain the confidentiality of Designs and Drawings provided to it by the Technology Partner and shall endeavour to protect the Intellectual Property rights of the Technology Partner therein.

13.2 Tests at the Manufacturing Unit

- 13.2.1 Prior to supply of sample Sleeper Trains that conforms to the Specifications and Standards (the “**Prototype**”), the Technology Partner shall carry out, or cause to be carried out, at its own cost and expense, all Tests in accordance with Schedule-F and such other tests that the Technology Partner may consider necessary to demonstrate that the Prototype comply in all respects with the Specifications and Standards. The Technology Partner shall provide to the Government forthwith, a copy of the Technology Partner’s report on each test containing the results of such test and the action, if any, that it proposes to take for compliance with the Specifications and Standards.
- 13.2.2 The Technology Partner shall, with at least 4 (four) weeks’ notice to the Government, convey the date, schedule and type of tests that shall be conducted on the Prototype at the Manufacturing Unit and the Government shall have the right, but not the obligation, to nominate its representative to witness the tests.
- 13.2.3 The Government’s Representative shall make a report forthwith on the tests witnessed by it and provide a copy thereof to the Parties for review. The Technology Partner shall, prior to dispatch of the Prototype for delivery to the Government, procure that defects and deficiencies, if any, are rectified and the Prototype conforms to the Specifications and Standards.
- 13.2.4 In the event of failure of any Test specified in Clause 13.2.1, the Technology Partner shall rectify the defect and conduct repeat Tests, and the procedure specified in this Clause 13.2 shall apply *mutatis mutandis* to such repeat Tests.

13.3 Supply of Prototype

- 13.3.1 The Technology Partner shall supply 2 (two) Prototype Trains to the Government for tests and trials to be conducted in accordance with the provisions of Clause 13.4. First Prototype Train shall be supplied within a period of 16 (sixteen) months from the Appointed Date, in case the Technology Partner opts to use IR’s design as per Clause 13.1.1 above, or a period of 22 months from the Appointed Date, in case the Technology Partner uses its own design as per Clause 13.1.1 above, as the case may be. Second Prototype shall be delivered within 30 days of the date of delivery of the First prototype. In case, the Technology Partner opts to supply initial few Trains as per IR design and remaining Trains as per its own design, supply timelines for supply of Prototype as per Technology Partner’s own design may be suitably modified subject to meeting the supply timelines specified in Clause 15.1.1.
- 13.3.2 In the event that the Technology Partner fails to deliver the Prototype within the period specified in Clause 13.3.1, the Government may recover from the Technology Partner an

amount equal to 0.5 % (zero point five per cent) of the Train Price as Damages for each and every week, or part thereof, by which the delivery of the Prototype is delayed; provided that such Damages shall not exceed 10% (ten per cent) of the Train Price.

13.4 Tests on Government's railway lines

- 13.4.1 For determining that each Prototype conforms to Specifications and Standards, the Government shall, within 120(one hundred and twenty) days of the delivery of the Prototype, conduct, or cause to be conducted, on the Government's railway lines, the Tests specified in Schedule-F.
- 13.4.2 In the event of failure of any Test specified in Clause 13.4.1, the Technology Partner shall rectify the defect and present the Prototype for repeat Tests, and the procedure specified in this Clause 13.4 shall apply *mutatis mutandis* to such Tests.
- 13.4.3 The Parties agree that the Tests pursuant to Clauses 13.4.1 and 13.4.2, as the case may be, shall be conducted at the cost and expense of the Government.
- 13.4.4 In the event the Technology Partner is not satisfied with the Tests conducted by the Government, it may cause such Tests to be carried out by an independent agency and submit the results thereof to the Government. The Parties expressly agree that if the Government does not accept the results of such independent agency, the Dispute Resolution Procedure shall apply.
- 13.4.5 The Parties expressly agree that either Party shall notify the other Party of the date, time and place of Tests so as to afford sufficient opportunity to the other Party to witness the Tests.

13.5 Acceptance of Prototype

- 13.5.1 The Government shall, no later than 30 (thirty) days after successful completion of the Tests, communicate its acceptance of the Prototype to the Technology Partner.
- 13.5.2 Prior to accepting the delivery of Prototype, the Government may inspect the Prototype in accordance with the provisions of Clause 14.3.
- 13.5.3 The Parties expressly agree that conducting of Tests by the Government shall not relieve or absolve the Technology Partner of its obligations and liabilities under this Agreement in any manner whatsoever.

13.6 Independent Safety Assessor (ISA)

- 13.6.1 The Technology Partner shall engage an internationally recognized Independent Safety Assessor (CISA), for the audit and Safety Certification of Rolling Stock Design. The CISA should have accreditation as per ISO/IEC 17065 with experience of certifying rolling stock of operating/design speed 160/176 kmph or more against minimum 3 (three) different projects out of which at least one project must be executed in a country other than home country of such ISA. The Technology Partner shall obtain Government's prior approval before selecting such agency so as to ensure independence and avoid possible conflict of interest between Technology Partner's ISA and Government's ISA. The audit report & certificate from this agency shall be submitted by the Technology Partner to the Government.
- 13.6.2 The Government shall also engage an Independent Safety Assessor (GISA) who shall:

- (a) assess the System Assurance Requirements, Specifications and design of all safety related subsystems, which are issued as part of various tender documents, review the preliminary technical risk assessments as well as high level safety, performance and functionality criteria requirements.
- (b) review the consolidated list of Project Hazards and mitigation measures thereof, identify list of unmitigated hazards to be taken care of by operating procedures;
- (c) review / witness the results of relevant system and integration tests. Oscillation trials may be conducted by an Independent Agency/GISA. Oscillation trial results shall be reviewed by the GISA.
- (d) GISA should also conduct final review, verification and assessment of safety acceptance of complete system for issuing Safety Certificate to put the system in revenue operation.
- (e) It shall be incumbent upon the Technology Partner to provide all the necessary information sought by ISA appointed by the Government (GISA)/Independent Agency in all phases of project including design, installation, testing and commissioning phase and assist in visits (if required) of GISA to their premises for the purpose of assessment.

13.7 Payment for Prototype

The Government shall, upon successful completion of the tests specified in Clause 13.2, pay the Train Price to the Technology Partner for supply of the Prototype. For the avoidance of doubt, the Parties agree that upon delivery of the Prototype and furnishing of a bank guarantee for a period of 180 (one hundred and eighty) days and for an equivalent amount, substantially in the form specified in Schedule-I, the Government shall make forthwith apart payment equal to 90% (ninety per cent) of the Train Price and the balance remaining shall be paid upon acceptance of the Prototype pursuant to Clause 13.5, whereupon the bank guarantee furnished hereunder shall be released. The Parties further agree that in the event of failure of the aforesaid tests, the validity of the bank guarantee shall be extended for a similar period.

Article 14. Delivery of Trains

14.1 Delivery of Trains

It is expressly agreed by the Parties that the Technology Partner shall, upon receiving the acceptance specified in Clause 13.5 and pursuant to the Supply Programme specified in Article 15, deliver the Trains to the Government. The period of delivery of Trains hereunder shall be deemed to commence from the date of acceptance of the first Prototype as per Clause 13.5 and shall expire upon completion of the period of supply specified in Article 15 (the “**Supply Period**”).

14.2 Tests

Subject to the provisions of Clause 13.4.5, the Technology Partner shall, at its own cost and expense, subject each Train and its sub-systems to the Tests specified in Schedule-F and shall provide a copy of the results of such Tests along with the delivery of that Train. For the avoidance of doubt, the Parties agree that the Government shall, on a best-effort basis, procure for the Technology Partner, use of Government’s railway lines for conducting Tests that demonstrate the capacity of a Train to attain its maximum speed in accordance with the Specifications and Standards. In the event such a railway line is not procured hereunder, such Tests shall be deemed to be waived.

14.3 Inspection by the Government

- 14.3.1 The Government or its authorised representative may inspect each Train, in accordance with the provisions of this Clause 14.3, prior to accepting its delivery and communicating the acceptance thereof for the purposes of payment of Train Price.
- 14.3.2 The Technology Partner shall notify the Government, no later than 45 (forty five) days prior to the date of delivery of a Train, its delivery schedule for that Train. The Government may, in its discretion, nominate its representative to carry out an inspection on the scheduled date and time.
- 14.3.3 The Technology Partner shall provide the assistance necessary for the Government Representative to perform the inspection in accordance with the provisions of this Clause 14.3. For the avoidance of doubt, the Parties expressly agree that such inspection shall be completed within a period of 72 (seventy two) hours.
- 14.3.4 The Government Representative may submit an inspection report for each Train specifying the defects and deficiencies that shall be rectified by the Technology Partner in conformity with the Specifications and Standards (the “**Punch List**”). The Technology Partner shall, no later than the first Maintenance Schedule, rectify each item in the Punch List and notify the Government of the same. The Government may, in its discretion, inspect the Train within 30 (thirty) days thereof and in the event that any defect or deficiency specified in the Punch List shall have remained without rectification thereof, the Technology Partner shall pay to the Government as Damages, 0.5% (zero point five per cent) of the Maintenance Fee of that Train for each day of delay until all items of the Punch List are rectified.

14.4 Safety Inspection

The inspection specified in Clause 14.3, shall include a safety inspection in accordance with the provisions of Article 18. In the event that the Government Representative is satisfied that the Train does not conform with the Specifications and Standards, and is, therefore, not safe for entry into service, he shall convey to the Parties forthwith, a report stating in detail the reasons for his findings. The Technology Partner shall, notwithstanding anything to the contrary contained in this Article 14, withdraw the Train for rectification thereof and present it to the Government for inspection after the defects or deficiencies have been rectified.

14.5 Point of delivery

It is expressly agreed by the Technology Partner that all Trains shall be delivered at the Manufacturing Unit.

14.6 Transfer of Title

The Parties expressly agree that all rights, title and interest in the Trains shall be transferred to the Government at the point of delivery in accordance with the terms of this Agreement, free and clear of all Encumbrances.

Article 15. Supply Programme

15.1 Supply Programme

15.1.1 The Technology Partner shall supply Sleeper Trains in accordance with the following annual programme (the “**Supply Programme**”):

Year of Supply Period	Minimum Number of Trains to be supplied*
First Year	18
Second Year	24
Third Year onwards*	30

** till supply of all the Train as per Clause 2.1 along with Option Quantity if any*

15.2 Option Clause

15.2.1 The Government may, in its discretion, increase the ordered quantity to be supplied against this Agreement. For avoidance of doubt, the additional quantity against this Option Clause can either be in the form of 16 Car Train or 4 Car non-driving basic unit of such Trains for the purpose of augmenting a 16 Car Train to 20 or 24 Car Train, as the case may be. Total number of Cars forming part of such Trains or 4 Car basic units shall not exceed 30% of the total number of Cars in the initial ordered quantity of Trains.

15.2.2 Procurement Price and Maintenance Fee of such a 4 Car basic unit shall be determined separately equal to 23.75% (i.e. 95% of 25%) of the Price of a 16 car Train determined as per Article 23 and 25 respectively and all other provisions of this Agreement shall apply *mutatis mutandis*. All Cost towards augmentation of a 16 Car Train to 20 or 24 Car Train including testing and commissioning of such augmented Train shall be deemed to be included in this price.

15.3 Damages for delay

15.3.1 The Technology Partner agrees that in the event of its failure to deliver a Train in accordance with the Supply Programme set forth in Clause 15.1, the Government shall recover from the Technology Partner an amount equal to 0.5% (zero point five per cent) of the Train Price as Damages for each and every week, or part thereof, by which the delivery of that Train is delayed; provided that such Damages shall not exceed 10% (ten per cent) of the Train Price.

15.3.2 The Parties hereto expressly agree that if the delay in supply of a Train has arisen solely on account of any cause attributable to the Government, or on account of Force Majeure, the Technology Partner shall be entitled to such additional time as may be reasonably required by the circumstances of the case.

Article 16. Change of Scope

16.1 Change of Scope

- 16.1.1 The Government may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services in the Trains or at the site of Manufacturing Unit and Trainset Depots, which are not included in the Scope of the Agreement as contemplated by this Agreement (the “**Change of Scope**”). Any such Change of Scope shall be made in accordance with the provisions of this Article 16 and the costs thereof shall be expended by the Technology Partner and reimbursed to it by the Government in accordance with this Article 16.
- 16.1.2 If the Technology Partner determines at any time that a Change of Scope is necessary for providing safer and improved Trains, including upgradation of any technology thereof, it shall by notice in writing require the Government to consider such Change of Scope. The Government shall, within 30 (thirty) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefore in accordance with this Article 16 or inform the Technology Partner in writing of its reasons for not accepting such Change of Scope or for accepting such Change of Scope without any payment obligations hereunder, as the case may be.

16.2 Procedure for Change of Scope

- 16.2.1 In the event of the Government determining that a Change of Scope is necessary, it shall issue to the Technology Partner a notice specifying in reasonable detail the works and services contemplated there under (the “**Change of Scope Notice**”).
- 16.2.2 Upon receipt of a Change of Scope Notice, the Technology Partner shall, with due diligence, provide to the Government 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 Schedule, the Operations, the services or the requirements of the Specifications and Standards; and
 - (b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Government to its contractors, along with the proposed premium/discount on such rates and the requirement of any tests.
- 16.2.3 Upon receipt of information set forth in Clause 16.2.2, if the Government decides to proceed with the Change of Scope, it shall convey its preferred option to the Technology Partner, and the Parties shall thereupon make good faith efforts to agree upon the time and costs for implementation thereof and the revision of Train Price arising thereof. Upon reaching an agreement, the Government shall issue an order (the “**Change of Scope Order**”) requiring the Technology Partner to proceed with the performance thereof. In the event that the Parties are unable to agree, the Government may, by issuing a Change of Scope Order, require the Technology Partner to proceed with the performance thereof pending resolution of the Dispute.

16.2.4 The provisions of this Agreement, insofar as they relate to Tests, shall apply *mutatis mutandis* to any modifications in the Trains undertaken by the Technology Partner under this Article 16.

16.3 Payment for Change of Scope

16.3.1 Within 15 (fifteen) days of issuing a Change of Scope Order relating to the Manufacturing Unit or any Trainset Depot, the Government shall make a part payment to the Technology Partner in a sum equal to 20% (twenty per cent) of the cost of Change of Scope as agreed hereunder upon furnishing of a bank guarantee by the Technology Partner for an equivalent amount and for a period of 180 (one hundred and eighty) days, substantially in the form specified in Schedule-I. The Technology Partner shall, after commencement of work, present to the Government bills for payment in respect of the works and services in progress or completed works and services, as the case may be, supported by such Documentation as is reasonably sufficient for the Government to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Government shall disburse to the Technology Partner such amounts as are reasonable and after making a proportionate deduction for the advance payment made hereunder, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure.

16.3.2 If any works or services, undertaken in accordance with this Article 16, shall modify any Train, the cost thereof shall be paid by revising the Train Price hereunder.

16.4 Restrictions on certain works

16.4.1 Notwithstanding anything to the contrary contained in this Article 16, the cumulative costs relating to all the Change of Scope Orders for provision of works and services shall not exceed Rs 25 (twenty five) crore for the Manufacturing Unit and Rs 20 (twenty) crore for each of the Trainset Depots during the Agreement Period.

16.4.2 Notwithstanding anything to the contrary contained in this Article 16, the Technology Partner shall be entitled to nullify any Change of Scope Order if the cumulative costs relating to all the Change of Scope Orders shall cause the Train Price to exceed 5% (five per cent) thereof in any continuous period of 2 (two) years immediately preceding the date of such Change of Scope Order.

16.5 Power of the Government to undertake works

16.5.1 Notwithstanding anything to the contrary contained in Clauses 16.1.1 and 16.3, the Government may, after giving notice to the Technology Partner and considering its reply thereto, award such works or services to any person on the basis of open competitive bidding; provided that the Technology Partner shall have the option of matching the first ranked bid in terms of the selection criteria, and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Technology Partner shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten per cent) thereof. It is also agreed that the Technology Partner shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder. For the avoidance of doubt, the Government acknowledges and agrees that it shall not undertake

any works or services under this Clause 16.5.1 if such works or services cause a Material Adverse Effect on the Technology Partner.

- 16.5.2 The works undertaken in accordance with this Clause 16.5 shall conform to the Specifications and Standards and shall be carried out in a manner that minimizes the disruption in operation of the Trains. The provisions of this Agreement, insofar as they relate to Tests, shall apply *mutatis mutandis* to the works carried out under this Clause 16.5.

Article 17. Maintenance of Trains

17.1 Maintenance of Trains

- 17.1.1 The Technology Partner shall maintain the Trains supplied in accordance with the provisions of this Article 17, the Specifications and Standards, the Maintenance Manual and the Maintenance Requirements (the “**Maintenance Obligations**”).
- 17.1.2 The Government shall pay to the Technology Partner a Maintenance Fee, as specified in Article 25, for performance of its Maintenance Obligations.

17.2 Maintenance Period

- 17.2.1 The Technology Partner shall, for each and every Train, perform its Maintenance Obligations until its design life of 35 Years from the date of acceptance of such Train (the “**Maintenance Period**”).
- 17.2.2 The Maintenance Obligations of the Technology Partner shall cease upon completion of the Maintenance Period and no Maintenance Fee shall be due and payable thereafter.

17.3 Maintenance Manual

The Technology Partner shall prepare a repair and maintenance manual (the “**Maintenance Manual**”) for the predictive, preventive and curative maintenance of Trains in conformity with Good Industry Practice and the provisions of this Article 17. The Technology Partner shall provide 10 (ten) copies of a provisional maintenance manual (the “**Provisional Maintenance Manual**”) to the Government no later than 6 months before the scheduled date of supply of the prototype Train. The Government may review the Provisional Maintenance Manual and convey its comments to the Technology Partner within a period of 60(sixty) days from the date of receipt thereof. It is expressly agreed that the review by the Government of the Provisional Maintenance Manual shall not relieve or absolve the Technology Partner of its obligations and liabilities hereunder in any manner whatsoever. The Technology Partner shall revise the Provisional Maintenance Manual, as may be necessary, and provide 20 (twenty) copies of the Maintenance Manual in English and Hindi/Regional language, accompanied by an electronic copy thereof, before the supply of the Prototype Train. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 17.3 shall apply, *mutatis mutandis*, to such revision. For the avoidance of doubt, the Parties expressly agree that until the Maintenance Manual is provided hereunder, the Provisional Maintenance Manual shall apply.

17.4 Spares and Consumables

- 17.4.1 During the Maintenance Period, the Technology Partner shall, at its own cost and expense, replace and install materials, which get consumed or wear out beyond serviceable limits in the normal course of operation of a Train, including oils, lubricants, brake blocks and pads, pantograph strips, rubber parts and hoses, fuses, light fittings, bulbs, seats, curtains, filters, toilet fittings, look out glass, pneumatic valves, miniature circuit breaker, printed circuit boards, bearings and insulators etc. (the “**Consumables**”).

- 17.4.2 During the Maintenance Period, the Technology Partner shall, at its own cost and expense, replace any part or equipment of a Train, which may be defective or worn out, by a substitute thereof (the “**Spares**”) which may be necessary for the efficient operation and maintenance of a Train. For avoidance of doubt the Spares and Consumables are not mutually exclusive.
- 17.4.3 The Parties expressly agree that the Technology Partner shall, during the Maintenance Period of a Train, supply and install Spares like cattle-guards, gear case, axle-boxes, bogie liners, brake gear components, wind shield, window glasses, doors and under-gear piping/cabling at its own cost and expense; provided, however, that if such supply and installation have arisen on account of reasons not attributable to the Technology Partner, the obligations hereunder shall form part of **Unscheduled Maintenance** and the cost thereof shall be borne in accordance with the provisions of Clause 17.6.4.
- 17.4.4 The Technology Partner shall maintain a sufficient inventory of Consumables and Spares for timely repair and maintenance of Trains.

17.5 Scheduled Maintenance

- 17.5.1 Save and except as otherwise provided in this Agreement, the Technology Partner shall perform its Maintenance Obligations at the periodic intervals set forth in the Maintenance Manual (the “**Scheduled Maintenance**”). The date on which Scheduled Maintenance shall be due hereunder (the “**Due Date**”) shall be determined by the Technology Partner based on RAMS analysis as per applicable Standards. Provided that no Scheduled Maintenance in the Trainset Depot shall be ordinarily required before 31st (thirty first) day from the immediately preceding Scheduled Maintenance or travel of 40,000 km (forty thousand kilometres) after such Scheduled Maintenance whichever is earlier. Periodic Overhauling and Intermediate Overhauling involving scheduled lifting of the Train/cars shall not be required before every 6th year and 3rd year respectively.
- 17.5.2 The Technology Partner shall, before commencement of every scheduled service of a Train, undertake an examination of its compliance with Safety Requirements and the availability of all passenger amenities in the Train (the “**Travel-Worthiness**”) and shall furnish a Certificate of Travel-Worthiness to the driver of the Train prior to its departure on a scheduled service. Provided, however, that such examination of safety compliance and certification thereof shall not be required more than once in a day.

17.6 Unscheduled Maintenance

- 17.6.1 Any maintenance or repair of a Train, not being Scheduled Maintenance, and arising during the Maintenance Period out of any reason including Failure, unsatisfactory performance, defects, deficiencies, accident, cattle run over (CRO), vandalism, natural calamity, fire, riots, arson or negligence, shall be undertaken by the Technology Partner as unscheduled maintenance (the “**Unscheduled Maintenance**”). The Parties expressly agree that any and all Unscheduled Maintenance shall be undertaken promptly to procure efficient, safe and reliable operation of the Train.
- 17.6.2 For the purposes of Maintenance Obligations, failure of a Train, save and except when it occurs solely as a result of any breach of this Agreement by the Government including the negligence of its staff (other than those IR Staff assigned to work under the

Technology Partner) or due to Force Majeure shall mean any of the following events (the “**Failure**”), namely:

- (a) detention of a Train at any railway station for more than 15 (fifteen) minutes on account of a malfunction;
- (b) detention of a Train at any place, not being a railway station, for more than 15 (fifteen) minutes on account of a malfunction;
- (c) inability to achieve at least 75% (seventy five per cent) of the maximum speed it is ordinarily required to achieve during a scheduled service in accordance with Specifications and Standards;
- (d) delay of more than 15 (fifteen) minutes in commencing the scheduled service of a Train due to a malfunction therein;
- (e) cumulative loss of 15 (fifteen) minutes or more, due to malfunction in a Train, causing a delay exceeding 15 (fifteen) minutes in reaching the destination of a scheduled service; or
- (f) cancellation of a scheduled service of a Train due to malfunction.

17.6.3 Any and all **Unscheduled Maintenance**, shall form part of **Maintenance Obligations** and shall be undertaken by the Technology Partner at its own cost and expense, save and except as provided in Clause 17.6.4.

17.6.4 If the total cost of all **Unscheduled Maintenance** arising out of reasons not attributable to the Technology Partner, including accidents, CRO, vandalism, arson, riots or natural calamities, shall in any Accounting Year, exceed 0.25% (zero point two five per cent) of the sum of **Applicable Train Price** computed for each Train in the Fleet, such excess cost shall be reimbursed by the Government to the Technology Partner and shall be deemed to be additional **Maintenance Fee** for the respective year. For the avoidance of doubt and by way of illustration, if the total cost of all **Unscheduled Maintenance** in an Year is Rs 27crore (Rupees twenty seven crore) and the **Applicable Train Price** for the Fleet is Rs 10,000 crore (Rupees ten thousand crore), the Government shall pay to the Technology Partner a sum of Rs 2crore (Rupees two crore) as additional **Maintenance Fee** for **Unscheduled Maintenance**.

17.6.5 The Parties agree that the Technology Partner shall be entitled to undertake **Unscheduled Maintenance** of a Train which is in a railway yard or in other than nominated Government depot, and the Government hereby agrees and undertakes to provide the Technology Partner and its representatives access for such maintenance, subject to any operational or safety constraints. The Parties also agree that on the request of the Technology Partner, the Government shall, on a best effort basis, provide its lifting facility (crane / jacks) to the Technology Partner on payment of Rs 10,000 (Rupees ten thousand) per hour, and in the event of such facility not being available at other than the nominated Government depot, the Technology Partner may, in its discretion and subject to the provisions of Clause 20.2.3 (c), require the Government to move the Train to the Trainset Depot. The Parties further agree that the aforesaid amount of Rs 10,000 (Rupees ten thousand) shall be indexed to WPI as on the Base Index Date and revised on the Reference Index Date for the relevant Year.

