

**Providing Rolling Stock on Lease Basis
for Line 5 of Delhi Metro Rail
Corporation Limited**

Agreement

Delhi Metro Rail Corporation

Table of Contents

PART I	5
PRELIMINARY	5
ARTICLE 1	8
DEFINITIONS AND INTERPRETATION	8
PART II	12
SCOPE OF THE AGREEMENT	12
ARTICLE 2	13
SCOPE OF THE AGREEMENT	13
ARTICLE 3	15
AWARD OF CONTRACT	15
ARTICLE 4	16
CONDITIONS PRECEDENT	16
ARTICLE 5	19
OBLIGATIONS OF THE LESSOR	19
ARTICLE 6	29
OBLIGATIONS OF DMRC	29
ARTICLE 7	32
REPRESENTATIONS AND WARRANTIES	32
ARTICLE 8	37
DISCLAIMER	37
PART III	39
DEVELOPMENT AND OPERATIONS	39
ARTICLE 9	40
PERFORMANCE SECURITY	40
ARTICLE 10	42
RIGHT OF WAY AND ACCESS TO THE DEPOT SITES AND MAINTENANCE DEPOTS	42
ARTICLE 11	45
DESIGN AND SUPPLY OF PROTOTYPE	45
ARTICLE 12	50
SUPPLY AND LEASE OF TRAINSETS	50
ARTICLE 13	57
SUPPLY PROGRAMME	57
ARTICLE 14	59
TRAIN OPERATION PLANS	59
ARTICLE 15	60
CHANGE OF SCOPE	60
ARTICLE 16	63

MAINTENANCE OBLIGATIONS	63
ARTICLE 17	69
SAFETY REQUIREMENTS	69
ARTICLE 18	72
MONITORING OF MAINTENANCE	72
ARTICLE 19	74
MAINTENANCE DEPOTS	74
ARTICLE 20	76
KEY PERFORMANCE INDICATORS	76
ARTICLE 21	78
OPERATIONAL ROUTES	78
ARTICLE 22	79
PROVISION OF TRAIN OPERATORS FOR THE TRAINSETS	79
PART IV	82
FINANCIAL COVENANTS	82
ARTICLE 23	83
LEASE CHARGES	83
ARTICLE 24	85
MAINTENANCE CHARGES	85
ARTICLE 25	87
OPTION TO PURCHASE THE TRAINSETS	87
ARTICLE 26	89
BILLING AND PAYMENT	89
ARTICLE 27	91
CONDEMNATION OF TRAINSETS	91
ARTICLE 28	92
ADDITIONAL TRAINSETS DURING MAINTENANCE PERIOD	92
ARTICLE 29	93
TRANSFER OF DEPOT SITES AND MAINTENANCE DEPOTS	93
ARTICLE 30	94
INSURANCE	94
ARTICLE 31	96
ACCOUNTS AND AUDIT	96
PART V	98
FORCE MAJEURE AND TERMINATION	98
ARTICLE 32	99
FORCE MAJEURE	99
ARTICLE 33	105
DAMAGES FOR BREACH OF AGREEMENT	105

ARTICLE 34	107
SUSPENSION OF LESSOR’S RIGHTS	107
ARTICLE 35	109
TERMINATION	109
ARTICLE 36	115
DIVESTMENT OF RIGHTS AND INTEREST	115
ARTICLE 37	119
DEFECTS LIABILITY AFTER AGREEMENT PERIOD	119
PART VI	121
OTHER PROVISIONS	121
ARTICLE 38	122
ASSIGNMENT AND CHARGES	122
ARTICLE 39	123
CHANGE IN LAW	123
ARTICLE 40	125
LIABILITY AND INDEMNITY	125
ARTICLE 41	129
RIGHTS AND TITLE OVER DEPOT SITES AND MAINTENANCE DEPOTS	129
ARTICLE 42	130
DISPUTE RESOLUTION	130
ARTICLE 43	133
DISCLOSURE	133
ARTICLE 44	134
REDRESSAL OF COMPLAINTS	134
ARTICLE 45	136
MISCELLANEOUS	136
ARTICLE 46	141
DEFINITIONS	141

PART I
PRELIMINARY

LEASE, MAINTENANCE AND OPERATION AGREEMENT

THIS AGREEMENT is entered into on this {.....} day of....., 20.....}¹

BETWEEN

1 **DELHI METRO RAIL CORPORATION LIMITED**, a company within the meaning of the (Indian) Companies Act, 2013, with Corporate Identification Number (C.I.N) U74899DL1995GOI068150, having its registered office at Metro Bhawan, Fire Brigade Lane, Barakhamba Road, New Delhi – 110 001, India (hereinafter referred to as the “**DMRC**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors – in – interest and permitted assigns and substitutes) of the **ONE PART**;

AND

2 {***** Limited}, a company incorporated under the provisions of the (Indian) Companies Act, 2013 and having its registered office at (hereinafter referred to as the “**Lessor**” which expression shall, unless repugnant to the context or meaning thereof, include its successors in interest and permitted assigns) of the **OTHER PART**.

DMRC and the Lessor are hereinafter referred to individually as a **Party** and together as **Parties**.

WHEREAS:

- (A) DMRC, a joint venture of the Government of India (“**GOI**”) and the Government of National Capital Territory of Delhi (“**GNCTD**”), is engaged in the development of metro rail facility for enhancing the public transportation system in New Delhi for the benefit of the public at large. The metro rail facility users continue to grow in numbers with users depending on the metro rail facilities for their daily commute, which has considerably decreased the travel time within the city for the users.
- (B) DMRC has decided to take on lease the required number of Trainsets of 4 (four) Cars to be Supplied so as to provide 25 (twenty five) numbers of Trainsets of 4 (four) Cars each, in accordance with the terms of the Agreement and to be operated on Line-5 i.e. from Kirti Nagar/Inderlok in New Delhi to City Park (Bahadurgarh) in Haryana (hereinafter referred as “**Project**”) through a leasing agreement which shall *inter alia* include Supply and maintenance of all Trainsets, and augmentation, if required and operation and maintenance of the Depot Sites and Maintenance Depots in accordance with the terms and conditions as set forth in this lease, maintenance and operation agreement (the “**Agreement**”).
- (C) DMRC had accordingly invited interests by its Expression of Interest, titled as ‘EOI ‘RSL 1’ dated July 12, 2017 as amended by its addenda/corrigenda from time to time (the

¹ 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.

“**Expression of Interest**” or “**EoI**”), for short listing of Applicants (as defined in the EoI) and had shortlisted certain Applicants as EoI Shortlisted Bidders. The EoI Shortlisted Bidders including, *inter-alia* {formed a consortium the single bidder/ Consortium comprising and (collectively the “**Consortium**”) with as the Lead Member}²

- (D) DMRC had prescribed the technical and commercial terms and conditions and invited Bids (the “**Request for Proposals**” or “**RFP**”) from the EoI Shortlisted Bidders shortlisted pursuant to the EoI for undertaking the Project.
- (E) After evaluation of the Bids received, DMRC had accepted the Bid of the {selected bidder/ Consortium} (the “**Selected Bidder**”) and issued its {Letter of Award No. dated (hereinafter called the “**LOA**”) to the Selected Bidder requiring, *inter-alia*, the execution of this Agreement within 60 (sixty) days of the date of issue thereof.
- (F) {The Selected Bidder has since promoted and incorporated as a limited liability company under the Companies Act, 2013 and has requested DMRC to accept the Lessor as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder under the LOA, including the obligation to enter into this Agreement pursuant to the LOA for undertaking the Project. }
- (G) {By its letter dated, the Lessor has also joined in the said request of the Selected Bidder to DMRC to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder including the obligation to enter into this Agreement pursuant to the LOA. The Lessor has further represented to the effect that it has been promoted by the Selected Bidder for the purposes hereof. }
- (H) DMRC has {agreed to the said request of the Selected Bidder and the Lessor, and the Parties have accordingly} agreed to enter into this Agreement for Supply and maintenance of Trainsets and augmentation, if required and operation and maintenance of the Depot Sites and Maintenance Depots subject to and on the terms and conditions set forth hereinafter.

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

² 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.

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, the Lessor, corporation, society, trust, DMRC, state or agency of a state or any association or partnership (whether or not having separate legal personality) of 2 (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 “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and “**develop**” shall be construed accordingly;
- (g) any reference to any time shall mean a reference to that according to Indian Standard Time;
- (h) 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;

- (i) any reference to day shall mean a reference to a calendar day. A day shall be deemed to commence at 0001 hours on the morning of the day in question;
- (j) 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;
- (k) any reference to a “**week**” shall mean the week commencing on a Monday. Where reference is made to the completion of an activity by a particular week, this shall mean by midnight on the Sunday of that week.
- (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 Key Dates shall mean and include such date, period or Key Dates 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 Party shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such Party is incorporated or any jurisdiction in which such Party 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 Article 1.2.1 (u) shall not operate so as to increase liabilities or obligations of DMRC 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 shall be in full force and effect as though they were expressly set out in the body of this Agreement;
- (x) references to Recitals, Articles, Sub-Articles, provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Sub-Articles, provisos and Schedules of or to this Agreement; reference to an Annexure shall, subject to anything to the contrary specified therein, be construed as a reference to an Annexure 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 Annexure, 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-estimate of loss and damages 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 Lessor to DMRC shall be provided free of cost and in 3 (three) copies, and if DMRC is required to return any such documentation with their comments and/or approval, they shall be entitled to retain 2 (two) copies thereof.

1.2.3 The rule of construction, if any, that a contract should be interpreted against the Party 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) the Agreement;
- (b) all other agreements and documents forming part hereof or referred to herein;
- (c) the LOA issued to the Selected Bidder;
- (d) any written addenda to the Bid;
- (e) bid document; and
- (f) Bid.

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

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

PART II
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 scope to be performed by the Parties during the Agreement Period:

2.1.1. Lessor’s Scope

- (a) the Lessor shall be responsible for Supply of required number of Trainsets comprising of 4 (four) Cars each, confirming to Specifications and Standards set forth in Schedule-A and in accordance with the terms of this Agreement;
- (b) the Lessor shall be responsible for maintenance of the Trainsets throughout the Agreement Period for their safe operation on the Line;
- (c) the Lessor shall also be responsible for augmentation, if required, operation, upkeep and management of the Depot Sites and the Maintenance Depots along with installed M&P, test benches, tools, racks, furniture and other equipment installed at the Maintenance Depots;
- (d) the Lessor shall be responsible for provision of trained Train Operators (hereinafter referred to as “**T.O.**”) as set forth in Schedule-T for driving the Trainsets on the Line throughout the Agreement Period;
- (e) the Lessor shall design, manufacture, commission and also maintain the simulators for training the T.O.s;and
- (f) the Lessor shall be responsible for the Trainsets as per the Availability Plan and/ or Final Train Operation Plan and in accordance with the terms and conditions of this Agreement.

2.1.2. DMRC’s Scope

- (a) DMRC shall give access to Depot Sites and Maintenance Depots in accordance with the Agreement.
- (b) pay to the Lessor, Total Charges in accordance with this Agreement, after adjustments and deductions, in any, as per the terms and conditions of this Agreement.

2.2 Project Objectives

The mass rapid transport system i.e. the metro rail for New Delhi was built to counter the problem of public transport in the city of New Delhi. It is one of the busiest transport systems of India and is used by over million users in the city. DMRC has been instrumental in developing a state of art metro rail system which covers the city of New Delhi, its satellite cities of Faridabad, Gurgaon, Bahadurgarh, Noida and Ghaziabad in the National Capital Region of India. DMRC operates all the metro activities in the city and has been procuring the rolling stock itself and overseeing its maintenance and operations. DMRC is now desirous

of operating Line 5 by leasing rolling stock from the Lessor with the maintenance of the rolling stock being carried out by the Lessor.

The Lessor acknowledges that the objective of the Project activities, that it is required to perform under this Agreement, is to contribute to the following outcomes:

- (a) availability of Trainsets to meet the Master Train Operation Plan and other operational requirements throughout the Agreement Period;
- (b) provision of optimum maintenance services of the Trainsets, Depot Sites and the Maintenance Depots in accordance with the provisions of this Agreement;
- (c) successful integration of the Lessor's Trainsets including machinery (if any) with DMRC's infrastructure;
- (d) provision of value for money, safe and high quality services for DMRC;
- (e) developing a long term collaborative relationship between DMRC and the Lessor;
and
- (f) performance of the Project activities in a way that ensures that the Project Assets are maintained, timely replaced and finally returned in accordance with the provisions of the Article 36, Licence Agreement(s) (Schedule-D) and Schedule C.

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 Applicable Permits, DMRC hereby awards to the Lessor the right to Supply the Trainsets, maintain the Trainsets, and augment, if required and operate and maintain the Depot Sites and the Maintenance Depots for the Agreement Period (the “**Contract**”), and the Lessor hereby accepts the Contract and agrees to implement the same subject to and in accordance with the terms and conditions set forth in this Agreement.
- 3.1.2 Subject to and in accordance with the provisions of this Agreement, the Contract hereby granted shall require, oblige or entitle (as the case may be) the Lessor to:
- (a) Supply Trainsets in accordance with the provisions of this Agreement;
 - (b) maintain the Trainsets in accordance with the provisions of this Agreement;
 - (c) have Right of Way, access and licence in respect of Depot Sites and the Maintenance Depots for performing its Maintenance Obligations in accordance with the provisions of this Agreement and the Licence Agreement;
 - (d) operate and maintain the Depot Sites and Maintenance Depots;
 - (e) provide trained and competent T.O.s for the operation of the Trainsets on the Line;
 - (f) perform and fulfil all of the Lessor’s obligations under and in accordance with this Agreement;
 - (g) 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 Lessor under this Agreement; and
 - (h) neither assign, transfer or sub-let or create any lien or Encumbrance on this Agreement and/or the Trainsets nor transfer, sub-licence or part possession of Maintenance Depots and the real estate related thereto including the Depot Sites, save and except as expressly permitted by this Agreement.

3.2 Agreement Period

Subject to the provisions of Article 4.1, this Agreement shall come into effect on the Appointed Date and shall expire on the Termination Date (“**Agreement Period**”).

ARTICLE 4

CONDITIONS PRECEDENT

4.1 Conditions Precedent

- 4.1.1 Save and except as provided in Articles 4.2 and 4.3, and in Articles 3, 7, 8, 9, 10, 32, 33, 39, 42, 43 and 46, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Article 4.1 (the “**Conditions Precedent**”). Provided, however, that a Party may grant waiver from satisfaction of any Condition Precedent by the other Party in accordance with the provisions of Articles 4.1.2 or 4.1.3, as the case may be, and to the extent of such waiver, that Condition Precedent shall be deemed to be fulfilled for the purposes of this Article 4.1.1.
- 4.1.2 The Lessor may, upon providing the Performance Security to DMRC in accordance with Article 4.1.3 and at any time after 15 (fifteen) days from the date of this Agreement or on an earlier day acceptable to DMRC, by notice require DMRC to provide Right of Way to the Depot Site at Bahadurgarh, free from all Encumbrances in accordance with Article 10 as a Condition Precedent to be satisfied by DMRC as set forth in this Article 4.1.2 within a period of 90 (ninety) days of receipt of the notice. In the event that DMRC has provided the Right of Way, free from all Encumbrances to the Depot Site at Bahadurgarh to the Lessor in accordance with Article 10, prior to execution of this Agreement, such Condition Precedent shall be deemed to have been fulfilled by DMRC. Provided that upon request in writing by DMRC, the Lessor may, in its discretion, waive the Condition Precedent set forth in this Article 4.1.2.
- 4.1.3 The Conditions Precedent required to be satisfied by the Lessor within a period of 120 (one hundred and twenty) days from the date of this Agreement shall be deemed to have been fulfilled when the Lessor shall have:
- (a) provided Performance Security to DMRC pursuant to Article 9;
 - (b) achieved Financial Closure and provide to DMRC a copy of the Financial Package furnished by it to the prospective Senior Lenders. As and when such Financial Package is agreed with the Senior Lenders, with or without modifications, and such agreement is confirmed by the signing of the agreed Financing Package by both the Lessor and the Senior Lenders, a copy of the same shall be furnished by the Lessor to DMRC forthwith.
 - (c) delivered to DMRC {from the Consortium Members, their respective} confirmation, in original, of the correctness of their representations and warranties set forth in Sub-Article (k), (l) and (m) of Article 7.1;
 - (d) delivered to DMRC a legal opinion from the legal counsel of the Lessor with respect to the authority of the Lessor to enter into this Agreement and the enforceability of the provisions thereof;
 - (e) delivered to DMRC the certified true copies of all Project Agreements, and in particular the Financing Agreements, the rolling stock supply contract (if any), the

operations and maintenance contract(s) (if any), and the shareholders' share purchase and share subscription agreements;

- (f) delivered to DMRC the copies (certified as true copies by an authorised officer of the Lessor) of the constitutional documents of the Lessor; and
- (g) delivered to DMRC copies (certified as true copies by a Director of the Lessor) of all resolutions adopted by the Board of Directors of the Lessor authorising the execution, delivery and performance by the Lessor each of the Project Agreements and this Agreement;

Provided that upon request in writing by the Lessor, DMRC may, in its discretion, waive any of the Conditions Precedent set forth in this Article 4.1.3.

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

4.2 Damages for delay by DMRC

In the event that: (i) DMRC does not procure fulfilment or waiver of the Condition Precedent set forth in Article 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Lessor or due to Force Majeure, DMRC shall pay Damages to the Lessor of an amount calculated at the rate of 0.25% (zero point two five per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount of the Performance Security.

4.3 Damages for delay by the Lessor

In the event that (i) the Lessor does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Article 4.1.3 within the period specified in that Article, and (ii) the delay has not occurred as a result of breach of this Agreement by DMRC or due to Force Majeure, the Lessor shall pay Damages to DMRC of an amount calculated at the rate of 0.45% (zero point four five per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to the Bid Security or the Performance Security, as the case may be, and upon reaching such maximum amount, DMRC may, in its sole discretion and subject to the provisions of Article 9.2, terminate the Agreement.

4.4 Deemed Termination upon delay

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

ARTICLE 5

OBLIGATIONS OF THE LESSOR

5.1 Obligations of the Lessor

- 5.1.1. Subject to and on the terms and conditions of this Agreement, the Lessor shall, at its own cost and expense, procure, finance for and undertake the Scope of the Agreement as specified in Article 2 and shall observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2. The Lessor shall provide Available Trainsets to DMRC in accordance with the Specifications and Standards at Schedule A, the Supply Programme and terms of this Agreement including Schedule-Q.
- 5.1.3. The Lessor shall maintain the Trainsets in accordance with the terms and conditions of this Agreement.
- 5.1.4. Deleted.
- 5.1.5. The Lessor shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement including those being performed by any of the Contractors.
- 5.1.6. Save and except as otherwise provided in this Agreement or Applicable Laws, or Applicable Permits as the case may be, the Lessor shall, in discharge of all of its obligations under this Agreement, conform with and adhere to Good Industry Practice at all times.
- 5.1.7. The Lessor 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 and DMRC 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, Intellectual Property rights and systems used or incorporated in the Trainsets and Maintenance Depots;
 - (c) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
 - (d) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Lessor'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 violate any of the provisions of this Agreement;
 - (f) take all reasonable precautions for the prevention of Accidents on or around the Maintenance Depots and the Depot Sites and provide all reasonable assistance and emergency medical aid to Accident victims; and
 - (g) handover and transfer the Trainsets, Maintenance Depots and the Depot Sites to DMRC upon Termination of this Agreement in accordance with the provisions of Article 35.
- 5.1.8. The Lessor shall maintain and upkeep the Depot Sites and the Maintenance Depots including cleaning and housekeeping and undertake all the works in Maintenance Depots, including E&M works, all type of maintenance works, except the track, traction supply and trackside S&T systems in the Maintenance Depots. The Lessor shall also bear all the operational and maintenance expenses for the Maintenance Depots including payment of water and energy consumption charges as detailed in Schedule-C. The Lessor shall undertake any structural change or any additional construction work at the Maintenance Depots, if required, only after seeking prior approval of DMRC and DMRC's decision in this regard shall be conveyed within 30 (thirty) days from the date of receipt of such application.
- 5.1.9. The Lessor shall provide required number of competent and trained T.O.s for each Trainset, having requisite competency certificate issued by DMRC for driving the Trainsets. Lessor shall ensure that the duties and responsibilities as given in Schedule-T shall be performed by the T.O.s.
- 5.1.10. The Lessor acknowledges that notwithstanding anything to the contrary contained herein, DMRC has the right to instruct the Lessor to increase manpower for improving safety and operation of Trainsets if the Lessor does not meet the Key Performance Indicators requirements under Article 20 of this Agreement. The Lessor shall abide by such instructions. If even after deploying the maximum manpower, the Lessor does not meet the requirements under this Agreement and/or as instructed by DMRC, it shall amount to a material breach of the Lessor's obligations under this Article 5.1.
- 5.1.11. The Lessor shall, following the receipt of Additional Quantity Option Order in accordance with Article 12.6, provide additional Trainsets, equipment and T.O.s and provide maintenance services according to the terms and conditions of this Agreement in relation to such additional Trainsets.
- 5.1.12. The Lessor shall provide and, as appropriate, maintain all personnel, equipment and facilities necessary for the effective conduct and management of its obligations under this Agreement.
- 5.1.13. The Lessor shall make all arrangements and assume full responsibility for transportation of the Trainsets and its parts to the Depot Sites. Any permission from the Government Instrumentality which may be required for the transportation will be the responsibility of the Lessor. The Lessor shall use only such entry points to the Depot Sites for transportation of the equipment and machinery, including the Cars, as may be informed by DMRC from time to time.