- 17.6.6 Notwithstanding anything to the contrary contained in this Agreement, the Technology Partner shall, upon arrival of a Train at the Trainset Depot for carrying out Unscheduled Maintenance, commence the repair thereof as soon as may be; provided that if the Train is determined to be fit for withdrawal or condemnation, as the case may be, the provisions of Article 28 shall apply.
- 17.6.7 The Technology Partner shall, within 2 (two) days of arrival of a Train at a Trainset Depot for Unscheduled Maintenance arising out of the reasons specified in Clause 17.6.4, furnish to the Government in reasonable detail the particulars of defects, deficiencies or damages and the estimated cost of repair thereof. Upon completion of repairs hereunder, the Technology Partner shall furnish to the Government the actual cost of repairs as determined in accordance with the provisions of Clauses 27.2 and 27.3.
- 17.6.8 The Government may at any time inspect the Train to verify the defect, deficiency or damages reported in accordance with the Clause 17.6.7.
- 17.6.9 The Government shall, no later than 30 (thirty) days of submission of particulars with respect to the actual cost of Unscheduled Maintenance of a Train, convey its acknowledgment thereof and in the event such costs exceed the limit specified in Clause 17.6.4, the Technology Partner may submit its invoice for payment in accordance with the provisions of Clause 26.1. The Parties agree that the Technology Partner shall return to the Government all the released systems, parts and components that have been replaced by it in the course of such Unscheduled Maintenance.

17.7 Washing Lines

- 17.7.1 The Technology Partner shall be provided a non-exclusive right for use of Washing Lines attached to terminal stations and equipped with platform at floor level, pit, electricity and water supply as per the details indicated in Schedule-B on an “as is where is” basis. The Government may provide the use of Washing Lines to the Technology Partner at any railway station on the Operational Route from where a scheduled service shall originate or terminate, as the case may be.
- 17.7.2 Ordinarily, one such Washing Line location with two washing lines shall be nominated for every 10 (ten) Trains. Thus, a Technology Partner entrusted with Maintenance of 100 trains may have to undertake the activities indicated in Clause 17.7.3 at about 10 such Washing Line locations. Ordinarily, every Train shall be made available at the washing Line on an average once every 4-6 (four to six) days for the Technology Partner to perform the activities indicated in Clause 17.7.3 below.
- 17.7.3 All activities related to Inspections and minor repairs required to be performed, prior to the scheduled maintenance at the Trainset Depots to provide travel worthiness certificate for trips, shall be undertaken by the Technology Partner at the Washing Lines, Platform or yards, as the case may be. However, outside washing of Trains shall ordinarily be done using IR’s Auto Coach Washing Plants wherever installed.
- 17.7.4 The Technology Partner shall, in accordance with Good Industry Practice, undertake inspection and minor repairs, if any, of each Trains, within 3 (three) hours from the time of their arrival at the Washing Lines.

- 17.7.5 The Government shall, upon request from the Technology Partner to this effect, provide covered space of at least 20 (twenty) square meters at each Washing Line location to facilitate the Technology Partner in performing its Maintenance Obligations. If required, the Technology Partner can upgrade the available Washing Line by providing additional facilities at his own cost with prior approval of the Government.
- 17.7.6 Technology Partner shall be responsible for all cleaning and washing requirements of the Train except for en-route cleaning and cleaning/washing of the Trains at stations/yards.

17.8 Stabling of Trains

The Government shall, at its own risk and cost, stable each Train before and after completion of a scheduled service or during any break-down in such service for any reason whatsoever. Provided, however, that the Technology Partner shall keep the Train under its lock during the period of stabling.

17.9 Maintenance Requirements

The Technology Partner shall procure that at all times during the Maintenance Period, each and every Train conforms to the maintenance requirements set forth in Schedule-G (the “**Maintenance Requirements**”).

17.10 Prompt response and Helpline

- 17.10.1 The Technology Partner shall engage trained personnel and constitute teams comprising of at least 1(one) such personnel to provide a prompt response for Unscheduled Maintenance and for conforming with the Maintenance Requirements (the “**Prompt Response Teams**” or “**PR Teams**”). The Technology Partner may provide PR Team along with a suitable maintenance kit, on Trains as per requirement during the course of its scheduled service. One seat/berth will be provided for such purpose, if required, at no cost.
- 17.10.2 The PR Team shall, to the extent possible, repair and rectify the defects and deficiencies, including those specified in the Maintenance Requirements, and notify the Government of further repairs, if any, required to be taken for safe and reliable operation of the Train. Upon receiving such report, the Parties agree to take action as may be necessary to procure safe and reliable operation of the Train.
- 17.10.3 The Parties expressly agree that the Technology Partner may, with the consent of the Government, employ other forms of prompt response teams which can be demonstrated as equivalent to or better than the provisions specified herein.
- 17.10.4 To provide maintenance support in accordance with the provisions of this Agreement, the Technology Partner shall, without prejudice to its Maintenance Obligations, set up and operate, round-the-clock, a control centre (the “**Helpline**”) connected to the operation control centres of the Government (the “**Operation Control Centres**”) and the PR Teams of the Technology Partner. The Helpline shall provide such advice and guidance to the Operation Control Centres and PR Teams as may be necessary for performance of the Maintenance Obligations hereunder.

17.11 Damages for breach of Maintenance Obligations

- 17.11.1 In the event that the Technology Partner fails to repair or rectify any defect or deficiency in a Train, as set forth in the Maintenance Requirements and within the period specified therein, it shall be deemed to be in breach of this Agreement and the Government shall be entitled to recover Damages, to be calculated and paid for each day of non-compliance until the breach is cured, at the higher of (a) 0.01% (zero point zero one per cent) of the Maintenance Fee of that Train, and (b) 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the Government. Recovery of such Damages shall be without prejudice to the rights of the Government under this Agreement, including the right of Termination thereof. For the avoidance of doubt, the Parties agree that the Damages specified in this Clause 17.11.1 shall not be due and payable for and in respect of any day that includes a Non-Available Hour.
- 17.11.2 The Damages set forth in Clause 17.11.1 may be assessed and specified forthwith by the Government; provided that the Government may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Technology Partner is otherwise in compliance with its Maintenance Obligations. The Technology Partner shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

17.12 De-commissioning due to Emergency

- 17.12.1 If, in the reasonable opinion of the Government, there exists an Emergency which warrants de-commissioning of its Train, the Government shall be entitled to de-commission the Train for so long as such Emergency and the consequences thereof warrant; provided that such de-commissioning and particulars thereof shall be notified by the Government to the Technology Partner without any delay, and the Technology Partner shall diligently carry out and abide by any reasonable directions that the Government may give for dealing with such Emergency.
- 17.12.2 The Technology Partner shall re-commission the Train as quickly as practicable after the circumstances leading to its de-commissioning have ceased to exist or have so abated as to enable the Technology Partner to re-commission the Train and shall notify the Government of the same without any delay.

17.13 Epidemic Defect Warranty

- 17.13.1 The Technology Partner agrees that if any identical defect or deficiency occurs on more than 10% (ten per cent) of equipment or parts in any rolling period of 36 (thirty six) months commencing from the second Year of the Supply Period, such defect or deficiency shall be deemed to be an epidemic defect (the “**Epidemic Defect**”) and the Technology Partner shall cover such Epidemic Defect under an epidemic defect warranty to be maintained by the Technology Partner for the Maintenance Period (the “**Epidemic Defect Warranty**”).
- 17.13.2 If during the Agreement Period, the Government notifies the Technology Partner that an Epidemic Defect has occurred, the Technology Partner shall remedy such Epidemic Defect on all Trains, and shall undertake such other work and measures as may be necessary for enabling the Trains to continue in operation in conformity with the Maintenance Obligations until such defects are rectified. Within 30 (thirty) days of

having been notified of such Epidemic Defect by the Government, the Technology Partner shall submit to the Government a programme for rectification of the Epidemic Defect as soon as practicable and the Technology Partner and the Government shall negotiate and agree to such programme in good faith, within a period of 30 (thirty) days after receipt of such programme.

- 17.13.3 If the Technology Partner and the Government are unable to agree to a programme within 30 (thirty) days of its receipt, the Government may rectify the defect, or cause rectification of the defect, at the Technology Partner's cost and expense, and recover the same from the Technology Partner in accordance with Clause 17.14, along with the Damages specified therein.

17.14 Government's right to take remedial measures

In the event the Technology Partner does not maintain and/or repair the Trains in conformity with the provisions of this Agreement and the Maintenance Manual, and fails to commence remedial works within 15 (fifteen) days of receipt of a notice in this regard from the Government, the Government shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Technology Partner, and to recover its cost from the Technology Partner. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Technology Partner to the Government as Damages.

17.15 Overriding powers of the Government

- 17.15.1 If in the reasonable opinion of the Government, the Technology Partner is in material breach of its obligations under this Agreement and, in particular, the Maintenance Obligations, and such breach is causing or is likely to cause material hardship to the Government or render the use of a Train unsafe for operation, the Government may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice, require the Technology Partner to take reasonable measures immediately for rectifying or removing such hardship or unsafe condition, as the case may be.
- 17.15.2 In the event that the Technology Partner, upon notice under the provisions of this Clause 17.15, fails to rectify or remove any hardship or unsafe situation affecting the operation of any Train, within 15 (fifteen) days from the date of the notice, the Government may exercise overriding powers under this Clause 17.15 and take over the performance of any or all the obligations of the Technology Partner to the extent deemed necessary by it for rectifying or removing such hardship or unsafe situation; provided that the exercise of such overriding powers by the Government shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that for any costs and expenses incurred by the Government in discharge of such obligations, the Government shall be entitled to recover them from the Technology Partner in accordance with the provisions of Clause 17.14 along with the Damages specified therein.
- 17.15.3 In the event of a national emergency, civil commotion or any such other event, the Government may take over the performance of any or all the obligations of the Technology Partner to the extent deemed necessary by it, and exercise such control over

the Trainset Depot or Trains or give such directions to the Technology Partner as may be deemed necessary; provided that the exercise of such overriding powers by the Government shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Government. It is agreed that the Technology Partner shall comply with such instructions as the Government may issue in pursuance of the provisions of this Clause 17.15, and shall provide assistance and cooperation to the Government, on a best effort basis, for performance of its obligations hereunder.

17.16 Restoration of loss or damage to the Trains

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

17.17 Modifications to the Trains

The Technology Partner shall not carry out any material modifications to the Trains save and except where such modifications are necessary for the Trains to operate in conformity with the Specifications and Standards, Maintenance Obligations, Good Industry Practice and Applicable Laws; provided that the Technology Partner shall notify the Government of the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions that the Government may make within 15 (fifteen) days of receiving the Technology Partner's proposal. For the avoidance of doubt, the Parties agree that the cost of any modifications hereunder shall be borne by the Technology Partner.

17.18 Operation by the Government

- 17.18.1 The Government shall, at all times, operate the Trains in accordance with Good Industry Practice.
- 17.18.2 For guidance of the operating staff of the Government, the Technology Partner shall provide an operation manual (the "**Operation Manual**") for Trains. The Technology Partner shall provide 10 (ten) copies of a provisional operation manual (the "**Provisional Operation Manual**") to the Government along with the delivery of the Prototype hereunder. The Government may review the Provisional Operation Manual and convey its comments to the Technology Partner within a period of 60(sixty) days from the date of receipt thereof. The Technology Partner shall revise the Provisional Operation Manual, as may be necessary, and provide 300 (three hundred) copies of the Operation Manual, in English and Hindi, no later than the 2rd(second) anniversary of the Appointed Date along with soft copy thereof. The Operation Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 17.18.2 shall apply, *mutatis mutandis*, to such revision.
- 17.18.3 The Operation Manual shall include:
 - (a) instructions to Loco Pilots for operation of the Train;

- (b) instructions for troubleshooting;
- (c) dos and don'ts for Loco Pilots;
- (d) safety precautions to be taken by the driver;
- (e) rating and layout of equipment;
- (f) operating limits of installed systems;
- (g) control and safety features of the Train;
- (h) instructions to Loco Pilots to retrieve the Train in case of axle lock;
- (i) Travel Worthiness Certificate which shall include the items to be checked before issue of that Certificate;
- (j) Safety certification to be undertaken by the safety certification official after each Scheduled Maintenance;
- (k) instructions for Train Operations with limited or degraded or deteriorated features and special conditions for clearance of failed rolling stock from section; and
- (l) a chapter on handling of Trains for rescue and restoration during accidents.

17.19 Excuse from performance of obligations

17.19.1 The Technology Partner shall not be considered in breach of its obligations under this Agreement if any Train is not available for operation on account of any of the following:

- (a) an event of Force Majeure;
- (b) measures taken to ensure the safe operation of Trains except when unsafe conditions occurred because of failure of the Technology Partner to perform its obligations under this Agreement; or
- (c) compliance with a request from the Government or the directions of any Government Instrumentality.

Provided, that any such non-availability and particulars thereof shall be notified by the Technology Partner to the Government without any delay:

Notwithstanding the above, the Technology Partner shall keep all unaffected Trains available for operations.

17.20 Maintenance Report

No later than 7 (seven) days after a Scheduled Maintenance, Unscheduled Maintenance or any maintenance carried out by the PR Team, as the case may be, the Technology Partner shall submit, in such form as the Government may specify, a report containing the particulars of maintenance carried out by the Technology Partner including:

- (a) an analysis of the defects and deficiencies affecting the performance or safe operation of the Train;
- (b) time of arrival of the Train in the Trainset Depot or the arrival of the PR Team at the site of Failure, as the case may be, and the time of departure of the Train from the Trainset Depot or the time of rectification of malfunction by the PR Team at

the site of Failure, as the case may be, counter signed by the Loco Pilot of the Train or by any other Railway official in the event the Loco Pilot is not available; and

- (c) details of Failure including date and time of such Failure, counter signed by the Government Representative.

17.21 Predictive Maintenance

- 17.21.1 The Technology Partner shall perform predictive maintenance in line with the best practices in railway industry to reduce safety hazards, operation downtime and minimizing the Total Cost of Ownership (TCO). The Technology Partner shall deploy, a continuous remote monitoring and diagnostic predictive maintenance tool that enables turn asset condition data into action for operators and maintainers by using advanced algorithms to predict the future state of given component, its remaining useful life.
- 17.21.2 The predictive maintenance tool shall be able to monitor in real time situation to better support train operation in case of problem during running.
- 17.21.3 The predictive maintenance information shall be shared on the web access so that the status and location of trains can be monitored in real time. It shall enable receive of data from the on-board systems on the trains in operation in order to capture failure and operating data while the train is still in operation.
- 17.21.4 The data base of failure and events produced by the tool shall allow detecting, developing anomalies and failure trend at fleet level. The tool shall not only monitor fleet health but also assist with advanced data analytics to predict their remaining useful life of assets, so they are replaced on a truly as-needed basis.
- 17.21.5 The system should have the minimum following features:
 - (a) Real time condition monitoring of train system
 - (b) Real time data transmission
 - (c) Web-based user interface with various dashboard views, Fleet status, event status, fleet location/map etc/
 - (d) Data analysis/reporting function
 - (e) Alert function ('watched faults') and e-mail notifications
 - (f) Data import/export via XML and other data formats.

The comprehensive predictive maintenance system must focus on asset parameters which will provide meaningful indicators in detecting faults, particularly those with high risk or impact.

17.22 Maintenance Management Information System

- 17.22.1 Daily monitoring of all Trains shall be carried out from the Depot, by making use of event and fault data recorded in TCMS. TCMS fault & event data collected through remote monitoring or otherwise shall be integrated with 'Maintenance Management Information System' provided in the Depot by Technology Partner on real time basis. This data shall be interfaced with Government's Asset Management System and authorised Government representative shall be able to access the TCMS fault & event data on real time.

17.22.2 The Technology Partner shall provide a Maintenance Management Information System (MMIS) that shall be used for maintenance monitoring as per Article 19 along with the following, at the least:

- (a) Scheduling and controlling Maintenance work, outstanding work and new work planning;
- (b) Technical incident, failures, fault control and monitoring including trend analysis;
- (c) Materials management;
- (d) Configuration control;
- (e) Reporting the following:
 - i. Fleet status;
 - ii. Kilometres travelled;
 - iii. RAMs and Key Performance Indicators;
 - iv. Preventive Maintenance Summary Report;
 - v. Weekly/monthly incidents (failures/faults/unusual) statement;
 - vi. Corrective Maintenance Summary Report;
 - vii. Action plan follow up report;
- (f) Effective Maintenance planning and efficient fault diagnostics; and
- (g) Reactive monitoring to identify past or existing faults, failures or incidents leading to a Service Affecting Failure.

17.23 Obsolescence Management

- (a) The Technology Partner is required to manage Obsolescence of all Equipment, Spares and Consumables to enable the trains to continue in service for the duration of the Contract.
- (b) This Obsolescence management service must include:
 - i. timely identification of any Obsolete items of Equipment;
 - ii. development of mitigation strategies to minimise the impact of the imminent Obsolescence on trains or Equipment operations or availability, including:
 - establishing alternative supply paths;
 - provision of equivalent or interchange Parts or Equipment; and
 - development of replacement products or design Modifications to accept market available alternatives.
- (c) The Obsolescence management service must form part of the cost included in the contract, and separate additional cost claims must not be contemplated over the duration of the contract.

Article 18. Safety Requirements

18.1 Safety Requirements

The Technology Partner shall develop, implement and administer a safety programme for providing a safe environment on or about the Trains, Manufacturing Unit, Trainset Depots, Washing Lines and shall comply with the safety requirements set forth in this Article 18 and Schedule-H (the “**Safety Requirements**”).

18.2 Guiding principles

- 18.2.1 Safety Requirements aim at reduction in injuries, loss of human life and damage to property resulting from accidents on account of the Trains or at the Manufacturing Unit or any of the Trainset Depots/Washing Lines, irrespective of the person(s) at fault.
- 18.2.2 Safety Requirements shall apply to all phases of manufacture, supply, operation and maintenance of the Trains including upgradation of the Manufacturing Unit and Trainset Depots with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.

18.3 Obligations of the Technology Partner

- 18.3.1 The Technology Partner shall abide by the following to ensure safety of the Trains, Manufacturing Unit, Trainset Depots, Washing Line, human life and property:
- (a) instructions issued by Commissioner of Railway Safety or the Government;
 - (b) Applicable Laws and Applicable Permits;
 - (c) A.C. Traction Manual, General Rules and Subsidiary Rules issued by the Government;
 - (d) provisions of this Agreement;
 - (e) relevant standards/guidelines contained in internationally accepted codes; and
 - (f) Good Industry Practice.
- 18.3.2 The Technology Partner shall impart safety training to its employees and shall at all times be responsible for observance of safety procedures by its staff, sub-contractors and agents.
- 18.3.3 The Technology Partner shall be responsible for undertaking all the measures under its control to ensure safe operation of Trains.
- 18.3.4 The Technology Partner agrees that the Government shall be entitled to inspect any Train to verify adherence to Safety Requirements and the Technology Partner shall be obliged to facilitate such inspection and implement the corrective measures identified in such inspection.

18.4 Safety measures during upgradation of Manufacturing Unit and Trainset Depots

The Technology Partner shall, while upgrading the Manufacturing Unit and Trainset Depots, provide an environment for procuring the safety of human life and property in accordance with Applicable Laws and Good Industry Practice.

18.5 Annual Safety Report

- 18.5.1 The Technology Partner shall submit to the Government before the 31st (thirty first) May of each Accounting Year, an annual report in 10 (ten) copies containing, without limitation, a detailed listing and analysis of all accidents of the preceding Accounting Year and the measures taken by the Technology Partner for averting or minimizing such accidents in future (“**Annual Safety Report**”).
- 18.5.2 Once in every Accounting Year, a safety audit shall be carried out by the Government. It shall review and analyse the Annual Safety Report and accident data of the preceding Accounting Year, and undertake an inspection of the Trains and Project Assets. The Government shall provide a safety report recommending specific improvements, if any, required to be made in the Trains and Project Assets. Such recommendations shall be implemented by the Technology Partner in accordance with Safety Requirements, Specifications and Standards and Applicable Laws.

Article 19. Monitoring of Maintenance

19.1 Monthly status reports

- 19.1.1 During the Maintenance Period, the Technology Partner shall, no later than 7 (seven) days after the end of each month, furnish to the Government a monthly report stating in reasonable detail the maintenance services performed by the Technology Partner on the Trains and the defects and deficiencies that require rectification. The report shall also include manpower utilization of IR Staff, Key Performance Indicators achieved by the Trains and the compliance or otherwise with the Maintenance Requirements and Maintenance Manual. The Technology Partner shall promptly give such other relevant information as may be required by the Government.
- 19.1.2 The monthly report specified in Clause 19.1.1 shall also include a summary of the key operational hurdles and deliverables expected in the succeeding month along with strategies for addressing the same and for otherwise improving the Technology Partner's operational performance.

19.2 Report of unusual occurrence

The Technology Partner shall, prior to the close of each day, send to the Government, e-mail, a report stating the Failures, accidents and unusual occurrences relating to the Trains. A weekly and monthly summary of such reports shall also be sent within 3 (three) days of the closing of each week and month, as the case may be. For the purposes of this Clause 19.2, unusual occurrences on the Trains shall include:

- (a) Failure of Trains;
- (b) accidents involving malfunction of Trains;
- (c) trouble on Trains during operation; and
- (d) Unscheduled Maintenance performed on Trains.

19.3 Inspection

The Government shall be entitled to inspect the Trains after any Scheduled or Unscheduled Maintenance, as the case may be, for evaluating the compliance of Trains with the Maintenance Obligations. It shall make a report of such inspection (the "**Maintenance Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Obligations and notify the Technology Partner of the same for taking remedial measures in accordance with the provisions of Clause 19.5. For the avoidance of doubt, any inspection undertaken after a Train is declared available under the provisions of Clause 20.2.2 shall be deemed to form part of Available Hours under the provisions of Clause 20.2.1.

19.4 Tests

For determining that the maintenance of Trains conforms to the Maintenance Obligations, the Government may require the Technology Partner to carry out, or cause to be carried out, the tests specified by it in accordance with Good Industry Practice. The Technology Partner shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Government and furnish the results of

such tests to the Government within 15 (fifteen) days of such tests being conducted. One half of the costs incurred on such tests shall be reimbursed by the Government to the Technology Partner. Provided, however, that the Government shall not bear any costs hereunder for and in respect of Tests which have failed.

19.5 Remedial measures

- 19.5.1 The Technology Partner shall repair or rectify the defects or deficiencies, if any, set forth in the Maintenance Inspection Report or in the test results referred to in Clause 19.4 and furnish a report in respect thereof to the Government within 15 (fifteen) days of receiving the Maintenance Inspection Report or the test results, as the case may be.
- 19.5.2 The Government shall require the Technology Partner to carry out or cause to be carried out tests, at the cost of the Technology Partner, to determine whether the remedial measures have brought the Trains into compliance with the Maintenance Obligations and Safety Requirements, and the procedure set forth in this Clause 19.5 shall be repeated until the maintenance of Trains conforms to the Maintenance Obligations and Safety Requirements. In the event that remedial measures are not completed by the Technology Partner in conformity with the provisions of this Agreement, the Government shall be entitled to recover Damages from the Technology Partner under and in accordance with the provisions of Clause 17.11. For the avoidance of doubt, the remedial measures hereunder and the tests relating thereto shall be deemed as part of *Unscheduled Maintenance*, and the period for which the Train remains out of service on account thereof shall be included in *Non-Available Hours*.

19.6 Responsibility of the Technology Partner

- 19.6.1 It is expressly agreed between the Parties that any inspection carried out by the Government or the submission of any Maintenance Inspection Report by the Government as per the provisions of this Article 19 shall not relieve or absolve the Technology Partner of its obligations and liabilities hereunder in any manner whatsoever.
- 19.6.2 It is further agreed that the Technology Partner shall be solely responsible for adherence to the Key Performance Indicators specified in Article 20.

Article 20. Key Performance Indicators

20.1 Key Performance Indicators

Without prejudice to the obligations specified in this Agreement, the Technology Partner shall maintain the Trains such that each Train achieves the performance indicators comprising Availability, Reliability, upkeep of Cars and conformity with ISO certification, as specified in this Article 20 (the “**Key Performance Indicators**”).

20.2 Availability

- 20.2.1 During an Accounting Year, a Train shall be deemed to be available for operation at all times, save and except the Non-Available Hours specified in Clause 20.2.2, and the sum of hours in an Accounting Year when such Train is deemed to be available shall be reckoned as available hours (the “**Available Hours**”) of such Train. For the avoidance of doubt and by way of illustration, Available Hours of a Train accepted on 15.05.2024 (as per Clause 14.6) shall be: (i) sum of hours minus the Non-Available Hours from 15.05.2024 to 31.03.2025 during Accounting Year 2024-25; and (ii) sum of hours minus the Non-Available Hours from 01.04.2025 to 31.03.2026 during Accounting Year 2025-26.
- 20.2.2 The Parties agree that the period for which a Train is deemed to be not available for operation (the “**Non-Available Hours**”) shall be reckoned as follows:
- (a) in the case of Scheduled Maintenance, the period between entry of a Train at the Trainset Depots and the time when it is declared by the Technology Partner as available for operation;
 - (b) in the case of Unscheduled Maintenance arising out of the reasons specified in Clause 17.6.4, the period between entry of a Train at the Trainset Depots and the time when it is declared by the Technology Partner as available for operation; provided that the total period of Unscheduled Maintenance to be reckoned hereunder shall be subject to the remission specified in Clause 20.2.3;
 - (c) in the case of Unscheduled Maintenance arising out of reasons attributable to the Technology Partner, the period between the time of occurrence of an event that renders the Train unfit or unavailable for service and the time when it is declared by the Technology Partner as available for operation; provided that the time taken for transporting the Train from its location to the Trainset Depots or other government depot, as the case may be, shall be deemed to be 24 (twenty four) hours and shall form part of Non-Available Hours herein;
 - (d) in the case of delay by the Technology Partner in supply of a Payable Spare, one-half of the delay determined under Clause 27.2.7; and
 - (e) in case of delay in washing and maintenance at the Washing Lines exceeding 3(three) hours, one half of such delay.
- 20.2.3 In computing the Non-Available Hours for the Unscheduled Maintenance specified in Sub-clause (b) of Clause 20.2.2, the following time shall be excluded by way of remission, namely:
- (a) In the event that the Unscheduled Maintenance is caused by an event or reason specified in Clause 17.6.4, 85% (eighty five per cent) of the Non-Available Hours; and

- (b) upto 1 (one) hour of Unscheduled Maintenance per month, as specified in Clause 17.6.5; and
- (c) 85% (eighty five percent) of the time taken for moving a Train from other Government depot to the Trainset Depots for any repair or rectification which cannot be undertaken at such other Government depot.

- 20.2.4 The Parties agree that the sum of Available Hours of all the Trains in the Fleet as a proportion of the total hours (Available Hours + Non-Available Hours) of all the Trains in the Fleet in any Accounting Year, shall be deemed to be the availability of the Fleet in that Accounting Year (the “**Availability**”). For the avoidance of doubt and by way of illustration, if the total hours of all the Train in the Fleet in an Accounting Year are 100 (one hundred) and if their Available Hours are 96 (ninety six), the Availability hereunder shall be 96% (ninety six per cent).
- 20.2.5 The Technology Partner shall procure that the Availability of the Fleet in every Accounting Year shall be at least 95% (ninety five per cent) (the “**Guaranteed Availability**”).
- 20.2.6 The Technology Partner agrees that for every 1% (one percent) reduction as compared to the Guaranteed Availability of a Train, it shall pay to the Government 4% (four percent) of the Maintenance Fee as Damages.

20.3 Declaration of Availability

The Technology Partner shall notify, no later than 7 (seven) days prior to the commencement of a month, its maintenance schedule for that month including expected time required for such scheduled maintenance and any reduction in Availability arising as a result thereof. The Technology Partner shall, as soon as may be, notify any modifications of its maintenance schedule or time required for such maintenance along with justification for the same thereof.

20.4 Reliability

- 20.4.1 The Parties agree that the Reliability of the Fleet shall be monitored, during the Reliability demonstration period, after completion of cumulative 10,00,000 (ten lakh) kilometres by the Fleet or 12 (twelve) months from the date of commercial operation of the first Train, whichever is later (the “**Reliability Demonstration Period**”). Reliability of the Fleet in any Accounting Year during the Reliability Demonstration Period shall be measured in terms of the mean distance travelled between two Failures (the “**Reliability**”) i.e. the Reliability of the Fleet shall be computed by dividing the cumulative distance travelled by all the Trains in the Fleet in an Accounting Year by aggregate number of Failures of all the Trains in the Fleet in such Accounting Year. For the avoidance of doubt and by way of illustration, if the cumulative distance travelled by all the Trains in the Fleet is 5,00,00,000 km (five crore kilometres) and aggregate number of Failures of all the Trains in the Fleet in such Accounting Year is 125 (one hundred and twenty five), then the Reliability of such Fleet in such Accounting Year shall be 400,000 km (four hundred thousand kilometres).
- 20.4.2 The Technology Partner shall procure that the Reliability of the Fleet shall not be less than 200,000 km (two hundred thousand kilometres) (the “**Guaranteed Reliability**”). For every 20,000 km increase or decrease in the average annual Kilometer earning of the

Fleet with respect to the normative distance specified in Clause 25.4.2, this Guaranteed Reliability shall be increased or decreased, as the case may be, by 10,000 km.

20.4.3 The Technology Partner agrees that for every 20,000 km (twenty thousand kilometres) reduction in the Guaranteed Reliability of the Fleet, it shall pay to the Government 2% (two per cent) of the Maintenance Fee as Damages.

20.5 Upkeep of Cars

20.5.1 The Technology Partner shall at all times procure that:

- (a) the toilets in the Train are clean, hygienic and free of odour when the Train is turned out from the Trainset Depot;
- (b) the interiors of Cars are clean, hygienic and free of odour when the Train is turned out from the Trainset Depot;
- (c) there is adequate lighting inside the Cars, in conformity with the Specifications and Standards;
- (d) the temperature inside the Trains is maintained in accordance with Maintenance Requirements;
- (e) there are adequate fire safety systems in the Train;
- (f) all train information systems, public address systems and lighting systems function efficiently and their availability is no less than 98% (ninety eight per cent) in a month;
- (g) complaints relating to the Cars are addressed promptly;
- (h) there are no sharp edges that can injure the Users; and
- (i) there are no such conditions as per the list in Schedule D, affecting reliability, safety and passenger amenities.

20.5.2 The Technology Partner shall ensure and procure compliance of each of the Key Performance Indicators specified in this Clause 20.5 and for repeated shortfall in performance during a quarter, as may be determined by the Government for reasons to be recorded in writing based on passenger feedback and inspections by the Government, it shall pay Damages equal to 2% (two per cent) of the Maintenance Fee for such shortfall in any such performance indicator.

20.6 KPI based adjustments in Maintenance Fee

20.6.1 Any recoveries, required to be made in accordance with this Article 20, shall be made for each Accounting Year on an annual basis and adjusted in the Maintenance Fee payable to the Technology Partner for the Fleet.

20.6.2 The aggregate of all Damages payable by the Technology Partner for an Accounting Year, in terms of Clauses 20.2.6, 20.4.3 and 20.5.2 shall be deemed as the aggregate Damages for the Fleet (the “**Aggregate Damages**”).

20.6.3 In the event that the amount payable by the Technology Partner in accordance with the provisions of this Clause 20.6 shall exceed 10% (ten per cent) of the total Maintenance Fee payable for the Fleet during a Year, the amount payable in excess of such 10% (ten

per cent) shall be carried forward to the subsequent Accounting Year. For the avoidance of doubt, if the amount carried forward under this Clause 20.6.3 cannot be adjusted in the subsequent year, it shall continue to be carried forward to the following Accounting Years until it is fully adjusted, but only within the ceiling of 10% (ten per cent) per annum specified herein above.

20.6.4 The Parties expressly agree that notwithstanding anything to the contrary contained in this Agreement, for computing the Damages for any Accounting Year under this Article 20, the Maintenance Fee shall be deemed to be 3.25% (five per cent) of the Applicable Train Price.

20.6.5 In the event of Termination occurring prior to completion of the Agreement Period, the Damages specified in this Article 20 shall be due and payable on a proportionate basis and calculated as if they are applicable to the mean of the performance of the Fleet.

20.7 Monthly Report

The Technology Partner shall, no later than 7 (seven) days after the end of each month, furnish to the Government a report stating the Key Performance Indicators of each Train as measured on a daily basis. The Technology Partner shall promptly give such other relevant information as may be required by the Government.

Article 21. Operational Routes

21.1 Operational routes for Trains

The Parties agree that the Government shall operate the Trains on any operational BG network of Indian Railways.

21.2 Washing of Trains

The Government may provide the use of Washing Lines to the Technology Partner at any railway station on the Operational Route from where a scheduled service shall originate or terminate, as the case may be.

Article 22. Manpower and Training

22.1 Maintenance Organisation

- 22.1.1 The Technology Partner shall establish a maintenance organisation of his own, for the maintenance of Trains, and shall be responsible in all respect to ensure compliance of the Maintenance Obligations. The Technology Partner shall be fully responsible to ensure availability of adequate number of suitably qualified and competent manpower for carrying out all supervision and other maintenance obligations during the Maintenance Period.
- 22.1.2 The maintenance staff shall be given initial training and periodic refresher courses to upgrade their knowledge of the Train equipment, trouble shooting, condition monitoring, predictive maintenance etc.
- 22.1.3 Government will provide its maintenance staff as per the details specified in this Article to undertake Train maintenance who shall work under the supervision of the Technology Partner.

The Technology Partner shall also make use of predictive maintenance by making use of monitoring tools of the Maintenance Management Information System, On-board diagnostic System on the Trains and any other means which the Technology Partner shall adopt to minimize maintenance manpower requirement.

The Technology Partner shall replace promptly, its such experts who are not considered suitable by the Government.

The Technology Partner shall provide, at least 6 months before the expected commissioning date of the first Train, a Maintenance Quality Plan which shall detail all the operative methods and rules to meet the contractual obligations including the following:

- (a) Maintenance Organization and Responsibilities
- (b) Management of all the Maintenance activities, inclusive of daily handover/takeover procedures of Trains for Operations.
- (c) Quality monitoring, management and improvement of the Maintenance tasks.
- (d) Configuration management plan for the Assets under maintenance.
- (e) Maintenance Safety Management Plan.
- (f) Reporting, inclusive of Monitoring of Maintenance as per Article 19.

22.2 Government Staff

- 22.2.1 The Government will, in accordance with the provisions of this Article 22, provide its technical staff (the “**IR Staff**”) to the Technology Partner for manufacturing of Trains and performing its Maintenance Obligations. These IR staff shall work under the supervision and technical control of the Technology Partner for manufacturing and maintenance of the Trains. IR staff shall be shortlisted in accordance with the criteria mutually agreed between the Parties. Normally, such selected staff shall not be recalled by the Government before 5 (five) years unless recalled on ground of disciplinary rules or found ineligible otherwise with mutual agreement of both Parties. Technology Partner may

however request for repatriation of any particular IR Staff on grounds of indiscipline/poor performance and the same shall be considered by the Government on merits.

- 22.2.2 Total 0.5 (zero point five) IR Staff shall be provided for maintenance of each car forming part of the Trains under the Maintenance obligation of the Technology Partner. About 20% of such IR staff will be in the supervisory category and remaining in Technician category. The Parties agree that this number of IR staff including number of supervisory staff provided to the Technology Partner as per this Clause can be varied by upto 30% with mutual agreement and in such event the benefitting Party shall compensate the other Party by way of adjustment in the Maintenance Fee, by an amount calculated at the rate of Rs 80 thousand per man-month for each supervisory staff and Rs 60 thousand per man-month for each technician staff. For avoidance of doubt, and by way of illustration, in case 50 supervisor and 180 Technicians are provided as IR Staff for maintenance of total 30 Trains comprising 480 cars instead of 48 supervisors and 192 Technicians as per the above norm, adjustment, by way of deduction at the rate of Rs 1.6 lakh per month towards additional 2 Supervisors and reimbursement at the rate of Rs 7.2 lakh per month towards shortfall of 12 Technicians, shall be made in the Maintenance Fee.
- 22.2.3 IR staff at the rate of 5 man-months (excluding training period) shall be provided at the Manufacturing Unit for manufacture/assembly of each Cars forming part of the Trains to be supplied under this agreement. For avoidance of doubt, and by way of illustration, total 160 IR Staff (24 Trains/Year x 16 Cars/Trains x 5 man-month/Car ÷ 12 months/Year) staff shall be provided for manufacturing of total 24 Trains in a Year. Other provisions of Clause 22.2 shall apply *mutatis mutandis* to this Clause.
- 22.2.4 Salary and other fixed allowances shall be paid to such staff by the Government as per extent rules. Technology Partner shall pay to each such staff expenses on account of Travel for official purposes, Personal Protective Equipment, Uniform, Canteen/Recreational etc. as per Technology Partner's norms. For avoidance of doubt, Railway duty pass may be issued in favour of IR staff in connection with travel for the purpose of maintenance of Trains.
- 22.2.5 Technology Partner shall arrange required training as provided to their own staff according to their assigned duties. Technology Partner shall provide various office facilities to them as provided to its own staff. Technology Partner shall furnish the appraisal report of such IR Staff periodically. The appraisal system shall be decided by the Government in consultation with the Technology Partner.

22.3 Training

- 22.3.1 The Technology Partner shall plan and design the training modules including Lesson Plan for Government Staff for manufacturing/assembly, operation, maintenance, overhauling, testing and repair of Trains, machinery and plants, Driving Simulator, special tools, equipments including for the items supplied by various OEM/Vendors. The training shall also focus on maintenance monitoring and asset management system. The training shall include initial, on-the-job as well as Refresher training.
- 22.3.2 The objective of training of train operating staff is that the batches of drivers and instructors who will operate the trains should be able to run the trains safely under all operating conditions. The Technology Partner's Instructors shall provide training in

classroom, Driving Simulator and actual driving of trains. The instructors shall also train the operating staff in trouble shooting of the faults and emergency procedures. The training should enable them to acquire full capability for identification and troubleshooting of the faults within specified duration.

- 22.3.3 The Technology Partner shall provide Training Manual for use by the Government for conducting in-house training. The Manuals shall cover all requirements specified in this chapter. The Technology Partner shall review and modify the Training manual based on Government's feedback. Government shall have right to use all the training material including all the manuals for imparting training to other Government Staff.

22.4 Training Facilities

- 22.4.1 The Technology Partner shall develop/upgrade one training facilities at any of the Trainset Depot Sites (the "**Training Facilities**"), no later than 18 (eighteen) months from the Appointed Date, for training of Government staff in accordance with the provisions of this Agreement.

- 22.4.2 The Technology Partner shall procure that the following minimum facilities shall be installed and operated at the training premises:

- (a) one driving simulator, as specified in Clause 22.4.3;
- (b) one computer based training module, as specified in Clause 22.4.4; and
- (c) any other facilities and infrastructure required for conducting the training in accordance with the provisions of this Agreement.

For avoidance of doubt, the driving simulator can be provided at location other than the location of Training Facilities, as per operational requirement.

- 22.4.3 A motion driving simulator to be provided by the Technology Partner shall be a computer controlled visual system showing the track and signals ahead and interfaced with the driver's controls. Scope and brief technical requirements of the Simulator are indicated in Schedule K. The simulator shall include:

- (a) A driver's desk mounted within a simulated driving cab;
- (b) a driver instructor's console for inputting information and observing the driver's technique along with printing facilities for recording the proceedings;
- (c) adequate margin in design of software and hardware to accommodate minor changes/ addition of features in future, if required;
- (d) a design that shall accommodate track/signalling/OHE features of the section through video generated graphics; and
- (e) other features in accordance with Good Industry Practice.

- 22.4.4 A computer based training (CBT) module to be provided by the Technology Partner shall simulate fault finding steps required to be taken by the maintenance staff in accordance with Good Industry Practice.

- 22.4.5 Lump sum payments of Rs 15 (fifteen) crore or total cost of the Training Facilities provided by the Technology Partner, whichever is lower, shall be paid to the Technology Partner upon development/upgradation of each such Training facilities. The above payment will become due and payable upon successful commissioning of all the planned

training facilities to be provided by the Technology Partner. The Technology Partner shall submit documentary evidence to establish the cost of such Training Facility to the Government.

22.5 Costs of training

- 22.5.1 The Technology Partner shall be entitled to recover from the Government an amount of Rs 1,500 (Rupees one thousand five hundred) per day for each officer or engineer and Rs 1000 (Rupees one thousand) per day per head for other staff, by way of a lump sum charge towards the cost of training at the Training Facility, including the faculty and training material. The travel, boarding and lodging expenses of all trainees shall be borne by the Government. For avoidance of doubt, this provision is not applicable for training of such staff who are provided to the Technology Partner to work under their supervision who shall be trained by the Technology Partner at their own cost.
- 22.5.2 The costs payable to the Technology Partner in accordance with the provisions of Clause 22.5 and man-month rates specified in Clause 22.2 shall be revised annually to reflect the variations in CPIIW occurring between the Base Index Date and the Reference Index Date for the relevant Year.

PART IV
Financial Covenants

Article 23. Train Price

23.1 Train Price

The Government shall pay to the Technology Partner a sum, determined in accordance with the provisions of this Article 23, as the price for each Train (the “**Train Price**”).

23.2 Base Price

23.2.1 The base price of a Train to be supplied during the first Year of the Supply Period shall be an amount of Rs..... (Rupees)[§], and the same shall be revised annually in accordance with the provisions of this Clause 23.2 (the “**Base Price**”).

23.2.2 The Base Price for the third Year of the Supply Period and for each subsequent Year shall be determined by decreasing the Base Price for the immediately preceding Year by 2% (two per cent) thereof. For the avoidance of doubt and by way of illustration, the Base Price for the first Year of the Supply Period shall be the amount specified in Clause 23.2.1 and for the third and fourth Years, it shall be a sum equal to 98% (ninety eight per cent) and 96.04% (ninety six point zero four per cent) respectively of the amount specified in Clause 23.2.1.

23.3 Indexed Price

23.3.1 For the second Year of the Supply Period and thereafter, the Base Price determined in accordance with Clause 23.2 shall be revised annually to reflect the variation in Price Index occurring between the Base Index Date and the Reference Index Date for the relevant Year (the “**Indexed Price**”). For the avoidance of doubt and by way of illustration, if the Price Index increases by 14% (fourteen per cent) between the Base Index Date and the Reference Index Date for the third Year of the Supply Period, the Indexed Price for the third Year shall be 114% (one hundred and fourteen per cent) of the Base Price for that Year.

23.3.2 In the event that the Price Index varies by more than 4% (four per cent) between the Reference Index Date for any Year and the last date preceding any month of that Year, the Indexed Price shall be revised to reflect such variation at the commencement of that month, and such Indexed Price shall be the Train Price until its revision for the following month or Year, as the case may be, in accordance with the provisions of this Clause 23.3.2. For the avoidance of doubt and by way of illustration, if the Price Index for the Reference Index Date and for the last date preceding any month of that Year shall vary by 4.1% (four point one per cent), the Train Price shall be revised at the commencement of that month to reflect the variation in Price Index.

23.4 Computation of Train Price

The Base Price, as corrected for variation in Price Index in accordance with the provisions of Clause 23.3, shall be the Train Price payable for all Trains supplied in the relevant Year in accordance with the Supply Programme specified in Article 15.

[§] The base price of a Train shall be determined by competitive bidding and the sum quoted by the selected bidder / Consortium shall be inserted here.

23.5 Incentive on Train weight

Price incentive at the rate of Rs 6 lakh per ton per Train shall be paid to the Technology Partner for achieving reduction in the weight of the Train below the value specified in Clause 2.10.3 of the Manual of Standards and Specifications for the 16 car Sleeper Train considering the expected saving in operating cost as a result of such weight reduction. For the purpose of this Price Incentive, actual weight reduction of the Train will be rounded down to nearest integer by ignoring the decimal part. For avoidance of doubt, and by way of illustration, in case actual weight reduction of 30.8 tons is achieved in the weight of the 16 car Train, below the value specified in the Manual of Standards and Specifications, the reduction would be taken as 30 tones and accordingly an amount of Rs 1.8 crore per Train will be paid to the Technology Partner as Incentive along with the Train Price.

23.6 Delayed supplies

In the event that a Train, due for supply in a Year under and in accordance with the Supply Programme specified in Clause 15.1, is supplied in subsequent Year, the Train Price shall be determined by reckoning followings dates for calculating the Base Price and Indexed price:

- (a) In case of delay due to reasons attributable to the Technology Partner –
 - (i) Base Price: as applicable on the date of such delayed supply;
 - (ii) Indexed Price: as on the date of original scheduled supply or date of delayed supply whichever is lower.
- (b) In case of delay due to reasons not attributable to the Technology Partner –
 - (i) Base Price: as applicable on the date of original scheduled supply;
 - (ii) Indexed Price: as on the date of supply.

23.7 Development Advance

23.7.1 The Government shall, on request of the Technology Partner and upon furnishing a bank guarantee, equivalent to the advance (covering principle and interest of 2 years), in the form specified in Schedule-I, make advance payment as per the details given below (the “Development Advance”):

Instalment Number	Time	Amount	Recovery
1	at any time after the Appointed Date	a sum not exceeding the Base Price for 2 (two) Train	in equal instalments from the payment towards Train Price of 11 th (eleventh) to 20 th (twentieth) Train.
2	at any time after the 1 st (first) anniversary of the Appointed Date	a sum not exceeding the Base Price for 1 (one) Train	in equal instalments from the payment towards Train Price of 21 th (eleventh) to 25 th (twenty fifth) Train.
3	at any time after the 2 nd (second) anniversary of the Appointed Date	a sum not exceeding the Base Price for 1 (one) Train	in equal instalments from the payment towards Train Price of 25 th (twenty fifth) to 30 th (thirtieth) Train.

- 23.7.2 The rate of interest on the Development Advance shall be equal to 5% (five per cent) above the Bank Rate (simple interest).
- 23.7.3 The Technology Partner may opt to refund the above Development Advance, including interest thereon, at earlier dates.

Article 24. Maintenance Security

24.1 Maintenance Security

- 24.1.1 The Technology Partner shall, for the performance of its obligations hereunder between the date of completion of Supply Period and the Transfer Date, provide to the Government, no later than 30 (thirty) days prior to the completion of Supply Period, an irrevocable and unconditional guarantee from a Bank, to take effect on completion of the Supply Period, for a sum calculated at the rate of Rs 2(two)crore per Train subject to a maximum limit of Rs 200 (two hundred) crore as performance security in the form set forth in Schedule-C (the “**Maintenance Security**”), to be modified, *mutatis mutandis*, for this purpose. Until such time the Maintenance Security is provided by the Technology Partner pursuant hereto and the same comes into effect, the Performance Security shall remain in force and effect, and upon such provision of the Maintenance Security pursuant hereto, the Government shall release the Performance Security to the Technology Partner.
- 24.1.2 The Parties expressly agree that the Technology Partner may furnish Maintenance Security valid for 3 (three) years at a time; provided that the Technology Partner shall, 2 (two) months prior to the expiry of such Maintenance Security, submit a new Maintenance Security valid for a further period of 3 (three) years and repeat the process hereunder until expiry of the Agreement Period.
- 24.1.3 Notwithstanding anything to the contrary contained in this Agreement, in the event Maintenance Security is not provided by the Technology Partner within the period specified in Clause 24.1.1, such failure shall be deemed to be a Technology Partner Default and the Government shall be entitled to encash the Performance Security and appropriate the proceeds thereof as Damages, in accordance with the provisions of Clause 9.2.

24.2 Appropriation of Maintenance Security

Upon occurrence of a Technology Partner Default, the Government shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Maintenance Security as Damages for such Technology Partner Default. Upon such encashment and appropriation from the Maintenance Security, the Technology Partner shall, within 15(fifteen) days thereof, replenish, in case of partial appropriation, to its original level the Maintenance Security, and in case of appropriation of the entire Maintenance Security provide a fresh Maintenance Security, as the case may be, and the Technology Partner shall, within the time so granted, replenish or furnish fresh Maintenance Security as aforesaid failing which the Government shall be entitled to terminate this Agreement in accordance with Article 35. Upon replenishment or furnishing of a fresh Maintenance Security, as the case may be, as aforesaid, the Technology Partner shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Technology Partner Default, and in the event of the Technology Partner not curing its default within such Cure Period, the Government shall be entitled to encash and appropriate such Maintenance Security as Damages, and to terminate this Agreement in accordance with Article 35.

24.3 Release of Maintenance Security

Subject to the Technology Partner not being in default under this Agreement, the Government shall, no later than 30 (thirty) days after completion of the Defect Liability Period Post Termination as per Clause 37.1, release the Maintenance Security.