- 5.1.14. Deleted.
- 5.1.15. The Lessor shall not enter into any Project Agreements, the term of which extends beyond the Termination Date, without DMRC's prior written consent.
- 5.1.16. The Lessor shall give DMRC not less than 30 (thirty) days written notice prior to entering into, amending or replacing any Project Agreements, so as to enable DMRC to provide its consent or offer its comments, if any thereon which, if made, shall be duly considered and given effect to by the Lessor before entering into, amending or replacing such Project Agreement.
- 5.1.17. The Lessor shall ensure and procure that each Project Agreement contains provisions that entitle DMRC to step into such agreement in its discretion in place and substitution of the Lessor in the event of Termination of this Agreement.
- 5.1.18. The Lessor shall procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project.
- 5.1.19. The Lessor shall provide to DMRC reports as required under the provisions of this Agreement on regular basis during the Agreement Period in the manner set forth in this Agreement. The Lessor shall also provide semi-annually to DMRC (i.e. latest by 30 April and 30 November of the relevant year) a statement of accounts reflecting its Adjusted Equity and Debt Due.
- 5.1.20. The Lessor shall assist DMRC and/or DMRC's Representative in technical and operational audits performed by DMRC on a regular basis by providing the requisite documents related to the Project.
- 5.1.21. The Lessor shall give access to the documents related to Project to DMRC and/or any statutory independent auditor at all times.
- 5.1.22. As and when required, DMRC shall be entitled to be a part of any failure investigation carried out for failure of any of Project related systems/sub-systems and the Lessor shall provide to DMRC any information related to the failure.
- 5.1.23. The Lessor shall appoint, supervise, monitor and control the activities of the Contractors under their respective Project Agreements as may be necessary.
- 5.1.24. Lessor shall coordinate with various departments of DMRC through DMRC Representative or alternatively through PMC. DMRC through DMRC Representative shall communicate and coordinate with the Project Manager and any communication to the Project Manager shall be deemed to be conveyed to the Lessor.
- 5.1.25. The Lessor shall develop, implement and administer a safety, health and environment program for the Project, the users thereof, and the Contractor's personnel engaged in the provision of any services under any of the Project Agreements including correction of safety

violations and deficiencies, and taking of all other actions necessary to comply with Article 5, Schedules and other provisions of this Agreement and Applicable Laws.

- 5.1.26. The Lessor shall not place or create and nor permit any Contractor or other person claiming through or under the Lessor to create or place any Encumbrance or security interest over all or any part of the Depot Sites or the Project Assets, or on any rights of the Lessor therein or under this Agreement, save and except as expressly set forth in this Agreement.
- 5.1.27. The Lessor shall be responsible for safety, soundness and durability of the Trainsets supplied and the infrastructure including all machinery and equipment forming part of the Maintenance Depots handed over by DMRC.
- 5.1.28. The Lessor shall not claim or demand possession or control of any roads, structures or real estate which do not form part of the scope of Lessor's work.
- 5.1.29. The Lessor shall provide to DMRC schedules pertaining to work during night, traffic diversions required, closure of roads and such other matters that may cause inconvenience to the public during performance of its obligations by the Lessor.
- 5.1.30. The Lessor after receiving the possession of the Depot Sites and Maintenance Depots or parts thereof, ensure that such Depot Sites and Maintenance Depots or parts thereof remain free from all encroachments and take all steps necessary to remove such encroachments, if any make such official payment to police department or any Government Instrumentality as may be required for the provision of such services as are not provided in the normal course or are available on payment;
- 5.1.31. The Lessor shall maintain the Depot Sites and the Maintenance Depots and shall undertake maintenance/ upkeep and timely replacements as the case may be of the following:
- (a) Civil Works;
 - (b) furniture and fittings;
 - (c) M&P including jigs, fixtures, test benches and any other equipment handed over to the Lessor;
 - (d) work stations;
 - (e) workshop plant, tools and equipment for Trainset maintenance (if required);
 - (f) Trainset inspection and stabling facilities;
 - (g) 3 (three) phase 400 (four hundred)V 50 (fifty) Hz power supply system;
 - (h) DCC;
 - (i) asset maintenance facilities;
 - (j) CMV underframe including fitness of the CMV underframe as specified in Schedule C;
 - (k) crew control room(s) and associated rest rooms; and
 - (l) E&M utilities including firefighting and fire hydrant systems.

Notwithstanding the foregoing, the Lessor agrees that it shall provide all other facilities and equipment mentioned under Schedule - A, which are considered necessary for the good operation and maintenance of Trainsets in accordance with the provisions of this Agreement.

It is clarified that the Lessor shall not be required to maintain the Traction System and tracks within the Maintenance Depots and the trackside S&T equipment within the Maintenance Depots, which shall be undertaken by DMRC.

- 5.1.32. The Lessor shall maintain the crew control room(s) at the Station(s) handed over by DMRC under a licence agreement which shall be executed by the Parties as per the format attached at Schedule D. The Lessor shall also bear the energy consumption charges in respect of such crew control room(s).
- 5.1.33. Without prejudice to the foregoing and notwithstanding anything to the contrary contained in this Agreement, the Lessor expressly agrees and acknowledges that it shall perform all acts necessary and incidental to performance of its obligations under this Agreement at its own cost.

5.2 Obligations relating to Project Agreements

- 5.2.1 It is expressly agreed that the Lessor 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 any other agreement shall excuse the Lessor from its obligations or liability hereunder.
- 5.2.2 Before finalisation, the Lessor shall submit to DMRC the drafts of all Project Agreements including in particular the rolling stock supply contract (if any), the Financing Agreements and the operation and maintenance contract (if any) or any amendments or replacements thereto for its review and comments, and DMRC shall have the right but not the obligation to undertake such review and provide its comments and observations, if any, to the Lessor. Lessor shall appropriately consider all such comments/ observations. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Lessor shall submit to DMRC a true copy thereof, duly attested by a Director of the Lessor, for its record. For avoidance of doubt, it is agreed that the review and comments/ observations by DMRC on any Project Agreement or failure or omission of DMRC to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by DMRC. No review and/or observation of DMRC and/or its failure to review and/or convey its observations on any document shall relieve the Lessor of its obligations and liabilities under this Agreement in any manner nor shall DMRC be liable for the same in any manner whatsoever.
- 5.2.3 The Lessor shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of DMRC if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on DMRC, and in the event that any replacement or amendment is made without such consent, the Lessor shall not enforce such replacement or amendment nor permit enforcement thereof against DMRC. For avoidance of doubt, DMRC acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Lessor.
- 5.2.4 Notwithstanding anything to the contrary contained in this Agreement, the Lessor shall not sub-lease, sub-license, assign or in any manner create an Encumbrance on any of the Project Assets as the case may be, without prior written approval of DMRC, which approval DMRC

may, in its discretion, deny if such sub-lease, sub-licence, assignment or Encumbrance has or may have a Material Adverse Effect on the rights and obligations of DMRC under this Agreement or Applicable Laws.

- 5.2.5 The Lessor shall procure that each of the Project Agreements contains provisions that entitle DMRC to step into such agreement, in its sole discretion, in substitution of the Lessor in the event of Termination or Suspension (the “**Covenant**”). The Lessor 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 DMRC an acknowledgment and undertaking, in a form acceptable to DMRC, from the counter party(ies) of each of the Project Agreements, where under such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from DMRC in the event of Termination or Suspension. For avoidance of doubt it is clarified that DMRC shall not be responsible for any liabilities arising under the Project Agreements, prior to DMRC exercising its step in rights.
- 5.2.6 Notwithstanding anything to the contrary contained in this Agreement, the Lessor agrees and acknowledges that selection or replacement of an O&M Contractor and execution of the O&M Contract shall be subject to the prior approval of DMRC from national security and public interest perspective, the decision of DMRC in this behalf being final, conclusive and binding on the Lessor. For avoidance of doubt, it is expressly agreed that approval of DMRC hereunder shall be limited to national security and public interest perspective, and DMRC shall endeavour to convey its decision thereon expeditiously. It is also agreed that DMRC 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 Lessor or its Contractors from any liability or obligation under this Agreement.

5.3 Obligations relating to Change in Ownership

- 5.3.1 The Lessor shall not undertake or permit any Change in Ownership, except with the prior written approval of DMRC.
- 5.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Lessor agrees and acknowledges that:
- (a) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate 25% (twenty five per cent) or more of the total Equity of the Lessor; or
 - (b) acquisition of any control directly or indirectly of the Board of Directors of the Lessor by any person either by himself or together with any person or persons acting in concert with him,

shall constitute a Change in Ownership requiring prior approval of DMRC from national security and public interest perspective, the decision of DMRC in this regard being final, conclusive and binding on the Lessor, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Lessor without such prior approval of DMRC. For avoidance of doubt, it is expressly agreed that approval of DMRC

hereunder shall be limited to national security and public interest perspective, and DMRC shall endeavour to convey its decision thereon expeditiously. It is also agreed that DMRC 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 Lessor from any liability or obligation under this Agreement. It is further agreed that in the event of any acquisition of shares or control in the Lead Member or its holding by another overseas entity, which results in a Change in Ownership as set forth in this Article 5.3.2 prior to the expiry of the Supply Period, the Lessor shall seek prior consent of DMRC in accordance with the provisions of Article 5.3.

For the purposes of this Article 5.3.2:

- (i) the expression “**acquirer**”, “**control**” and “**person acting in concert**” shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Lessor;
- (ii) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any Lessor or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Lessor; and
- (iii) power to appoint, whether by contract or by virtue of control or acquisition of shares of any Lessor holding directly or through one or more companies (whether situate in India or abroad) the Equity of the Lessor, not less than half of the directors on the Board of Directors of the Lessor or of any Lessor, directly or indirectly whether situate in India or abroad, having ultimate control of 25% (twenty five per cent) or more of the Equity of the Lessor shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Lessor.

5.4 Obligations relating to employment of foreign nationals

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

5.5 Obligations relating to employment of qualified and trained personnel

The Lessor shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly qualified and trained for their respective functions.

5.6 Obligations relating to public relations matter

- 5.6.1. The Lessor shall liaise with DMRC (public relation officer) on all press and public relation matters pertaining to the Project. The Lessor shall submit to DMRC all materials including press releases, press statements, articles prepared by the Lessor prior to its publication or release in the media.
- 5.6.2. The Lessor shall not use DMRC's name or its trademark including its logo in any of its publications without seeking a prior approval of DMRC.
- 5.6.3. Any hoardings and signboards used by the Lessor shall be in good condition.
- 5.6.4. Lessor shall extend all necessary cooperation to DMRC in relation to photography, videography and visits by DMRC's Representative, events organized by DMRC including community talks and press releases during the Agreement Period.
- 5.6.5. Lessor shall ensure that in case any dignitary is using DMRC's Line 5, or if any VIP movement is being undertaken, it shall be kept confidential and the Lessor shall undertake all steps as instructed by DMRC including its public relation officer to ensure smooth operations and confidentiality of such movement.

5.7. Branding of Trainsets

The Trainsets or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Lessor or its shareholders, save to the extent of displaying the name or brand of the Lessor at 4 (four) places on the exterior/interior of each Car with each such display restricted to a maximum area of 0.5 (zero point five) square foot.

The Parties hereby agree and acknowledge that:

- (a) DMRC shall be permitted, during the Agreement Period, to display or reflect the name or identity of DMRC and to sell, market and / or transfer the advertising rights ("**Advertising Rights**"), or to display any other audio, visual public information messages as mandated by the GOI or GNCTD, as the case may be, over any demarcated spaces ("**Advertising Spaces**") as advised by DMRC during finalisation of the Design of Trainsets in accordance with Article 11.1, whether on the exterior / interior of each Car, to any advertising agency and / or any other Person (each hereinafter individually referred to as the "**Advertiser**") in accordance with the terms and conditions of the mutually agreed understanding between DMRC and the Advertiser;
- (b) DMRC may collect the proceeds from the monetization and / or utilization of the Advertising Rights over any of the Advertising Spaces in any Car, at such rates as may be finalised between DMRC and the Advertiser and DMRC shall not be held liable by the Lessor with regards to the monetization and / or utilization of the Advertising Rights over any such Advertising Spaces in any of the Cars, for any reason whatsoever; and
- (c) Lessor shall provide access to the Advertisers for placing the advertisements on the Trainset in print or electronic or any other form of audio-visual display on behalf of DMRC and it is

clarified that if the Lessor is not able to provide Trainsets for Revenue Services or is required to withdraw Trainsets from Revenue Services on account of the Advertiser or any work done by the Advertiser then the Lessor shall be required to pay any Damages as per Clause 8 of Schedule –Q.

5.8 Clean Development Mechanism

The Lessor shall endeavour to earn revenues or other benefits, in relation to or arising out of this Project, under the Clean Development Mechanism (CDM) of Kyoto Protocol of United Nations Framework Convention on Climate Change (UNFCCC) or any other such mechanism. The Lessor expressly agrees and undertakes to transfer forthwith to DMRC one-half of all revenues, credits or other benefits accruing to it from such mechanism.

5.9 Obligations regarding risk of loss or damage

- 5.9.1 The Lessor shall bear the risk of loss in relation to each Car arising from the performance of its obligations under this Agreement throughout the Agreement Period. If the Lessor claims that any damage in the Cars is attributable to DMRC then the Lessor shall at its own cost and expense engage an independent third party to conduct a root cause analysis of the damage. Such independent third party shall be engaged with prior consent of DMRC. The Lessor shall submit such report by the third party to DMRC. If the root cause analysis report identifies the damage attributable to solely any act or omission of DMRC, then the difference in the amount recovered by the Lessor under the insurance and the amount claimed towards the loss shall be borne by DMRC, upon submission of relevant documents in support of its claim by the Lessor to the satisfaction of DMRC. However, any findings of the investigations conducted by the Railway Statutory Authority for analyzing the cause of the failure/Accident resulting into loss shall be binding on both the Parties.

5.10 Obligations relating to information

- 5.10.1 Without prejudice to the provisions of Applicable Laws, Applicable Permits and this Agreement, upon receiving a notice from DMRC 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 Lessor shall provide such information to DMRC forthwith and in the manner and form required by DMRC.
- 5.10.2 After receiving a notice from DMRC for reasoned comments on the accuracy and text of any information relating to the Lessor's activities under or pursuant to this Agreement which DMRC proposes to publish, the Lessor shall provide such comments to DMRC in the manner and form required by DMRC.

5.11 Obligation related to access of Depot Sites and Maintenance Depots

- 5.11.1 The Lessor shall, at all times, afford access to the Depot Sites and Maintenance Depots to DMRC's Representative, Railway Statutory Authority and to any persons duly authorised by any Government Instrumentality having jurisdiction over the Project, including those concerned with safety, security, energy, fire, water, sewage or environmental protection to inspect the Project and to investigate any matter within their authority and upon reasonable notice, the Lessor shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions with minimum disruption to the operation and

maintenance of the Project consistent with the purpose for which such persons have gained such access to the Depot Sites and/or Maintenance Depots.

5.12 Obligations related to access to driver's cab of any Trainset

The T.O.s shall follow the Standard Operating Procedure (as specified in Schedule-T) for granting access to the driver's cab to any other Lessor's personnel or DMRC's personnel for the purpose of maintenance and/or any other work/activities of DMRC and/or inspection by DMRC or its representatives.

ARTICLE 6

OBLIGATIONS OF DMRC

6.1 Obligations of DMRC

6.1.1 DMRC 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 DMRC agrees to provide support to the Lessor 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 partial or full Right of Way, access and licence in respect of the Depot Sites to the Lessor for the purpose of performing its Maintenance Obligations and execute the licence agreement (“**Licence Agreement**” and hereinafter collectively referred to as the “**Licence Agreements**”) for each of the Depot Sites, substantially in the format specified in Schedule-D hereto, in accordance with Article 10 prior to providing such access;
- (b) provide access to the rail track and electrified traction lines connecting the Maintenance Depots to the existing railway network of DMRC, no later than 30 (thirty) days prior to the Supply of the first Trainset for the purpose of movement of Trainsets;
- (c) upon written request from the Lessor, assist the Lessor in obtaining access to all necessary infrastructure facilities and utilities, including water, electricity and telecommunication facilities at rates and on terms no less favourable to the Lessor than those generally available to commercial customers receiving substantially equivalent services;
- (d) upon written request from the Lessor and subject to the Lessor complying with Applicable Laws, assist and provide all reasonable support to the Lessor in obtaining Applicable Permits such as labour law permits for employing labour, clearances from Central Pollution Board for noise, water and air pollution caused by equipment and National Highways Authority of India/Ministry of Road, Transport and Highways/ Government Instrumentality approvals for moving heavy vehicles/equipment;
- (e) not do or omit to do any act, deed or thing that may in any manner violate any of the provisions of this Agreement;
- (f) support, cooperate with and facilitate the Lessor in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- (g) upon written request from the Lessor and subject to the provisions of Article 5.4, provide reasonable assistance to the Lessor and any expatriate personnel of the Lessor or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Lessor or its Contractors their obligations under this Agreement; and

- (h) pay to the Lessor, Total Charge in accordance with the provisions of this Agreement, with reasonable adjustments and deductions, if any, in accordance with the provisions of this Agreement.

6.1.3 DMRC shall undertake the following works itself or through its various contractors:

- (a) Obligations pertaining to Trainset operations:
 - (i) management of operational control through OCC and preparation of Master Train Operation Plan according to the passenger demand forecasts in accordance with Article 14;
 - (ii) maintenance of all civil structures of the line including all stations, elevated sections and associated structures such as entry / exit structures, utilities galleries, plant rooms, water tanks and other enclosures;
 - (iii) operation and maintenance all E&M equipment and systems on the Line excluding the ones within the Maintenance Depots;
- (b) Obligations pertaining to Depot Sites and Maintenance Depots:
 - (i) handing over of the major M&P of the Maintenance Depots to the Lessor;
 - (ii) ensuring provisions for all the E&M equipment and systems requirements, including fixing points, openings / cut outs and so on as per the interface with the Lessor at the Maintenance Depots;
 - (iii) ensuring provision for all permanent embedded / buried drainage and water supply systems not within the Maintenance Depots and supply pumps to be installed at the Maintenance Depots;
 - (iv) provision of maintenance of all tracks including tracks within the Maintenance Depots as provided in Article 5.1.31;
 - (v) provision of maintenance of the Traction System within the Maintenance Depots as provided in Article 5.1.31; and
 - (vi) provision of maintenance of trackside signalling and telecommunication systems including the S&T equipment within the Maintenance Depots as provided in Article 5.1.31.
- (c) provision of interface between the Railway Statutory Authority and the Lessor:
 - (i) the Lessor shall coordinate with the Railway Statutory Authority for carrying out all mandatory tests upon the Trainsets at design stage, during manufacturing, installation, commissioning and integrating testing activities of various items in the scope of work of the Lessor under this Agreement. DMRC shall facilitate the Lessor in its application for tests with such Railway Statutory Authority; and
 - (ii) DMRC or its contractor(s) shall provide high voltage substations with supplies for the Line: 11kV (eleven kilo volt), 3 (three) phase auxiliary supplies and 25kV (twenty five kilo volt) single phase traction power supplies at the Maintenance Depots. The day to day maintenance and operational control of the substations shall rest with DMRC.

6.1.4. DMRC shall procure the onboard signalling equipment required to be used in the Project at its sole cost and expense. These onboard signalling equipment for each Trainset shall be handed over to the Lessor for installation on the Trainset by the Lessor/RSM within 60 (sixty) days

prior to dispatch/supply of respective Trainsets. The ownership of the onboard signalling equipment shall remain with DMRC. Thereafter maintenance of the onboard signaling equipment shall be undertaken by the DMRC at its sole cost and expense. However, the Lessor shall provide all necessary support and access of the Trainsets and Maintenance Depots and Depot sites for testing, installation, commissioning relevant safety certifications (if any) and maintenance of the onboard signalling equipment. For any delay in the delivery of the onboard signalling equipment under the contract for supply for the onboard signalling equipment by the supplier which may cause a delay in the Supply of the Trainsets by the Lessor, the Lessor shall be granted a corresponding day to day extension in the Key Dates by DMRC in accordance with Article 13.2.1.