Article 25. Maintenance Fee

25.1 Maintenance Fee

- 25.1.1 The Government shall pay to the Technology Partner, an annual fee for undertaking the Maintenance Obligations of a Train including insurance thereof (the “**Maintenance Fee**”), to be determined in accordance with the provisions of this Article 25.
- 25.1.2 The Maintenance Fee due and payable for an Accounting Year shall be computed with reference to the applicable Train Price determined in accordance with Clause 25.1.3 (the “**Applicable Train Price**”).
- 25.1.3 The Applicable Train Price for any Accounting Year shall be determined by adjusting the amount specified in Clause 23.2.1 annually to reflect the variation in Maintenance Index occurring between the Base Index Date and the Reference Index Date for the relevant Accounting Year, and the amount so arrived at shall be the Applicable Train Price for that Accounting Year. For the avoidance of doubt, the amount specified in Clause 23.2.1 shall not be varied in accordance with Clause 23.2.2 for computation of Applicable Train Price hereunder.

25.2 Determination of Maintenance Fee

- 25.2.1 The annual Maintenance Fee per Train, due and payable, for each Service Year of such Train during the Maintenance Period, shall be as follows:

Service Year of a Train	Annual Maintenance Fee as per cent of Applicable Train Price
3, 9, 15, 21, 27, 33	3.75%
6, 12, 18, 24, 30 ...	4.75%
Other Service Years	2.75%

Here, First Service Year with respect to a Train shall mean a period of 1 (one) year commencing from the date of acceptance of such Train as per Clause 14.6, Second Service Year with respect to such Train shall mean a period of one year following the First Service Year of such Train and so on.

25.3 Payment of Maintenance Fee

- 25.3.1 Maintenance Fee shall be due and payable in arrears at the end of each Quarter of an Accounting Year. The Maintenance Fee instalment payable for a Quarter of any Accounting Year shall be calculated as Sum total of the Maintenance Fees of each Trains under Maintenance Obligations during the relevant quarter where Maintenance Fees of each of the Train shall be calculated as - $[0.25] \times [(Total\ Train-Days\ under\ Maintenance\ Obligation\ for\ the\ corresponding\ Service\ Year\ of\ maintenance\ during\ the\ Quarter)^* (Applicable\ Annual\ Maintenance\ Fee\ per\ Train\ for\ the\ corresponding\ Service\ Year\ of\ Maintenance)] / [No\ of\ Days\ in\ the\ relevant\ quarter]$. The illustration given below calculates Maintenance Fee of first quarter of 2026 (01.01.2026 to 31.03.2026) for a hypothetical fleet of 4 RRTS Trains where date of acceptance of these Trains are considered as 10/2/23, 20/10/24 and 1/3/25 respectively.

Train No.	Date of Acceptance of Train	Service Year/Annual Maintenance Fee per Train (as % of Applicable Train Price)/ Train-Days				Train Maintenance Fee for Q4 of 2025-26
		1	2	3	4	
		2.75%	2.75%	3.75%	2.75%	
1	10-02-2023			40 Days (01.01.26-09.02.26)	50 Days (10.02.26-31.03.26)	$0.25 * [(40 * 3.75\% + 50 * 2.75\%) / 90]$
2	20-10-2024		90 Days (01.01.26-31.03.26)			$0.25 * [(90 * 2.75\%) / 90]$
4	01-03-2025	59 Days (01.01.26-28.02.26)	31 Days (01.03.26-31.03.26)			$0.25 * [(59 * 2.75\% + 31 * 2.75\%) / 90]$
4	15-03-2026	17 Days (15.03.26-31.03.26)				$0.25 * [(17 * 2.75\%) / 90]$

25.4 Distance based adjustments in Maintenance Fee

25.4.1 Average annual kilometer earning of the Fleet in any Accounting Year shall be calculated as: [total distance travelled by all the Trains in the Fleet during such Accounting Year] /Fleet Train-Year; where Fleet Train-Year shall be calculated as [(Fleet Train-Days during the Accounting Year)/ (No of Days in the Accounting Year)].

For the avoidance of doubt and by way of illustration, Fleet Train-Year during 2025-26 of a hypothetical Fleet of 3 (three) Trains with their date of acceptance as 11-09-2025 (200 days), 28-12-2025 (92 days) and 15-10-2024 (365 days) shall be equal to 1.8 [(200+92+365)/365].

25.4.2 Total Maintenance Fee payable for the Fleet for an Accounting Year shall be adjusted based on average annual kilometer earning of the Fleet in comparison to the normative distance of 350,000 (three hundred fifty thousand) kms (the “**Normative Distance**”). For every increase or decrease of 20,000 km (twenty thousand kilometres) in the average annual kilometer earning of the Fleet during an Accounting Year with respect to the Normative Distance, the Maintenance Fee shall be increased or decreased, as the case may be, by 2% (two per cent) thereof. For the avoidance of doubt and by way of illustration, the Parties agree that in the event the average annual kilometer earning of the Fleet is 377,000 (three hundred and seventy seven thousand) kilometres in an Accounting Year, the Maintenance Fee shall be increased by 2% (two per cent) thereof. The Parties further agree that for the purposes of adjustment under this Clause 25.4.2, the annual Maintenance Fee of all Trains in the Fleet shall be deemed to be 3.25% (three point two five per cent) of the Applicable Train Price.

Article 26. Billing and Payment

26.1 Billing and payment

- 26.1.1 On or after the date on which an amount has become due and payable to the Technology Partner in accordance with the provisions of this Agreement, it shall submit, an invoice with necessary particulars in physical form (in triplicate) or in electronic form to the officer designated by the Government as the payment authority for this purpose (the “**Payment Authority**”).
- 26.1.2 The Payment Authority shall, within 30 (thirty) days of receipt of an invoice in accordance with Clause 26.1.1 (the “**Payment Due Date**”), make payment of the amount claimed directly, through electronic transfer, to the nominated bank account of the Technology Partner, save and except any amounts which it determines as not payable or disputed (the “**Disputed Amounts**”).
- 26.1.3 All Damages (except those as per Clauses 13.3, 15.3) payable by the Technology Partner in accordance with the provisions of this Agreement shall be deducted from the Maintenance Fee due and payable to the Technology Partner and in the event the deductions hereunder exceed the Maintenance Fee, the balance remaining shall be deducted from the Train Price due and payable to the Technology Partner. Delay Damages, if any, in terms of Clause 13.3 and 15.3 shall be deducted from the respective Train Price.
- 26.1.4 For claiming payment of the Train Price from the Government, the Technology Partner shall submit (i) the original invoice and a copy thereof for each Train delivered; (ii) Technology Partner’s certificate that the amounts claimed in the invoice are correct and in accordance with the provisions of the Agreement; (iii) proof of acceptance of Train in accordance with Clause 13.5 or Clause 14.3.1, as the case may be; (iv) proof of delivery of the Train certified by the Government Representative; (v) official documents in support of Price Index variation as specified in Clause 23.3; (vi) detailed calculation for Train Price in accordance with Clause 23.4; (vii) copies of reports in respect of Tests performed in accordance with Schedule-F; and (viii) details in respect of taxes/duties which are reimbursable in accordance with the provisions of this Agreement (ix) Details of delay Damages in accordance with 13.3 and 15.3.
- 26.1.5 For claiming payment of Maintenance Fee from the Government, the Technology Partner shall submit (i) the original invoice and a copy thereof in respect of Maintenance Obligations for the preceding quarter; (ii) Technology Partner’s certificate that the amounts claimed in the invoice are correct and in accordance with the provisions of the Agreement; (iii) a copy of maintenance reports as specified in Clause 17.20, duly verified by the Government Representative; (iv) official documents in support of Maintenance Index variation as specified in Clause 25.1.3; (v) detailed calculation for Maintenance Fee claimed in accordance with Clause 25.2; (vi) details in respect of taxes/duties which are reimbursable in accordance with the provisions of this Agreement; and (vii) details of Damages payable in respect of Key Performance Indicators in accordance with the provisions of this Agreement.

26.2 Disputed Amounts

- 26.2.1 The Payment Authority shall, within 15 (fifteen) days of receiving an invoice, notify the Technology Partner of the Disputed Amounts, if any, with particulars thereof. Within 7 (seven) days of receiving such notice, the Technology Partner shall present any information or evidence as may reasonably be required for determining that such Disputed Amounts are payable. The Payment Authority may, upon request to this effect from the Technology Partner, meet a representative of the Technology Partner for resolving the dispute and in the event that the dispute is not resolved amicably, the Dispute Resolution Procedure shall apply. For the avoidance of doubt, even if a dispute is resolved amicably, any amount paid after the Payment Due Date shall be deemed as delayed payment if the delay was not caused by the Technology Partner in submission of the particulars specified in Clause 26.1.4.
- 26.2.2 If any amount is payable by either Party to the other Party upon determination of a dispute under the Dispute Resolution Procedure, such amount shall be deemed to be payable on the date when it first became due under this Agreement, and interest for the period of delay shall be due and payable at the rate specified in Clause 26.3.

26.3 Delayed payments

All amounts due and payable to the Technology Partner under the provisions of this Agreement shall be paid within the period set forth in Clause 26.1.2. In the event of delay beyond such period, the Government shall pay interest for the period of delay, calculated at a rate equal to 5% (five per cent) above the Bank Rate on the amounts payable.

26.4 Discount for early payment

The Parties expressly agree that in the event the Government pays the Train Price or Maintenance Fee, as the case may be, in terms of Clause 26.1.2 within 15 (fifteen) days of the date of submission of the invoice and particulars thereof, the Government shall be entitled to deduct 0.5% (zero point five per cent) of the amount to be paid, as the case may be, by way of discount for early payment.

26.5 Taxes and Duties

- 26.5.1 All duties, taxes [except Goods and Services Tax (GST)], royalties, cess and other levies payable by the Technology Partner under this Agreement, or for any other cause, as of 28 days prior to the deadline for submission of bids, shall be included in the quoted Price submitted by the Bidder. The Train Price, Maintenance Fee and price towards Payable Spares are exclusive of Goods and Services Tax (GST). GST will be paid extra as applicable on the submission of GST Invoices subject to submission of documentary evidence towards payment of GST collected on the previous bills/invoices to the GST Authorities.
- 26.5.2 Technology Partner shall provide following declarations while claiming payment:
- i. “It is certified that the GST % at which has been charged for the item billed for herein is as per relevant sections of CGST/SGST/IGST Acts and is legally leviable. If, however, it is found later that the rate at which the GST tariff rate has been charged is not correct, we indemnify Indian Railways against any loss on this account.”

- ii. “It is certified that no refund of GST already reimbursed to me/us on the order/contract has been obtained by me/us during the quarter. And that in respect of refund/increase of refund of GST obtained on this order/contract will be passed on to the purchaser.”
- iii. No additional duty setoffs on the goods supplied have accrued under the GST Act or any future scheme which may be introduced while submitting the present bill.
- iv. Any additional Input Tax Credit benefit, if become available to supplier, the same shall be passed on to purchaser without any undue delay.

OR

It is declared that additional input tax credit to the tune of ₹_____ has accrued and accordingly the same is being passed onto the purchaser and to that effect the payable amount may be adjusted.

Article 27. Supply of Spares and Consumables

27.1 Supply of Spares

- 27.1.1 The Technology Partner shall, in accordance with the provisions of this Article 27, supply all Spares and Consumables required for the operation, repair and maintenance of Trains during the Agreement Period.
- 27.1.2 Save and except as otherwise provided in Clause 27.2, all Spares and Consumables required for operation, repair and maintenance of Trains during the Maintenance Period shall be supplied and installed by the Technology Partner, at its cost and expense, as part of its Maintenance Obligations, and no payment or compensation other than Maintenance Fee shall be due and payable for this purpose.

27.2 Payable Spares

- 27.2.1 Subject to the provisions of Clause 17.6, the Technology Partner shall, for the price determined under this Clause 27.2, provide Spares for Unscheduled Maintenance specified in Clause 17.6.4 (the “**Payable Spares**”).
- 27.2.2 The Parties agree that the Technology Partner shall, no later than 18 (eighteen) months from the Appointed Date, furnish to the Government, a schedule of rates for Payable Spares to be specified in terms of their percentage with reference to the Train Price and the aggregate percentage of all the Payable Spares, including components, parts and systems forming part of a complete Train, shall be equal to 100 (hundred), which shall be certified by a qualified cost accountant. The Technology Partner agrees and undertakes that the costing of individual parts, components and systems shall reflect their true proportion to the Train Price and the Parties shall make good faith efforts to negotiate and finalise the offer of the Technology Partner within 3 (three) months of its submission, subject however to the aforesaid ceiling of 80 (eighty); provided that after an interval of 5 (five) years, the Parties may, with mutual consent, negotiate the aforesaid percentages for Payable Spares and determine the revised rates in accordance with the provisions of this Clause 27.2.2.
- 27.2.3 The Parties agree that the price payable by the Government for a Payable Spare shall be determined by applying the percentage specified under Clause 27.2.2 to the Applicable Train Price and increasing the amount so arrived at by 20% (twenty per cent) thereof. For the avoidance of doubt and by way of illustration, if the rate of a Payable Spare is 0.1% (zero point one per cent) and the Applicable Train Price is Rs 20 crore (Rupees twenty crore), the price of that Payable Spare shall be Rs 2.6 lakh (Rupees two lakh and sixty thousand). For the avoidance of doubt, the price determined hereunder shall be exclusive of taxes and duties in accordance with the provisions of Clause 26.5.
- 27.2.4 In the event that 20 (twenty) or more units of any Payable Spare are supplied by the Technology Partner in any Year, the price determined in accordance with Clause 27.2.3 above shall be reduced by 5% (five per cent) thereof for all the units supplied in that year.
- 27.2.5 In the event that 100 (one hundred) or more units of any Payable Spare are supplied by the Technology Partner in any Year, the price determined in accordance with Clause

- 27.2.3 above shall be reduced by 10% (ten per cent) thereof for all the units supplied in that year.
- 27.2.6 The Technology Partner shall maintain an adequate inventory of Payable Spares and shall supply every Payable Spare within a period of 4 (four) hours from the time a notice is delivered by the Government to the Technology Partner; provided, however, that in case of Payable Spares that were required in quantities of 12 (twelve) units or less during the immediately preceding Year, the period of delivery hereunder shall be 48 (forty eight) hours.
- 27.2.7 In the event of failure to supply a Payable Spare within the time specified in Clause 27.2.6, the Technology Partner shall pay Damages equal to 5% (five per cent) of the price of Payable Spare hereunder for each day of delay, or part thereof, until that Payable Spare is supplied, subject to the maximum Damages not exceeding the price of that Payable Spare. In the event that any delay hereunder shall cause Failure of a Train, one-half of the delay in supply hereunder shall be deemed as Non-Available Hours.
- 27.2.8 All Payable Spares shall carry a warranty as specified in Clause 29.2.3.

27.3 Cost of installation

- 27.3.1 A sum equal to 10% (ten per cent) of the price of a Payable Spare, determined in accordance with Clause 27.2.3, shall be due and payable to the Technology Partner for installation of that Payable Spare in a Train. For the avoidance of doubt, the Government may purchase a Payable Spare after completion of Maintenance Period of any Train and install the same in its own premises, and in such an event no payment shall be due for installation under this Clause 27.3.1.
- 27.3.2 In the event the Technology Partner determines that a Spare can be repaired and installed in substitution of a Payable Spare, it may undertake repair and installation thereof for a reasonable charge based on Good Industry Practice, but at no time exceeding 35% (thirty five per cent) of the price of such Payable Spare; Provided, however, that if the price of any Payable Spare, determined in accordance with Clause 27.2, shall exceed Rs 500,000 (Rupees five lakh), the Technology Partner may, with prior approval of the Government, undertake repair and installation thereof for such higher charges as the Government may, in its discretion, permit.

Article 28. Condemnation of Trains

28.1 Condemnation of Trains

- 28.1.1 The Parties agree that in the event of the cost of repair of a Train or Car, as the case may be, arising out of any reason or event not attributable to the Technology Partner, including negligence, accident, natural calamities, vandalism, arson, riots or any event of a nature analogous to the foregoing, is more than 50% (fifty per cent) of its depreciated book value, the Government may, in its discretion, withdraw such Train or Car from the Fleet.
- 28.1.2 The Parties agree that in the event of the cost of repair of a Train or Car, as the case may be, arising out of any reason or event attributable to the Technology Partner, including defect, negligence, accident or fire, is more than its depreciated book value, the Technology Partner may, subject to payment to the Government of a sum equal to the depreciated book value determined by applying an annual depreciation rate of 3% (three percent), condemn such Train or Car as the case may be. Salvage value of the condemned Train or car, as the case may be, shall be retained by the Government.

28.2 Termination of Maintenance Obligations

The Parties expressly agree that the Maintenance Obligations of the Technology Partner with respect to a Train or Car which is withdrawn or condemned, as the case may be, in accordance with the provisions of Clause 28.1 shall be deemed to be terminated. For the avoidance of doubt, no Maintenance Fee shall be payable by the Government from the date of withdrawal or condemnation hereunder.

Article 29. Handover of Project Assets

29.1 Handover of Project Assets

- 29.1.1 All the Project Assets related to manufacturing/assembly of Trains at the Manufacturing Unit shall be handed over to the Government upon completion of the Supply Period or Termination of this Agreement whichever is earlier.
- 29.1.2 All the Project Assets related to maintenance of Trains at the Trainset Depots and Washing Lines shall be handed over to the Government upon Termination of this Agreement.
- 29.1.3 Upon handover of the Project Assets hereunder, all equipment, machinery, building, structures, hardware, software and other assets shall vest in the Government without any Encumbrance.

29.2 Provision of Spares upon Termination

- 29.2.1 In case of Termination before completion of the Maintenance Period, the Technology Partner shall provide to the Government, free of charge, an inventory of Spares along with the Project Assets handed over under this Article 29. The inventory shall comprise of Spares equivalent to one-half of the average annual consumption of Spares during the preceding 3 (three) Years. For this purpose, the Technology Partner shall compute the total consumption of each Spare, excluding any Payable Spare, during the preceding 3 (three) Years and divide the same by 3 (three) for arriving at the average annual consumption, and all fractions shall be rounded off to the nearest whole number.
- 29.2.2 Without prejudice to the provisions of Clause 29.2.1, the Government may, in its discretion, require the Technology Partner to provide an additional inventory of Spares, equivalent in all respects to the inventory of Spares specified in Clause 29.2.1, or such proportion thereof as the Parties may by mutual agreement determine; provided that the Spares supplied hereunder shall be deemed to be Payable Spares and all terms and conditions of supply including payment of the price thereof, shall apply as if these are Payable Spares; provided further that the Government may exercise its rights hereunder no later than 30 (thirty) days prior to the Transfer Date.
- 29.2.3 All Spares provided by the Technology Partner under this Clause 29.2 shall carry a warranty of 18(eighteen) months from the date of its repair or replacement, as the case may be, free of cost to the Government. The terms of such warranty shall be determined in accordance with Good Industry Practice.

Article 30. Insurance

30.1 Insurance during Agreement Period

The Technology Partner shall effect and maintain at its own cost, during the Agreement Period, such insurances for such maximum sums as may be required under this Agreement and Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Technology Partner shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Government as a consequence of any act or omission of the Technology Partner during the Agreement Period. The Technology Partner shall procure that in each insurance policy, the Government shall be a co-insured and that the insurer shall pay the proceeds of insurance to the Government in the event of Termination.

30.2 Insurance Cover

Without prejudice to the provisions contained in Clause 30.1, the Technology Partner shall, during the Agreement Period, procure and maintain Insurance Cover including but not limited to the following:

- (a) loss, damage or destruction of the Project Assets, Manufacturing Unit, Trainset Depots or any Train on account of defect or deficiency attributable to the Technology Partner;
- (b) comprehensive third party liability insurance for life, goods or property, including injury to or death of personnel of the Government or others, arising from any accident at the Manufacturing Unit, Trainset Depots or on account of any negligence of the Technology Partner or a defect or deficiency in a Train;
- (c) the Technology Partner's general liability arising out of the Agreement;
- (d) workmen's compensation insurance; and
- (e) any other insurance that may be necessary to protect the Technology Partner and its employees, including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (d) above.

30.3 Notice to the Government

No later than 45 (forty five) days prior to commencement of the Agreement Period, the Technology Partner shall by notice furnish to the Government, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 30. Within 30 (thirty) days of receipt of such notice, the Government may require the Technology Partner 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.

30.4 Evidence of Insurance Cover

All insurances obtained by the Technology Partner in accordance with this Article 30 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Technology Partner shall furnish to the Government, 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 Technology Partner to the Government.

30.5 Remedy for failure to insure

If the Technology Partner shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Government shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Technology Partner, 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 Technology Partner.

30.6 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Technology Partner pursuant to this Article 30 shall include a waiver of any and all rights of subrogation or recovery of the insurers there under against, *inter alia*, the Government, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

30.7 Technology Partner's waiver

The Technology Partner hereby further releases, assigns and waives any and all rights of subrogation or recovery against, *inter alia*, the Government and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Technology Partner 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 Technology Partner 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.

30.8 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Technology Partner, and it shall apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Trains or the Manufacturing Unit or Trainset Depots, as the case may be, and the balance remaining, if any, shall be paid to the Government.

30.9 Compliance with conditions of insurance policies

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

Article 31. {Not Used}

PART V
Force Majeure and Termination

Article 32. Force Majeure

32.1 Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 32.2, 32.3 and 32.4 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.

32.2 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 Manufacturing Unit or Trainset Depots);
- (b) strikes or boycotts (other than those involving the Technology Partner, 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 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 32.3;
- (c) any failure or delay of a Sub-Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Technology Partner by or on behalf of such Sub-Contractor;
- (d) any delay or failure of an overseas contractor to deliver rolling stock equipment in India if such delay or failure is caused outside India by any event specified in Sub-clause (a) above and which does not result in any offsetting compensation being payable to the Technology Partner by or on behalf of such contractor;
- (e) any judgement or order of any court of competent jurisdiction or statutory authority made against the Technology Partner in any proceedings for reasons other than (i) failure of the Technology Partner 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 Government;
- (f) the discovery of geological conditions, toxic contamination or archaeological remains on the Site for Manufacturing Unit or Trainset Depots that could not reasonably have been expected to be discovered through a site inspection; or
- (g) any event or circumstances of a nature analogous to any of the foregoing.

32.3 Indirect Political Event

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

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (c) any civil commotion, boycott or political agitation which prevents production and assembly of Trains by the Technology Partner for an aggregate period exceeding 15 (fifteen) days in an Accounting Year;
- (d) failure of the Government to permit the Technology Partner to continue the operation of the Project works, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds or for any other reason;
- (e) any failure or delay of a Sub-Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Technology Partner by or on behalf of such Sub-Contractor;
- (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.

32.4 Political Event

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

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 39 and its effect, in financial terms, exceeds the sum specified in Clause 39.1;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Technology Partner 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 Technology Partner or any of the Sub-contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Technology Partner'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 and which does not result in any offsetting compensation being payable to the Technology Partner by or on behalf of such Sub-Contractor; or

(e) any event or circumstance of a nature analogous to any of the foregoing.

32.5 Duty to report Force Majeure Event

32.5.1 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 32 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

32.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

32.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 32.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

32.6 Effect of Force Majeure Event on the Agreement

32.6.1 Upon the occurrence of any Force Majeure Event:

- (a) whereupon the Technology Partner is unable to supply Trains despite making best efforts or it is directed by the Government to suspend the manufacture thereof during the subsistence of such Force Majeure Event, the Supply Programme and the Agreement Period shall be extended by a period, equal in length to the period during which the Technology Partner was prevented from manufacturing Trains on account thereof; or
- (b) after the commencement of the Maintenance Period, whereupon the Technology Partner is unable to undertake its Maintenance Obligations with respect to any or all of the Trains despite making best efforts or it is directed by the Government to suspend the maintenance services thereof during the subsistence of such Force Majeure Event, the Maintenance Period for any or all of the affected Trains and the Agreement Period shall be extended by a period, equal in length to the period during which the Technology Partner was prevented from undertaking its Maintenance Obligations on account thereof.

32.7 Allocation of costs arising out of Force Majeure

- 32.7.1 Upon occurrence of any Force Majeure Event prior to the Appointed Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.
- 32.7.2 Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project (the “**Force Majeure Costs**”) shall be allocated and paid as follows:
- (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;
 - (b) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Technology Partner, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Government to the Technology Partner; and
 - (c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Government to the Technology Partner.

For the avoidance of doubt, Force Majeure Costs may include O&M Expenses and all other costs directly attributable to the Force Majeure Event, but shall not include loss of income or debt repayment obligations, if any, of the Technology Partner.

- 32.7.3 Save and except as expressly provided in this Article 32, 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.

32.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 32, 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.

32.9 Termination Payment for Force Majeure Event

- 32.9.1 If Termination is on account of a Non-Political Event, the Government shall not make any Termination Payment to the Technology Partner.
- 32.9.2 If Termination is on account of an Indirect Political Event, the Government shall make a Termination Payment to the Technology Partner in an amount equal to 70% (seventy

percent) of the Net Residual Value of all Project Assets provided by the Technology Partner less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Termination Payment.

- 32.9.3 If Termination is on account of a Political Event, the Government shall make a Termination Payment to the Technology Partner in an amount that would be payable as if it were a Government Default as per Article 35.

32.10 Dispute resolution

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

32.11 Excuse from performance of obligations

- 32.11.1 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.
- 32.11.2 The Parties agree that the Technology Partner shall develop alternate or standby arrangements for provision of goods and services in accordance with Good Industry Practice and failure on this account shall not excuse the Technology Partner from performance of its obligations hereunder.

32.12 Relief for Unforeseen Events

- 32.12.1 Upon occurrence of an unforeseen event, situation or similar circumstances not contemplated or referred to in this Agreement, and which could not have been foreseen by a prudent and diligent person (the “**Unforeseen Event**”), any Party may by notice inform the other Party of the occurrence of such Unforeseen Event with the particulars thereof and its effects on the costs, expense and revenues of the Project. Within 15 (fifteen) days of such notice, the Parties shall meet and make efforts in good faith to determine if such Unforeseen Event has occurred, and upon reaching agreement on occurrence thereof, deal with it in accordance with the provisions of this Clause 32.12.
- 32.12.2 Upon determination of the occurrence of an Unforeseen Event, the Parties shall make a reference for Dispute Resolution Mechanism.

Article 33. Compensation for breach of Agreement

33.1 Compensation for default by the Technology Partner

Subject to the provisions of Clause 33.5, in the event of the Technology Partner being in material default or breach of this Agreement, it shall pay to the Government by way of compensation, all direct costs suffered or incurred by the Government as a consequence of such material default or breach, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 33.1 for any material default or breach in respect of which Damages are expressly specified and payable under this Agreement.

33.2 Compensation for default by the Government

Subject to the provisions of Clause 33.5, in the event of the Government being in material default or breach of this Agreement at any time after the Appointed Date, it shall pay to the Technology Partner by way of compensation, all direct costs suffered or incurred by the Technology Partner as a consequence of such material default or breach within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include O&M Expenses and all other costs directly attributable to such material default but shall not include loss of income or debt repayment obligations or other consequential losses.

33.3 Extension of Agreement Period

In the event that a material default or breach of this Agreement set forth in Clause 33.2 causes delay in complying with the Supply Programme, the Government shall, in addition to payment of compensation under Clause 33.2, extend the Supply Period and the Agreement Period, such extension being equal in duration to the period by which the Supply Programme was delayed or the manufacturing of Trains remained suspended on account thereof, as the case may be.

33.4 Compensation to be in addition

Compensation payable under this Article 33 shall be in addition to, and without prejudice to, the other rights and remedies of the Parties under this Agreement including Termination thereof.

33.5 Mitigation of costs and damage

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

Article 34. Suspension of Technology Partner's Rights

34.1 Suspension upon Technology Partner Default

Upon occurrence of a Technology Partner Default, the Government shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (a) suspend all rights of the Technology Partner under this Agreement including the Technology Partner's right to receive Maintenance Fee, and other payments pursuant hereto, and (b) exercise such rights itself and perform the obligations hereunder or authorise any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Government to the Technology Partner and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice.

34.2 Government to act on behalf of Technology Partner

- 34.2.1 During the period of Suspension, the Government may, at its option and at the risk and cost of the Technology Partner, remedy and rectify the cause of Suspension. The Government shall, on behalf of the Technology Partner, appropriate the Maintenance Fee and other revenues under and in accordance with this Agreement and deposit the same in an account to be opened by the Government's nominee for this purpose. The Government shall be entitled to make withdrawals from such account for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and for defraying the expenses on maintenance of Trains.
- 34.2.2 During the period of Suspension hereunder, all assets and liabilities in relation to the maintenance of Trains, shall continue to vest in the Technology Partner in accordance with the provisions of this Agreement and all things done or actions taken, including expenditure incurred by the Government for discharging the obligations of the Technology Partner under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Technology Partner and the Technology Partner undertakes to indemnify the Government for all costs incurred during such period. The Technology Partner hereby licenses and sub-licenses respectively, the Government or any other person authorised by it under Clause 34.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Technology Partner for and in respect of operation and maintenance of Trains.

34.3 Revocation of Suspension

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

34.3.2 Upon the Technology Partner having cured the Technology Partner Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Government shall revoke the Suspension forthwith and restore all rights of the Technology Partner under this Agreement. For the avoidance of doubt, the Government shall provide access to the Manufacturing Unit, Trainset Depots, Trains and Washing Lines, as the case may be, to enable the Technology Partner to cure the Technology Partner Default hereunder.

34.4 Termination

34.4.1 At any time during the period of Suspension under this Article 34, the Technology Partner may by notice require the Government to revoke the Suspension and issue a Termination Notice. The Government shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 35 as if it is a Technology Partner Default under Clause 35.1.

34.4.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) 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 Government upon occurrence of a Technology Partner Default.

Article 35. Termination

35.1 Termination for Technology Partner Default

35.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Technology Partner 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 120 (one hundred and twenty) days, the Technology Partner shall be deemed to be in default of this Agreement (the “**Technology Partner Default**”), unless the default has occurred as a result of any breach of this Agreement by the Government or due to Force Majeure. The defaults referred to herein shall mean and include the following:

- (a) The Performance Security or the Maintenance Security, as the case may be, has been encashed and appropriated in accordance with Clause 9.2 or Clause 24.2, as the case may be and the Technology Partner fails to replenish or provide fresh Performance Security or Maintenance Security, as the case may be, within a Cure Period of 15 (fifteen) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security or the Maintenance Security, as the case may be, in accordance with Clause 9.2 or Clause 24.2, as the case may be, the Technology Partner fails to cure, within a Cure Period of 120 (one hundred and twenty) days, the Technology Partner Default for which whole or part of the Performance Security or Maintenance Security was appropriated;
- (c) the Technology Partner fails to supply the Prototype within a Cure Period of 270 (two hundred and seventy) days after expiry of the period specified in Clause 13.3;
- (d) the Technology Partner abandons or manifests intention to abandon the upgradation or operation of the Manufacturing Unit or Trainset Depots without the prior written consent of the Government;
- (e) the Technology Partner is in breach of the Maintenance Obligations or the Safety Requirements, as the case may be;
- (f) the average Availability of the Fleet, in any Year, is 85% (eighty five per cent) or less and fails to improve above such 85% (eighty five per cent) during the succeeding Year; provided that the provisions of this Sub-clause (h) shall not apply for the first and second Years of the Supply Period;
- (g) the Technology Partner supplies less than 50% of the Trains as specified in the Supply Programme in 2 (two) successive Years;
- (h) the Technology Partner has failed to make any payment to the Government within the period specified in this Agreement;
- (i) a breach of any of the Project Agreements by the Technology Partner has caused a Material Adverse Effect;
- (j) the Technology Partner creates any Encumbrance in breach of this Agreement;
- (k) the Technology Partner repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;

- (l) the Technology Partner substitutes or drops a Consortium Member in breach of the provisions of Clause 5.3;
- (m) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Technology Partner under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Technology Partner, and such transfer causes a Material Adverse Effect;
- (n) an execution levied on any of the assets of the Technology Partner has caused a Material Adverse Effect;
- (o) the Technology Partner is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Technology Partner or for the whole or material part of its assets that has a material bearing on the Project;
- (p) the Technology Partner 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 Government, a Material Adverse Effect;
- (q) a resolution for winding up of the Technology Partner is passed, or any petition for winding up of the Technology Partner 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 Technology Partner 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 Technology Partner are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Technology Partner under this Agreement and the Project Agreements; and provided that:
 - i. the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - ii. the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Technology Partner as at the Appointed Date; and
 - iii. each of the Project Agreements remains in full force and effect;
- (r) any representation or warranty of the Technology Partner herein contained which is, as of the date hereof, found to be materially false or the Technology Partner is at any time hereafter found to be in breach thereof;
- (s) the Technology Partner submits to the Government any statement, notice or other document, in written or electronic form, which has a material effect on the Government's rights, obligations or interests and which is false in material particulars;
- (t) the Technology Partner has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;

- (u) the Technology Partner issues a Termination Notice in violation of the provisions of this Agreement; or
- (v) the Technology Partner commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Government and the Technology Partner fails to cure such default in a Cure Period of 240 (two hundred and forty) days.

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

35.2 Termination for Government Default

35.2.1 In the event that any of the defaults specified below shall have occurred, and the Government fails to cure such default within a Cure Period of 120 (one hundred and twenty) days or such longer period as has been expressly provided in this Agreement, the Government shall be deemed to be in default of this Agreement (the “**Government Default**”) unless the default has occurred as a result of any breach of this Agreement by the Technology Partner or due to Force Majeure. The defaults referred to herein shall mean and include the following:

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

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

35.3 Termination Payment

35.3.1 Upon Termination on account of a Technology Partner Default, the Government shall pay to the Technology Partner by way of a Termination Payment, an amount equal to 30% (thirty per cent) of the Net Residual Value of all Project Assets provided by the Technology Partner.

- 35.3.2 Upon Termination on account of a Government Default, the Government shall pay to the Technology Partner, by way of Termination Payment, the sum of: (a) an amount equal to 130% (one hundred and thirty per cent) of the Net Residual Value of all Project Assets provided by the Technology Partner and (b) 10% (ten per cent) of the Train Price of minimum number of Trains due to be supplied by the Technology Partner in accordance with Clause 15.1 of this Agreement for and in respect of a period of 1 (one) year from the Transfer Date.
- 35.3.3 Termination Payment shall become due and payable to the Technology Partner within 30 (thirty) days of a demand being made by the Technology Partner to the Government with the necessary particulars, and in the event of any delay, the Government shall pay interest at a rate equal to 5% (five per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days; provided further that liability of the Government to make the Termination Payment hereof is subject to the fulfilment of the Divestment Requirements in accordance with Article 36 of this Agreement. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Government of its payment obligations in respect thereof hereunder.
- 35.3.4 Upon Termination on expiry of the Agreement Period by efflux of time, no Termination Payment shall be due and payable to the Technology Partner; provided that in the event any assets and equipments at the Trainset Depot, essential for the efficient, economic and safe operation of the Trains, are acquired and installed within 3 (three) years of the expiry of the Agreement Period, with prior written consent of the Government, which consent shall not be unreasonably denied, a Termination Payment equal to 80% (eighty percent) of the Depreciated Value of such assets and equipments shall, notwithstanding the provisions of Clause 35.4, be made by the Government to the Technology Partner.
- 35.3.5 Notwithstanding anything to the contrary in this Agreement, but subject to the provisions of Clause 35.3.4, in the event any assets and equipments at the Trainset Depot, essential for the efficient, economic and safe operation of the Trains, shall have been acquired and installed within 3 (three) years of the expiry of the Agreement Period, with prior written consent of the Government, which consent shall not be unreasonably denied, a sum equal to 80% (eighty per cent) of the Depreciated Value thereof shall be included in Termination Payment.
- 35.3.6 The Technology Partner expressly agrees that Termination Payment under this Article 35 shall constitute a full and final settlement of all claims of the Technology Partner on account of Termination of this Agreement for any reason whatsoever and that the Technology Partner or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

35.4 Certain limitations on Termination Payment

Termination Payment, due and payable under this Agreement, shall at no time exceed Rs200 crore (Rupees two hundred crore).

35.5 Other rights and obligations of the Government

Upon Termination for any reason whatsoever, the Government shall:

- (a) take possession and control of the operation of Manufacturing Unit and Trainset Depots forth with;
- (b) take possession and control of all materials, stores, implements, plants and equipment on or about the Manufacturing Unit and Trainset Depots;
- (c) be entitled to restrain the Technology Partner and any person claiming through or under the Technology Partner from entering upon the Manufacturing Unit and Trainset Depots or any part of the Government premises;
- (d) require the Technology Partner to comply with the Divestment Requirements set forth in Clause 36.1; and
- (e) succeed upon election by the Government, without the necessity of any further action by the Technology Partner, to the interests of the Technology Partner under such of the Project Agreements as the Government may in its discretion deem appropriate, and shall upon such election be liable to the Sub-contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Government elects to succeed to the interests of the Technology Partner. For the avoidance of doubt, the Technology Partner acknowledges and agrees that all sums claimed by such Sub-contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Technology Partner and such Sub-contractors, and the Government shall not in any manner be liable for such sums. It is further agreed that in the event the Government elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Government for this purpose shall be deducted from the Termination Payment.

35.6 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 35.3.6, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

Article 36. Divestment of Rights and Interest

36.1 Divestment requirements

- 36.1.1 Upon completion of the Supply Period or Termination or expiry of the Agreement Period, as the case may be, the Technology Partner shall comply with and conform to the following divestment requirements (the “**Divestment Requirements**”), no later than 15 (fifteen) days from the respective Divestment Date:
- (a) handover all Project Assets along with the infrastructure and all facilities, equipment and systems therein, free and clear of all Encumbrances;
 - (b) cure all Trains of all defects and deficiencies so that the Trains are compliant with the Maintenance Obligations; provided that if such defects and deficiencies have arisen on account of accident, vandalism, arson, riot or natural calamity occurring no earlier than 120 (one hundred and twenty) days prior to such Termination or expiry of the Agreement Period, the Government shall grant to the Technology Partner such additional time, not exceeding 240 (two hundred forty) days, as may be reasonably required for repair and rectification thereof;
 - (c) cure all the Project Assets at the Manufacturing Unit, Trainset Depots and Washing Lines facilities under Technology Partner’s control of any defect or deficiency such that it can continue to be used efficiently and economically in accordance with Good Industry Practice;
 - (d) deliver and transfer relevant records, reports and Intellectual Property pertaining to the Trains and the Trainset Depots including all software and manuals pertaining thereto, and complete ‘as built’ Drawings as on the Transfer Date so as to enable the Government to operate and maintain the Trains. For the avoidance of doubt, the Intellectual Property shall be adequate and complete for the operation and maintenance of the Trains and shall be assigned or licensed to the Government free of any Encumbrance;
 - (e) transfer and/or deliver all Applicable Permits, if any, in respect of the Manufacturing Unit, Trainset Depots and Trains, to the extent permissible under Applicable Laws;
 - (f) execute such deeds of conveyance, documents and other writings as the Government may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Technology Partner in respect of the outstanding insurance claims to the extent due and payable to the Government; and
 - (g) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Technology Partner in the Trains, Insurance Cover, Manufacturing Unit, Trainset Depots and Washing Line facilities, free from all Encumbrances, absolutely unto the Government or to its nominee.
- 36.1.2 Subject to the exercise by the Government of its rights under this Agreement or any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Technology Partner, the Parties shall continue to perform their obligations under this Agreement notwithstanding the giving of any Termination Notice until the Termination of this Agreement becomes effective in accordance with its terms.

36.2 Inspection and cure

Not earlier than 90 (ninety) days before Termination but not later than 15 (fifteen) days before the effective date of such Termination, the Government shall verify, after giving due notice to the Technology Partner specifying the time, date and place of such verification and/or inspection, compliance by the Technology Partner with the Maintenance Obligations, and if required, cause appropriate tests to be carried out at the Technology Partner's cost for this purpose. The Technology Partner shall at its own cost and expense, cure defaults if any, in the Maintenance Obligations and the provisions of Article 37 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 36.

36.3 Cooperation and assistance on handover

- 36.3.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project Assets specified in Clause 36.1.1, in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the users, other members of the public or the lawful occupiers of any part of the Manufacturing Unit, Depot Site and Washing Line.
- 36.3.2 The Parties shall provide to each other, 9 (nine) months prior to the Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Technology Partner shall further provide such reasonable advice and assistance as the Government, its *company* or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.

36.4 Vesting Certificate

The divestment of all rights, title and interest in the assets specified in Clause 36.1.1 shall be deemed to be complete on the date on which all of the Divestment Requirements have been fulfilled, and the Government shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule-J (the "**Vesting Certificate**"), which will have the effect of constituting evidence of divestment by the Technology Partner of all of its rights, title and interest in such assets, and their vesting in the Government pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Government or its nominee on, or in respect of, the Trains, Manufacturing Unit and Trainset Depots on the footing that all Divestment Requirements have been complied with by the Technology Partner.

36.5 Other provisions

- 36.5.1 In the event of any dispute relating to matters covered by and under this Article 36, the Dispute Resolution Procedure shall apply.
- 36.5.2 Upon Termination, the provisions of this Article 36 shall apply *mutatis mutandis* to the grant of license in respect of the use of the know-how of maintenance of Trains and the operations in the Trainset Depots by the Government ("**Transfer of Technology**").

- 36.5.3 The Technology Partner shall procure that each of the agreements for procurement of components, equipment, sub-systems and systems for maintenance of Trains contains provisions that entitle the Government to step into such agreement, in its sole discretion, in substitution of the Technology Partner in the event of Termination. For the avoidance of doubt, it is expressly agreed that in the event the Government does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the aforesaid agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Government and the agreements shall expressly provide for such eventuality. The Technology Partner expressly agrees to include the aforesaid covenant in all its agreements for procurement of components, equipment, sub-systems and systems for maintenance of Trains and undertakes that it shall, in respect of each of the aforesaid agreements, procure and deliver to the Government an acknowledgment and undertaking, in a form acceptable to the Government, from the counter party(s) of each of the aforesaid agreements, whereunder such counter party(s) shall acknowledge and accept the covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Government in the event of Termination.
- 36.5.4 The Technology Partner shall transfer and/or deliver all Applicable Permits in respect of the Manufacturing Unit, Trainset Depots and Washing Lines to the extent permissible under Applicable Laws.

Article 37. Defects Liability after Termination

37.1 Liability for defects after Termination

The Technology Partner shall be responsible for all defects and deficiencies in the Trains and Project Assets, for a period of 180 (one hundred and eighty) days after Termination (the “**Defect Liability Period Post Termination**”), and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Government in the Trains during the aforesaid period. In the event that the Technology Partner fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Government in this behalf, the Government shall be entitled to get the same repaired or rectified at the Technology Partner’s risk and cost so as to make the Trains conform to the Maintenance Obligations. All costs incurred by the Government hereunder shall be reimbursed by the Technology Partner to the Government within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Government shall be entitled to recover the same from the Technology Partner. For the avoidance of doubt, the Parties expressly agree that if the Maintenance Period of a Train shall have expired prior to Termination, the provisions of this Clause 37.1 shall apply to that Train for a period of 180 (one hundred and eighty) days after the expiry of such Maintenance Period.

PARTVI
Other Provisions

Article 38. Assignment and Charges

38.1 Restrictions on assignment and charges

- 38.1.1 Subject to Clause 38.2, this Agreement shall not be assigned by the Technology Partner to any person, save and except with the prior consent in writing of the Government, which consent the Government shall be entitled to decline without assigning any reason.
- 38.1.2 Subject to the provisions of Clause 38.2, the Technology Partner shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Technology Partner is a party except with prior consent in writing of the Government, which consent the Government shall be entitled to decline without assigning any reason.

38.2 Permitted assignment and charges

The restraints set forth in Clause 38.1 shall not apply to:

- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Technology Partner;
- (b) liens or encumbrances required by any Applicable Law.

38.3 Assignment to IRFC

Without prejudice to the provisions of this Agreement, the Government may, in its discretion, assign any or all Trains to the Indian Railway Finance Corporation (the “**IRFC**”) or any other financing agency for the purposes of making payment of the Train Price to the Technology Partner and for leasing out the Trains to the Government on terms to be agreed between the Government and such financing agency. Notwithstanding any such assignment or leasing, the rights and obligations of the Parties under this Agreement shall continue to remain as if such assignment or leasing has not been undertaken.

Article 39. Change in Law

39.1 Increase in costs

If as a result of Change in Law, the Technology Partner suffers an increase in costs or reduction in net after-tax return or other financial burden related to this project, the aggregate financial effect of which exceeds Rs 5 crore (Rupees five crore) in any Accounting Year, the Technology Partner may so notify the Government and propose amendments to this Agreement so as to place the Technology Partner in the same financial position as it would have enjoyed had there been no such Change in Law resulting in increased cost, reduction in return or other financial burden as aforesaid. Upon notice by the Technology Partner, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Technology Partner may by notice require the Government to pay an amount that would place the Technology Partner in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Government shall pay the amount specified therein; provided that if the Government shall dispute such claim of the Technology Partner, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 39.1 shall be restricted to changes in law directly affecting the Technology Partner's costs of performing its obligations under this Agreement.

39.2 Reduction in costs

If as a result of Change in Law, the Technology Partner benefits from a reduction in costs or increase in net after-tax return or other financial gains, related to this project the aggregate financial effect of which exceeds Rs 5 crore (Rupees five crore) in any Accounting Year, the Government may so notify the Technology Partner and propose amendments to this Agreement so as to place the Technology Partner in the same financial position as it would have enjoyed had there been no such Change in Law resulting in decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Government, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Government may by notice require the Technology Partner to pay an amount that would place the Technology Partner in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Technology Partner shall pay the amount specified therein to the Government; provided that if the Technology Partner shall dispute such claim of the Government, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause

39.2 shall be restricted to changes in law directly affecting the Technology Partner's costs of performing its obligations under this Agreement.

39.3 Protection of NPV

Pursuant to the provisions of Clauses 39.1 and 39.2 and for the purposes of placing the Technology Partner in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall endeavour to establish a net present value (the "NPV") of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred. For the avoidance of doubt, the Parties expressly agree that for determination of NPV, the discount rate to be used shall be equal to rate of interest applicable on the Development Advance as per Clause 23.7.

39.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 39 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than 1 (one) year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

39.5 Revision of Train Price

Notwithstanding anything to the contrary contained in this Agreement, the Government shall not in any manner be liable to reimburse to the Technology Partner any sums on account of a Change in Law if the same are recoverable as a part of the Train Price or in any other manner.

Article 40. Liability and Indemnity

40.1 General indemnity

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

40.2 Indemnity by the Technology Partner

- 40.2.1 Without limiting the generality of Clause 40.1, the Technology Partner shall fully indemnify, hold harmless and defend the Government and the Government Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:
- (a) failure of the Technology Partner to comply with Applicable Laws and Applicable Permits;
 - (b) payment of taxes required to be made by the Technology Partner in respect of the income or other taxes of its Sub-contractors, suppliers and representatives; or
 - (c) non-payment of amounts due as a result of materials or services furnished to the Technology Partner or any of its sub-contractors which are payable by the Technology Partner or any of its sub-contractors.
- 40.2.2 Without limiting the generality of the provisions of this Article 40, the Technology Partner shall fully indemnify, hold harmless and defend the Government Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Government 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 Technology Partner or by its Sub-contractors in performing the Technology Partner'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 Technology Partner 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 Manufacturing Unit, Trainset Depots, Washing Lines or Trains, as the case may be, or any part thereof or comprised therein, are held to constitute an infringement and their use is permanently enjoined, the Technology Partner shall promptly make every reasonable effort to secure for the Government a licence, at no cost to the Government, authorising continued use of the infringing work. If the Technology Partner is unable to secure such licence within a reasonable time, the Technology Partner 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 they becomes non-infringing.

40.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 40 (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.

40.4 Defence of claims

- 40.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 40, 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.

40.4.2 If the Indemnifying Party has exercised its rights under Clause 40.3, 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).

40.4.3 If the Indemnifying Party exercises its rights under Clause 40.3, 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;
- (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;
- (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 40.4.3 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.

40.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 40, 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.

40.6 Limitation of Liability

40.6.1 Notwithstanding anything to the contrary in this Agreement, the liability of one Party towards the other Party for any damages or compensation of any nature whatsoever under this Agreement shall not exceed Rs200 crore (Rupees two hundred crore). For the avoidance of doubt, the limitation hereunder shall not apply to any Damages for delays as specified in Clause 13.3 and 15.3 or all liabilities in respect of third parties.

40.6.2 Except as otherwise provided in this Agreement, neither Party shall be liable to the other Party for any loss of profit or for any other indirect or consequential damages or losses that may be suffered in connection with this Agreement.

40.7 Survival on Termination

The provisions of this Article 40 shall survive Termination.

Article 41. {Not Used}

Article 42. Dispute Resolution

42.1 Dispute resolution

- 42.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 42.2.
- 42.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

42.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon a mutually accepted person to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by such person or without the intervention of such person, either Party may require such Dispute to be referred to the Member (Traction and Rolling Stock), Railway Board and the Chairman of the Board of Directors of the Technology Partner for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 42.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 42.3.