ARTICLE 7

REPRESENTATIONS AND WARRANTIES

7.1 Representations and warranties of the Lessor

The Lessor represents and warrants to DMRC 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 action under Applicable Laws and its constitutional documents to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) 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 thereof;
- (e) it is subject to laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement on matters arising thereunder including any obligations, liability or responsibility hereunder;
- (f) all the information furnished in the Bid is, and shall be, true and correct as on the date of this Agreement, Appointed Date and COD and the balance sheet and profit and loss account of the Lessor for each of its Accounting Years after the Appointed Date furnished to DMRC shall give true and fair view of the affairs of the Lessor;
- (g) it shall furnish a copy of the audited accounts within 120 (one hundred twenty) days of the close of its each Accounting Year after the Appointed Date and any material change subsequent to the date of such accounts shall be notified to DMRC by the Lessor within 30 (thirty) days of its occurrence and warrants that the accounts and the information furnished as aforesaid shall be true and correct;
- (h) the execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Memorandum and Articles of Association of the Lessor or [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;

- (i) there are no actions, suits, proceedings, or investigations pending or, to the Lessor's 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;
- (j) 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 or impairment of the Lessor's ability to perform its obligations and duties under this Agreement;
- (k) it has complied with all Applicable Laws in all material aspects 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 Material Adverse Effect on its financial condition or its ability to perform its obligations and duties under this Agreement;
- (l) each Consortium Member was and is duly organised and existing under the laws of the jurisdiction of its incorporation and has full power and authority to consent to and has validly consented to and requested DMRC to enter into this Agreement with the Lessor pursuant to the LOA and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (m) it shall at no time undertake or permit any Change in Ownership except in accordance with provisions of Article 5.3; and that the Selected Bidder shall hold upto 4 (four) years from the completion of the Supply Period or successful completion of Defect Liability Period, whichever is earlier; representing not less than: (i) 26% (twenty six percent) of the subscribed and paid-up equity of the Lessor; and (ii) 5% (five percent) of the Total Project Cost as specified herein. Further, by submitting the Bid, the Selected Bidder acknowledges and undertakes that the Members of the Consortium/JV shall collectively hold 100% (hundred per cent) of the subscribed and paid up equity share capital of the Lessor at all times until the expiry of a period of 4 (four) years from the completion of the Supply Period or successful completion of Defect Liability Period, whichever is earlier;
- (n) it shall have an Equity of atleast 30% (thirty percent) of the Total Project Cost at the time of the COD of the last Trainset;
- (o) all rights and interests of the Lessor in and to the Project shall pass to and vest in DMRC on the Termination Date free and clear of all liens, claims, and Encumbrances without any further act or deed on the part of the Lessor or DMRC and that none of Project Assets including materials, supplies or equipment forming part thereof shall be acquired by the Lessor subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person save and except as expressly provided in this Agreement;
- (p) no representation or warranty by the Lessor contained herein or in any other document furnished by it to DMRC, or to any Government Instrumentality in relation to Applicable Permits contains or shall contain any untrue statement of material fact or omits or shall omit to state a material fact necessary to make such representation or warranty not misleading;

- (q) it has been incorporated as a validly existing company in the Companies Act, 2013 and shall remain a valid existing active company from the date of incorporation of the Lessor, throughout the Agreement Period and as long as the Lessor has outstanding obligations and/ or guarantees towards DMRC;
- (r) from the date of incorporation of the Lessor and throughout Agreement Period, the Lessor's memorandum and Articles of Association shall not be materially amended, supplemented or otherwise modified unless agreed to by DMRC;
- (s) throughout the Agreement Period, the Lessor shall have no subsidiaries and/or shareholdings and/or other holdings in any company and/or holding of securities convertible to shares of any company or options for such securities, except for holdings of securities registered on stock exchanges, which do not confer on the Lessor the status of an interested party and except for holding in subsidiaries established if any under the provisions of this agreement with prior written approval of DMRC and on such terms as stipulated by DMRC;
- (t) the organizational structure and management of the Lessor and its personnel shall at all times be suited to and shall fully reflect the Lessor's compliance with its obligations under this Agreement. Without derogating from the generality of the above, the Lessor shall at all times ensure that it has sufficient suitable personnel present at the Depot Sites and Maintenance Depots as is required to perform its obligations. The Lessor shall submit to DMRC for its review a list of its executive officers and personnel, clearly indicating their responsibilities;
- (u) no sums, in cash or kind, have been paid or shall 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 DMRC in connection therewith;
- (v) all information provided by the {Selected Bidder/ Consortium Members} in response to the EoI and the RFP or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects;
- (w) all undertakings and obligations of the Lessor arising from the EoI and the RFP or otherwise shall be binding on the Lessor as if they form part of this Agreement;
- (x) it has and shall have all necessary Intellectual Property, proprietary rights, licenses, agreements, approvals, consents of third parties free from any encumbrances and permissions for materials, technology, methods, processes, know-how and systems to be used or incorporated into the Trainsets and Maintenance Depots for or in connection with the performance of all its obligations under this Agreement;
- (y) it has not and shall not incorporate any materials, technology or any item or thing that involves the use of Intellectual Property or proprietary rights that the Lessor shall not have right to use or license to DMRC or that may result in claims or suits against the Lessor or DMRC arising out of claims of infringement of any Intellectual Property or other proprietary rights;

- (z) it shall grant to DMRC an irrevocable, royalty-free, non-exclusive licence (including the right to grant sub-licences) to use, reproduce, modify and adapt all Intellectual Property subsisting in or in relation to the Designs and Drawings, materials, plant and machinery of the Maintenance Depots as well as components, parts and systems forming part of a complete Trainset for the purposes of this Project and such licence shall survive expiry or termination of the Agreement without limitation as to duration;
- (aa) no infringement of any Intellectual Property of any kind, whether in India or elsewhere, shall result from the performance of the Agreement or the Project Agreements, or the operation, use or ownership of the Project, Trainsets or the exercise of the rights and licence granted pursuant to Agreement by DMRC; and
- (bb) no representation or warranty by it contained herein or in any other document furnished by it to DMRC or to any other Government Instrumentality including Railway Statutory Authority in relation to Applicable Permits or otherwise contains or shall contain any untrue or misleading statement of material fact or omits or omit to state a material fact necessary to make such representation or warranty not misleading.

7.2 Representations and warranties of DMRC

DMRC represents and warrants to the Lessor that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under the Agreement
- (d) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has complied with Applicable Laws in all material respects;
- (f) all information provided by it in the EoI and RFP in connection with the Project is to the best of its knowledge or belief, true and accurate in all material respects;
- (g) to the extent DMRC has knowledge, there are no facts or information related to the Project and Disclosed Data relating to that which DMRC has intentionally not disclosed to the Lessor and which, if learned by the Lessor, might reasonably be expected to materially affect the Lessor's evaluation of the risks the Lessor is assuming pursuant to this Agreement or might reasonably be expected to deter the

Lessor from completing the transactions contemplated by this Agreement on the terms of this Agreement;

- (h) 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 DMRC Instrumentality which may result in any Material Adverse Effect on DMRC's ability to perform its obligations under this Agreement;
- (i) it has good and valid right to the Depot Sites and Maintenance Depots and has power and authority to grant a lease or licence, as the case may be, in respect thereto to the Lessor; and
- (j) upon the Lessor submitting a written request to this effect with necessary particulars, it shall enable personnel of the Lessor to travel on board the Trainsets for the purpose of discharging the 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 the aforesaid representations or warranties untrue or incorrect, such party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any obligation of either Party under this Agreement.

ARTICLE 8

DISCLAIMER

8.1 Disclaimer

- 8.1.1 The Lessor acknowledges that prior to the execution of this Agreement, the Lessor has after a complete and careful examination made an independent evaluation of the Specifications and Standards, and of the Depot Sites and the Maintenance Depots, of the scope of the Project, tender notice, local conditions and all the information provided by DMRC or gathered otherwise, and has determined to the Lessor's satisfaction the nature and extent of such 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 Article 7.2, DMRC 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 Lessor confirms that it shall have no claim whatsoever against DMRC in this regard.
- 8.1.2 The Lessor acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Article 8.1.1 above and hereby acknowledges and agrees that DMRC shall not be liable for the same in any manner whatsoever to the Lessor, the Consortium Members 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 Article 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 Article 8.1.1, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of DMRC to give any notice pursuant to this Article 8.1.4 shall not prejudice the disclaimer of DMRC contained in Article 8.1.1 and shall not in any manner shift to DMRC any risks assumed by the Lessor 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 Lessor and DMRC shall not be liable in any manner for such risks or the consequences thereof.
- 8.1.6 Save as Article 7.2, DMRC gives no warranty or guaranty of whatever nature in respect of Disclosed Data or data provided to the Lessor and specifically (but without limitation), DMRC does not warrant that the Disclosed Data represents all of the information in its possession or power (either during conduct of the Leasing process for the Project or at a time of this agreement) relevant or material to or in connection with the Project or the obligations of the Lessor under this Agreement or any of the Project documents.
- 8.1.7 DMRC shall not be liable to the Lessor in respect of any failure to disclose or make available to the Lessor (whether before, on or after execution of this Agreement) any information, documents, data or any failure to review or update the Disclosed Data, nor any failure at any

stage to inform the Lessor of any inaccuracy, error, omission, defects or inadequacy in the Disclosed Data.

PART III
DEVELOPMENT AND OPERATIONS

ARTICLE 9

PERFORMANCE SECURITY

9.1 Performance Security

- 9.1.1 The Lessor shall, for the performance of its obligations hereunder provide, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs. 60 crores (Rupees sixty crores) with an initial validity till the expiry of the Defects Liability Period in the form set forth in Schedule-E (the “**Performance Security**”). Until such time (before signing of the Agreement) the Performance Security is provided by the Lessor 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, DMRC shall release the Bid Security to the Lessor.
- 9.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that the Performance Security is not provided by the Lessor within a period of 120 (hundred and twenty) days from the date of this Agreement, DMRC shall have the right to encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Lessor under or arising out of this Agreement including the Licence Agreement (if executed) shall be deemed to have been waived by, and to have ceased with the concurrence of the Lessor, and shall be entitled to Terminate this Agreement forthwith.

9.2 Appropriation of Performance Security

- 9.2.1 In the event of the Lessor being in default in the due and faithful performance of its obligations under this Agreement and failing to remedy such default within the Cure Period, DMRC shall without prejudice to its other rights and remedies hereunder be entitled to encash and appropriate the Performance Security as Damages for such default. Upon such encashment and appropriation of the Performance Security, DMRC shall grant a period of 15 (fifteen) days to the Lessor to provide fresh Performance Security and in case of partial appropriation to replenish the Performance Security and the Lessor shall within the time so granted furnish to DMRC such Performance Security failing which DMRC shall be entitled to Terminate this Agreement under Article 35. The provision set forth in above Article 9.1.1 and Article 9.1.2 shall apply *mutatis-mutandis* to replenishments or such fresh Performance Security.
- 9.2.2 Failure of the Lessor to maintain the availability of the Performance Security to DMRC by extending its validity at least 60 (sixty) days before its due expiry at any time during the term of this Agreement shall entitle DMRC to encash the Performance Security before its expiry and to terminate this Agreement in accordance with the provisions of Article 35.

9.3 Release of Performance Security

Upon expiry of the Defects Liability Period of the last Trainset in accordance with the provisions of this Agreement, 50% (fifty per cent) of the amount of the Performance Security shall be released. The remaining 50% (fifty per cent) of the Performance Security shall

remain in force and effect for the entire Maintenance Period until the date of Vesting Certificate.

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 Lessor to DMRC, 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 Lessor, and the amount so determined shall be appropriated from the Bid Security, Performance Security or Performance Guarantee, as the case may be.

ARTICLE 10

RIGHT OF WAY AND ACCESS TO THE DEPOT SITES AND MAINTENANCE DEPOTS

10.1 Handover of Maintenance Depots and Depot Sites

10.1.1. Maintenance Depots shall comprise the area which is described, delineated and shown in Schedule-C and in respect of which the Right of Way and possession shall be provided and granted by DMRC to the Lessor as a licence under and in accordance with this Article 10 (the “Depot Sites”).

10.1.2. Prior to handing over of the Depot Sites and Maintenance Depots the Parties shall conduct a Joint Survey in accordance with Schedule C to ascertain the immovable and movable assets at the Depot Sites and Maintenance Depots to be handed over by DMRC to the Lessor.

10.2 Licence and Right of Way for Depot Sites

10.2.1 DMRC shall grant to the Lessor access to the Depot Sites for carrying out any surveys, investigations that the Lessor may deem necessary prior to the Appointed Date it being expressly agreed and understood that DMRC shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Lessor on or about the Depot Sites pursuant hereto in the event of Termination or otherwise.

10.2.2 In consideration of the license fee of Re. 1 (Rupee one) per annum, this Agreement and the covenants and warranties on the part of the Lessor herein contained and as contained in the Licence Agreement, DMRC, in accordance with the terms and conditions set forth herein, grants to the Lessor, effective from the dates specified in this Article 10.2, leave and licence rights in respect of the Depot Sites at Mundka and Bahadurgarh, on an “*as is where is*” basis, free of any Encumbrances, to operate and maintain the Depot Sites, for the duration of this Agreement and, solely for the purposes permitted under this Agreement, and for no other purpose whatsoever.

10.2.3 DMRC shall provide and grant to the Lessor, access, and Right of Way to the Depot Sites, by way of executing the Licence Agreement on or prior to the dates specified below:

- (a) the Depot Site situated at Bahadurgarh shall be provided within 90 (ninety) days of receiving a notice from the Lessor in accordance with Article 4.1.2; and
- (b) the Depot Site situated at Mundka shall be provided within 90 (ninety) days of COD of the last Trainset; provided however that if required by the Lessor DMRC may at its sole discretion provide partial access to the Depot Site at Mundka within 30 (thirty) days of the COD of first Trainset. Provided that the Right of Way to the Depot Site at Mundka shall be non-exclusive and DMRC shall be entitled to use the Maintenance Depot at Mundka for the maintenance of its Existing Trains, till DMRC shifts its entire operations from the Maintenance Depot at Mundka and electricity charges shall be shared between the parties on pro-rata basis, calculated in the ration of number of Trainsets maintained by each party at the Depot Site during such partial excess.

- 10.2.4 The Parties agree that performance of Maintenance Obligations by the Lessor shall be subject to the grant of the license and Right of Way with respect to Depot Sites hereunder and in the event of any delay, the Parties shall, in good faith, determine alternative arrangements thereof.
- 10.2.5 Notwithstanding the provisions of Article 10.2.2, the licence granted in respect of the Depot Sites hereunder shall expire in respect of such Depot Sites upon the transfer of the relevant Maintenance Depots under and in accordance with the provisions of Article 29.
- 10.2.6 For avoidance of doubt, possession of the Depot Sites and Maintenance Depots shall be granted for and in respect of the land comprising such Depot Sites and the Maintenance Depots.
- 10.2.7 Upon receiving possession of the Depot Sites and Maintenance Depots in accordance with Article 10.2.3, the Lessor shall protect the Depot Sites and Maintenance Depots from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor(s) or other person claiming through or under the Lessor to place or create any Encumbrance or security interest over all or any part of the Depot Sites, the Maintenance Depots or the Project Assets, or on any rights of the Lessor therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement. The Parties further agree that in the event of any encroachment or occupation on any part of the Depot Sites or the Maintenance Depots, the Lessor shall report such encroachment or occupation forthwith to DMRC and undertake its removal forthwith at its own cost and expense including with the help of the relevant Government Instrumentality.
- 10.2.8 The Lessor hereby irrevocably appoints DMRC (acting directly or through a nominee) to be its true and lawful attorney, to execute and sign in the name of the Lessor, a transfer or surrender of the license granted/ to be granted pursuant hereunder, a sufficient proof of which shall be the declaration of any duly authorised officer of DMRC, and the Lessor consents to it being registered for this purpose.

10.3 Survey of the Depot Sites and Maintenance Depots

Pursuant to the notice specified in Article 4.1.2, DMRC Representative and the Lessor shall, on a mutually agreed date and time, prior to the execution of the Licence Agreement, conduct a joint survey of the Depot Sites and Maintenance Depots in accordance with Schedule-C.

10.4 Depot Sites and Maintenance Depots to be free from Encumbrance

The Depot Sites and Maintenance Depots shall be made available by DMRC to the Lessor pursuant hereto free from all Encumbrances and occupations and without the Lessor being required to make any payment to DMRC on account of any costs, compensation, expenses and charges for the possession and use of such Depot Sites for the duration of the Agreement Period, except in so far as otherwise expressly provided in this Agreement and the Licence Agreements. It is further agreed that the Lessor accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Depot Sites and Maintenance Depots.

10.5 Access to DMRC

The Right of Way to each Depot Sites and Maintenance Deptos granted to the Lessor under the Licence Agreement shall always be subject to the right of access of DMRC and its employees, agents, Railway Statutory Authority and Government Instrumentality having jurisdiction over such Depot Sites and/or the Project, for inspection, viewing and exercise of its rights and performance of its obligations under this Agreement.

10.6 Access to crew control room and rest rooms

DMRC shall provide to the Lessor partial access during Supply Period and subsequently full access to the crew control rooms and the rest rooms. Prior to granting access to the crew control room and the rest rooms the Parties shall execute the Licence Agreement in the format provided at Schedule D.

10.7. Geological and archaeological finds

It is expressly agreed that mining, geological or archaeological rights do not form part of the license granted to the Lessor under the Licence Agreement and this Agreement, and the Lessor hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest. Such rights, interest and property on or under the Depot Sites and Maintenance Depots shall vest in and belong to DMRC. The Lessor shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform DMRC forthwith of the discovery thereof and comply with such instructions as DMRC may reasonably give for the removal of such property. It is also agreed that DMRC shall within a reasonable period issue instructions so as to enable the Lessor to continue its construction works with such modifications as may be deemed necessary.

10.8 Felling of trees

DMRC shall assist the Lessor in procuring the Applicable Permits for felling of trees to be identified by the Lessor for this purpose if and only if such trees cause a material adverse effect on the construction, operation or maintenance of the Maintenance Depots and Depot Sites. In the event of any delay in felling thereof for reasons beyond the control of the Lessor, it shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees. For avoidance of doubt, the costs and expense in respect of felling of trees shall be borne by the Lessor and any revenues thereof shall be paid to DMRC.

ARTICLE 11

DESIGN AND SUPPLY OF PROTOTYPE

11.1 Design of Prototype

11.1.1 The Lessor agrees that the design work shall commence within 30 (thirty) days of the Appointed Date according to the Specifications and Standards specified in Schedule-A.

11.1.2 All interface related design issues (with DMRC or its contractors) shall be completed within 6 (six) months from the Appointed Date. For this purpose the Lessor shall maintain a design interface team and shall lead the design coordination with DMRC or its contractors. Any unresolved issue beyond this period shall be the responsibility of the Lessor and has to be resolved by the Lessor at its own cost and expense.

11.1.3 The Lessor shall:

- (a) no later than 60 (sixty) weeks from the Appointed Date, provide to DMRC, 2 (two) copies of the Designs and Drawings of the Prototype, as specified in Schedule-A; and
- (b) no later than 60 (sixty) weeks from the Appointed Date, provide to DMRC, 2 (two) sets of duly licensed simulation software along with requisite hardware, capable of simulating the performance and running characteristics of the Trainsets, 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 Trainset for a given length of section and for different weights of Trainset and different topography of the section and other features in conformity with Applicable Laws, Applicable Permits and Good Industry Practice.

11.1.4 By submitting the Designs and Drawings in accordance with Article 11.1.3 above, the Lessor represents that it has determined and verified the design and engineering including the field construction criteria related thereto in conformity with the Specifications and Standards set forth in Schedule –A and the other provisions of this Agreement.

11.1.5 DMRC 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 a period of 12 (twelve) weeks from the date of receiving the Designs and Drawings. For 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 DMRC to review and / or comment hereunder shall not be relieve or absolve the Lessor of its obligations and liabilities under this Agreement in any manner whatsoever.

11.1.6 Pursuant to the Design Report or otherwise, the Lessor shall carry out such modifications in the designs as may be necessary for conforming to the Specifications and Standards.

11.1.7 DMRC 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 Lessor and shall endeavour to protect the Intellectual Property rights of the Lessor therein.

11.2 Tests at the factory

11.2.1 Prior to supply of a sample of a Trainset and sub-system of a Trainsets as detailed in Schedule -A that conforms to the Specifications and Standards (the “**Prototype**”), the Lessor shall carry out, or cause to be carried out, at its own cost and expense, all Tests including routine Test and type Test in accordance with Schedule –A and such other Tests that the Lessor may consider necessary to demonstrate that the Prototype complies in all respects with the Specifications and Standards. The Lessor shall provide to DMRC forthwith, a copy of the Lessor’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.

11.2.2 The Lessor shall, with at least 4 (four) weeks’ notice to DMRC, convey the date, schedule and type of Tests that shall be conducted on the Prototype at the plant of the Lessor and the factories of the Contractors of major sub-systems and DMRC shall have the right, but not the obligation, to nominate its representative to witness the Tests. DMRC shall also conduct a mock-up test on the Prototype in accordance with Schedule -A.

11.2.3 DMRC’s Representative shall make a report forthwith on the Tests witnessed by it and provide a copy thereof to the Parties for review. The Lessor shall, prior to dispatch of the Prototype for Supply to DMRC, ensure that defects and deficiencies, if any, are rectified and the Prototype conforms with the Specifications and Standards, Applicable Laws, Applicable Permits and provisions of this Agreement. DMRC shall issue a dispatch clearance certificate for the Prototype in accordance with Schedule-A, prior to the dispatch of the Prototype.

11.2.4 In the event of failure of any Test specified in Article 11.2.1, the Lessor shall rectify the defect and/or cause its Contractor to rectify such defects and conduct repeat Tests, and the procedure specified in this Article 11.2 shall apply *mutatis mutandis* to such repeat Tests.

11.3 Supply of the Prototype

11.3.1 The Lessor shall, no later than the Key Dates mentioned in Schedule – K, Supply a Prototype for Tests and trials to be conducted by DMRC and Railway Statutory Authority in accordance with the provisions of Article 11.4.

11.3.2 In the event that the Lessor fails to Supply the Prototype within the period specified in Article 11.3.1, DMRC may recover from the Lessor an amount equal to 0.1% (zero point one per cent) of the Performance Security as Damages for each and every week, or part thereof, by which the Supply of the Prototype is delayed; provided that such Damages shall not exceed 10% (ten per cent) of the Performance Security and upon reaching such maximum, DMRC may, in its sole discretion, terminate the Agreement.

11.4 Tests on the metro railway lines of DMRC

11.4.1 Upon Supply of the Prototype at the Depot Site, DMRC shall conduct routine and type Tests on the Prototype and integration Test in the presence of the Lessor and all Contractors for the

sub-systems of the Trainsets. After successful completion of routine tests on the Prototype for determining that the Prototype conforms to Specifications and Standards, DMRC shall, within a period of 120 (one hundred and twenty) days of the Supply of the Prototype at the Depot Sites, conduct, or cause to be conducted, on the metro railway lines of DMRC, the Tests specified in Schedule –A, the Specifications and Standards, and the Applicable Laws and Applicable Permits, or as otherwise required by the Railway Statutory Authority. The relevant Railway Statutory Authority shall conduct internal oscillation trials in accordance with Procedure for Safety Certification and Technical Clearance of Metro Systems by RDSO, 2015. Pursuant to the internal oscillation tests, service trials of the Prototype shall be conducted on the Line. Upon successful completion of the Tests by the Railway Statutory Authority and DMRC, DMRC will issue a clearance certificate for the Prototype in accordance with Article 11.5 (“**Prototype Clearance Certificate**”).