42.3 Arbitration

- 42.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 42.2, shall be finally decided by reference to arbitration by an arbitral tribunal constituted in accordance with Clause 42.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The place of such arbitration shall be Delhi, and the language of arbitration proceedings shall be English.
- 42.3.2 There shall be an arbitral tribunal comprising three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.
- 42.3.3 The arbitral tribunal shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 42 shall be final and binding on the Parties as from the date it is made, and the Technology Partner and the Government agree and undertake to carry out such Award without delay.

42.3.4 The Technology Partner and the Government agree that an Award may be enforced against the Technology Partner and/or the Government, as the case may be, and their respective assets wherever situated.

42.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

42.4 Adjudication by a tribunal

In the event of constitution of a statutory tribunal or other forum with powers to adjudicate upon disputes between the Technology Partner and the Government, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 42.3, be adjudicated upon by such tribunal or other forum in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly.

Article 43. Disclosure

43.1 Disclosure of Specified Documents

The Technology Partner shall make available for inspection by any person, copies of this Agreement, the Maintenance Manual, the Safety Requirements and the Manual of Specifications and Standards (hereinafter collectively referred to as the “**Specified Documents**”), free of charge, during normal business hours on all working days at the Technology Partner’s Registered Office. The Technology Partner shall prominently display at the Manufacturing Unit, Trainset Depots, public notices stating the availability of the Specified Documents for such inspection, and shall make copies of the same available to any person upon payment of copying charges on a ‘no profit no loss’ basis.

43.2 Disclosure of Documents relating to safety

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

43.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 43.1 and 43.2, the Government shall be entitled to direct the Technology Partner, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 43.1 and 43.2, or portions thereof, the disclosure of which the Government is entitled to withhold under the provisions of the Right to Information Act, 2005.

Article 44. Redressal of Complaints

44.1 Complaints Register

- 44.1.1 The Technology Partner shall keep one register (the “**Complaint Register**”) in every Train for recording of complaints by drivers and maintenance staff. The Complaint Register shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, substance of the complaint and the action taken by the Technology Partner. The Technology Partner shall also develop a Mobile Application along with backend software for processing/analyzing such complaints in electronic form and responses thereto.
- 44.1.2 Technology Partner shall develop suitable application for processing/analyzing passenger complaints registered on the Government’s designated app (presently ‘Rail Madad’) for this purpose.

44.2 Redressal of complaints

- 44.2.1 The Technology Partner shall inspect the Complaint Register of every Train along with the electronic complaints on Mobile Application before undertaking any Scheduled or Unscheduled Maintenance, as the case may be, and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly recorded by the Technology Partner in the Complaint Register/Mobile Application.
- 44.2.2 In the event that a complaint shall require an urgent response from the Technology Partner, the driver of a Train or any maintenance staff, as the case may be, shall inform the Trainset Depot forthwith and upon receiving such complaint, the Technology Partner shall despatch its Prompt Response Team and take such other action as may be necessary.
- 44.2.3 Technology Partner shall provide access of the Mobile Application to the Government.
- 44.2.4 The Technology Partner shall prominently display its Helpline contact details in the driving cab and other locations for use by crew and passengers in case of requirement. The Technology Partner shall provide a robust mechanism to address all such complaints/grievances by taking suitable action on the same and providing feedback of the same to the concerned party. Details of all such complaints/grievances including the action taken shall be promptly shared with the Government.

Article 45. Miscellaneous

45.1 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.

45.2 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).

45.3 Delayed payments

45.3.1 The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, 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 5% (five per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

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

45.4 Waiver

45.4.1 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.

45.4.2 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.

45.5 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

(a) no review, comment or approval by the Government of any Project Agreement, Document or Drawing submitted by the Technology Partner nor any observation or inspection of the upgradation, operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Technology Partner from its obligations, duties and liabilities under this Agreement, Applicable Laws and Applicable Permits; and

(b) the Government shall not be liable to the Technology Partner by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

45.6 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.

45.7 Survival

45.7.1 Termination shall:

(a) not relieve the Technology Partner or the Government, 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.

45.7.2 All rights and obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination; provided, however, that all obligations of the Technology Partner in relation to licensing, sub-licensing, assignment or transfer of the specified Intellectual Property to the Government shall survive the Termination in perpetuity.

45.8 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 Technology Partner arising from the Tender, as the case may be, shall be deemed to form part of this Agreement and treated as such.

45.9 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.

45.10 No partnership

This Agreement shall not be interpreted or construed to create an association 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.

45.11 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.

45.12 Successors and assigns

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

45.13 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 Technology Partner, 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 Technology Partner may from time to time designate by notice to the Government; provided that notices or other communications to be given to an address outside Delhi may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Technology Partner may from time to time designate by notice to the Government;

{ Attention:
Designation:
Address:
Fax No:
Email: }

- (b) in the case of the Government, be given by facsimile or e-mail and by letter delivered by hand at the address given below and addressed to the person named below with a copy delivered to the Government Representative or such other person as the Government may from time to time designate by notice to the Technology Partner; provided that if the Technology Partner 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;

{ Name:
Designation:
Address:
Fax No:
Email: }; and

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

45.14 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.

45.15 Counterparts

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

Article 46. Definitions

46.1 Definitions

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

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

“Affected Party” shall have the meaning as set forth in Clause 32.1;

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

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

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

“Applicable Train Price” shall have the meaning as set forth in Clause 25.1.2;

“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 upgradation, operation and maintenance of the Manufacturing Unit, Trainset Depots and Trains, as the case may be, during the subsistence of this Agreement;

“Appointed Date” means the date of this Agreement or an earlier date that the Parties may by mutual consent determine;

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

“Availability” shall have the meaning as set forth in Clause 20.2.4;

“Available Hours” shall have the meaning as set forth in Clause 20.2.1;

“**Bank**” means a nationalised bank or a scheduled bank incorporated in India and having a minimum net worth of Rs 1,000 crore (Rupees one thousand crore). For the avoidance of doubt, scheduled bank shall mean a bank as defined under section 2(e) of the Reserve Bank of India Act, 1934;

“**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 Index Date**” means the last date of the month which shall have closed no later than 30 (thirty) days prior to the Bid Date;

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

“**Bid Date**” means the last date on which the Bid may have been submitted in accordance with the provisions of the tender;

“**Bid Security**” means the security provided by the Technology Partner to the Government along with the Bid in accordance with the tender, and which is to remain in force until substituted by the Performance Security;

“**Car**” means a passenger car forming part of a Train;

“**CPIIW**” means the Consumer Price Index for Industrial Workers published by Labour Bureau, Government of India and shall include any index which substitutes the CPIIW, and any reference to CPIIW shall, unless the context otherwise requires, be construed as a reference to the CPIIW published for the period ending with the preceding month;

“**Change in Law**” means the occurrence of any of the following after the Bid 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 Date;
- (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 Date; or
- (e) any change in the rates of any of the Taxes that have a direct effect on the Agreement;

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

“**Technology Partner**” shall have the meaning attributed thereto in the array of Parties 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;

“**Technology Partner Default**” shall have the meaning as set forth in Clause 35.1.1;

{“**Consortium**” shall have the meaning as set forth in Recital (C);}

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

“**Consumables**” shall have the meaning as set forth in Clause 17.4.1;

“**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 Technology Partner requires any reasonable action by the Technology Partner that must be approved by the Government hereunder, the applicable Cure Period shall be extended by the period taken by the Government to accord its approval;

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

“**Depot Site**” shall have the meaning as set forth in Clause 12.1.1;

“**Depreciated Value**” of a Project Asset shall mean the depreciated value of such asset by depreciating its initial book value, using straight line method (SLM), by applying annual depreciation rate calculated using service life as minimum of the following:

- (i) as declared by the OEM of such project Asset;
- (ii) as applicable as per the Companies Act/Income Tax Act; and
- (iii) Supply Period in case of Project Assets installed at the Manufacturing Unit and Maintenance Period in case of Project Assets installed at the Trainset Depots/Washing Lines.

“**Designs**” or “**Drawings**” means all of the drawings, designs, calculations and documents pertaining to the Trains as set forth in Schedule-E;

“**Dispute**” shall have the meaning as set forth in Clause 42.1.1;

“**Dispute Resolution Procedure**” means the procedure for resolution of Disputes as set forth in Article 42;

“**Divestment Date**” (i) in relation to divestment at Trainset Depots and Washing Lines means the date of completion of the Maintenance Period of all Trains under this Agreement or termination of the Agreement by a Termination Notice whichever is earlier, and (ii) in relation to divestment at Manufacturing Unit means the date of

completion of the Supply Period of all Trains under this Agreement or termination of the Agreement by a Termination Notice whichever is earlier;

“Divestment Requirements” means the obligations of the Technology Partner for and in respect of Termination as set forth in Clause 36.1.1;

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

“Emergency” means a condition or situation that is likely to endanger the security of the individuals on or about the Manufacturing Unit, Trainset Depots or Trains, as the case may be, or which poses an immediate threat of material damage to any of the Project Assets;

“Encumbrances” means, in relation to the Manufacturing Unit, Trainset Depots or Trains, as the case may be, 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 Manufacturing Unit, Trainset Depots or Trains, as the case may be, where applicable herein;

“Epidemic Defect” shall have the meaning as set forth in Clause 17.13.1;

“ ;

“Failure” shall have the meaning as set forth in Clause 17.6.2;

“Fleet” means and includes, for any Year, all Trains in respect of which the Technology Partner has Maintenance Obligations during that Year;

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

“Force Majeure” or **“Force Majeure Event”** shall have the meaning ascribed to it in Clause 32.1;

“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 operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Technology Partner in accordance with this

Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

“Government Default” shall have the meaning as set forth in Clause 35.2.1;

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

“Government Representative” means such person or persons as may be authorised in writing by the Government 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 Government under this Agreement;

“Guaranteed Availability” shall have the meaning as set forth in Clause 20.2.5;

“Guaranteed Reliability” shall have the meaning as set forth in Clause 20.4.2;

“Helpline” shall have the meaning as set forth in Clause 17.10.4;

“IEC” means the International Electro-technical Commission;

“Indemnified Party” means the Party entitled to the benefit of an indemnity pursuant to Article 40;

“Indemnifying Party” means the Party obligated to indemnify the other Party pursuant to Article 40;

“Indirect Political Event” shall have the meaning as set forth in Clause 32.3;

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Technology Partner pursuant to Article 30, and includes all insurances required to be taken out by the Technology Partner under Clause 30.2 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

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

“**Key Performance Indicators**” shall have the meaning as set forth in Clause 20.1;

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

“**Lead Member**” shall mean the lead member of the Consortium, and in the event there is no Consortium, the Selected Bidder;

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

“**Maintenance Fee**” shall have the meaning as set forth in Clause 25.1.1;

“**Maintenance Index**” means the sum of:

- i. 15% (fifteen per cent) of CPIIW;
- ii. 20% (twenty per cent) of WPIBMA;
- iii. 15% (fifteen per cent) of WPI;
- iv. 30% (thirty per cent) of WPIEIM; and
- v. 20% (twenty per cent) remaining constant as compared to the preceding revision, if any, of the Maintenance Index;

“**Maintenance Inspection Report**” shall have the meaning as set forth in Clause 19.3;

“**Maintenance Manual**” shall have the meaning ascribed to it in Clause 17.3;

“**Maintenance Obligations**” shall have the meaning as set forth in Clause 17.1.1;

“**Maintenance Period**” shall have the meaning as set forth in Clause 17.2.1;

“**Maintenance Requirements**” shall have the meaning as set forth in Clause 17.9;

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

“**Manufacturing Unit**” shall have the meaning as set forth in Clause 10.1;

“**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;

“**Net Residual Value**” of all Project Asset shall mean, higher of (i) the Depreciated Value of all Project Assets provided by the Technology Partner less the total of all lump-sum payments made to the Technology Partner for development/upgradation of the Manufacturing Unit and Trainset Depots in terms of Clause 10.4 and 12.4 respectively; and (ii) zero.

“**Non-Available Hours**” shall have the meaning as set forth in Clause 20.2.2;

“**Non-Political Event**” shall have the meaning as set forth in Clause 32.2;

“**O&M**” means maintenance of the Trains and includes all matters connected with or incidental to such maintenance, and provision of services and facilities in accordance with the provisions of this Agreement;

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

“**O&M Sub-contractor**” means the person, if any, with whom the Technology Partner has entered into an O&M Contract for discharging O&M obligations for and on behalf of the Technology Partner;

“**O&M Expenses**” means expenses incurred by or on behalf of the Technology Partner or by the Government, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Technology Partner any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

“**Operation Control Centre**” shall have the meaning as set forth in Clause 17.10.4;

“**Operation Manual**” shall have the meaning as set forth in Clause 17.18.2;

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

“**Payable Spares**” shall have the meaning as set forth in Clause 27.2.1;

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

“**Periodic Overhaul Schedule**” or “**POH**” shall have the meaning as set forth in Clause 12.2.4;

“**Political Event**” shall have the meaning as set forth in Clause 32.4;

“**Price Index**” means the sum of:

- i. 13% (thirteen per cent) of CPIIW;
- ii. 13% (thirteen per cent) of WPIBMA;
- iii. 9% (nine per cent) of WPIEIM;
- iv. 14% (fourteen per cent) of WPIT;

- v. 8% (eight per cent) of WPI;
- vi. 23% (twenty three per cent) of WPIC; and
- vii. 20% (twenty per cent) remaining constant as compared to the preceding revision, if any, of the Price Index;

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

“Project Agreements” means this Agreement, the Financing Agreement, contracts for upgradation of Manufacturing Unit, Trainset Depots, M&P, O&M Contract and any other material agreements or contracts that may be entered into by the Technology Partner with any person in connection with matters relating to, arising out of or incidental to this Agreement, but does not include any agreement for procurement of components, sub-systems for the Trains and other goods and services for the Trainset Depots, as the case may be;

“Project Assets” means all physical and other assets relating to and forming part of the Manufacturing Unit, Trainset Depots, Training Facilities, Driving Simulator and Washings Lines which are maintained, operated or used by the Technology Partner for manufacturing/assembly or maintenance of the Trains or training purpose as part of this Agreement. The Project Assets may be provided either by the Technology Partner or by the Government and include physical assets like civil structures, Mechanical Electrical and Plumbing (MEP) system, communication systems, offices, sheds, Plant and Machineries (M&Ps), jigs and fixtures, tools, software & hardware system as well as non tangible assets like insurance proceeds, Applicable Permits and other rights of the Technology Partner to or in respect of the Project however excludes tracks, OHE, Signalling which are provided and maintained by the Government. All the assets at the Training Facilities including Driving Simulator shall be considered as part of Project Asset of Trainset Depots.

“Prompt Response Teams” or **“PR Teams”** shall have the meaning as set forth in Clause 17.10.1;

“Prototype” shall have the meaning as set forth in Clause 13.2.1;

“Reference Index Date” for and in respect of a Year or Accounting Year, as the case may be, means the last date of the month which shall have closed no later than 30 (thirty) days prior to commencement of that Year or Accounting Year;

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

“Reliability” shall have the meaning as set forth in Clause 20.4.1;

“Safety Requirements” shall have the meaning as set forth in Clause 18.1;

“Scheduled Maintenance” shall have the meaning as set forth in Clause 17.5.1;

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

“**Selected Bidder**” shall have the meaning as set forth in Recital (C);

“**Service Year**” shall have the meaning as set forth in Clause 25.2.1;

“**Spares**” shall have the meaning as set forth in Clause 17.4.2;

“**Specifications and Standards**” means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Trains, as set forth in Schedule-A, and any modifications thereof, or additions thereto, as included in the design and engineering for the Trains submitted by the Technology Partner to, and expressly approved by, the Government;

“**State**” means the States of India, including a Union Territory, where the Manufacturing Unit or the Trainset Depots or Washing Lines, as the case may be, are located and “**State Government**” means the governments of those States;

“**Statutory Auditors**” means a reputable firm of chartered accountants acting as the statutory auditors of the Technology Partner under the provisions of the Companies Act, 2013 including any re-enactment or amendment thereof, for the time being in force;

“**Sub-contractor**” means the person or persons, as the case may be, with whom the Technology Partner has entered into any of the contracts, the O&M Contract any other material contract for upgradation, operation and/or maintenance of the Manufacturing Unit, Trainset Depots or the Trains, as the case may be, or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Technology Partner;

“**Supply Period**” shall have the meaning as set forth in Clause 14.1;

“**Supply Programme**” shall have the meaning as set forth in Clause 15.1.1;

“**Suspension**” shall have the meaning as set forth in Clause 34.1;

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

“**Termination**” means the expiry or termination of this 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 the Government under and in accordance with the provisions of this Agreement, upon Termination;

“**Tests**” means the tests as set forth in Schedule-F to determine the conformity of Trains with the provisions of this Agreement;

“**Train**” means a train comprising electrical multiple units (EMU) of 16 or 20 or 24 Sleeper Cars, complying with the requirements specified in the Manual of Specifications and Standards;

“**Train Price**” shall have the meaning as set forth in Clause 23.1;

“**Trainset Depot**” shall have the meaning as set forth in Clause 12.2.1;

“**Transfer Date**” means the date of completion of the Maintenance Period of all Trains under this Agreement or termination of the Agreement by a Termination Notice;

“**Unscheduled Maintenance**” shall have the meaning as set forth in Clause 17.6.1;

“**Vesting Certificate**” shall have the meaning as set forth in Clause 36.4;

“**Washing Lines**” means the site and infrastructure designated by the Government for the washing, maintenance and inspection of Trains after completion of each journey;

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

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

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

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

“**WPIT**” means the Wholesale Price Index for Transformers as published by Ministry of Industry, GOI and shall include any index which substitutes the WPIT, and any reference

to WPIT shall, unless the context otherwise requires, be construed as a reference to the WPIT published for the period ending with the preceding month; and

“**Year**” means the period commencing from the date on which the Supply Period shall begin and expiring on the date which shall precede the 1st (first) anniversary thereof, or any subsequent period of 1(one) year immediately preceding an anniversary of the date on which the Supply Period shall have commenced.

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

SIGNED, SEALED AND DELIVERED For and on behalf of THE GOVERNMENT by:	THE COMMON SEAL OF [.....] has been affixed pursuant to the resolution passed by the Board of [.....] at its meeting held on the day of 20** hereunto affixed in the presence of, director, and director who has signed these presents in token thereof and, Technology Partner Secretary / Authorised Officer who has countersigned the same in token thereof.
(Signature) (Name) (Designation) (Address)	(Signature) (Name) (Designation) (Address)
In the presence of: 1.	2.

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

Schedules

A. Specifications and Standards

1. Trains

The Technology Partner shall comply with the Specifications and Standards set forth in Annex-I of this Schedule-A for manufacture, supply and maintenance of the Trains.

Annex-I: Specifications and Standards for Vande Bharat Trains
(Schedule-A)

Manual of Specifications and Standards to apply

The Trains shall conform to the Manual of Specifications and Standards for Vande Bharat Trains published by the Government (An authenticated copy of the Manual comprising Specification No. ICF MD SPEC-398 REV 00 dated 04.04.2022 has been provided to the Technology Partner as part of the bid documents.)

B. Proposed Sites of the Manufacturing Unit and Trainset Depots

(See Clause 2.1 and Article 10)

- 1. Site of Government Manufacturing Unit at Marathwada Rail Coach Factory (MRCF), Latur.**
 - 1.1 Site of Government Manufacturing Unit at MRCF, Latur shall include the area handed over to the Technology Partner for manufacturing and assembling the Trains which is to be up-graded, the available existing infrastructure/facilities and additional infrastructure/facilities to be developed to meet the requirement to manufacture the Trains at the site of Government Manufacturing unit at MRCF, Latur.
 - 1.2 An inventory of the Site of Government Manufacturing Unit at MRCF, Latur including the land, buildings, structures, road works, trees and any other immovable property on, or attached to the site shall be prepared jointly by the Government Representative and the Technology Partner.
- 2. Site of Government Manufacturing Unit at Integral Coach Factory (ICF), Chennai.**
 - 2.1 Site of Government Manufacturing Unit at ICF, Chennai shall include the area handed over to the Technology Partner for manufacturing and assembling the Trains which is to be up-graded, the available existing infrastructure/facilities and additional infrastructure/facilities to be developed to meet the requirement to manufacture the Trains at the site of Government Manufacturing unit at ICF, Chennai.
 - 2.2 An inventory of the Site of Government Manufacturing Unit at ICF, Chennai including the land, buildings, structures, road works, trees and any other immovable property on, or attached to the site shall be prepared jointly by the Government Representative and the Technology Partner.
- 3. Trainset Depots**
 - 3.1 Site of the Trainset Depots shall include the land, buildings, structures, M&Ps, road works and other systems as described in Annex-I of this Schedule B.
 - 3.2 An inventory of the Depot Sites including the land, buildings, structures, M&Ps, road works, trees and any other property on, or attached to the Depot Sites shall be prepared jointly by the Government Representative and the Technology Partner.
 - 3.2 The Depot Sites shall have rail lines which are connected to the Government's rail network.
 - 3.4 Site plan of the Trainset Depots is at Annex- I of this Schedule- B.

4. Washing Line

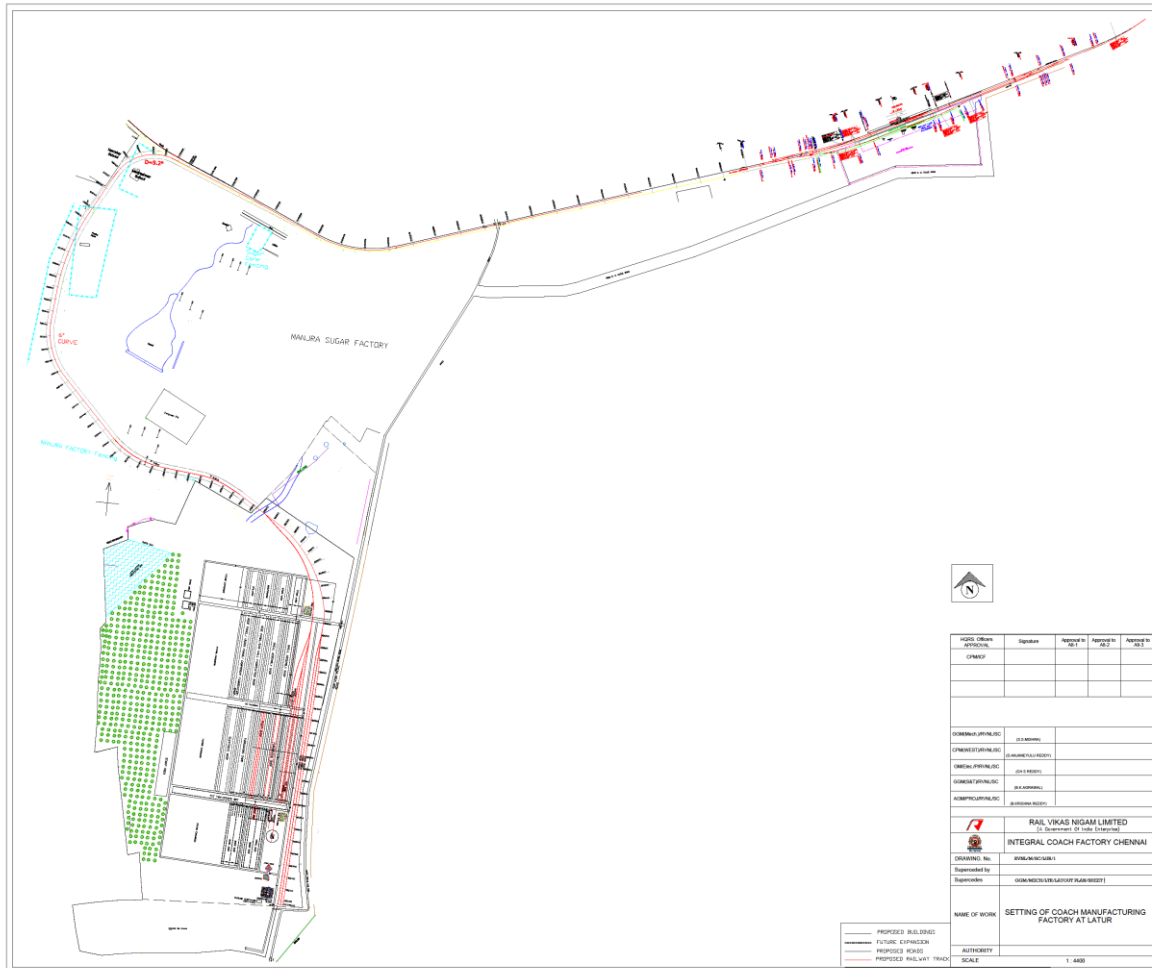
4.1 The Washing Lines will be provided at the following Stations of the Government rail network:

- a) Delhi – New Delhi, Nizamuddin, Anand Vihar, Old Delhi, Sarai Rohilla
- b) Kolkatta – Howrah, Sealdah, Santragachi
- c) Mumbai – CST, Mumbai Central, Bandra,
- d) Hyderabad, Secunderabad
- e) Bengaluru

Annex - I
(Schedule-B)

Details of available existing infrastructure/facilities at the site of Government Manufacturing Unit at MRCF, Latur

MRCF Latur Layout



Infrastructures and Assets of Marathwada Rail Coach Factory

1 Civil Engineering Infrastructure

1.1 Factory Shop Floor-Pre-Engineered Building (51,314 m²)

SN	Name of Shop	Size in Meters Lx W x H _{Max}	Main Shed Floor Area in m ²	Lean to Shed Floor Area in m ²	Total Shed Area including Lean to Shed in m ²	Office and Amenity Space in the Lean to shed Area in m ²
1	Stores	151x 42 x14	3990	2278	6268	886
2	Shell	351 x 42 x 15.5	9477	5265	14742	1700
3	Paint	151 x 42 x 14	3973	1597	5570	1597
4	Furnishing	351 x42 x 16	9477	5265	14742	1570
5	Bogie	51 x 67x14	2640	769	3409	282
6	Test	121 x 53 x 12	4450	1963	6413	2032
7	Pump Room	20x8.5x5.5	170	-	170	-

1.2 Service Buildings (4094 m²)

SN	Name of Building	No of Floors	Total Floor Area in m2	Max Height of Building in meters
1	Admin Building	G+2	2882	14.4
2	Security Building	G	105	4
3	Canteen	G	438	4.2
4	Main Electric Substation	G	357.5	5.25
5	Metering Room	G	22.75	5.25
6	Toilet Blocks (six blocks)	G	288.72	3.65
7	Station Building	G	359	4.2

2 MECHANICAL INFRASTRUCTURES

2.1 MACHINES AND PLANTS

SN	Description	Unit	Nos	Location
1	Shell Assembly Fixture (Godrej)	Sets	2	Shell Shop
2	Paint Booth & Drying Oven (Takisha)	Nos	1	Paint Shop
3	Rail cum Road Vehicle 2000T (Zagro)	Nos	2	Yard Shunting
4	Rail Cum Road Vehicle 300T (Zagro)	Nos	4	Paint Shop, Test Shop
5	Rail Com Road Vehicle 100T (Zagro)	Nos	4	Shell Shop, Furnishing Shop
6	Bogie Testing Machine (BBM)	Nos	1	Bogie Shop
7	Traverser Pit Type (GH Cranes)	Nos	2	-
8	Turning Bridge (GH Cranes)	Nos	1	-
9	EOT crane 20T (GH Cranes)	Nos	4	Shell Shop
10	EOT crane 30T (GH Cranes)	Nos	2	Furnishing Shop
11	Mobile Coach weighing System (TRACK BLAZE)	Set	1	Test Shop
12	Shower Test System (TUFF MACHINES)	Set	2	-
13	MIG/MAG Welding Plant (LINCLON)	Nos	22	Shell & Bogie Shop
14	TIG Welding Plant + Wire Feeder (LINCLON)	Nos	24	Shell & Bogie Shop

15	TIG Welding Plant (LINCLON)	Nos	25	Shell & Bogie Shop
16	High Dip Lorry /Dummy Bogie (Godrej)	Nos	40	Furnishing Shop
16	Low Dip Lorry/Dummy Bogie (Godrej)	Nos	28	Shell & Paint Shop
18	Air Compressor (Atlas Copco)	Nos	8	All Shops except stores
19	Turing Device for Under Frame (Godrej)	Sets	2	Shell Shop
20	Batter Operated Stacker (Godrej)	Nos	16	All Shops
21	Reach Truck (Godrej)	Nos	4	Stores
22	Working Platform 1T (Godrej)	Nos	16	Furnishing Shop
23	Trolley Mounted Fire Fighting Equipment (CEASE FIRE)	Nos	30	All shops and Service buildings
24	Coach Body lifting Jack (NAVYUG)	Set	2	Test Shop
24	EOT crane 15T (GH Cranes)	Nos	2	Bogie Shop
26	EOT crane 3T (GH Cranes)	Nos	1	Test Shop
27	Forklift 5T (Godrej)	Nos	2	Stores
28	Forklift 3T (Godrej)	Nos	4	Stores
29	Starter Bay 5 Level Storage (Godrej)	Nos	16	Furnishing, Paint and Test Shop
30	Extension Bay 5 Level Storage (Godrej)	Nos	142	Furnishing, Paint and Test Shop
31	Starter Bay 7 Level Storage (Godrej)	Nos	4	Stores
32	Extension Bay 7 Level Storage (Godrej)	Nos	68	Stores
33	Starter Bay 3 Level Storage (Godrej)	Nos	12	Shell, Test, Bogie Shop
34	Extension Bay 3 Level Storage (Godrej)	Nos	76	Shell, Test, Bogie Shop
35	Cage Pallet Bins (Godrej)	Nos	650	Stores
36	Flat Pallets (Godrej)	Nos	650	Stores
37	Cantilever Racking System (Godrej)	Nos	10	Stores
38	Front Open Crates with Stand (Godrej)	Nos	10	Stores, Furnishing Shop
39	Working Platform Height-1.1 m (Godrej)	Nos	16	Shell Shop
40	Working Platform-Height-2.05 m (Godrej)	Nos	8	Furnishing Shop
41	Mobile Platform height 4.3 m (Godrej)	Nos	4	Furnishing Shop
42	Underframe trestles (Godrej)	Sets	2	Shell Shop
43	Platform Truck 2T (Godrej)	Nos	8	All Shops
44	Mobile (Self Propelled) Scissor Lift (Godrej)	Nos	4	Shell Shop
45	Easy Mover (Easy mover)	Nos	6	Furnishing Shop
46	Scissor Lift Table 4T (Godrej)	Nos	2	Furnishing Shop
47	Sewage Water Treatment Plant (Ion Exchange)	Nos	1	-
48	Road Mobile Crane 12T (Ace)	Nos	1	-
49	MMA Welding plant (LINCLON)	Nos	10	Shell Shop
50	Plasma Cutting Machine (HYPERTHERM)	Nos	2	Shell Shop
51	Single Car Test Rig (ESCORTS)	Nos	4	Test Shop
52	Hand Pallet Hydraulic Truck (GODREJ)	Nos	20	All Shops
53	Scissor Lift Table (NILKAMAL)	Nos	4	Shell Shop
54	Rake Test Rig (ESCORTS)	Nos	2	Test Shop
55	Safety Accessories for Welder	Nos	30	Shell & Bogie Shop
56	Hydraulic Pipe Bending Machine (Rothenberger)	Nos	2	Furnishing Shop
57	Portable Pipe Threading Machine (Rothenberger)	Nos	2	Furnishing Shop
60	Pedestal Grinding Machine (BESTON)	Nos	2	Shell Shop

62	Pillar Drill Machine 40mm (BATILBOI)	Nos	1	Shell Shop
63	Automatic Boom Barrier (Home Automotive)	Nos	2	Security Gate
64	Dock Leveller 12 T Capacity (Godrej)	Nos	2	Stores

2.2 Pneumatic and Gas Pipelines

Pneumatic pipe line network is extended to all shops except stores from compressor/compressors installed in the shop floor through 80 mm diameter MS pipeline headers and 25 mm diameter MS branch off pipe with auto drain valve, filter regulator and QRC provided at each tap off point provided on shed column structure.

Only in Shell shop Argon and Co₂+Argon mix pipeline network has been provided to facilitate MIG and TIG welding. Header from gas bank is 50 mm diameter SS pipe with 12.5 mm diameter SS branch pipe for tapping off. At each tap off point regulator flow-meter is provided inside a lock box.

SN	Shop	No of Pneumatic Tap off Points with (Filter Regulator & QRC)	No of Argon Tap off points with Tapping point regulator flow-meter with lock box.	No of CO ₂ +Argon mix tap off points with Tapping point regulator flow-meter with lock box.
1	Shell Shop	48	30	30
2	Furnishing Shop	136	-	-
3	Paint Shop	25	-	-
4	Bogie Shop	16	-	-
5	Test Shop	48	-	-

3 Electrical general services and TRD Infrastructure

3.1 Main Electric Substation-

3.1.1 Incoming Supply- 33 KV for MSEDCL for connected load of 3000KW.

3.1.2 33 KV to 11 KV- 2 Transformer of 3000 KVA each

3.1.3 11 KV-25 KV-2 Transformers of 1000 KVA each for OHE lines

- a) 11 KV-430 V – 2300KW is estimated maximum operating load, connected load is 5150KW, 4 nos 500 KVA Transformer for meeting requirements of Bogie shop, Test shop, Furnishing shop, Admin building, Canteen, Security room, streetlight and SWTP)

3.2 Compact substations

3.2.1 Three (3) nos 11 KV to 430 V-800 KVA Compact substations units for shell shop & stores

3.2.2 Two (2) nos 11 KV to 430 KV- 800 KVA compact units for Paint shop

3.2.3 Two (2) nos 11 KV to 430 KV-500 KVA compact substation units for colony

3.3 11 KV and 450 V supply through cable trenches to different shops. 11 KV supply connected in ring main between different substations. Total length of cables in trenches, shop floor and buildings are about -33 KV 550 m, 11 KV 7354 m, LT armoured cables-41395m, LT flexible cables-7225m

3.4 Power distribution including lighting supply in shop floor is through Buss Bar. Shops have been provided with power tapping provisions for the portable machines and welding plants as follows. All power tapping location where welding machines are expected to work have been provided with de-contactors to switch off power supply when welding machines are not in use.

Shop	440V, 63A, 3Ph - 1No., 230V, 15A, 1Ph - 1No., 110V, 15A, 1Ph - 1No.	440V, 63A, 3 Ph - 1No. 230V, 15A, 1Ph - 2 No.	440V, 32A, 3 Ph - 1No. 230V, 15A, 1Ph - 2 No.	110V, 1Ph - 2 No.	De- Contactor - 1No.
Shell			52		52
Furnishing			68	68	
Bogie		12			
Paint	21				
Test	33				
Store			15		

3.5 Genset for emergency supply- 2 Diesel Gensets of 500 KVA each provided one at the Main substation other at the compact substation by the side of shell shop. Emergency supply is provided to all lifting machines like Cranes, Jacks, admin building, streetlights and 30% of lights in shop-floor.

3.6 Solar electric Power-Roof mounted, grid connected solar power generation plant of total 820 KWp capacity is provided on roof of Test Shop, Shell Shop and Admin building.

3.7 LED Streetlights are provided all along the road network at 25 m spacing on 7 m high lamp posts

3.8 All light fittings inside the shop are LED and all major machines are with VVF drive.

3.9 OHE facility is provided on two lines of Test shop and in one of the yard line to be used as test track. Total length of OHE line is 4.6 Km.

3.10 Admin building provided in HVAC VRF system while few offices spaces in test shops have been provided with split AC

HARANGUL STATION INFRASTRUCTURE

Harangul (HGL) used to be a halt station without any signalling arrangements which was converted to a full-fledged block station with EI interlocking. Salient features are as under

1. Though HGL is in a non-electrified single line section, HGL yard and signalling arrangement have been made compatible for electrification and doubling. No further work in station would be required to be done in case of future doubling and electrification of the section.
2. Total new track laid in station area is 4572 meters. The CSL of mainline and three loop lines are as under

- a. Loop1, ML- 921 meters
- b. Loop2, Loop3 -857 meters
3. Station building- Single storied building of area 359 m²with road approaches, bore-well water and MIDC electric supply.
4. Construction of two number of type-II quarters of area 172 m²in lieu of demolition of two quarters near LC gate 55

Additional Facilities to be provided by the Contractor (as per requirement)

1. The bays at present are open bays. In case controlled atmosphere is to be maintained, then necessary sealing/ humidity control shall be in the scope of contractor.
2. All assembly fixtures required for body shell assembly, bogie assembly and lowering of body shell on the bogie.
3. Special gadgets required for testing, commissioning, inspection of the coaches/ BU/ Rake.
4. If additional air conditioned paint booth is required, the same need to be constructed by the contractor at earmarked space.
5. Any other facility/gadget/tools as required.

Annex - II
(Schedule-B)

Details of available existing infrastructure/facilities at the site of Government Manufacturing Unit at ICF, Chennai

1. Wheel set assembly line can be spared for assembly of wheel sets, if required. The contractor has to install necessary fixtures for bogie assembly. Bogie static testing machine is available with ICF.
2. Complete furnishing activities have to be carried out at the PU facility.
3. One covered shed of size 40m x 250m with two bays of 20m width will be provided, out of which one bay is meant for Shell assembly and the second bay is meant for Furnishing.
4. Broad Gauge tracks (2 lines) will be available in the bays.
5. The sheds shall have EOT cranes of suitable capacity for shell assembly and furnishing assembly.
6. Lighting, fume extraction and fans with office rooms shall be available in the sheds.
7. Free supply of drinking water with rest room facilities shall be available in the shed.
8. Free supply of compressed air and electricity for connecting equipment/ tools shall be provided along the pillars.
9. Storage facility for day-to-day working shall be available. However, the firm has to arrange warehouse near the PU location for bulk storage for movement to work spot on just-in-time basis, whenever required.
10. Existing painting booths of the PUs can be spared for painting of shells. In case the firm wants air-conditioning of the paint booth, the same shall be separately erected by the firm.
11. External movement of shells to/ from paint booth and shunting of coaches to form Basic Units (BU) and to for train rake.
12. Facility for commissioning and testing of BU and rake.
13. Canteen available for the staff.

Additional Facilities to be provided by the Contractor (as per requirement)

1. The bays at present are open bays. In case controlled atmosphere is to be maintained, then necessary sealing/ humidity control shall be in the scope of contractor.
2. External warehouse for bulk storage near the PU location so as to move the material on just-in-time basis.
3. All assembly fixtures required for body shell assembly, bogie assembly and lowering of body shell on the bogie.
4. Low-dip lorries for movement of body shells and high-dip lorries for underslung equipment mounting below the underframe.
5. Pusher for the shells to move within the shed.
6. All special equipment viz. hydraulic jack, hydraulic lift, ladder, etc.
7. Special tools, hand tools and power tools.

8. TIG/ MIG welding sets and consumables viz. gas, electrodes etc.
9. Special gadgets required for testing, commissioning, inspection of the coaches/ BU/ Rake.
10. If air conditioned paint booth is required, the same need to be constructed by the contractor at earmarked space at ICF.
11. Any other facility/gadget/tools as required.

Annex-III: Site of the Trainset Depots

(Schedule-B)

[**Note 1:** Through suitable drawings and description in words, the land, buildings, structures and road works comprising the Depot Sites shall be specified briefly but precisely in this Annex-I.

The Depot Sites specified in this Schedule B are indicative at this stage and locations of the Depot Sites actually provided to a Technology Partner shall be decided during Design Stage, depending upon number of Trains under Maintenance Obligation, site availability and operational requirements.]

S.No	Zone	Major Originating/ Terminating station	Proposed Depot Sites
1	NR	Delhi/New Delhi	BIJWASAN Coaching Terminal
2			EMU Car Shed Ghaziabad
3	ER	HWH/SER and ER	Dankuni Coaching Terminal
4	WR	Mumbai WR	BCT Depot
5	NWR	Jodhpur	Jodhpur
6	SCR	Hyderabad	Cherlapalli
7	CR	Mumbai CR	Wadibunder Coaching Complex
8	SWR	Bengaluru	HEJJALA Coaching Terminal

C. Performance Security

(See Clauses 9.1, 24.1 and 37.2.3)

Executive Director Stores(RS),
Railway Board, Government of India,
New Delhi-110001

WHEREAS:

- a)(the “Technology Partner”) and the President of India through the _____, Railway Board, Government of India (the “Government”) have entered into a Manufacturing-cum-maintenance Agreement dated(the “**Agreement**”) whereby the Government has agreed to the Technology Partner undertaking the supply and maintenance of electric trains, subject to and in accordance with the provisions of the Agreement.
- b) The Agreement requires the Technology Partner to furnish a Performance Security to the Government in a sum of Rs crore (Rupeescrore)/ (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Supply Period (as defined in the Agreement).
- c) We, through our Branch at(the “Bank”) have agreed to furnish this Bank Guarantee by way of Performance Security.

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

1. The Bank hereby unconditionally and irrevocably guarantees and undertakes to pay to the Government upon occurrence of any failure or default in the due and faithful performance of all or any of the Technology Partner’s obligations for a period of 3 (three) years from the date hereof³, under and in accordance with the provisions of the Agreement on its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Technology Partner, such sum or sums upto an aggregate sum of the Guarantee Amount as the Government shall claim, without the Government 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 Government, under the hand of an Officer not below the rank of Deputy Secretary to the Government, that the Technology Partner 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 Government shall be the sole judge as to whether the Technology Partner is in default of the due and faithful performance of any of its obligations under the Agreement and its decision that the Technology Partner is in default shall be final, and binding on the Bank, notwithstanding any differences between the Government and the Technology Partner, or any dispute between them pending before any court, tribunal,

³The date of expiry of the Guarantee to be specified depending on whether Article 9 or Article 24 of the Agreement is applicable.

arbitrators or any other authority or body, or by the discharge of the Technology Partner for any reason whatsoever.

3. In order to give effect to this Guarantee, the Government shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Technology Partner 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 Government to proceed against the Technology Partner before presenting to the Bank its demand under this Guarantee.
5. The Government 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 Technology Partner contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Government against the Technology Partner, 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 Government, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Government of the liberty with reference to the matters aforesaid or by reason of time being given to the Technology Partner or any other forbearance, indulgence, act or omission on the part of the Government 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 Government 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 Technology Partner 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 Government on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Government under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. This Guarantee shall cease to be in force and effect after the period specified in paragraph 1, provided the Technology Partner is not in breach of the Agreement.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Government 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 Government 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 the period specified in paragraph 1; and unless a demand or claim under this Guarantee is made in writing on or before the expiry of this Guarantee, the Bank shall be discharged from its liabilities hereunder.
12. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs..... crore (Rupeescrore). The Bank shall be liable to pay the said amount or any part thereof only if the Government serves a written claim on the Bank in accordance with paragraph 1 hereof, on or before the {the date of expiry of this Guarantee}.

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.

D. List of Conditions affecting Upkeep

Conditions affecting Upkeep

S. No.	System name	Condition
1	Windscreen Wiper and Washer System	- Rainy weather, defective wiper in any cab.
2	Couplers (any type)	- Any mechanical/electrical/pneumatic fault and/or any dimensional misalignment and/or any damage to any part which does not allow the coupler to guarantee the fulfilment to its assigned mission, in accordance to the technical requirements, performance and safety set out in this specification.
3	Suspension	- Any defect in primary / secondary suspension resulting in passenger safety, comfort or performance.
4	Wheel	- If wheel flat is > 40 mm or as finalised in design. - Any abnormal hammering as reported by the TO.
5	Pantograph	- Isolation of any pantograph
6	Transformer	- Isolation of any one main transformer.
7	Battery charger	- Battery Charger of one unit isolated.
8	Mechanical drive system	- Any defect resulting in high temperature / isolation
9	Traction Motors	- Isolation of more than 25%motors.
10	Traction converters	- As per the consequential effect as defined in Item 10 above.
11	Main compressor unit	- Isolation of any Main Compressor Unit
12	Auxiliary converter-inverter	- Isolation of any Auxiliary Converter-Inverter unit.
13	Brake system (mechanical)	- If isolation of an additional bogie (mechanical) leads to speed restriction.
14	Exterior lights	- Failure of any head light / marker/tail light.
15	Driver's desk	- If master controller prevents the train from moving. - Any defect in master controller even if no delays are reported. - Any defective cab switch leading to unsafe operation.

Conditions affecting Upkeep

S. No.	System name	Condition
16	TCMS & Vehicle circuits	<ul style="list-style-type: none"> - If HMI display fails & functionality is not transferred to redundant HMI. - Any failure in TCMS component / equipment /circuit element / software/communication system etc. resulting in loss of intended function. - Further cases will be included based on TCMS redundancy and configuration.
17	PIS & CCTV	<ul style="list-style-type: none"> - If both automatic and manual announcements fail - If announcements in Car is not audible - if ≥ 1 unit exterior side view CCTV not working - If >1 PEA in any car is defective - One saloon CCTV, including its backup if any, is isolated. - If ≥ 1 unit for rear cab and front cab camera, cameras on the roof
18	Passenger doors	<ul style="list-style-type: none"> - If ≥ 1 (one) door per train side is isolated.
19	HVAC (passenger area)	<ul style="list-style-type: none"> - Failure of any one HVAC in any car leading to increase in inside temperature $\geq 28^{\circ}\text{C}$ - Failure of two HVAC's in one car. - Noisy Air Conditioner: Interior Noise $>+2\text{dB}$ than the one recorded and validated during the type test at standstill)
20	Ground fault in DC Circuit	<ul style="list-style-type: none"> - Train to be withdrawn in case of single ground fault if it leads to unsafe operation as per the design.
21	A failure or symptom which may endanger safe and/or normal operation of train	<ul style="list-style-type: none"> - Failure in safety interlock or protection circuit such as door loop - Abnormal noise in underframe - Wheel flat - Arcing in pantograph - Failure of emergency equipment - Failure which may disable train's push out duty. - Train which that requires more than 2 instances of reset within 30 minutes - Jerky movement (The details shall be finalized in design stage). - Others to be decided during design stage

Note: *The above list shall be further reviewed and updated during design stage.*

**E. List of Design/Drawings of Car Body Shells and Bogie
of Vande Bharat Train (Chair Car Version)**

(See Clause 13.1)

[May be collected from ICF/Chennai]

F. Tests

(See Clause 13.2, 13.4, 14.2 and 23.7.2)

[Refer Manual of Specifications and Standards]

G. Maintenance Requirements

1. Maintenance Requirements

- 1.1 The Technology Partner shall, at all times, maintain the Trains in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Technology Partner shall, at all times during the Maintenance Period, conform to the maintenance requirements set forth in this Schedule-G (the “**Maintenance Requirements**”).
- 1.2 The Technology Partner shall repair or rectify any defect or deficiency set forth in Paragraph 2 of this Schedule-G within the time limit specified therein.

2. Repair/rectification of defects and deficiencies

The obligations of the Technology Partner in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies specified in Annex - I of this Schedule-G within the time limit set forth therein.

3. Other defects and deficiencies

- 3.1 In respect of any defect or deficiency not specified in Annex - I of this Schedule-G, the Technology Partner shall undertake repair or rectification in accordance with Good Industry Practice.
- 3.2 In respect of any defect or deficiency not specified in Annex - I of this Schedule-G, the Government may, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards, and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Technology Partner in accordance with Good Industry Practice within the time limit specified by the Government.

4. Extension of time limit

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

5. Emergency repairs/restoration

Notwithstanding anything to the contrary contained in this Schedule-G, if any defect, deficiency or deterioration in the Train poses a hazard to safety or risk of damage to property, the Technology Partner shall promptly take all reasonable measures for eliminating or minimising such danger.

6. Inspection by the Technology Partner

The Technology Partner shall undertake periodic inspections of the Trains and maintain a record thereof in a register to be kept in such form and manner as the Government may specify in consultation with the Technology Partner. Such record shall be kept in safe custody of the Technology Partner and shall be open to inspection by the

Government at any time during office hours. The Government may, in addition, require the Technology Partner to furnish soft copies of such record once every month.

7. Divestment Requirements

All defects and deficiencies specified in this Schedule-G shall be repaired and rectified by the Technology Partner so that the Trains conform to the Maintenance Requirements on the Transfer Date.

8. Notice for repairs

The Government shall give a notice of 4 (four) hours to the Technology Partner for commencing the repair or rectification of a defect or deficiency at the location specified in such notice, in accordance with paragraph 8 above.

9. Effect on Availability

- 9.1 The time taken by the Technology Partner for repair or rectification of any defect or deficiency set forth in this Schedule-G shall be deemed to be Non-Available Hours in accordance with the provisions of Clause 20.2 of the Agreement.
- 9.2 Notwithstanding the provisions of paragraph 9.1 above, the time taken for repair or rectification arising out of any damage set forth in part I of Annex-I of this Schedule-G, shall be deemed to form part of Available Hours, subject to the time limit specified therein; For the avoidance of doubt, the provisions of this paragraph 10.2 shall not apply when such repair or rectification is undertaken during Scheduled Maintenance.

10. Display of Schedule-G

The Technology Partner shall display a copy of this Schedule-G at the Trainset Depots and in the cabin of every Train.