- 11.4.2 The Parties agree that the Tests pursuant to Article 11.4, shall be conducted at the cost and expense of the Lessor. The Tests conducted by DMRC shall be final and binding on the Lessor. In the event that DMRC or the Railway Statutory Authority concludes that the Prototype does not qualify the Tests and is not safe for entry into service, the Lessor shall, notwithstanding anything to the contrary contained in this Article 11, withdraw the Prototype for rectification thereof and present it to DMRC for inspection after the defects or deficiencies have been rectified. The Lessor undertakes to rectify any defect which may be reflected in the Tests conducted on the Prototype and present the Prototype for repeat Tests, and the procedure specified in this Article 11.4 shall apply *mutatis mutandis* to such Tests. The Lessor shall include all recommendations/requirements of the Railway Statutory Authority including any equipment specifications which have not been prescribed in Schedule-A, and are related to safety in the Prototype and subsequently in all Trainsets. The Lessor shall also conduct any additional Tests which may be required by the Railway Statutory Authority. Such additional requirements/ Tests which the Railway Statutory Authority may require the Lessor to undertake shall be deemed to be part of Schedule -A, and the cost of conducting the additional tests or incorporating the requirements of the Railway Statutory Authority shall be borne by the Lessor. Any failure to incorporate the requirements and/ or conduct the additional Tests required by the Railway Statutory Authority on the Prototype and subsequently on the Trainsets shall amount to Lessor’s Default under Article 35.
- 11.4.3. The Lessor shall coordinate with the Railway Statutory Authority and make available all relevant documents required by the Railway Statutory Authority for conducting the Tests and safety inspections on the Prototype in accordance with the Applicable Laws. DMRC will facilitate the Lessor in submission of the relevant documents if required by the Railway Statutory Authority.
- 11.4.4. DMRC shall not be responsible for any delays which may result due to delay in conducting the Tests on the Prototype. Pending the completion of the Tests on the Prototype, considering time is of essence in the Agreement, the Lessor may, without prejudice to any of the rights of DMRC and Lessor’s obligations under this Agreement and Applicable Laws in any manner whatsoever, at its sole risk and cost Supply other Trainsets to the Depot Site for conducting Tests at its own risk. The Lessor undertakes that any defect or deficiency detected in the Prototype shall be rectified by the Lessor in the Prototype as well as the other Trainsets which may have been supplied during the Tests on the Prototype, in accordance with clause 4.2.4 of Schedule-A or which shall be Supplied later, at its sole cost and expense.

- 11.4.5 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.
- 11.4.6. The Lessor shall provide copies of all Test data including detailed Test results of the Prototype to DMRC.
- 11.4.7. All Tests conducted on the Prototype to be conducted on the Line shall have to be planned in advance by Lessor and Blocks shall be provided at available time slots for durations as maybe permitted by DMRC without disturbing the existing operation of the Line.

11.5 Acceptance of the Prototype by DMRC

- 11.5.1 DMRC shall, no later than 30 (thirty) days after successful completion of all the Tests, issue a Prototype Clearance Certificate to the Lessor, accepting the Prototype.
- 11.5.2 The Parties expressly agree that notwithstanding anything to the contrary contained herein, any Tests conducted by DMRC on the Prototype or other Trainsets, shall not relieve or absolve the Lessor of its obligations and liabilities under this Agreement in any manner whatsoever.
- 11.5.3. Without prejudice to the foregoing, DMRC shall be entitled to issue the Prototype Clearance Certificate with certain conditions to be fulfilled by the Lessor at a later date, based on the specific undertaking of the Lessor that it shall comply with such conditions in a time bound manner.

11.6 Lease of the Prototype

- 11.6.1 In consideration of the Total Charges and subject to the requirements of Article 11.6.2, the Lessor hereby grants on lease to DMRC and DMRC agrees to accept the lease from the Lessor, free from all Encumbrances, of the Prototype together with all and singular rights, liberties, privileges and benefits whatsoever in or appurtenant to the Prototype or any part thereof, and to hold, possess, use and enjoy the Prototype and / or any part thereof, for the Agreement Period, in accordance with the terms and conditions of this Agreement.
- 11.6.2 The Lessor hereby leases the Prototype to DMRC, on and from the date of the issuance of the Prototype Clearance Certificate as per the requirements of Article 11.5 and the terms and conditions of this Agreement.
- 11.6.3 The Parties hereby agree and acknowledge that DMRC shall be entitled to sub – lease any Advertising Spaces of the Prototype and / or sell, market and / or transfer any Advertising Rights to any Advertiser, in accordance with the terms and conditions of this Agreement.
- 11.6.4 The Lessor hereby agrees and warrants to DMRC that:
 - (a) DMRC shall be entitled to use and enjoy the Prototype and every part thereof, during the Agreement Period, without any interruption by the Lessor;

- (b) Subject to timely payment of the Total Charges as per Article 11.7 and performance of the covenants and conditions of this Agreement, DMRC shall peacefully operate and enjoy the Prototype during the Agreement Period;
- (c) The Lessor shall not create any Encumbrances on the Prototype and / or otherwise part with or alienate any of the rights, title or interest in or to the Prototype, save and except any sale, transfer, disposal and / or Encumbrance that shall be subject to the leasehold rights of DMRC as set out under this Agreement and the Lessor shall ensure that simultaneously with the sale, transfer, disposal and / or Encumbrance of the Prototype or any part thereof, the concerned transferee thereof shall acknowledge the leasehold rights of DMRC therein and shall execute an agreement on terms and conditions that are identical or not less favourable than the terms and conditions of this Agreement.

11.7 Total Charges for the Prototype

In consideration of the Lessor leasing the Prototype to DMRC in accordance with the requirements of Article 11.6 and granting the rights, privileges and benefits as set forth hereunder, DMRC shall pay to the Lessor, the Total Charges in accordance with the terms and conditions of this Agreement. DMRC shall pay the Total Charges into such account as may be designated by the Lessor from time to time, as per the terms and conditions of this Agreement.

ARTICLE 12

SUPPLY AND LEASE OF TRAINSETS

12.1 Supply of Trainsets

It is expressly agreed by the Parties that Lessor shall, in accordance with the provisions of Article 11 and the Supply Programme specified in Article 13, Supply the Trainsets. The period of Supply of the Trainsets hereunder shall be deemed to commence from the Appointed Date and shall expire upon completion of the period of Supply specified in Article 13 (“**Supply Period**”).

12.2 Testing of Trainsets

- 12.2.1 The Lessor shall in accordance with the Article 11.4.2., ensure that the rectifications of defects and/or modifications in the Prototype addressing the requirements of DMRC and/or the Railway Statutory Authority have been incorporated in all the Trainsets and the Trainsets are ready and capable of safe operation.
- 12.2.2 DMRC shall conduct Tests on the Trainsets and major sub-systems, in accordance with the inspection and test plan, Schedule – A, Applicable Laws and Applicable Permits, or as required by the Railway Statutory Authority. DMRC shall carry out, or cause to be carried out, all Tests including routine Test and type Test in accordance with Schedule – A at the Lessor’s plant or the RSM’s plant as the case may be.
- 12.2.3 The Lessor shall bear all the expenses relating to Tests including repeat Tests under this Agreement and shall provide copies of all Test data including detailed Test results to DMRC. In case of any repeat Tests, the Lessor shall also bear the cost of DMRC’s visits to witness the Tests at the factory of the Lessor or its sub-contractors.
- 12.2.4 At least 45 (forty-five) days prior to the likely COD of Trainset, the Lessor shall notify DMRC of the same and shall give notice of its intent to conduct any final Tests. The Lessor shall give to DMRC at least 15 (fifteen) days’ prior notice of the actual date on which it intends to commence the Tests and at least 10 (ten) days’ prior notice of the commencement date of any subsequent Tests.
- 12.2.5 All Tests of Trainsets to be conducted on the Line shall have to be planned in advance by Lessor and Blocks shall be provided at available time slots for durations as permitted by DMRC without disturbing the existing operation of the Line.
- 12.2.6 The Lessor shall provide certificates for its Design and Tests of the Trainsets and sub-systems certifying that the Trainsets can be safely and reliably placed in commercial operations.
- 12.2.7 If the Tests of the Trainsets are successful and the Trainsets can be placed in commercial operations, even though certain works or things forming part thereof which do not affect the use and safety of the Trainsets, or any part of the Trainsets, for their intended purpose, are outstanding and are to be completed (“**Punch List**”), the Lessor shall issue a notice of completion pending Punch List to DMRC for each Trainset along with certificate certifying

the engineering and that the Trainsets safe for operation for passenger use in accordance with the provisions of Schedule-A. Upon receipt of the notice, DMRC shall within 15 (fifteen) days of such notice of completion conduct an inspection on the Trainsets for which notice of completion was issued by the Lessor. Upon inspection, DMRC may, issue a provisional certificate of completion (“**Provisional Certificate**”) substantially in the form set forth in Schedule – F upon fulfilling the following conditions:

- (a) the Trainset is complete and complies with the requirements of this Agreement and Specifications and Standards, except for Punch List items;
- (b) the Trainset has passed all Tests and all results of the Tests have been provided to DMRC's Representative;
- (c) Railway Statutory Authority has issued a certificate to the Lessor after examining the essential operational and safety standards and presentation standards of the Prototype;
- (d) all documents and other information (including maintenance and operation manuals and/or training material) relating to the Trainsets which are required under this Agreement have been completed and supplied to DMRC’s Representative; and
- (e) the Lessor has certified that all the modifications, improvements, rectifications required by the Railway Statutory Authority in the Prototype have been incorporate in the Trainset Supplied.

12.2.8 If DMRC is unable to issue the Provisional Certificate because of events or circumstances which excuse the performance of the Lessor’s obligations in accordance with this Agreement and as a consequence thereof the Tests could not be held or had to be suspended, the Lessor shall re-schedule the Tests and hold the same as soon as reasonably practicable.

12.2.9 List of all Punch List items appended to the Provisional Certificate, if any, shall be completed by the Lessor within 180 (one hundred and eighty) days of the date of issue of such Provisional Certificate. When Lessor considers it has achieved completion of Punch List on a Trainset, it must:

- (a) notify DMRC's Representative; and
- (b) request that DMRC's Representative issue a Completion Certificate

12.2.10. Within 10 (ten) Business Days after receiving the request and upon being satisfied by the documents provided by the Lessor, DMRC's Representative must inspect the relevant Trainset(s) and either:

- (a) issue a certificate of completion (“**Completion Certificate**”) substantially in the form set forth in Schedule – F to Lessor, if the Punch List items as provided under the Provisional Certificate have been completed; or
- (b) issue a written notice to Lessor listing the Punch List items remaining to be completed along with the timelines to complete them.

In the event the Lessor fails to complete the Punch List items within the timeline mentioned in the notice issued by the Lessor in Sub-Article (b) above, then DMRC without prejudice to any of its rights under this Agreement including Termination thereof, may waive of completion of such Punch List items. DMRC's decision shall be final and binding. Upon completion of all Punch List items, or waiver thereof to the satisfaction of DMRC, DMRC shall issue the Completion Certificate to the Lessor in respect of each Trainset.

12.2.11 If DMRC, or DMRC's Representative is not satisfied with the results of any Tests or inspection, it shall within 7 (seven) days thereof notify the Lessor of its reasons to conclude that the Provisional Certificate or Completion Certificate should not be issued, in which case the Lessor shall promptly take such action as shall achieve such satisfaction. Such procedure shall be repeated as necessary after rectification and remedy of reasons/ causes by the Lessor on account of which the Tests were unsuccessful, until the Completion Certificate or Provisional Certificate has been issued in accordance with this Agreement by DMRC.

12.2.12. DMRC shall issue the Completion Certificate after fulfilment of the following conditions:

- (a) in the opinion of DMRC, as evidenced by his issuing a written clearance for the same, the Trainsets are capable of safe and reliable commercial operation by the Lessor; and
- (b) the Lessor's personnel including T.O.s (or those of the O&M Contractor, if and to the extent applicable) are ready to operate and maintain the Project Assets as per the provisions of this Agreement.

The Commercial Operation Date ("COD") shall be the date stated by DMRC in the Completion Certificate in accordance with the provisions of this Article 12.

12.2.13. Without prejudice to the foregoing DMRC shall be entitled to issue a Completion Certificate with certain conditions including balance items of Punch List to be fulfilled by the Lessor at a later date, based on the specific undertaking of the Lessor that it shall comply with such conditions and complete the balance items of Punch List in a time bound manner.

12.2.14. A Completion Certificate shall not:

- (a) constitute an approval by DMRC of the Lessor's performance of its obligations under this Agreement;
- (b) be taken as an admission or evidence that the relevant Trainset complies with this Agreement;
- (c) prejudice any rights or powers of DMRC under this Agreement or otherwise according to law; or
- (d) in any case absolve Lessor for its responsibility to complete the conditions including balance items of Punch List as stipulated in the Completion Certificate, if any, and provide safe working of all Trainsets throughout the Agreement Period.

12.3 Commissioning of Trainsets

- 12.3.1 The Trainset(s) shall only be deemed to be ready for use when the Completion Certificate is issued under this Agreement and the Lessor cannot start its services until it has received such Completion Certificate.
- 12.3.2 The Lessor guarantees that the COD shall be achieved in accordance with the Key Dates in Schedule-K.
- 12.3.3 Subject to Clause 12.3.4, if the COD is not achieved on or before the Key Dates specified in Schedule-K for any reason other than conditions constituting Force Majeure or for reasons solely and directly attributable to DMRC or any Railway Statutory Authority, which results in substantial delay in the performance of obligations under this Agreement, the Lessor shall pay to DMRC an amount equal to 0.25% (zero point two five per cent) of the Performance Security as Damages per Trainset for each and every week, or part thereof, by which the COD is delayed, provided that such Damages shall not exceed 10% (ten per cent) of the Performance Security and upon reaching such maximum, DMRC may, in its sole discretion, Terminate the Agreement. The Minimum Guaranteed Annual Availability (in Trainhours) for Third Year shall be reduced by 106.7 (one hundred and six decimal seven) Trainhours per Trainset for each and every week, or part thereof, by which the COD is delayed.
- 12.3.4 If the COD of the Triansets specified in Key Date No. 7.4 of Schedule –K does not occur within 6 (six) months form the Key Date specified (156 weeks from Appointed Date) for any reason other than conditions constituting Force Majeure or for reasons solely and directly attributable to DMRC or any Railway Statutory Authority, then DMRC shall be entitled to Terminate this Agreement in accordance with the provisions of Article 35 and the Lessor shall not be entitled to any Damages whatsoever in case of delay on its account.

12.4. Defects Liability Period

- 12.4.1. The Lessor shall ensure that the RSM and/or individual major subsystem manufacturers provide a Warranty against any defect or deficiency in the workmanship, material or manufacture of a Trainset and shall at its own cost and expense, undertake repair and rectification of such defects or deficiency for the Defects Liability Period. The Warranties provided by the RSM and/or individual major subsystem manufacturers shall not in any manner absolve the Lessor for any liability or obligations under this Agreement.
- 12.4.2 If any defect or deficiency appears in any Trainsets during the Defects Liability Period, the Lessor shall take remedial action forthwith for removal or rectification of such defect or deficiency. Notwithstanding anything contained in this Article 12.4, the Lessor shall be solely responsible for any defect or failure attributable to the defective Design, material or workmanship of Trainsets, during the Agreement Period.
- 12.4.3 Any rectification of the defects including repair or replacement of defective components/equipment shall be undertaken by the Lessor at its own cost. The Lessor shall ensure that all replacement and repairs undertaken during the Defects Liability Period are undertaken promptly and as per the Specifications and Standards set forth in Schedule A .

12.5 Indigenization Requirements for Supply of all Trainsets

- 12.5.1 The Lessor may supply the Prototype by importing fully or partly assembled Trainsets from the designated overseas plant owned by itself or by the RSM.
- 12.5.2 Notwithstanding anything contained under this Agreement, the Parties hereby agree and acknowledge that the percentage of Cars that may be manufactured in off-shore factory shall not exceed 25% (twenty five percent) of aggregate number of Trainsets that are to be Supplied by the Lessor to DMRC and at least 75% (seventy five percent) of aggregate number of Trainsets that are to be Supplied by the Lessor to DMRC are to be manufactured in manufacturing facilities in India which are either independently established or established with / by an Indian Consortium Member or subcontractor of the Lessor for local manufacturing of Cars in India (“**Indigenization Requirements**”). The Lessor shall follow the Indigenization Requirements as set forth in Schedule-A.
- 12.5.3 The Parties hereby also agree and acknowledge that the Lessor shall ensure that certain equipment and/or sub-systems forming part of a Trainset are to be sourced from vendors and/or third parties in India, in order to facilitate ease of maintenance and easy availability of spares/consumables and for standardization of use of such equipment and/or sub-systems, in accordance with Schedule-A.

12.6 Additional Quantity of Trainsets

- 12.6.1 DMRC, notwithstanding anything to the contrary contained in this Agreement, at any time prior to the expiry of a period of 6 (six) months of the Supply Period, may require lease of an additional quantity (“**Additional Quantity Option**”) of such number of Cars, which are not in excess of 7(seven) Trainsets of 4(four) Cars each i.e. 28 (twenty eight) Cars, as per the requirements of DMRC, over and above the Trainsets that are required to be Supplied and leased as per Article 13. In the event that DMRC exercises the Additional Quantity Option within period mentioned above in this Article 12.6.1, such additional Trainsets shall be Supplied by the Lessor to DMRC on same terms and conditions, (which shall be recorded in writing in a supplemental/amendment agreement) including prevailing Monthly/annual Total Charges and the provisions pertaining to Projected Annual Availability and the Minimum Guaranteed Annual Availability, Total Project Cost, Debt Due and limitation on Termination Payment shall be modified proportionately and the Availability Plan shall be modified accordingly.

e.g. If DMRC requires 5 (five) additional Trainsets then the Projected Annual Availability and the Minimum Guaranteed Annual Availability shall be $(146000 \times 30/25 =) 175200$ Trainhours and $(95\% \text{ of } 175200 =) 166440$ Trainhours respectively.

- 12.6.2 In the event that DMRC decides to proceed with the Additional Quantity Option, it shall issue to the Lessor an order (the “**Additional Quantity Option Order**”) requiring the Lessor to proceed with the performance of the same including specifying the additional quantity of Cars / Trainsets that are required to be leased by the Lessor and the supply programme for such additional quantity of Trainsets.
- 12.6.3 Notwithstanding anything contained under this Agreement, the Parties hereby agree and acknowledge that each Trainset, forming part of the additional quantity being leased, pursuant to the Additional Quantity Option Order, DMRC shall be required to pay to the

Lessor, the Total Charges for each such Trainset, in accordance with the terms and conditions of this Agreement.

12.6.4 The provisions of this Agreement, insofar as they relate to Supply and leasing of Trainsets, shall apply *mutatis mutandis* to any supply and leasing of the additional quantity of Trainsets, undertaken by the Lessor, pursuant to the Additional Quantity Option and the Additional Quantity Option Order, under this Article 12.6.

12.7 Lease of the Trainsets

12.7.1 In consideration of the Total Charges and subject to the requirements of Article 12, the Lessor hereby grants on lease to DMRC and DMRC agrees to accept the lease from the Lessor, on and from the date of acceptance of each Trainset as per Article 12.2, free from all Encumbrances, of such Trainset together with all and singular rights, liberties, privileges and benefits whatsoever in or appurtenant to such Trainset or any part thereof, and to use and enjoy such Trainset and / or any part thereof, for the Agreement Period, in accordance with the terms and conditions of this Agreement.

12.7.2 The Parties hereby agree and acknowledge that DMRC shall be entitled to sub – lease any Advertising Spaces in each Trainset and / or sell, market and / or transfer any Advertising Rights to any Advertiser, in accordance with the terms and conditions of this Agreement.

12.7.3 The Lessor hereby agrees and warrants to DMRC that:

- (a) DMRC shall be entitled to use and enjoy each Trainset and every part thereof, during the Agreement Period, without any interruption by the Lessor;
- (b) subject to timely payment of the Total Charges and performance of the covenants and conditions of this Agreement, DMRC shall peacefully use and enjoy each Trainset during the Agreement Period; and
- (c) the Lessor shall not create any Encumbrances on any of the Trainsets and / or otherwise part with or alienate any of the rights, title or interest in or to any of the Trainsets, save and except any sale, transfer, disposal and / or Encumbrance that shall be subject to the leasehold rights of DMRC as set out under this Agreement and the Lessor shall ensure that simultaneously with the sale, transfer, disposal and / or Encumbrance of each Trainset or any part thereof, the concerned transferee thereof shall acknowledge the leasehold rights of DMRC therein and shall execute an agreement on terms and conditions that are identical or not less favourable than the terms and conditions of this Agreement.

12.8 Total Charges for the Trainsets

In consideration of the Lessor leasing each Trainset to DMRC, in accordance with the requirements of Article 12.7 and granting the rights, privileges and benefits as set forth hereunder, DMRC shall pay to the Lessor, the Total Charges for each such Trainset, in accordance with the terms and conditions of this Agreement. DMRC shall pay the Total Charges into such account as may be designated by the Lessor from time to time, as per the terms and conditions of this Agreement.

ARTICLE 13

SUPPLY PROGRAMME

13.1 Supply Programme

- 13.1.1 Subject to the provisions of Article 13.1.2, the Lessor shall supply Trainsets in accordance with Schedule K and to meet the obligations of this Agreement commencing from the Appointed Date and ending on the COD of the last Trainset (the “**Supply Programme**”).
- 13.1.2 DMRC may, by a notice delivered at least 12 (twelve) months prior to commencement of the relevant Year, vary the Supply Programme specified in Article 13.1.1 by up to [4 (four)] Trainsets with respect to such Year.
- 13.1.3 DMRC agrees and undertakes that it shall ordinarily not reduce the Supply Programme, however DMRC shall have the right to delay Supply of 1(one) or more Trainsets during the Supply Period but such delay shall not in any way exceed beyond 156 weeks from Appointed Date. The Parties also agree that any variation in the Supply Programme will not lead to a variation in the total number of the Trainsets to be Supplied by the Lessor.