Annex-I: Repair/ rectification of Defects and deficiencies

The Technology Partner shall repair and rectify the defects and deficiencies specified in this Annex-I of Schedule-G within the time limit set forth herein.

	Nature of defect or deficiency		Time limit for repair/rectification
I.	Damage to Train		
(i)	Damage to battery / box of the battery	-	4 hours
(ii)	Damage or breakage of cattle guard	-	8 hours
(iii)	Damage or breakage of look-out glass and window glass	-	4 hours
(iv)	Damage or breakage of bogie/ bogie part/ brake rigging part	-	12 hours
(v)	Damage or breakage of driver seat, passenger seat/ berths		4 hours
(vi)	Damage or breakage of door	-	4 hours
(vii)	Damage to brake pads	-	4 hours
(viii)	Damage or breakage of blinds	-	4 hours
(ix)	Damage or breakage of brake pipe and feed pipe/ hose leakage or other defects	-	4 hours
(x)	Damage to bio-vacuum toilets		8 hours
(xi)	Damage to door mechanism		8 hours
(xii)	Damage to gangways		8 hours
II.	Electrical Equipment		
(i)	Malfunction of Head Light	-	4 hours
(ii)	Malfunction of flasher light unit	-	4 hours
(iii)	Malfunction of flasher light roof unit	-	4 hours
(iv)	Malfunction of Speedo-meter	-	4 hours
(v)	Malfunction of Independent brake/Automatic brake/Emergency brake controller/ EP brakes	-	4 hours
(vi)	Malfunction of vigilance control device	-	4 hours
(vii)	Non-activation of Train cab	-	4 hours

(viii)	Malfunction of pantograph	-	4 hours
(ix)	Failure or breakage of roof insulator	-	4 hours
(x)	Malfunction of constant speed mode	-	4hours
(xi)	Failure of traction motor	-	12 hours
(xii)	Failure of compressor	-	8 hours
(xiii)	Malfunction of air conditioner	-	4 hours
(xiv)	Failure of auxiliary rotating machine	-	4 hours
(xv)	Failure of traction converter	-	12 hours
(xvi)	Failure of transformer	-	36 hours
(xvii)	Malfunction of master cum brake controller	-	4 hours
(xviii)	Malfunction of main circuit breaker	-	4 hours
(xix)	Malfunction of vehicle control unit	-	4 hours
(xx)	Malfunction of cab equipment	-	4 hours
(xxi)	Malfunction of voice recorder	-	4 hours
(xxii)	Malfunction of event recorder	-	4 hours
(xxiii)	Malfunction of fire detection system	-	4 hours
(xxiv)	Any fault in power circuit that inhibits Train movement	-	4 hours
(xxv)	Fault in cables	-	12 hours
(xxvi)	Failure of auxiliary converter	-	12 hours
(xxvii)	Malfunction of electromagnetic and electro-pneumatic contactors	-	4 hours
(xxviii)	Malfunction of any electronic card	-	4 hours
(xxix)	Malfunction of Passenger Information System		4 hours
(xxx)	Malfunction of air conditioning system		4 hours
(xxxi)	Malfunction of lighting system		4 hours
(xxxii)	Malfunction of inter-vehicular couplers		4 hours
(xxxiii)	Malfunction of HVAC system		4 hours
III.	Mechanical Equipment		
(i)	Poor brake power of Train	-	4 hours
(ii)	Malfunction of central buffer coupling	-	10 hours
(iii)	Malfunction of buffer	-	4 hours
(iv)	Water leakage in Train during monsoon	-	8 hours

(v)	Skidding of Train wheels	-	12 hours
(vi)	Over heating or failure of axle box	-	12 hours
(vii)	Abnormal sounds from under-gear	-	10 hours
(viii)	Malfunction of wheel	-	12 hours
(ix)	Malfunction of gear case	-	10 hours
(x)	Malfunction of traction link / traction transfer mechanism	-	8 hours
(xi)	Malfunction of washers and wipers	-	4 hours
(xii)	Malfunction of bogie suspension (including dampers)	-	8 hours
(xiii)	Malfunction of fire extinguishers	-	4 hours
IV.	Pneumatic Equipments		
(i)	Malfunction of horn switch	-	4 hours
(ii)	Malfunction of air drier	-	4 hours
(iii)	Malfunction of break system	-	4 hours
(iv)	Malfunction of cab gauge	-	4 hours
V.	Upkeep of Train		
(i)	Damage to upholstery & curtains	-	48 hours
(ii)	Infestation of rodents & pests	-	24 hours
(iii)	Stains & dirt on exteriors	-	24 hours
(iv)	Stains & dirt in interiors	-	4 hours
(v)	Temperature inside a Car exceeding 25°C when ambient temperature is 35°C or less	-	1 hour
(vi)	Difference between the external ambient temperature and the temperature inside the Car exceeding 10°C when the ambient temperature is more than 35°C.	-	1 hour
(vii)	Temperature inside a Car falling below 15°C	-	1 hour
(viii)	Damage to signage	-	48 hours
(ix)	Damage to Car furniture	-	48 hours
(x)	Damage to Car flooring	-	48 hours

H. Safety Requirements

(See Clause 18.1)

1. Guiding principles

- 1.1 Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents caused due to the Trains or in the Manufacturing Unit or Trainset Depots, irrespective of the person(s) at fault.
- 1.2 Users of the Trains include staff of the Government and its contractors working on its railway network.
- 1.3 Safety Requirements apply to all phases of manufacturing, supply, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.
- 1.4 Safety Requirements include measures associated with safe movement, safety management, safety equipment, fire safety, enforcement and emergency response with particular reference to Safety Guidelines specified in Annex I of this Schedule -H.

2. Obligations of the Technology Partner

The Technology Partner shall abide by the following to ensure safety of the Trains, Manufacturing Unit, Trainset Depots, human life and property:

- (a) instructions issued by Commissioner of Railway Safety or the Government;
- (b) Applicable Laws and Applicable Permits;
- (c) A.C. Traction Manual, General Rules and Subsidiary Rules, issued by the Government;
- (d) provisions of this Agreement;
- (e) relevant Standards/Guidelines contained in internationally accepted codes; and
- (f) Good Industry Practice.

3. Appointment of Safety Consultant

For carrying out safety audit of the Trains under and in accordance with this Schedule-H, the Government shall appoint from time to time, one or more qualified firms or organisations as its consultants (the “**Safety Consultant**”). The Safety Consultant shall employ a team comprising, without limitation, one rail safety expert and one train expert to undertake safety audit of the Trains. For the avoidance of doubt, the Government may nominate any of its specialised agencies to be the Safety Consultant.

4. Safety measures during Development Period

- 4.1 No later than 180 (one hundred and eighty) days from the date of this Agreement, the Government shall appoint a Safety Consultant for carrying out safety audit at the design stage of the Train.
- 4.2 The Technology Partner shall provide to the Safety Consultant, in 4 (four) copies, the relevant drawings containing the design that have a bearing on safety of Users (the

“**Safety Drawings**”). The Technology Partner shall also provide to the Safety Consultant all such relevant documentation as it may request, such as safety plans, hazard analyses and risk assessments.

- 4.3 The design and safety information shall be compiled, analysed and used by the Safety Consultant for evolving a package of recommendations consisting of safety related measures. The safety audit shall be completed in a period of three months and a report thereof (the “**Safety Report**”) shall be submitted to the Government, in 5 (five) copies. One copy of the Safety Report shall be forwarded by the Government to the Technology Partner forthwith.
- 4.4 The Technology Partner shall endeavour to incorporate the recommendations of the Safety Report in the design of the Train, as may reasonably be required in accordance with Applicable Laws, Applicable Permits, Manuals and Guidelines of the Government, Specifications and Standards, and Good Industry Practice. If the Technology Partner does not agree with any or all of such recommendations, it shall state the reasons thereof and convey them to the Government forthwith. In the event that any or all of the works and services recommended in the Safety Report fall beyond the scope of Article 18 and this Schedule-H, the Technology Partner shall make a report thereon and seek the instructions of the Government for funding such works in accordance with the provisions of Article 16.
- 4.5 Without prejudice to the provisions of Paragraph 4., the Technology Partner shall, within 15 (fifteen) days of receiving the Safety Report, send comments thereon to the Government, and not later than 15 (fifteen) days of receiving such comments, the Government shall review the same along with the Safety Report and by notice direct the Technology Partner to carry out any or all of the recommendations contained therein with such modifications as the Government may specify; provided that any works or services required to be undertaken hereunder shall be governed by the provisions of Article 18.

5. Safety measures during Supply and Maintenance Period

- 5.1 The Technology Partner shall develop, implement and administer a surveillance and safety programme for users, including correction of safety violations and deficiencies and all other actions necessary to provide a safe environment in accordance with this Agreement.
- 5.2 The Technology Partner shall submit to the Government before the 31st(thirty first) May of each year, an annual report (in ten copies) containing, without limitation, a detailed listing and analysis of all accidents of the preceding Accounting Year and the measures taken by the Technology Partner pursuant to the provisions of Paragraph 5.1 of this Schedule-H for averting or minimising such accidents in future.
- 5.3 Once in every Accounting Year, a safety audit shall be carried out by the Safety Consultant to be appointed by the Government. It shall review and analyse the annual report and accident data of the preceding year, and undertake an inspection of the Manufacturing Unit, Trainset Depots and a sample of Trains. The Safety Consultant shall complete the safety audit within a period of 1 (one) month and submit a Safety Report recommending specific improvements, if any, required to be made in the Trains,

Manufacturing Unit and Trainset Depots, as the case may be. Such recommendations shall be processed, *mutatis mutandis*, and acted upon in the manner set forth in Paragraphs 4.3, 4.4 and 4.5 of this Schedule-H.

Annex-I: Safety Guidelines

(Schedule-H)

1. Safe movement

Trains shall be designed, tested and maintained for safe movement.

2. System integrity

In all aspects of design of the Trains, Manufacturing Unit and the Trainset Depots, and their associated systems, particular care shall be taken to minimise the likely incidence of failure

3. Restoration of service

The Trains shall be designed such that in the event a fault occurs, a limited service can be provided within a few minutes by isolation of the affected area or equipment, to the extent possible

4. Safety management

A safety statement shall be prepared by the Technology Partner and provided to the Government every quarter to bring out clearly the system of management of checks and maintenance tolerances for various assets including the Trains, Manufacturing Unit and Trainset Depots, and compliance thereof. The statement shall also bring out the nature and extent of staff training and awareness in dealing with such checks and tolerances.

5. Emergency Procedures

The Technology Partner shall have emergency procedures in place in respect of the Manufacturing Unit and Trainset Depots in order to minimise the risks to staff and property or to visitors or neighbourhood in the event of an emergency.

6. Train Design

- 6.1 The design of the Train shall not introduce safety risk to Users, maintainers or others, or risks to property.
- 6.2 Consideration of Human Factors shall be an integral element of the design of Trains and of development of processes by the Technology Partner.
- 6.3 The Technology Partner shall demonstrate at the design stage that no foreseeable single-point failure mode shall be capable of causing a wrong-side failure of a safety-critical system.
- 6.4 Where the Trains incorporate component redundancy as the method of reducing the consequences of a single-point failure, such redundancy shall not allow hidden faults to remain undetected or cause extra difficulty in fault finding.
- 6.5 Operationally critical systems shall be physically and functionally separated from non-critical systems wherever possible.
- 6.6 Demonstration of visibility of signals from the driver's position and assistant driver's position shall be demonstrated by the Technology Partner to the Government.

- 6.7 The Technology Partner shall ensure that the Train design facilitates easy and safe evacuation in case of emergency. The Technology Partner shall define escape ways and ensure display of emergency evacuation procedures in the Cars

7. Maintenance and Overhaul of Trains

- 7.1 All Scheduled and Unscheduled Maintenance of the Trains shall be managed by the Technology Partner to minimise risks to the staff of the Technology Partner and the Government, contractors, or passengers on the Government's railway or neighbours. The Technology Partner shall at all times comply with Applicable Laws, and Good Industry Practice.
- 7.2 The Maintenance Manual to be provided by the Technology Partner shall include:
- (a) All maintenance activities and their periodicities that are required to keep the Train safe and ensure that the prescribed tolerances of systems and components are not exceeded at any time, including any systems relevant to the maximum moving dimensions;
 - (b) the inspection programme for regularly checking that the Train is safe to continuing in service
 - (c) the engineering facilities (such as pit facilities, special tools etc.) necessary for the mandated maintenance; and
 - (d) minimum competencies required by staff for the maintenance activities
- 7.3 The maintenance attention and periodicity prescribed in the Maintenance Manual shall be designed to ensure that the brake systems of the train shall function correctly and safely during the intervals between maintenance, to achieve the specified performance.
- 7.4 The brake systems shall be required to be subjected to a functional test at appropriate periodicities to prove the response of the system to brake application demands.
- 7.5 The Maintenance Manual shall specify appropriate functional brake tests to be undertaken whenever components of the brake system are replaced and reconnected on the Train following component repair, renewal or disconnection.
- 7.6 The Maintenance Manual shall specify the required testing of speedometers and speed control equipment, particularly when wheel sets have been renewed or re-profiled or the speed measurement system or components have been renewed or disturbed.
- 7.7 The Maintenance Manual shall ensure that safety critical systems and components on the Train are identified specifically and the minimum testing requirements that must be invoked in the event of their disturbance at examination or repair are defined.
- 7.8 Preparation of the Maintenance Manual shall give consideration to inspections, tests and maintenance of the following that have a bearing on safety:
- (a) Wheel set and constituent parts: Relative movement of wheels / axles / axle mounted equipment, cracks and fractures, dimensions affecting safe running (minimum wheel diameter, tolerances between wheel diameters, minimum throat thickness, back-to-back dimensions), flange and tread profile, condition of tread and flange (damage etc.), limits of sizes of wheel flats.
 - (b) Bearings – Floats, clearance, condition and grease.

- (c) Brake equipment (disc integrity, condition and dimensions), pad and brake block integrity and dimensions, brake rigging, integrity of operating devices, reservoirs, hoses, cocks, pipework, brake tests.
- (d) Regenerative Brake system: Its functioning and integrity for trouble free operation
- (e) EP brakes: Its integrity of operation at all times.
- (f) Vigilance control device: Condition and operation at all times.
- (g) Buffers: Heights, condition.
- (h) Couplers and Draw gear: Dimensions, rubber condition, integrity and condition, operation.
- (i) Primary and secondary suspension: Spring integrity, dimensional limits, damper integrity
- (j) Suspension tube bearings: Condition and security of components and installation, bearing float.
- (k) inter-vehicular couplers.
- (l) fire prevention system including safe working of pantry/ sub pantry equipment.
- (m) Traction and auxiliary electrical machines: Integrity and security, earthing condition and integrity, condition of safety labelling.
- (n) Passenger Information System
- (o) Cleaning: Ventilation ducts, filters, bogies and underframe equipment
- (p) Transmissions: Security to body or bogie frame, condition checks of safety critical items, lubrication
- (q) Power systems (including protection systems): Integrity and security earthing condition and integrity, condition of safety labelling
- (r) Pantographs: Integrity and security - dimensions and condition of pantograph head, overheight protection, earthing condition and integrity, condition of safety labelling
- (s) Train structures and underframes: Integrity and condition of all load bearing members or panels, integrity, operation and security of doors, openable and removable panels, integrity and security of all body mounted equipment, alignment, gangway
- (t) Safety systems (e.g. Vigilance control device): Functional tests;
- (u) Hydraulic and pneumatic systems: Condition and integrity of hoses, pipework, valves, etc.
- (v) Fire protection systems: Integrity and condition
- (w) Lighting Systems and visibility: Headlight, flasher and marker lights, adjustment, intensity
- (x) The inspection and/or testing of axles; brake valves, equipment and system and protection devices reservoirs (a label showing the last test date should be secured to the reservoir); fire equipment; safety equipment (e.g. Vigilance control Device);

windcreens, wipers and washers; main transformers; control systems, including safety interlocks; speedometers; headlights and marker lights; horn; doors; cattle guard; and bio-vacuum toilets

- 7.9 The instructions within the Maintenance Manuals shall be such as to protect staff working on the Trains, with particular reference to safety precautions and implementing a specified safety condition of the Train prior to starting work.
- 7.10 Any incident affecting safety on a Train in service or on maintenance (or potentially affecting safety) shall be investigated by the Technology Partner unless advised to the contrary by the Government. The Technology Partner shall make its findings known to the Government.
- 7.11 If the Technology Partner becomes aware of a safety incident due to a deficiency on a Train of similar design supplied to another administration, it shall advise the Government of the essential details, and shall advise the Government of any precautionary action.
- 7.12 The Technology Partner shall have a formal process for ensuring the competence of all members of staff engaged in maintenance. The Technology Partner shall have a process for ensuring all staff are briefed on any relevant safety matters.
- 7.13 The Technology Partner shall have a documented process for ensuring that the declared periodicity of maintenance on each Train is not exceeded.
- 7.14 The Technology Partner shall ensure that the supply arrangements for Consumables and Spares do not introduce safety hazards.
- 7.15 Records shall be maintained by the Technology Partner of all attention given to Trains on Scheduled and Unscheduled Maintenance, and also of wheel re-profiling carried out by Government.
- 7.16 The Technology Partner shall establish and implement for the duration of the Maintenance Period a configuration management system that to the extent applicable complies with the requirements of ISO 10007:2003 “Quality management systems. Guidelines for configuration management”,
- 7.17 The Technology Partner shall procure that all staff engaged in maintenance including its sub-contractors shall not take any action that could compromise the operational safety of the Government’s railway network. If the Technology Partner becomes aware of a condition on a Train in service that could affect safety, it shall immediately inform the Government by the most expeditious means.
- 7.18 The Technology Partner shall not use any hazardous substances unless those substances are permitted by Applicable Laws and the Government has given prior written consent.

8. Manufacturing Unit and Trainset Depots

- 8.1 The Manufacturing Unit and Trainset Depots (the “**Facilities**”) shall be equipped, operated and maintained so as to facilitate the maintenance of Trains in a safe condition, and so as to minimise risks to the staff of the Technology Partner or the Government, contractors, neighbours or visitors to the Facilities, and passengers on the Government’s railway. The Technology Partner shall comply with Applicable Laws and Good Industry Practice

- 8.2 All equipment such as lifting equipment, wheel lathes, jacks etc. shall be procured from established industry suppliers.
- 8.3 The Technology Partner shall ensure that the interface between each Facility and the Government's railway network presents no risks to the Government. It shall be arranged that a mishap to a Train on a Facility site, such as for example a train becoming out of control, shall not introduce a risk to the Government. The details of the interface shall be submitted to the Government for approval.
- 8.4 A planned system of maintenance shall be implemented in respect of each Facility and its facilities, plant and equipment. Items shall be inspected and maintained without limitation in line with Applicable Laws, relevant standards and good industry practice.
- 8.5 The Technology Partner shall document the process and responsibilities of personnel in respect of safe movements within the premises of the Facilities, and shall provide equipment as appropriate to promote safe movements and to reduce risks to staff from movements. The only personnel of the Technology Partner who may drive Trains at low speed within the Facilities shall be those who have been formally trained and passed out to do so.
- 8.6 Suitable equipment and measures shall be in place to protect staff from movements of Trains entering or leaving the maintenance shed, or any other location where staff may be at risk.
- 8.7 The Facilities shall be designed to include facilities that ensure the safety of staff, including with respect to hazards without limitation arising from movements, the 25kV overhead electric line, working at heights, or arising from fumes. The arrangements for protection of staff shall be integrated into a robust protection regime and processes.
- 8.8 The Facilities shall be equipped and operated in line with applicable requirements so as to minimise the risks to life and property arising from fire.
- 8.9 The Technology Partner shall not use any hazardous substances unless those substances are permitted by applicable laws and the Government has given prior written consent.
- 8.10 The Technology Partner shall confer and agree with Government and document at least six months before operation of each Facility:
 - (a) a safe system of movement of Trains from the Government's railway system on to each Facility and vice versa, with particular reference to the defined limits of authority for movements and the signalling and signing arrangements.
 - (b) the protocol for arranging as required safety inspections by the Government on Trains released from the Facility
 - (c) a protocol for the management of planned and unplanned isolations of the 25kV OHE, on either the infrastructure of the Government or the Technology Partner, including a procedure for dealing with emergencies on the Facility site.

9. Training

Safety aspects shall be a core element in the syllabus of training to be delivered by the Technology Partner to the Government's staff. The Technology Partner shall agree on

the course contents and course materials with the Government prior to any commencement of training.

I. Bank Guarantee for Advance Payments

(See Clauses 16.3.1 and 23.7)

The President of India,
Through the Executive Director Stores (RS),
Railway Board, Government of India,
New Delhi-110001

WHEREAS:

- (a)(the “Technology Partner”) and the President of India through the Executive Director Stores (RS), Railway Board, Government of India (the “**Government**”) have entered into a Manufacturing-cum-maintenance Agreement dated(the “**Agreement**”) whereby the Government has agreed to the Technology Partner undertaking the manufacturing, supply and maintenance of electric trains to be manufactured at, subject to and in accordance with the provisions of the Agreement.
- (b) In consideration of the Government having agreed to make an advance payment to the Technology Partner for performance of the above Contract amounting to (in words and figures) as an advance against Bank Guarantee to be furnished by the Technology Partner, in accordance with Clause 23.7 of the aforesaid Agreement.
- (c) We, through our Branch at(herein after referred to as the “**Bank**”, which expression shall, unless repugnant to the content or meaning thereof, include its successors, administrator, executors and assigns) have agreed to furnish this Bank Guarantee by way of Security.

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

1. To pay the Government immediately on demand any or, all monies payable by the Technology Partner to the extent of as aforesaid at any time upto.....without any demur, reservation, context, recourse or protest and or without any reference to the Technology Partner. Any such demand made by the Government on the Bank shall be conclusive and binding notwithstanding any difference between the Government and the Technology Partner or any dispute pending before any Court, Tribunal, Arbitrator or any other authority. We agree that the Guarantee herein contained shall be irrevocable and shall continue to be enforceable till the Government discharges this guarantee.
2. The Government shall have the fullest liberty without affecting in any way the liability of Bank under this Guarantee, from time to time to vary the advance or to extend the time for performance of the Agreement by the Technology Partner. The Government shall have the fullest liberty without affecting this Guarantee, to postpone from time to time the exercise of any powers vested in them or of any right which they might have against the Technology Partner and to exercise the same at any time in any manner, and either to enforce or to forebear to enforce any covenants, contained or implied, in the Contract between the Government and Technology Partner or any other course or remedy or

security available to the Government. The Bank shall not be relieved of its obligation under these presents by any exercise by the Government of its liberty with reference to the matters aforesaid or any of them or by reason of any other act or forbearance or other acts of omission or commission on the part of the Government or any other indulgence shown by the Government or by any other matter or thing whatsoever which under law would but for this provision have the effect of relieving the Bank.

3. The Bank also agrees that the Government at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance without proceeding against the Technology Partner and notwithstanding any security or other guarantee that the Government may have in relation to the Technology Partner's liabilities.
4. The outstanding liability of the Bank under this Guarantee will reduce by such amounts as may be notified to the Bank by the Government and stated to be the reduction of this Guarantee required to be made in accordance with the Agreement, by reason of the repayments made by the Technology Partner
5. Notwithstanding anything contained herein above our liability under this Guarantee is limited to and it shall remain in force upto {180(one hundred and eighty) days after the ***** anniversary of the Appointed Date}and shall be extended from time to time for such period (not exceeding one year) as may be desired by the Technology Partner on whose behalf this guarantee has been given.

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.

J. Vesting Certificate

1. The President of India represented by Executive Director, Stores(RS), Railway Board (the “**Government**”) refers to the Agreement dated (the “**Agreement**”) entered into between the Government and (the “**Technology Partner**”) for Manufacturing-cum-Maintenance of Electric Trains.
2. The Government hereby acknowledges compliance and fulfilment by the Technology Partner of the Divestment Requirements set forth in Clause 36.1 {and Clause 36.5} of the Agreement on the basis that upon issue of this Vesting Certificate, the Government shall be deemed to have acquired, and all title and interest of the Technology Partner in or about the Trains Manufacturing Unit and Trainset Depots shall be deemed to have vested unto the Government, free from any encumbrances, charges and liens whatsoever.
3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Technology Partner to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Technology Partner in any manner of the same.

Signed this day of, 20 at

AGREED, ACCEPTED AND SIGNED

SIGNED, SEALED AND DELIVERED

For and on behalf of

For and on behalf of

THE CONTRACTOR by:

THE GOVERNMENT by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

K. Driving Simulator

Specification for Driving Simulator will be provided in due course via corrigendum.