13.2 Extension of Supply Programme

- 13.2.1 The Parties hereto expressly agree that if the delay in Supply of Trainset(s) has arisen solely on account of any cause directly attributable to DMRC, the Lessor may request DMRC for such additional time as may be reasonably required by the circumstances of the case. DMRC shall upon receiving a request for extension from the Lessor, along with the supporting documents, extend the Supply Programme on a day for day basis not exceeding a maximum period of 1 (one) year, and upon such extension, the Supply Period and the Agreement Period shall be deemed to be extended by a corresponding period on the terms and conditions specified in this Agreement.
- 13.2.2 Upon extension of the Supply Programme in accordance with this Article 13.2, the number of Trainsets to be supplied by the Lessor in each relevant Year shall be modified by DMRC. Provided, however, that the Parties may, by mutual agreement, modify the aforesaid number of Trainsets and Cars.

13.3 Damages for delay

- 13.3.1 The Lessor agrees that in the event of its failure to Supply a Trainset in accordance with the Supply Programme set forth in Article 13.1, DMRC shall recover from the Lessor an amount equal to 0.5% (zero point five per cent) of the Performance Security as Damages for each and every month, or part thereof, by which the delivery of that Trainset is delayed; provided that such Damages shall not exceed 10% (ten per cent) of the Performance Security. For avoidance of doubt and by way of illustration, in the event that the Lessor shall have supplied no Trainsets in the first quarter of a Year that has an annual Supply Programme for [4 (four)] Trains, and the Trainset is supplied after a delay of [35 (thirty-five)] days, the Lessor shall pay Damages in an amount equal to 1% (one per cent) of the Performance Security and upon reaching such maximum, DMRC may, in its sole discretion, Terminate the Agreement.

13.4 Modification in Supply Programme

The Parties expressly agree that in the event the approval of Prototype, as the case may be, is delayed on account of Force Majeure or a default solely and directly attributable to DMRC, the Supply Programme shall, for every delay of a month or part thereof, be deferred by one month and all obligations arising out of or in relation to the Supply Programme shall be correspondingly deferred, subject to satisfaction of DMRC. For avoidance of doubt and by way of illustration, in the event the approval of Prototype by DMRC shall have been delayed by 15 (fifteen) days after the period specified in Article 11.4.1, the Supply Programme specified in Article 13.1 shall be deemed to be deferred by 1 (one) month.

ARTICLE 14

TRAIN OPERATION PLANS

- 14.1. DMRC shall provide to the Lessor the weekly Train Operation Plan in accordance with the Availability Plan, not later than 7 (seven) days prior to the commencement of the relevant week, which shall contain *inter-alia* the Scheduled Trips of the Trainsets (Trainset running timetable), Interchange Points, Required Time-In and Required Time-Out (**Master Train Operation Plan**).
- 14.2. The Lessor shall, based on the Master Train Operation Plan, submit a Train Operation Plan to DMRC no later than 23:59 hours of the day prior to implementation of that operation plan for next day, a reference Train Operation Plan based on the Master Train Operation Plan and include only the Trainset identification number in the Master Train Operation Plan (**Reference Train Operation Plan**).
- 14.3. The Reference Train Operation Plan, upon submission to and review by DMRC, shall become the final Train Operation Plan which shall be adhered by the Lessor (**Final Train Operation Plan**) in planning the deployment of Trainsets on Line and their Scheduled Maintenance.
- 14.4. The Lessor shall not deviate from the Final Train Operation Plan in providing the Available Trainsets during the relevant week.
- 14.5. In the event that a Replacement Trainset is provided by the Lessor to DMRC in accordance with Schedule-Q, the Lessor shall promptly but no later than providing such Replacement Trainset, notify DMRC the Trainset identification number of such Replacement Trainset.
- 14.6. The entire process pertaining to monitoring of Train Operation Plans shall be administered through AMS as per Schedule-R.

ARTICLE 15

CHANGE OF SCOPE

15.1 Change of Scope

15.1.1 DMRC may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in Scope of the Agreement including providing 2 (two) extra Cars for each or any of the Trainsets Supplied for augmentation of the Trainsets from 4 (four) Cars to 6 (six) Cars (the “**Change of Scope**”). It is understood by both the Parties that such Change in Scope shall be of nature that it does not adversely affect the COD of any Trainset. Any such Change of Scope shall be made by DMRC by a written order (“**Change of Scope Order**”) in accordance with the provisions of this Article 15.

15.2 Procedure for Change of Scope

15.2.1 DMRC shall, whenever determines that a Change of Scope is necessary, issue to the Lessor a notice specifying in reasonable detail the works and services contemplated thereunder (the “**Change of Scope Notice**”).

15.2.2 Upon receipt of a Change of Scope Notice, the Lessor shall, with due diligence, provide to DMRC 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 Key Dates if the works or services are required to be carried out before COD of a Trainset;
- (b) the cost to the Lessor of complying with such Change of Scope (including, without limitation, material and labour costs, cost of procurement of items from sub-suppliers, estimated man-hours, man-hour rates for manufactured items, design costs, basic rate of materials, sub-assemblies, taxes and duties, overheads and profits and inflation rates etc.) so as to establish the reasonableness of such cost. Provided, however that, in the event that DMRC does not issues the Change of Scope Order in accordance with Article 15.2.3, the cost of providing such information shall be reimbursed to the Lessor by DMRC to the extent such costs are certified to be reasonable by DMRC;
- (c) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the cost and time thereof, including a detailed breakdown by work classifications; and
- (d) any potential effect on the Defects Liability Period of the Trainsets.

15.2.3 DMRC after evaluating the information and documents provided by the Lessor in accordance with Article 15.2.2 above, decides in its sole discretion to proceed with the Change of Scope, it shall convey its decision to the Lessor by issuing a Change of Scope Order and thereupon the Parties shall make good faith efforts to mutually agree upon the details of such Change of Scope, cost and time for implementing of the same. Upon reaching an agreement relating to

such details of Change of Scope, cost and time, DMRC shall issue a written confirmation of the Change of Scope Order and thereupon the Lessor shall proceed with performance of such Change in Scope. In the event, the Parties are unable to agree, DMRC may, by issuing a confirmation in writing of such Change of Scope Order, require the Lessor to proceed with the performance of the Change in Scope Order pending resolution of such dispute.

Notwithstanding the foregoing, the Parties agree that in the event that DMRC withdraws the request for Change of Scope Notice at any time prior to the issuance of Change of Scope Order, the Lessor shall have no claim of any kind whatsoever arising out of or in connection with any Change of Scope Notice issued or failure to reach agreement, except for costs provided in Article 15.2.2(b).

- 15.2.4 The provisions of this Agreement, insofar as they relate to Tests, shall apply *mutatis mutandis* to any modifications in the Trainsets undertaken by the Lessor under this Article 15.

15.3 Payment for Change of Scope

- 15.3.1 A Change of Scope Order shall be effective and binding upon the Parties after the parties have reached an agreement in accordance with Article 15.2.3 and have reduced such agreement in writing, duly signed by their authorized representatives. Notwithstanding a dispute regarding the details of Change of Scope, cost and time for implementation of such Change of Scope Order, the Lessor shall proceed with the performance of such Change of Scope Order promptly following DMRC's issuance of such Change of Scope Order pursuant to Article 15.2.3. Pending resolution of such dispute, DMRC shall pay to the Lessor an amount equal to the costs that are certified by the PMC to be reasonable and furnishing of a bank guarantee by the Lessor for an equivalent amount and for a period of 180 (one hundred and eighty) days, substantially in the format specified in Schedule-E with final adjustments to be made in accordance with the resolution of dispute under the Dispute Resolution Procedure.

- 15.3.2 All claims by the Lessor pursuant to this Article 15 shall be supported by such documentation as is reasonably sufficient for DMRC, in its sole discretion, to determine the accuracy thereof, including invoices from sub-suppliers and sub-contractors and certification of such claims by the Statutory Auditors. The decision of DMRC in this regard shall be final and binding.

15.4 Methodology for Payment for Change of Scope

- 15.4.1 The Lessor agrees and acknowledges that DMRC shall have the right to either make the payment for implementing the Change of Scope agreed in accordance with Article 15.3.1. above, upfront and/ or by increasing the Total Charges –per Trainhour of the relevant Trainset(s).

- 15.4.2 In the event that DMRC determines to make an upfront payment for implementing the Change of Scope agreed in accordance with Article 15.3.1. above, then DMRC shall, within 15 (fifteen) days of issuing a Change of Scope Order, shall in advance make a part payment to the Lessor of a sum equal to 20% (twenty percent) of the agreed cost of Change of Scope. The Lessor shall, after commencement of work, present to DMRC, 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 DMRC, in its sole discretion, to determine the accuracy thereof. Within 30 (thirty) days of receipt of such

documents and being satisfied of their sufficiency and accuracy, DMRC shall disburse to the Lessor the balance amounts agreed between the Parties as cost for implementing such Change of Scope. In the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure.

- 15.4.3 In the event that DMRC decides to pay for the Change of Scope by increasing the Total Charges per Trainhour for the relevant Trainset(s) in accordance with the Article 15.4.1, the Parties shall record such increase in the Total Charges per Trainhour for the relevant Trainset in writing, duly signed by their respective representatives.

15.5 Restrictions on certain works

- 15.5.1 Notwithstanding anything to the contrary contained in this Article 15, DMRC shall not require the Lessor to undertake any works or services if such works or services are likely to delay achieving Key Dates; provided that in the event that DMRC considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such Order shall not be reckoned for purposes of achieving Key Dates.

ARTICLE 16

MAINTENANCE OBLIGATIONS

16.1 Maintenance Obligations

16.1.1 During the Maintenance Period, the Lessor shall operate and maintain the Project Assets in accordance with the provisions of this Agreement and, if required shall modify, upgrade, rehabilitate, repair or otherwise make improvements to the Project Assets to comply with the Specifications and Standards, Operations and Maintenance Manual, Maintenance Requirements of Trainsets, Applicable Laws, Applicable Permits, Good Industry Practice and manufacturer's guidelines and instructions with respect to rail system (the "**Maintenance Obligations**") and more specially, but without limitation:

- (a) deploy suitably trained personnel(s) for Maintenance Obligations at all times;
- (b) deploy suitably trained T.O.s for driving the Trainsets and ensure proper upkeep and maintenance of T.O.s rest rooms and crew control room;
- (c) ensure safe, smooth and uninterrupted service by Available Trainsets;
- (d) minimise disruption to operation of the Trainset services in the event of Accidents or other incidents affecting the safety and use of the Line by providing a rapid and effective response and maintaining liaison procedures with emergency services. In case of disruption of services, the T.O.s shall assist DMRC to transfer all passengers and luggage to the nearest metro station;
- (e) undertake cleaning of the Trainsets regularly;
- (f) undertake all maintenance activities of the Trainsets, including prompt repairs of any wear or damage found and overhauling and rehabilitation of the Trainsets and/or its equipment;
- (g) undertake augmentation, if required, upkeep, repair and maintenance of the Depot Sites and the Maintenance Depots in accordance with Schedule-C;
- (h) prevent, with the assistance of relevant Government Instrumentality, unauthorised entry to and exit from the Depot Sites and the Maintenance Depots;
- (i) maintain a public relations unit following best practices model to interface with and attend to suggestions from users of the Project, the media, Government Instrumentalities, and other external agencies;
- (j) suitably customise and use an Assets **Management and Information Monitoring System (the "AMIMS")**. Report generated by this AMIMS shall be reviewed by the PMC from time to time at its sole discretion. The Lessor shall ensure that DMRC, DMRC's Representatives and PMC are given at least 15 (fifteen) web based access to the AMIMS to access information and reports uploaded on AMIMS; and
- (k) refer to the safety, health and environmental standards and requirements set out in Schedule-J in undertaking the Maintenance Obligations, including ensuring that the access areas to the Maintenance Depots, Depot Sites and the Trainsets are maintained in a clean, tidy and orderly condition, free of litter and debris.

16.1.2 The Lessor shall ensure that at all times during the Maintenance Period, each and every Trainset conforms to the maintenance requirements set forth in Schedule-M and particular Applicable Laws as specified in Schedule-V (the "**Maintenance Requirements of Trainsets**").

- 16.1.3 The Lessor shall either through RSM or through an experienced O&M Contractor who is qualified in carrying out engineering maintenance services in relation to the Trainsets, including services of similar nature and complexity as the Maintenance Obligations, perform the Maintenance Obligations. The Lessor shall ensure that the O&M Contractor selected has performed services of similar nature on at least 50 (fifty) cars in the past [3 (three) years] from the date of execution of the Agreement and provide an undertaking in the format attached at Annex 1 to Schedule-M. The appointment of the O&M contractor shall not in any manner absolve the Lessor for any liability or obligations under this Agreement.
- 16.1.4 DMRC shall pay to the Lessor the Maintenance Charges, as specified in Article 24, for performance of its Maintenance Obligations in respect of the Project Assets.

16.2 Maintenance Period

- 16.2.1 The Lessor shall, for each element of the Project Assets, perform its Maintenance Obligations till the end of the Agreement Period commencing from the Year in which the Maintenance Depots and Depot Sites are handed over to the Lessor and the relevant Trainset is Supplied (the “**Maintenance Period**”).

16.3 Operations and Maintenance Manual for Project Assets

- 16.3.1 The Lessor based on the RSM’s recommendations shall, in consultation with DMRC, submit along with the Supply of the first Trainset, the operations and maintenance manual (the “**Operations and Maintenance Manual**”) detailing the Lessor’s guidelines for the operation of the Trainsets under normal, degraded and emergency conditions and Lessor’s procedures for regular and periodic maintenance of the Trainsets, and shall ensure that at all times during the Maintenance Period the Trainsets are maintained in a manner, such that it complies with the Specifications and Standards and the operations and maintenance requirements for the Trainsets set forth in this Article 16.
- 16.3.2 The Operations and Maintenance Manual shall, in particular, include provisions for maintenance of the Trainsets and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Trainsets, including replacement thereof, such that its overall condition conforms to the best possible operating requirement.
- 16.3.3 In addition to the provisions of Article 16.3.2, the Operations and Maintenance Manual shall include:
- (a) instructions to operating and maintenance staff for operation and maintenance of the Trainsets;
 - (b) instructions for troubleshooting;
 - (c) do's and don'ts for operating and maintenance staff;
 - (d) safety precautions to be taken by the operating and maintenance staff;
 - (e) rating and layout of equipment;
 - (f) operating limits of installed systems; and
 - (g) control and safety features of the Trainsets.

16.3.4 Further, the Operations and Maintenance Manual shall also prescribe the operating benchmarks to be achieved during the Maintenance Period in consistence with the provisions of this Agreement.

16.3.5. The Lessor shall also submit to DMRC the operation and maintenance manual for the M&P and any other equipment installed at the Depot Sites and Maintenance Depots. The Lessor shall follow such operation and maintenance manual while undertaking its Maintenance Obligations.

16.4 Maintenance Programme for the Project Assets

16.4.1 Not later than 45 (forty five) days before the beginning of each Accounting Year, the Lessor, shall prepare and provide to DMRC, its proposed programme of preventive, urgent and other scheduled maintenance, subject to the minimum maintenance requirements set forth in Operations and Maintenance Manual necessary to maintain the Project Assets at all times in conformity with the Specifications and Standards in Schedule - A (the “**Maintenance Programme**”). Such Maintenance Programme shall include the following:

- (a) intervals and procedures for the carrying out of inspection of all elements of the Project Assets;
- (b) criteria to be adopted for deciding maintenance needs for the Project Assets;
- (c) preventive maintenance schedule for the Project Assets;
- (d) intervals at which the Lessor shall carry out periodic maintenance of the Project Assets;
- (e) intervals for major maintenance and the scope thereof for the Project Assets; and
- (f) Line closures schedule for each type of maintenance (length and time).

16.4.2. During the Maintenance Period, the Lessor shall carry out major repair and/or rehabilitation requiring upgradation and/or modifications to the Project Assets where such modification is necessary for the Project to operate in conformity with the Specifications and Standards prescribed in Schedule-A and under this Agreement or any subsequent revision thereto. Provided, that the Lessor shall notify DMRC of the proposed modifications along with details thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider such suggestions as DMRC may make within 15 (fifteen) days of receipt of such details by DMRC. For avoidance of doubt, all modifications made hereunder shall comply with the Specifications and Standards, Applicable Laws, Good Industry Practice and the provisions of this Agreement. The provisions of this Agreement, in so far as they relate to Tests shall apply *mutatis mutandis* to any modifications in the Trainsets undertaken by the Lessor under this Article 16.4.2.

16.4.3. With prior submission of justification to DMRC, during the Agreement Period the Lessor may modify the Maintenance Programme as may be reasonable without adversely affecting the reliability and safety performance in the circumstances and the procedures specified in Article 16.4 shall apply *mutatis mutandis* to such modifications.

16.5. Emergency De-commissioning

16.5.1. If, in the reasonable opinion of DMRC there exists an Emergency which warrants the immediate de-commissioning and closure to passenger use of whole or any part of the Trainsets, the Lessor shall de-commission and withdraw the Trainsets in accordance with Schedule -Q for so long as such Emergency and the consequences thereof warrant. DMRC

may, in its discretion, issue additional directions to the Lessor for dealing with such situations and the Lessor shall abide by such directions at its sole cost and expense.

- 16.5.2. Save as otherwise permitted under Article 16.4, the Lessor shall not be entitled to close any part of the Trainset for undertaking maintenance or repair works.
- 16.5.3. Save and except as otherwise be expressly provided in this Agreement, if the Project Assets or any part thereof shall suffer any loss or damage during the Agreement Period, from any cause other than that which is directly attributable to occurrence of a Force Majeure event or acts or omissions directly and solely attributable DMRC or its representatives, the Lessor shall, at its cost and expense rectify and remedy such loss or damage forthwith in a manner so as to make the Project Assets conform in every respect to the Specifications and Standards, quality and performance as prescribed by this Agreement.
- 16.5.4. In the event the Lessor does not maintain and/or repair the Project Assets or a part thereof up to and in accordance with the Specifications and Standards and/or in accordance with the Maintenance Programme or the Operations and Maintenance Manual, and shall have failed to commence remedial works within 30 (thirty) days of receipt of notice in this behalf from DMRC, or PMC, as the case may be, DMRC shall, without prejudice to its rights under this Agreement, including termination thereof, be entitled to undertake the repair and maintenance of the Project at the risk and cost of the Lessor and to recover the same from the Lessor. In addition to recovery of the aforesaid cost of repair and maintenance by DMRC, a sum equal to 25% (twenty five per cent) of such cost shall also be recovered by DMRC from the Lessor as Damages. DMRC shall have the right and the Lessor hereby expressly grants to DMRC the right to recover such costs and Damages directly from the payments due to the Lessor under this Agreement.
- 16.5.5. In the event DMRC does not exercise its option to undertake the required repair and maintenance after expiry of the 30 (thirty) days period stipulated in Article 16.5.4, it shall recover Damages from the Lessor for default in operating and maintaining the Project in conformity with this Agreement. Such Damages shall be payable after the aforesaid period of 30 (thirty) days and until the default is cured. The amount of Damages shall be calculated for each day of default at the higher of the following, namely: (a) 0.5% (zero point five percent) of the Maintenance Charges of the relevant Trainset for the relevant Year; and (b) 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by DMRC or the PMC, as the case may be, in its sole discretion. Recovery of such Damages shall be without prejudice to the rights of DMRC under this Agreement, including the right of termination thereof.
- 16.5.6. If the Lessor commences any Works for curing any defects or deficiencies in the Project Assets, it shall complete such Works expeditiously in accordance with the provisions of this Agreement such that the Project Assets comply with Specifications and Standards. If such Works are carried out in a manner that results in a delay of more than 30 (thirty) days as compared to the time required in accordance with Article 16.5.4, DMRC shall recover Damages from the Lessor as if a default had occurred under Article 16.5.5.
- 16.5.7. Without prejudice to any of the provisions above of this Article 16.5, the Lessor shall not be considered in breach of its obligations under this Agreement if any part of the Trainsets is not

available for passenger use after the COD of such Trainset on account of any of the following for the duration thereof:

- (a) unsafe conditions directly caused by a defect in any existing DMRC works which was not apparent at the time of handing over of the Depot Sites and Maintenance Depots; or
- (b) compliance with a request from DMRC or the directions of any Government Instrumentality the effect of which is to close all or any part of the Project.

Notwithstanding the above, the Lessor shall ensure all unaffected parts of the Trainset(s) remain open for passenger use provided they can be safely operated and shall be entitled to receive Lease Charges and Maintenance Charges and shall not be required to pay any Damages for any Non-Available Trainsets under clause 8.1.1 of Schedule-Q, However Damages under Clause 8.1.2, 8.2 and 8.3 of Schedule-Q shall be payable by Lessor on account of withdrawn Trainset, Detention of Trainset, and Disruption in Revenue Service.

16.6 Overriding powers of DMRC

- 16.6.1 If in the reasonable opinion of DMRC, the Lessor is in material breach of its obligations under this Agreement and, in particular, the Maintenance Obligations, DMRC shall have the right to, without prejudice to any of its rights under this Agreement including Termination thereof, by notice, require the Lessor to take reasonable measures immediately for curing such material breach.
- 16.6.2 In the event that the Lessor, upon notice under the provisions of this Article 16.6, fails to cure the material breach, within 15 (fifteen) days from the date of the notice, DMRC may exercise overriding powers under this Article 16.6 and take over the performance of any or all the obligations of the Lessor to the extent deemed necessary by it for curing such material breach; provided that the exercise of such overriding powers by DMRC 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 DMRC in discharge of such obligations, DMRC shall be entitled to recover from the Lessor cost and expense incurred by DMRC.
- 16.6.3 In the event of a national emergency, civil commotion or any such other event, DMRC may take over the performance of any or all the rights or obligations of the Lessor to the extent deemed necessary by it, and exercise such control over the Trainsets and Maintenance Depots or give such directions to the Lessor as may be deemed necessary; provided that the exercise of such overriding powers by DMRC 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 DMRC. It is agreed that the Lessor shall comply with such instructions as DMRC may issue in pursuance of the provisions of this Article 16.6, and shall provide assistance and cooperation to DMRC, on a best effort basis, for performance of its obligations hereunder. In the event DMRC takes over the performance of any or all of the obligations of the Lessor in accordance with this Article 16.6.3, then the Lessor shall be entitled to receive Lease Charges and Maintenance Charges, subject to Article 32, and shall not be required to pay any Damages for any Non-Available Trainsets under clause 8.1.1 of Schedule-Q, however, Damages under Clause 8.1.2, 8.2 and 8.3 of Schedule-Q shall be payable by the Lessor on account of Withdrawn Trainset, Detention of Trainset, and Disruption in Revenue Service.

16.7 Restoration of loss or damage to the Trainsets

Save and except as otherwise expressly provided in this Agreement, in the event that a Trainset or any part thereof suffers any loss or damage during the Maintenance Period from any cause whatsoever, the Lessor shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Trainset conforms to Specifications and Standards and the provisions of this Agreement. The cost or expense to rectify such loss or damage shall be borne by the party(ies) as determined in Article 5.9 and Article 16.5.3 of this Agreement.

16.8 Mandatory Modification

Any Mandatory Modification which is required to be carried out will be undertaken by the Lessor at its own cost and expense.

16.9. Fault Notification Procedure

The Lessor shall provide DMRC with a draft failure notification procedure at least the 30 (thirty) days prior to the COD of the first Trainset. DMRC shall notify the Lessor of any amendments required to the draft failure notification procedure within 30 (thirty) days of receiving the draft failure notification procedure and the Lessor shall incorporate such amendments. The Lessor shall provide DMRC with the final version of the Fault Notification Procedure (in hard copy and electronic copy form) within 15 (fifteen) days of the Lessor notifying the Lessor of any amendments and this shall be deemed to be the Fault Notification Procedure as defined for the purposes of this Agreement.

ARTICLE 17

SAFETY REQUIREMENTS

17.1 Safety Requirements

- 17.1.1 The Lessor shall develop, implement and administer a safety programme for providing a safe environment on or about the Trainsets, T.O.s and Maintenance Depots, and shall comply with the safety requirements set forth in this Article 17, Schedule-J and particular Applicable Laws including but not limited to 'The Delhi metro Railway (Operation and Maintenance), Act, 2002' and 'Metro Railway General Rules (MRGR), 2013 and amendments thereof 'as specified in Schedule-V (the "**Safety Requirements**")

Safety, Health and Environment (SHE) manual as attached at Schedule J is a standard form manual of DMRC which is applicable on DMRC and its contractors. It is expected that the Lessor shall follow the same for carrying out its obligations under this Agreement.

- 17.1.2 Safety Requirements shall apply to all phases of manufacturing, supply, augmentation, operation and maintenance with emphasis on identification of factors associated with Accidents, consideration of the same, and implementation of appropriate remedial measures.

17.2 Obligations of the Lessor

- 17.2.1 The Lessor shall abide by the following to ensure safety of the Trainsets and Maintenance Depots, human life and property:

- (a) Applicable Laws and Applicable Permits (including without prejudice to the foregoing the Delhi Metro Railways (Operation and Maintenance) Act, 2002 and the Metro Railway General Rules (MRGR), 2013 and amendments thereof);
- (b) safety, health and environment manual as attached at Schedule-J
- (c) instructions issued by DMRC and Railway Statutory Authority from time to time;
- (d) provisions of this Agreement;
- (e) relevant standards/guidelines contained in internationally accepted codes; and
- (f) Good Industry Practice.

- 17.2.2 The Lessor shall impart safety training to its employees and shall at all times be responsible for observance of safety procedures by its personnel, Contractors and agents.

- 17.2.3 The Lessor shall be responsible for undertaking all the measures under its control to ensure safe operation of Trainsets and safety of all its personnel.

- 17.2.4 The Lessor agrees that DMRC or DMRC's Representatives shall be entitled to inspect any Trainset (including the drivers cab), crew control room(s) and rest room facilities and/or the Maintenance Depot and/or Depot Sites any time during the Agreement Period to verify adherence to Safety Requirements and the Lessor shall be obliged to facilitate such inspection and implement the corrective measures identified in such inspection.

- 17.2.5. Notwithstanding anything to the contrary contained herein and without prejudice to Article 17.2.4, the Lessor agrees and acknowledges that upon occurrence of any Accidents and/or Emergency the Railway Statutory Authority shall have the right to undertake independent inspection on or conduct enquiry on Trainsets. The decision of the Railway Statutory Authority pursuant to such independent inspection or enquiry shall be final and binding on the Lessor. The Lessor further undertakes that it shall comply with such decision and carry out necessary activities on the Trainsets promptly at its sole cost and expense and shall indemnify DMRC or any third party for any losses incurred as may be determined by the Railway Statutory Authority in accordance with Article 40.
- 17.2.6 If the Railway Statutory Authority enquiry, in case of an Accident found to be occurred on account of any Fault, DMRC on its sole discretion shall assess the loss caused and shall recover the same from the Lessor either from monthly payments or from securities available.
- 17.2.7 The Lessor shall extend all necessary data, information and cooperation to the Railway Statutory Authority at the time of enquiry of an Accident by the Railway Statutory Authority. If the Lessor does not cooperate with the Railway Statutory Authority then DMRC may require the Lessor, by issuing a notice, to cooperate with the Railway Statutory Authority within 7(seven) days of such notice. If the Lessor fails to cooperate with the Railway Statutory Authority, within the 7(seven) days of such notice, then DMRC shall be entitled to terminate the Agreement forthwith.

17.3. Safety Requirements for the Trainsets

- 17.3.1. The Lessor shall ensure safe conditions for the passenger use of the Trainsets throughout the Agreement Period. In the case of unsafe conditions, track damage, vehicle breakdowns and Accidents, the Lessor shall follow the relevant operating procedures, which shall be in accordance with Applicable Laws, Applicable Permits and the provisions of this Agreement.
- 17.3.2. The Lessor shall ensure that any interruption of operations of the Trainsets is remedied promptly without undue delay.
- 17.3.3. The Lessor shall ensure that all the safety obligations at 17.2.1, are strictly complied with. Compliance shall also be monitored by DMRC and a breach by the Lessor of its obligations in respect of this Schedule-J identified by DMRC shall be notified immediately and is required to be cured within 24 (twenty four) hours of its notification notwithstanding inspection, reporting procedures outlined elsewhere in this Agreement. In addition, each notified breach shall lead to the award of a penalty point to the Lessor. A total of 5 (five) penalty points in any continuous period of 365 (three hundred and sixty five) days shall constitute a material breach of the provisions of this Agreement and accordingly provisions of Article 35 shall apply.

17.4. Safety measures during upgradation

The Lessor shall, during upgradation of the Maintenance Depots, provide an environment for procuring the safety of human life and property in accordance with Applicable Laws, Applicable Permits and Good Industry Practice.

17.5. Annual Safety Report

- 17.5.1. The Lessor shall submit to DMRC before the 31st (thirty first) May of each Accounting Year, an annual report in containing, without limitation, a detailed listing and analysis of all Accidents occurring on account of the Trainsets and/or in the Deposit Site and/or the Maintenance Depots during the preceding Accounting Year and the measures taken by the Lessor for averting or minimizing such Accidents in future (“**Annual Safety Report**”).
- 17.5.2. Once in every Accounting Year, a safety audit shall be carried out by DMRC. It shall review and analyse the Annual Safety Report and Accident data of the preceding Accounting Year, and undertake an inspection of the Trainsets and Project Assets. DMRC shall provide a safety report recommending specific improvements, if any, required to be made in the Trainsets and Project Assets. Such recommendations shall be implemented by the Lessor in accordance with Safety Requirements, Specifications and Standards and Applicable Laws.

17.6. Accident

In case of occurrence of any Accident the Lessor shall follow the procedures set out in Annexure 22 of Schedule V and shall comply with Applicable Laws set out in Schedule V. The Lessor agrees and acknowledges that the Lessor while following the procedures set out above will be bound by decision of DMRC during any enquiry conducted by DMRC and shall follow the Accident reporting requirements as set out in Schedule V.

17.7. Emergency Breakdown Equipment and Rail-cum-Road Vehicle

- 17.7.1. The Lessor shall maintain appropriate re-railing and rescue equipment at the Depot Sites in a box container loaded on a rail-cum-road vehicle (“**RRV**”) to cater for any eventuality of Accidents, unusual occurrences or any other incidence requiring lifting and shifting of one or more axles of the train to clear the Line, in addition to rescue of the stranded passengers, hereinafter referred to as Emergency Breakdown Equipment (“**EBE**”). The Lessor acknowledges that the required equipment were procured for Existing Trains, and shall have to be suitably modified, upgraded or replaced at its own cost, prior to the issue of the Prototype Clearance Certificate. The Lessor shall also provide an assisting Trainset to DMRC without any delay for clearing the stranded Trainset at Accident/ or any unusual occurrence site on the Line.
- 17.7.2. DMRC and/or the Railway Statutory Authority may, in its sole discretion, inspect the EBEs and the preparedness of the Lessor and its personnel in dealing with any Accident or unusual occurrence on the Line and accordingly suggest improvements or changes in EBE or procedures which shall be binding on the Lessors.
- 17.7.3. The EBE shall be maintained by the Lessor at all times and shall be kept in ready to be used conditions such that the EBE can be deployed at the site of Accident or unusual occurrence within minimum possible time.
- 17.7.4. The Lessor shall ensure that its personnel in sufficient numbers are fully trained to operate/handle the EBE and these personnel are made available within minimum time to attend any Accident or unusual occurrence at any site on the Line.
- 17.7.5. The underframe of the CMVs (refer Schedule C) shall be periodically inspected, maintained and certified by the Lessor for its safe working and operation on the Line.

ARTICLE 18

MONITORING OF MAINTENANCE

18.1 Monthly status reports

18.1.1 During the Maintenance Period, the Lessor shall, no later than 7 (seven) days after the end of each month, furnish to DMRC a monthly report stating in reasonable detail the maintenance services performed by the Lessor on the Trainsets and the defects and deficiencies that require rectification in accordance with clause 4.3.6 (2) of Schedule-A. The report generated through **AMIMS** (Article 16.1.1) shall also include Key Performance Indicators achieved by the Trainsets and the compliance or otherwise with the Maintenance Requirements of Trainsets and Operations and Maintenance Manual. The Lessor shall promptly give such other relevant information as may be required by DMRC.

18.1.2 Monthly report specified in Article 18.1.1 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 Lessor's operational performance.

18.2 Reports of unusual occurrence

The Lessor shall, prior to the close of each day, send to DMRC, by facsimile or e-mail, a report stating the Faults, Accidents and unusual occurrences relating to the Trainsets. 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 Article 18.2, unusual occurrences on a Trainsets shall include:

- (a) Fault of a Trainset;
- (b) Accidents involving a Trainset;
- (c) trouble on a Trainset during operation; and
- (d) Unscheduled Maintenance performed on a Trainset.

18.3 Inspection

DMRC shall be entitled to inspect the Trainsets after any Scheduled Maintenance or Unscheduled Maintenance, as the case may be, for evaluating the compliance of Trainsets 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 Lessor of the same for taking remedial measures in accordance with the provisions of Article 18.5.

18.4 Tests

For determining that the maintenance of Trainsets conforms to the Maintenance Obligations, DMRC may require the Lessor to carry out, or cause to be carried out, the Tests specified by it in accordance with Good Industry Practice. The Lessor shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of DMRC and

furnish the results of such Tests to DMRC within 15 (fifteen) days of such Tests being conducted.

18.5 Remedial measures

18.5.1 The Lessor 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 Article 18.4 and furnish a report in respect thereof to DMRC within 15 (fifteen) days of receiving the Maintenance Inspection Report or the test results, as the case may be.

18.5.2. DMRC shall require the Lessor to carry out or cause to be carried out tests, at the cost of the Lessor, to determine whether the remedial measures have brought the Trainsets into compliance with the Maintenance Obligations and Safety Requirements, and the procedure set forth in this Article 18.5 shall be repeated until the maintenance of Trainsets conforms to the Maintenance Obligations and Safety Requirements. In the event that remedial measures are not completed by the Lessor in conformity with the provisions of this Agreement, DMRC shall be entitled to recover Damages from the Lessor under and in accordance with the provisions of Article 16.6. For 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 Trainset remains out of service on account thereof shall be included in *Non-Available Hours*.

18.6 Responsibility of the Lessor

18.6.1 It is expressly agreed between the Parties that any inspection carried out by DMRC or the submission of any Maintenance Inspection Report by DMRC as per the provisions of this Article 18 shall not relieve or absolve the Lessor of its obligations and liabilities hereunder in any manner whatsoever.

18.6.2 It is further agreed that the Lessor shall be solely responsible for adherence to the Key Performance Indicators specified in Article 20.

18.7 Technical Records

18.7.1. The Lessor shall maintain records of the maintenance and repairs it carries out using:

- (a) AMIMS or any such substitute system as the Lessor and DMRC may agree; and
- (b) a hard copy, Car by Car maintenance log.

18.7.2. The Lessor shall provide DMRC, on request with such access it reasonably requires including inputs, outputs, downloads, print outs and analysis and any other information from the AMIMS, TCMS, AMS or any other relevant management information system deployed by the Lessor for management of Project Assets.

18.7.3. The Lessor shall keep and maintain clear, adequate and accurate records and documentation on per Trainset basis to show to DMRC's reasonable satisfaction that the Maintenance Obligations have been and are being carried out in accordance with the Maintenance Programme, Maintenance Requirements of Trainsets, Safety Requirements, all Applicable Laws, Applicable Permits and Specifications and Standards, mileage information, the date of the next maintenance service due and the reasonable requirements of DMRC. The Lessor will maintain records of the maintenance and repairs it carries out in accordance with Schedule-M.

ARTICLE 19

MAINTENANCE DEPOTS

19.1 Maintenance Depots

- 19.1.1 For discharging its Maintenance Obligations under and in accordance with the provisions of this Agreement, the Lessor shall operate and maintain the Maintenance Depots and the Depot Sites in accordance with the provisions of this Article 19.
- 19.1.2 The Maintenance Depots shall be provided by DMRC to the Lessor in accordance with the provisions of Article 10.
- 19.1.3 Supply of electricity and water at the Maintenance Depots shall be paid for by the Lessor in accordance with Schedule-C.
- 19.1.4. The Lessor shall be responsible, at its own cost and expense, for upgradation, operation and maintenance of all infrastructure handed over to it inside the Maintenance Depots. The Lessor may also undertake any structural change or any additional construction work to the buildings handed over to the Lessor at the Maintenance Depots, if required, only after submission of details of work proposed for seeking prior approval of DMRC.

19.2 Maintenance Facilities

- 19.2.1 The Lessor shall be responsible for undertaking the maintenance of the Maintenance Depots and the Depot Sites, including cleanliness, upkeep, housekeeping, repair work, civil maintenance and electrical maintenance for the entire premises of the Maintenance Depots. It is clarified that the Lessor shall be responsible to provide cleaning and housekeeping for the entire Depot Sites including the parts of the Depot Sites which are in possession of and occupied by DMRC.
- 19.2.2. The Lessor shall, at each Maintenance Depot, operate the maintenance facilities and install and maintain any equipment necessary for performing its Maintenance Obligations under and in accordance with this Agreement. The existing facilities at the Depot Sites and Maintenance Depots are detailed in Schedule-C and relevant Annexures attached at Schedule V.

19.3. Inspection of Maintenance Depots

The Lessor acknowledges that the DMRC and/or Railway Statutory Authority may at any time during the Agreement Period inspect:

- (a) the Maintenance Depots;
- (b) conduct safety inspection at the Maintenance Depot;
- (c) competency of the staff employed by the Lessor for the operation and maintenance of the Trainsets; and
- (d) competency of the T.O.s.

The Lessor shall provide access and all reasonable support to the officials for inspection as detailed above. Based on the inspection report by the Railway Statutory Authority, the Lessor

shall carry out such improvements and rectification as may be required by the DMRC or Railway Statutory Authority.

ARTICLE 20

KEY PERFORMANCE INDICATORS

20.1 Key Performance Indicators

Without prejudice to the obligations specified in this Agreement, the Lessor shall maintain every Trainset such that it achieves the performance indicators comprising Available Trainsets, SEC and timely completion of Project activities as specified in this Article 20 (the “Key Performance Indicators”).

The Key Performance Indicators are as follows:

S. No.	Key Performance Indicator	Damages	Monitoring Period	Reference
1.	Available Trainsets	DMRC shall be entitled to claim Damages based on the Hourly Non-Availability	During both Supply and Maintenance Period	Schedule – Q
2.	Indigenization	Minimum percentage of indigenization as per the Ministry of Housing and Urban Affairs (“MoHUA”) guidelines has to be met by the Lessor.	During Supply Period	Article 12 and Schedule – A
3.	Specific Energy Consumption (SEC)	Minimum SEC has been specified according to MoHUA guidelines, which shall be met by the Lessor. If the Lessor fails to do so, then DMRC shall be entitled to claim Damages.	During both Supply and Maintenance Period	Schedule – A
4.	Tare weight of Trainsets	Tare weight of Trainset shall not exceed the specified value. In case it does, then DMRC shall be entitled to reject such Trainsets.	During Supply Period	Schedule – A
5.	Timely completion of Project activities	DMRC shall be entitled to claim Damages if the specified Key Dates as set out in Schedule – K are not met.	During both Supply and Maintenance Period	Article 13
6.	Safety	DMRC shall be entitled to claim Damages as applicable	During both Supply and Maintenance Period	Article 17

7.	Noise and Vibrations	DMRC shall be entitled to claim Damages as applicable	During both Supply and Maintenance Period	Schedule A
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20.2. The Parties agree that if the Lessor fails to meet the Key Performance Indicators in accordance with Article 20.1 and the Agreement, DMRC shall be entitled to claim Damages from the Lessor as provided in relevant provisions of the Agreement as indicated in Article 20.1.

ARTICLE 21

OPERATIONAL ROUTES

21.1 Operational routes and Maintenance Depots

21.1.1 The Parties agree that DMRC shall endeavour to allocate Trainsets for operation on specified route of Line – 5 on DMRC network within a distance of 28.27 km (twenty eight point two seven kilometres) and Maintenance Depots located at Mundka and Bahadurgarh (the “**Operational Routes**”) and the Lessor shall ordinarily assign the Trainsets operating on this route to a Maintenance Depot.

21.1.2 Nothing in this Article 21 shall restrict the liberty of DMRC to operate the Trainsets on the extended route of Line-5 in future. DMRC may, from time to time add, restrict or modify the Operational Routes.

21.2 Stabling of Trainsets

21.2.1. The Lessor shall, at its own risk and cost, stable each Trainset at the Interchange Point(s) after consultation with OCC before and after completion of a scheduled service or during any break-down in such service for any reason whatsoever.

21.2.2. In the event DMRC requires Additional Quantity of Trainsets in accordance with Article 12.6 and/ or augmentation of Trainsets in accordance with Article 15.1.1, DMRC shall review the available stabling locations, if required, create more such facilities as may be mutually agreed with the Lessor.

ARTICLE 22

PROVISION OF TRAIN OPERATORS FOR THE TRAINSETS

22.1 Obligations for Operating the Trainsets

- 22.1.1. The Parties hereby agree and acknowledge that the Lessor shall deploy adequate number of T.O. for the Trainsets who shall operate the Trainsets, along the Operational Routes, during the Available Hours of each day of the Maintenance Period, as per the requirements of DMRC, the Availability Plan as given in Schedule - Q, Final Train Operation Plan, Good Industry Practice and in accordance with the terms and conditions of this Agreement (“**Operating Obligations**”).
- 22.1.2. The Lessor shall assess the number of T.O.s required based on the Availability Plan and the Master Train Operation Plan given by DMRC and the T.O.s roster trip charts prepared by the Lessor duly ensuring that the duty hours, rest requirements and leave reserves are not beyond the permissible limits as defined by the Applicable Laws.
- 22.1.3. The Lessor shall share with DMRC the T.O.s roster trip charts prepared by Lessor in accordance with Article 22.1.2. DMRC at its discretion may give suggestions, however, the Lessor shall solely be responsible for adherence to Article 22.1.2 above.
- 22.1.4. The medical records (as applicable), duty and training records of the T.O.s shall be maintained by the Lessor either in the AMIMS or any other suitable computerized application which shall be made available to DMRC or any other Government Instrumentality, as and when required by DMRC and/or Government Instrumentality.

22.2 Provision of T.O. during the Maintenance Period

The Lessor shall ensure that the T.O. engaged by it in the performance of its obligations under this Article 22.2 are at all times properly trained for their respective functions to ensure the operation of the Trainsets in accordance with the provisions of this Agreement, the Master Train Operation Plan and Good Industry Practice.

22.3 Breach of obligations by the Lessor

In the event that (i) the Lessor does not procure the operation of the Trainsets by the T.O. as per the requirements of DMRC, the Availability Plan and/or the Final Train Operation Plan, Good Industry Practice and in accordance with the terms and conditions of this Agreement, and (ii) such breach and / or failure has not occurred as a result of breach of this Agreement by DMRC or due to Force Majeure, and in such case it resorts to permit working of T.O.s beyond their stipulated duty hours and/ or breach of rest hours then such an act or omission of the Lessor shall constitute material breach by the Lessor of its obligations under this Agreement.

22.4 Obligation to use all reasonable endeavours

For avoidance of any doubt, the Parties hereby agree and acknowledge that any obligation under this Article 22.4 on the part of the Lessor to use all reasonable endeavours to operate the Trainsets and to provide the T.O. shall include an obligation to do each of the following:

- (a) ensure (so far as it is able to do so) the provision of the T.O. as per the requirements and the operating conditions of DMRC, the Final Train Operation Plan and Good Industry Practice;
- (b) take reasonable measures to avoid and / or reduce the impact of any disruption to the operation of the Trainsets and provision of T.O. for the Operational Routes, having regard to all the circumstances including reasonably foreseeable risks arising from the matters as listed below:
 - i. variations in weather and operating conditions which may include any seasonal variations;
 - ii. default by, or restrictions imposed by any Contractors to the Lessor in connection with the Project;
 - iii. shortages of adequately skilled or qualified T.O.s;
 - iv. any disputes and / or differences between any employees of the Lessor and / or the T.O.s;
 - v. the Available Trainsets, having regard to the Maintenance Obligations, the Specifications and Standards, the Maintenance Requirements of Trainsets and the Operations and Maintenance Manual;
 - vi. establishing reasonable turnaround time allowances for enabling and disabling (as appropriate) any part of a Trainset and the rostering of T.O.;
 - vii. any Fault in a Trainset and / or any requirement of Unscheduled Maintenance for any Trainset;
 - viii. any Accident and/ or unusual occurrence;
 - ix. any Withdrawn Trainset, Detention and Disruption of Services on Line; and
 - x. effect of festivals, special events and/ or mass leave taken by T.O.s
- (c) co – operating with DMRC on a regular basis to ensure due adherence to the Master Train Operation Plan and the requirements of DMRC with regard to the operation of the Trainsets during Available Hours on the Operational Routes; and
- (d) setting up and holding regular performance review meetings for the T.O.s and other personnel engaged by the Lessor for the performance of its obligations under this Agreement and regular monitoring of any alterations to such performance levels.
- (e) Comply with all initial and periodical Training requirements of T.O.s and also provide access to DMRC to review such training records, if requested.

22.5 Ensuring T.O.s availability for other requirements

DMRC may demand upto a maximum of 2 (two) Trainset(s) along with T.O.(s) for conducting any trials and/ or test runs during the non-revenue or non peak hours. In such a case DMRC shall notify at least 3 (three) days in advance, the Lessor shall provide such Trainset(s) along with T.O.(s) for such purpose and shall be entitled to the payment of applicable Total Charges by DMRC.

PART IV
FINANCIAL COVENANTS

ARTICLE 23

LEASE CHARGES

23.1 Lease Charges

23.1.1 DMRC shall pay to the Lessor, Monthly Lease Charges and Additional Lease Charges (“**Lease Charges**”) for Supply of Trainsets, which shall be determined in accordance with the provisions of this Article 23.

23.1.2 The Lease Charges due and payable for a month/ Year shall be computed with reference to the Actual Monthly/ Annual Availability of Trainsets, Minimum Guaranteed Annual Availability, Annual Non-Availability of Trainsets and Unit Lease Charges in the respective month/Year.

23.2 Unit Lease Charges

23.2.1 The unit lease charges for various Years of Agreement Period (“**Unit Lease Charges**”) shall be as under:

Year of the Agreement Period	Unit Lease Charges Per Trainhour (Rs.)	Minimum Guaranteed Annual Availability (in Trainhours)
First Year	-	-
Second Year	-	-
Third Year		-
Fourth Year		138700
Fifth Year		138700
Sixth Year		138700
Seventh Year		138700
Eighth Year		138700
Ninth Year		138700
Tenth Year		138700
Eleventh Year		138700
Twelfth Year		138700
Thirteenth Year		138700
Fourteenth Year		138700
Fifteenth Year		138700
Sixteenth Year		138700
Seventeenth Year		138700
Eighteenth Year		138700
Nineteenth Year		138700
Twentieth Year		138700
Twenty First Year		138700
Twenty Second Year		138700

Year of the Agreement Period	Unit Lease Charges Per Trainhour (Rs.)	Minimum Guaranteed Annual Availability (in Trainhours)
Twenty Third Year		138700
Twenty Fourth Year		138700
Twenty Fifth Year		138700
Twenty Sixth Year		138700
Twenty Seventh Year		138700
Twenty Eighth Year		138700
Twenty Ninth Year		138700
Thirtieth Year		138700
Thirty First Year		138700
Thirty Second Year		138700
Thirty Third Year		138700
Thirty Fourth Year		138700
Thirty Fifth Year		138700
Thirty Sixth Year		138700
Thirty Seventh Year		138700
Thirty Eighth Year		138700

23.3 Computation of Lease Charges

23.3.1 The Lease Charges due in a month (“**Monthly Lease Charges**”) shall be the product of: (i) Actual Monthly Availability in Trainhours; and (ii) Unit Lease Charges.

23.3.2 Upon completion of each Year, if the Minimum Guaranteed Annual Availability less the Annual Non-Availability for that Year, is greater than the Actual Annual Availability, then the additional Lease Charges (“**Additional Lease Charges**”) payable shall be the product of: (i) Minimum Guaranteed Annual Availability less the Annual Non-Availability less the Actual Annual Availability, and (ii) the Unit Lease Charges.

23.4 Taxes and duties

23.4.1 The Lease Charges are inclusive of all central/ state/ local taxes, levies, duties, cess etc. including any statutory deductions viz. tax deducted at source towards income tax/ GST/ labour cess and any other taxes etc. except GST as applicable on the Lease Charges which will be borne by DMRC.

ARTICLE 24

MAINTENANCE CHARGES

24.1 Maintenance Charges

24.1.1 DMRC shall pay to the Lessor, Monthly Maintenance Charges and Additional Maintenance Charges (“**Maintenance Charges**”) for undertaking the Operating Obligations and Maintenance Obligations of a Trainset including insurance thereof, to be determined in accordance with the provisions of this Article 24.

24.1.2 The Maintenance Charges due and payable for a month/ Year shall be computed with reference to the Actual Monthly/ Annual Availability of Trainsets, Minimum Guaranteed Annual Availability, Annual Non-Availability of Trainsets and Indexed Maintenance Charge in the respective month/ Year.

24.2 Base Maintenance Charge

24.2.1 The base maintenance fee for various Years of Maintenance Period (“**Base Maintenance Charge**”) shall be as under:

Year of the Agreement Period	Base Maintenance Charge Per Trainhour (Rs.)	Minimum Guaranteed Annual Availability (in Trainhours)
First Year		-
Second Year		-
Third Year		-
Fourth Year		138700
Fifth Year		138700
Sixth Year		138700
Seventh Year		138700
Eighth Year		138700
Ninth Year		138700
Tenth Year		138700
Eleventh Year		138700
Twelfth Year		138700
Thirteenth Year		138700
Fourteenth Year		138700
Fifteenth Year		138700
Sixteenth Year		138700
Seventeenth Year		138700
Eighteenth Year		138700
Nineteenth Year		138700
Twentieth Year		138700
Twenty First Year		138700
Twenty Second Year		138700
Twenty Third Year		138700

Year of the Agreement Period	Base Maintenance Charge Per Trainhour (Rs.)	Minimum Guaranteed Annual Availability (in Trainhours)
Twenty Fourth Year		138700
Twenty Fifth Year		138700
Twenty Sixth Year		138700
Twenty Seventh Year		138700
Twenty Eighth Year		138700
Twenty Ninth Year		138700
Thirtieth Year		138700
Thirty First Year		138700
Thirty Second Year		138700
Thirty Third Year		138700
Thirty Fourth Year		138700
Thirty Fifth Year		138700
Thirty Sixth Year		138700
Thirty Seventh Year		138700
Thirty Eighth Year		138700

24.3 Indexed Maintenance Charge

Base Maintenance Charge shall be revised annually to reflect the variation in Maintenance Index occurring between the Base Index Date and Reference Index Date for the Relevant Year (the “**Indexed Maintenance Charge**”). For avoidance of doubt and by the way of illustration, if the Maintenance Index increased by 5% (five percent) between the Base Index Date and Reference Index Date for Third Year of maintenance, the Indexed Maintenance Charge for Third year of Maintenance Period shall be 105% (one hundred and five percent) of the Base Maintenance Charge.

24.4. Computation of Maintenance Charges

24.4.1 The Maintenance Charges due in a month (“**Monthly Maintenance Charges**”) shall be the product of: (i) Actual Monthly Availability in Trainhours; and (ii) Indexed Maintenance Charges.

24.4.2 Upon completion of each Year, if the Minimum Guaranteed Annual Availability less the Annual Non-Availability for that Year, is greater than the Actual Annual Availability, then the additional Maintenance Charges (“**Additional Maintenance Charges**”) payable shall be the product of: (i) Minimum Guaranteed Annual Availability less the Annual Non-Availability less the Actual Annual Availability, and, (ii) the Indexed Maintenance Charges.

24.5. Taxes and Duties

The Maintenance Charges are inclusive of all central/ state/ local taxes, levies, duties, cess etc. including any statutory deductions viz. tax deducted at source towards income tax/ GST/ labour cess and any other taxes etc. except GST as applicable on the Maintenance Charges which will be borne by DMRC.

ARTICLE 25

OPTION TO PURCHASE THE TRAINSETS

25.1 Procedure for Exercise of Purchase Option

- 25.1.1 The Parties hereby agree, acknowledge and covenant that, any time during the Maintenance Period and prior to the Termination of the Agreement, DMRC may exercise the option (which is a right but not an obligation) (the “**Purchase Option**”) by giving a written notice (“**Purchase Option Exercise Notice**”) to the Lessor, requiring the Lessor to sell all of the Trainsets to DMRC, at a mutually agreed price which shall not be more than the price mentioned in the Valuation Report (“**Purchase Option Price**”).
- 25.1.2 Notwithstanding anything contained under this Agreement, in order to enable DMRC to decide on whether to exercise the Purchase Option during the Purchase Option Exercise Period, the Lessor shall provide to DMRC, the valuation report (“**Valuation Report**”) of its Statutory Auditors or any other documents to the satisfaction of DMRC, certifying the Price of all the Trainsets if the same are to be transferred to DMRC with reasonable justifications, at the time of the issuance of the Purchase Option Exercise Notice, within 15 (fifteen) days from the issuance of the Purchase Option Exercise Notice.
- 25.1.3 In the event, DMRC exercises the Purchase Option by delivery of the Purchase Option Exercise Notice, the Lessor shall have absolute, irrevocable and unconditional obligation to sell all of the Trainsets at the Purchase Option Price.
- 25.1.4 On such a date as mentioned in the Purchase Option Exercise Notice, not being a date more than **120 (one hundred and twenty)** days from the date of receipt of the Valuation Report of the Lessor, DMRC shall pay the Purchase Option Price for all the Trainsets to the Lessor. The Parties hereby agree and acknowledge that all rights, title and interest in all the Trainsets shall stand transferred to DMRC by the Lessor, upon payment of the Purchase Option Price, as on the date of payment by DMRC of the Purchase Option Price, free and clear of all Encumbrances.
- 25.1.5 The Parties hereby agree, acknowledge and covenant that the Lessor shall extend full support and co-operation to DMRC and shall take all necessary steps to assist DMRC in consummating the transaction pursuant to the exercise of the Purchase Option by DMRC including without limitation the execution of all such deeds, documents, transfers, assignments, conveyances and assurances pertaining to the Trainsets and shall do all acts, deeds, matters and things as DMRC may reasonably require for exercising the Purchase Option.
- 25.1.6 The Lessor shall bear its own expenses in connection with the completion of sale –purchase of the Trainsets as aforesaid including the payment of applicable stamp duties as per Applicable Laws.
- 25.1.7 The Parties hereby agree and acknowledge that the Lessor shall deliver and transfer relevant records, reports and Intellectual Property pertaining to the Trainsets including all software and manuals pertaining thereto, and complete ‘as built’ Drawings so as to enable DMRC to operate and maintain the Trainsets, and shall execute such deeds of conveyance, documents

and other writings as DMRC may reasonably require in connection therewith, upon the payment of the Purchase Option Price. For avoidance of doubt, the Lessor represents, warrants and undertakes that the Intellectual Property shall be adequate and complete for the operation and maintenance of the Trainsets and shall be assigned or licensed to DMRC, upon the payment of the Purchase Option Price, free of any Encumbrance.

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 Lessor in accordance with the provisions of this Agreement, it shall submit, in triplicate, an invoice with necessary particulars to the officer designated by DMRC as the payment authority for this purpose (the “**Payment Authority**”).
- 26.1.2 The Payment Authority shall, within 30 (thirty) Business Days of receipt of an invoice in accordance with Article 26.1.1 (the “**Payment Due Date**”), make payment of the amount claimed directly, through electronic transfer, to the nominated bank account of the Lessor, save and except any amounts which it determines as not payable or disputed (the “**Disputed Amounts**”).
- 26.1.3 Notwithstanding anything to the contrary contained herein and without prejudice to any of the rights of DMRC under this Agreement, including invocation and appropriation of the Performance Security in accordance with Article 9.2. All Damages payable by the Lessor in accordance with the provisions of this Agreement, if not directly paid by the Lessor to DMRC, shall be deducted from the Total Charges due and payable to the Lessor under the Agreement.
- 26.1.4 For claiming payment of Lease Charges from DMRC, the Lessor shall submit: (i) the original invoice indicating the Lease Charges and a copy thereof for indicating the number of hours being charged for the deployed Trainsets; (ii) the Lessor's certificate that the amounts claimed in the invoice are correct and in accordance with the provisions of the Agreement; (iii) copy of Completion Certificate issued by DMRC for the Trainset (to be submitted only with the first invoice); (iv) copies of reports in respect of Tests performed in accordance with Schedule-A (to be submitted only with the first invoice); (v) copies of the insurance policies taken by the Lessor; and (vi) details in respect of taxes/duties which are reimbursable in accordance with the provisions of this Agreement.
- 26.1.5 For claiming payment of Maintenance Charges from DMRC, the Lessor shall submit (i) the original invoice and a copy thereof in respect of Maintenance Obligations for the preceding month; (ii) Lessor'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 required under Article 18, duly verified by DMRC Representative; (iv) official documents in support of Maintenance Index variation as specified in Article 24.3 ; (v) detailed calculation for Maintenance Charges claimed in accordance with Article 24; (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 Lessor of the Disputed Amounts, if any, with particulars thereof. Within 7 (seven) days of

receiving such notice, the Lessor shall present any information or evidence as may reasonably be required for determining that such Disputed Amounts are payable. The Payment Authority, if not satisfied with the information or evidence submitted by the Lessor may, upon request to this effect from the Lessor, meet a representative of the Lessor for resolving the dispute and in the event that the dispute is not resolved amicably, Article 42 shall apply. For 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 Lessor in submission of the particulars specified in Article 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 in accordance with this Agreement.

26.3 Delayed payments

All amounts due and payable to the Lessor under the provisions of this Agreement shall be paid within the period set forth in Article 26.1.2. In the event of delay beyond such period, the Lessor shall have the right to invoke the Payment Security for the amount due and payable by the Payment Authority to the Lessor in accordance with the provisions of Article 26.5 below.

26.4 Payment Security

Payment Authority shall, within 30 (thirty) Business Days prior to the commencement of the Revenue Services of the first Trainset, open a revolving and irrevocable letter of credit with a Scheduled Bank for an amount equivalent to 3 (three) times the Monthly Lease Charges and 3 (three) times the Monthly Maintenance Charge as payment security towards its obligation to pay the Lease Charges and the Maintenance Charges to the Lessor in accordance with the terms of this Agreement (“**Payment Security**”). In the event that the Payment Authority fails to pay Lease Charges and/or the Maintenance Charges to the Lessor, as and when they become due and payable, the Lessor shall have the right to invoke the Payment Security and recover such Lease Charges and/or Maintenance Charges upon giving at least a 15 (fifteen) days notice prior to such invocation to DMRC. Within 30 (thirty) Business Days of invocation of the Payment Security, Payment Authority shall replenish the Payment Security and maintain it up to its original amount. Payment Authority shall maintain the Payment Security until the Termination Date.

26.5. Set-off

Notwithstanding anything to the contrary contained in this Agreement, in the event any amount is due and payable to DMRC by the Lessor, then DMRC may set-off such amounts from any sums payable by DMRC to the Lessor and pay the balance.

ARTICLE 27

CONDEMNATION OF TRAINSETS

27.1 Condemnation of Trainsets

27.1.1 The Parties agree that in the event of the cost of repair of a Trainset or Car thereof, as the case may be, arising out of any reason or event not attributable to the Lessor, including gross 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 Lessor may, in its discretion, withdraw such Trainset or Car from the Fleet.

27.2 Termination of Maintenance Obligations

The Parties expressly agree that the obligations of the Parties with respect to a Trainset or Car thereof which is withdrawn or condemned, as the case may be, in accordance with the provisions of Article 27.1 shall be deemed to be terminated and the obligations of the Parties including the obligations of Lessor to meet the Required Hourly Availability and DMRC's obligation to make payment for Minimum Guaranteed Annual Availability shall be pro-rata reduced. Notwithstanding anything contained in this Agreement including Article 32, no payment shall be made by DMRC to the Lessor with respect to such condemned or withdrawn Trainsets or Cars thereof, under this Article 27.2.

ARTICLE 28

ADDITIONAL TRAINSETS DURING MAINTENANCE PERIOD

28.1 Additional Trainsets

If during the Maintenance Period, DMRC requires additional Trainsets to operate on Line 5, then DMRC shall grant the Lessor the right of first refusal for Supplying and maintaining such Trainsets and if the Lessor agrees to Supply and maintain such Trainsets, the terms of the Supply and maintenance of the additional quantity of the Trainsets shall be mutually agreed between the Parties. If however, the Parties are not able to mutually agree upon the terms, or the Lessor refuses to Supply and maintain such additional quantity of Trainsets then DMRC shall be at liberty to appoint a third party contractor for Supply and maintenance of the additional quantity of Trainsets.

In case a third party contractor is appointed by DMRC for the Supply and maintenance of the additional Trainsets, then DMRC may require the Lessor to surrender and transfer the Maintenance Depot at Bahadurgarh, in accordance with the provisions of Article 29. The Lessor shall provide all reasonable support and assistance as may be required by DMRC for the Supply and maintenance of the additional quantity of Trainsets.

ARTICLE 29

TRANSFER OF DEPOT SITES AND MAINTENANCE DEPOTS

29.1 Transfer of Depot Sites and Maintenance Depots

29.1.1 The Depot Sites, Maintenance Depots and the crew control room and associated rest rooms shall, in accordance with Schedule-C and the provisions of this Agreement, be transferred to DMRC upon Termination of this Agreement. Provided, however, that in the event that DMRC transfers the Maintenance Obligations of Trainsets from one Maintenance Depot to another Maintenance Depot such that no Trainsets is required to be maintained at such Maintenance Depot, DMRC may require the Lessor to transfer that Maintenance Depot to DMRC. The Parties expressly agree that for and in respect of the transfers hereunder, the provisions of Article 36 shall apply *mutatis mutandis*.

29.1.2 Upon transfer of Depot Sites, Maintenance Depots and the crew control room and associated rest rooms hereunder, all equipment, machinery, building, structures, hardware, software and other assets comprising the Depot Sites, Maintenance Depots and the crew control room and associated rest rooms shall vest in DMRC without any Encumbrance.

29.2 Provision of Spares upon Termination

29.2.1 The Lessor shall provide to DMRC, free of charge, an inventory of Spares along with the Maintenance Depots transferred under this Article 29. The inventory shall comprise of Spares equivalent to one-half of the average annual consumption of Spares at the Maintenance Depots during the preceding 3 (three) Years. For this purpose, the Lessor shall compute the total consumption of each 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 Article 29.2.1, DMRC may, in its discretion, require the Lessor to provide an additional inventory of Spares, equivalent in all respects to the inventory of Spares specified in Article 29.2.1, or such proportion thereof as the Parties may by mutual agreement determine; provided that the Spares supplied under this Article 29.2.2 shall be at the cost of DMRC; and DMRC may exercise its rights hereunder no later than 120(one hundred and twenty) days prior to the Termination Date.

29.2.3 All Spares provided by the Lessor under this Article 29.2.1 shall carry a warranty of at least 2 (two) years from the date of its last repair or replacement, as the case may be, free of cost to DMRC, while the spares provided under the Article 29.2.2 shall carry a warranty of at least 2 (two) years from the Termination Date. The terms of warranty provided in this Article 29.2.3 shall be determined in accordance with Good Industry Practice.

ARTICLE 30

INSURANCE

30.1 Insurance during Agreement Period

The Lessor 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, the Financing Agreements and Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Lessor shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on DMRC as a consequence of any act or omission of the Lessor during the Agreement Period. The Lessor shall ensure that in each insurance policy, DMRC shall be a co-insured and that the insurer shall pay the proceeds of insurance to DMRC in the event of Termination.

30.2 Insurance Cover

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

- (a) Loss, damage or destruction of the Maintenance Depots, including any Trainset;
- (b) comprehensive third party liability insurance for life, goods or property, including injury to or death of personnel of DMRC or others, arising from any Accident at the Maintenance Depots and/or the Line on account of any negligence of the Lessor or a defect or deficiency in a Trainset for a minimum sum assured of Rs. 5 lakhs per incident and no limit on number of such accidents;
- (c) the Lessor'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 Lessor 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 DMRC

No later than 45 (forty five) days prior to commencement of the Agreement Period, the Lessor shall by notice furnish to DMRC, 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, DMRC may require the Lessor 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 Lessor 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 Lessor shall furnish to DMRC, 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 Lessor to DMRC.

30.5 Remedy for failure to insure

If the Lessor fails to effect and keep in force all insurances for which it is responsible pursuant hereto, DMRC shall have the option to either keep in force any such insurances, and pay such premia and set-off/recover the costs thereof from the Lessor, 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 Lessor.

30.6 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Lessor pursuant to this Article 30 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, *inter-alia*, DMRC, 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 Lessor's waiver

The Lessor hereby further releases, assigns and waives any and all rights of subrogation or recovery against, *inter-alia*, DMRC and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Lessor 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 Lessor 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 Lessor, and it shall apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, Supply of the Trainsets or, Maintenance Depots, as the case may be, and the balance remaining, if any, shall be applied in accordance with the provisions contained on this behalf in the Financing Agreements.

30.9 Compliance with conditions of insurance policies

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

ARTICLE 31

ACCOUNTS AND AUDIT

31.1 Audited accounts

- 31.1.1 The Lessor shall maintain books of accounts recording all its receipts, income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Lessor shall provide 2 (two) copies of its balance sheet, cash flow statement and profit and loss account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of its accounting year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. DMRC shall have the right to inspect the records of the Lessor during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to DMRC for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.
- 31.1.2 The Lessor shall, within 30 (thirty) days of the close of each quarter of its accounting year, furnish to DMRC its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.
- 31.1.3 On or before the expiry of 2 (two) months after its accounting year, the Lessor shall provide to DMRC, for that accounting year, a statement duly audited by its Statutory Auditors giving summarised information on (a) the bills raised by the Lessor for payment by DMRC, (b) the payments received and other revenues derived from DMRC, and (c) such other information as DMRC may reasonably require.

31.2 Appointment of auditors

- 31.2.1 The Lessor shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 3 (three) reputable firms of chartered accountants (the “**Panel of Chartered Accountants**”), such list to be prepared substantially in accordance with the criteria set forth in Schedule-N. All fees and expenses of the Statutory Auditors shall be borne by the Lessor.
- 31.2.2 The Lessor may terminate the appointment of its Statutory Auditors after a notice of 45 (forty five) days to DMRC, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.
- 31.2.3 Notwithstanding anything to the contrary contained in this Agreement, DMRC shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (the “**Additional Auditors**”) from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

31.3 Certification of claims by Statutory Auditors

Any claim or document provided by the Lessor to DMRC in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business including the submission of bills for Lease Charges and Maintenance Charge.

31.4 Dispute resolution

In the event of there being any difference between the findings of the Additional Auditors and the certification provided by the Statutory Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by DMRC by recourse to the Dispute Resolution Procedure as set out in Article 42.

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 mean, save and except as expressly provided otherwise, occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Articles 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 Depot Sites, as the case may be);
- (b) nation-wide strikes or boycotts (other than those involving the Lessor, 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 Article 32.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Lessor by or on behalf of such Contractor;
- (d) any delay or failure of an overseas Contractor to deliver rolling stock or equipment in India if such delay or failure is caused outside India by any event specified in Sub-Article (a) above and which does not result in any offsetting compensation being payable to the Lessor by or on behalf of such Contractor;
- (e) any judgement or order of any court of competent jurisdiction or statutory authority made against the Lessor in any proceedings for reasons other than;
 - (i) failure of the Lessor 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 DMRC; or

- (f) 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) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the Supply or operation of the Project to be financially unviable or otherwise not feasible;
- (c) industry-wide or State-wide strikes or boycotts or industrial action (other than those involving the Lessor, 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 exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (d) any civil commotion, boycott or political agitation which prevents Supply of Trainsets or fulfilment of Maintenance Obligations by the Lessor for an aggregate period exceeding 15 (fifteen) days in an Accounting Year;
- (e) failure of DMRC to permit the Lessor to continue its 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;
- (f) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Lessor by or on behalf of such Contractor;
- (g) any Indirect Political Event that causes a Non-Political Event; or
- (h) 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 Article 39.1;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Lessor or of the 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 Lessor or any of the 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 Lessor's or any 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 Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Lessor by or on behalf of such 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 shall 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 Article 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 prior to the Appointed Date, the period set forth in Article 4.1 for fulfilment of Conditions Precedent and for achieving the Appointed Date shall be extended by a period equal in length to the duration of the Force Majeure Event.

32.6.2. At any time after the Appointed Date, if any Force Majeure Event occurs:

- (a) whereupon the Lessor is unable to supply Trainsets despite making best efforts or it is directed by DMRC to suspend the Supply and / or leasing 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 Lessor was prevented from Supplying and / or leasing Trainsets on account thereof or alternatively, the obligation to Supply and / or lease Trainsets for the affected period may be carried forward, as may be mutually agreed upon; or
- (b) after the commencement of the Maintenance Period, whereupon the Lessor is unable to undertake its Maintenance Obligations with respect to any or all of the Trainsets despite making best efforts or it is directed by DMRC to suspend the maintenance services thereof during the subsistence of such Force Majeure Event, the Maintenance Period for any or all of the affected Trainsets and the Agreement Period shall be extended by a period, equal in length to the period during which the Lessor was prevented from undertaking its Maintenance Obligations on account thereof. For avoidance of doubt, the Parties agree that no Maintenance Charges shall be due and payable for the period during which Maintenance Obligations remain suspended on account of such Force Majeure Event.

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. It is clarified that save and except as expressly provided in this Article 32.7.2, 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 the occurrence or existence of any event of Force Majeure or the exercise by it of any right pursuant to this Article 32.7.1.

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 Lessor, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by DMRC to the Lessor; and

- (c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by DMRC to the Lessor.

For avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the cost of works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of income or debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.

- 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 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, DMRC shall not make any Termination Payment to the Lessor.
- 32.9.2 If Termination is on account of an Indirect Political Event, DMRC shall make a Termination Payment to the Lessor in an amount equal to an amount equal to 75% (seventy five percent) of Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty percent) of such unpaid claims shall be included in the computation of Debt Due.
- 32.9.3 If Termination is on account of a Political Event, DMRC shall make a Termination Payment to the Lessor in an amount that would be payable under Article 35.3.2 as if it were a DMRC Default.

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 Lessor 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 Lessor from performance of its obligations hereunder.

ARTICLE 33

DAMAGES FOR BREACH OF AGREEMENT

33.1 Damages for default by the Lessor

In the event of the Lessor is in default or breach of this Agreement at any time after the Appointed Date, it shall pay to DMRC as Damages all direct costs suffered or incurred by DMRC as a consequence of such default or breach along with interest at an annualized rate of Bank Rate plus 2% (two percent). Such Damages shall be paid by the Lessor as lumpsum amount within 30 (thirty) days of receipt of the demand from DMRC or at the Lessor's option within 3 (three) equal semi-annual instalments upon receipt of demand from DMRC. Provided, however, that no compensation shall be payable under this Article 33.1 for any default or breach in respect of which Damages are expressly specified and payable under this Agreement.

33.2 Damages for default by DMRC

In the event of DMRC being in default or breach of this Agreement at any time after the Appointed Date, it shall pay to the Lessor as Damages, all direct costs suffered or incurred by the Lessor as a consequence of such material default or breach by DMRC as lumpsum amount within 30 (thirty) days of receipt of the demand from the Lessor or at DMRC's option in 3 (three) equal semi-annual instalments with interest an annualized rate of Bank Rate plus 2% (two percent) upon receipt of demand from the Lessor. Provided, however, that no compensation shall be payable under this Article 33.2 for any breach or default in respect of which Damages have been expressly specified in this Agreement.

For avoidance of doubt, any Damages payable under Article 33.1 or Article 33.2 payable may include interest payments on debt, O&M expenses, any increase in capital costs on account of inflation and all other costs directly attributable to such breach or default but shall not include loss of income or debt repayment obligations or other consequential losses, and for determining such compensation, information contained in the Financial Package may be relied upon to the extent it is relevant.

33.3 Extension of Agreement Period

In the event that a default or breach of this Agreement for which Damages are payable by DMRC under Article 33.2 causes delay in the Lessor's compliance with the Key Dates, DMRC shall, in addition to payment of Damages under Article 32.2, be obliged to extend the Key Dates and the Agreement Period. Such extension shall be granted to the Lessor on day-for-day basis.

33.4 Damages as sole remedy

Notwithstanding anything to the contrary contained herein, Damages payable under this Article 33 shall be the sole remedy of a Party claiming such Damages. Provided, however, that such party shall have the right to exercise any of its other rights under this Agreement and/or Applicable Law against the defaulting Party in cases either where the Damages are not

paid by the defaulting Party in accordance with this Article 33 or where the defaulting Party continues to be in breach or default after the limitation of liability set out under Article 40.6 or elsewhere, as the case may be, is reached.

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 or default of the Agreement by the other Party.

ARTICLE 34

SUSPENSION OF LESSOR'S RIGHTS

34.1 Suspension upon Lessor Default

Upon occurrence of a Lessor Default, DMRC shall be entitled, without prejudice to its other rights and remedies under this Agreement including its right of Termination hereunder, to:

- (a) suspend all rights of the Lessor under this Agreement including the Lessor's right to receive Lease Charges, 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 DMRC to the Lessor and may extend up to a period not exceeding 120 (one hundred and twenty) days from the date of issue of such notice. Provided, however, that upon written request from the Lessor and the Lender's Representative, DMRC shall extend the aforesaid period of 120 (one hundred and twenty) days by a further period not exceeding 60 (sixty) days.

34.2 DMRC to act on behalf of the Lessor

34.2.1 During Suspension, DMRC may, at its option and at the risk and cost of the Lessor, remedy and rectify the cause of Suspension. DMRC shall, on behalf of the Lessor, appropriate the relevant Year's Total Charges and deposit the same in an account to be opened by DMRC's nominee for this purpose. DMRC 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 operation and maintenance of Trainsets.

34.2.2 During Suspension, all assets and liabilities in relation to the maintenance of Trainsets and the Maintenance Depots, shall continue to vest in the Lessor in accordance with the provisions of this Agreement and all things done or actions taken, including expenditure incurred by DMRC for discharging the obligations of the Lessor 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 Lessor and the Lessor undertakes to indemnify DMRC for all costs incurred during such period, notwithstanding the limitation of liability set out in Article 40.6. The Lessor hereby licenses and sub-licenses respectively, DMRC or any other person authorised by it under Article 34.1 to use during Suspension all Intellectual Property belonging to or licensed to the Lessor for and in respect of operation and maintenance of Trainsets and the Maintenance Depots.

34.3 Revocation of Suspension

34.3.1 In the event that DMRC shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension and has recovered all costs

incurred during the period of Suspension from the Lessor, it shall revoke the Suspension forthwith and restore all rights of the Lessor under this Agreement. For avoidance of doubt, the Parties expressly agree that DMRC 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 Lessor having cured the Lessor Default within a period not exceeding 90 (ninety) days from the date of Suspension, DMRC shall revoke the Suspension forthwith and restore all rights of the Lessor under this Agreement. For avoidance of doubt, DMRC shall provide access to the Depot Sites and/or Maintenance Depots to enable the Lessor to cure the Lessor Default hereunder.

34.4 Termination

34.4.1 At any time during Suspension under this Article 34, DMRC may by notice revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to step-in in accordance with the provisions of this Agreement and within the period specified in Article 34.4.2, DMRC shall terminate this Agreement under and in accordance with Article 35 as if it is a Lessor Default under Article 35.1.

34.4.2 At any time during Suspension, the Lenders' Representative, on behalf of the Senior Lenders, shall be entitled to step-in under and in accordance with the Agreement, and upon receipt of notice thereunder from the Lenders' Representative, DMRC shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Article 34.1, to enable the Lenders' Representative to exercise its step-in rights on behalf of Senior Lenders.

34.4.3 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, DMRC shall, upon expiry of the aforesaid period, have the right to terminate this Agreement and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by DMRC upon occurrence of a Lessor Default under Article 35.

ARTICLE 35

TERMINATION

35.1 Termination for Lessor Default

35.1.1 Save as otherwise provided in this Agreement, in the event that any of occurrence of any of the defaults specified below, and the Lessor fails to cure the default, if such default can be cured, 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 Lessor shall be deemed to be in default of this Agreement (the “**Lessor Default**”), unless the default has occurred as a result of any breach of this Agreement by DMRC or due to occurrence of a Force Majeure Event. The defaults referred to herein shall mean and include the following:

- (a) Lessor commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on DMRC;
- (b) the Performance Security, as the case may be, has been encashed and appropriated in accordance with Article 9.2, as the case may be and the Lessor fails to replenish or provide fresh Performance Security, as the case may be, within a Cure Period of 30 (thirty) days;
- (c) subsequent to the replenishment or furnishing of fresh Performance Security, as the case may be, in accordance with Article 9.2, as the case may be, the Lessor fails to cure, within a Cure Period of 120 (one hundred and twenty) days, the Lessor Default for which whole or part of the Performance Security was appropriated;
- (d) Deleted
- (e) the Lessor fails to perform Project activities on or before the Key Dates set out in Schedule –K and the maximum limit for the Damages has been reached;
- (f) the Lessor fails to Supply and lease the Prototype within a Cure Period of 270 (two hundred and seventy) days after expiry of the period specified in Article 11.3;
- (g) the Lessor fails to Supply and lease the Trainsets within a Cure Period of 270 (two hundred and seventy) days after expiry of the period specified in Article 12.7;
- (h) the Lessor abandons or manifests intention to abandon the operation of the Maintenance Depots and / or the Trainsets;
- (i) the Lessor is in material breach of the Maintenance Obligations, or the Safety Requirements, or any of the terms and conditions of this Agreements;
- (j) the Lessor is in material breach of the Operating Obligations and fails to provide T.O.s to operate the Trainsets, as per the requirements of DMRC, the Master Train Operation Plan, Good Industry Practice and in accordance with the terms and conditions of this Agreement;

- (k) the Lessor is in material breach of the Indigenization Requirements in accordance with Article 12.5 and / or fails to comply with the requirements of DMRC in case DMRC invokes the Additional Quantity Option, in accordance with the terms and conditions of this Agreement;
- (l) the Lessor fails to comply with the requirements of DMRC in case DMRC invokes the Purchase Option for the Trainsets, in accordance with the terms and conditions of this Agreement;
- (m) the Lessor fails to incorporate any additional requirements and/ or conduct the additional tests required by the Railway Statutory Authority on the Prototype and subsequently on the Trainsets;
- (n) commencing from the first Year of Supply, the Lessor supplies less Trainsets than the number of Trainsets due for supply in any Year, unless acting in accordance with DMRC's instructions in this regard and fails to supply in the succeeding Year the number of Trainsets due for supply in that Year;
- (o) the Lessor has failed to make any payment to DMRC within the period specified in this Agreement;
- (p) a material breach of any of the Project Agreements by the Lessor has caused a Material Adverse Effect;
- (q) the Lessor creates any Encumbrance in breach of this Agreement;
- (r) the Lessor repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (s) a Change in Ownership has occurred in breach of the provisions of Article 5.3;
- (t) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Lessor under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Lessor, and such transfer causes a Material Adverse Effect;
- (u) an execution levied on any of the assets of the Lessor has caused a Material Adverse Effect;
- (v) the Lessor has failed to fulfil any obligation, for which failure, Termination has been specified in this Agreement; or
- (w) the Lessor issues a Termination Notice in violation of the provisions of this Agreement.

Provided the Lessor shall not be provided a Cure Period for the following Lessor Defaults and DMRC shall have a right to terminate the Agreement forthwith by issuing a Termination Notice in accordance with Article 35.1.2:

- (a) the Lessor becomes Insolvent; or
- (b) the Lessor submits to DMRC any statement, notice or other document, in written or electronic form, which has a Material Adverse effect on DMRC's rights, obligations or interests and which is false in material particulars.

35.1.2 Without prejudice to any other rights or remedies which DMRC may have under this Agreement, upon occurrence of a Lessor Default, DMRC shall be entitled to terminate this Agreement by issuing a Termination Notice to the Lessor; provided that before issuing the Termination Notice, DMRC shall by a notice inform the Lessor of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Lessor to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice subject to the provisions of Article 35.1.3.

35.1.3. DMRC shall, if there are Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Article 35.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to exercise its step-in rights in accordance with Article 35.7. In the event DMRC receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' step-in right in accordance with Article 35.7: provided that the Lenders' Representative may, instead of exercising the Senior Lenders' step-in right, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, DMRC shall withdraw its notice referred to above and restore all the rights of the Lessor:

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

35.2 Termination for DMRC Default

35.2.1 In the event that any of the defaults specified below shall have occurred, and DMRC fails to cure or to take effective steps 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, DMRC shall be deemed to be in default of this Agreement (the "**DMRC Default**") unless the default has occurred as a result of any breach of this Agreement by the Lessor or due to Force Majeure. The defaults referred to herein shall mean and include the following:

- (a) DMRC commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Lessor;
- (b) DMRC has failed to make any payment to the Lessor within the period specified in this Agreement;
- (c) DMRC fails to open and maintain the Payment Security in accordance with Article 26.5; or

- (d) DMRC 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 Lessor may have under this Agreement, upon occurrence of a DMRC Default, the Lessor shall be entitled to terminate this Agreement by issuing a Termination Notice to DMRC; provided that before issuing the Termination Notice, the Lessor shall by a notice inform DMRC of its intention to issue the Termination Notice and grant 15 (fifteen) days to DMRC 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 Lessor Default, DMRC shall pay to the Lessor, by way of Termination Payment, an amount equal to the following:

An amount equivalent to 70% (seventy percent) of the Debt Due less Insurance Cover.

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

35.3.2 Upon Termination on account of a DMRC Default, DMRC shall pay to the Lessor, by way of Termination Payment, an amount equal to the following:

- (a) Debt Due; and
- (b) 120% (one hundred and twenty per cent) of the Adjusted Equity.

35.3.3 Termination Payment shall become due and payable to the Lessor within 60 (sixty) Business Days of the issuance of the Vesting Certificate, and in the event of any delay, DMRC shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days; provided further that liability of DMRC to make the Termination Payment hereof is subject to the fulfilment of the Divestment Requirements in accordance with the provisions of Article 36 of this Agreement. For avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by DMRC 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 Lessor.

35.3.5 The Lessor expressly agrees that Termination Payment under this Article 35 shall constitute a full and final settlement of all claims of the Lessor on account of Termination of this Agreement for any reason whatsoever and that the Lessor or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

35.3.6 The Parties hereby agree and acknowledge that in the event that DMRC makes payment of the Termination Payments to the Lessor, in accordance with the terms and conditions of this Agreement, all rights, title and interest in the Trainsets shall stand transferred to DMRC by

the Lessor, as on the date of such payment, free and clear of all Encumbrances. The Parties hereby agree, acknowledge and covenant that the Lessor shall extend full support and co – operation to DMRC and shall take all necessary steps to assist DMRC in consummating the transaction pursuant to the payment of the Termination Payments by DMRC including without limitation the execution of all such deeds, documents, transfers, assignments, conveyances and assurances pertaining to the Trainsets and shall do all acts, deeds, matters and things as DMRC may reasonably require in this regard. For avoidance of any doubt, it is hereby clarified by the Parties that a certificate in writing signed by DMRC to the effect that any particular assurance or thing required by them is reasonably required by them shall be conclusive evidence of such fact. The Lessor shall bear its own expenses in connection with the completion of transfer, assignment and conveyance of the Trainsets as aforesaid including the payment of applicable stamp duties as per Applicable Laws. The Parties hereby agree and acknowledge that the Lessor shall deliver and transfer relevant records, reports and Intellectual Property pertaining to the Trainsets including all software and manuals pertaining thereto, and complete ‘as built’ Drawings so as to enable DMRC to operate and maintain the Trainsets, and shall execute such deeds of conveyance, documents and other writings as DMRC may reasonably require in connection therewith, upon the payment of the Termination Payment to the Lessor. For avoidance of doubt, the Lessor represents, warrants and undertakes that the Intellectual Property shall be adequate and complete for the operation and maintenance of the Trainsets and shall be assigned or licensed to DMRC, upon the payment of the Termination Payment to the Lessor, free of any Encumbrances.

35.4 Limitations on Termination Payment

Notwithstanding anything contained in this Agreement, the Termination Payment due and payable under this Agreement, shall be limited to the Debt Due and Adjusted Equity, as the case may be and shall at no time exceed Total Project Cost: provided that the Termination Payment in relation to or arising out of the Debt Due shall not exceed [Rs.840 cores (Rupees eight hundred and forty crores)].

35.5. Other rights and obligations of DMRC

Upon Termination for any reason whatsoever, DMRC shall:

- (a) take possession and control of the all Project Assets forthwith;
- (b) take possession and control of all materials, stores, implements, plants and equipment on or about the Maintenance Depots;
- (c) be entitled to restrain the Lessor and any person claiming through or under the Lessor from entering upon the Maintenance Depots or any part of DMRC premises;
- (d) require the Lessor to comply with the Divestment Requirements set forth in Article 36.1; and
- (e) succeed upon election by DMRC, without the necessity of any further action by the Lessor, to the interests of the Lessor under such of the Project Agreements as DMRC may in its discretion deem appropriate and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them

under the terms of their respective Project Agreements from and after the date DMRC elects to succeed to the interests of the Lessor. For avoidance of doubt, the Lessor acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Lessor and such Contractors, and DMRC shall not in any manner be liable for such sums. It is further agreed that in the event DMRC elects to cure any outstanding defaults under such Project Agreements, the amount expended by DMRC 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 Article 35.3.5, 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.

35.7 Step-in rights of Senior Lenders

Upon occurrence of a Lessor Default, the Senior Lenders acting through the Lenders' Representative shall be entitled to exercise step-in rights in accordance with their Financing Agreements, and upon receipt of a notice from the Senior Lenders in pursuance thereof, DMRC shall either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise such step-in rights. For avoidance of doubt, the Parties expressly agree that following the exercise of step-in rights hereunder, it shall be incumbent upon Senior Lenders to demonstrate to DMRC that the incumbent Lessor has been substituted by another entity which has the capacity and means to discharge the functions and obligations of the Lessor in accordance with the provisions of this Agreement. In such an event, DMRC shall nullify its Termination Notice and restore the operation of this Agreement forthwith.

ARTICLE 36

DIVESTMENT OF RIGHTS AND INTEREST

36.1 Divestment requirements

36.1.1 Upon Termination or expiry of the Agreement Period, the Lessor shall comply with and conform to the following divestment requirements (the “**Divestment Requirements**”), no later than 15 (fifteen) days from the date of Termination or expiry of the Agreement Period, as the case may be:

- (a) notify to DMRC forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of the Project Assets, along with the infrastructure therein, free and clear of all Encumbrances;
- (c) all Project Assets including the structure and equipment shall have been cured of all defects and deficiencies as necessary and have a minimum residual life at the lower of the following, namely: (i) 5 (five) years; and (ii) subsequent period till 38 years after the Appointed Date, so that the Project is compliant with the Specifications and Standards as per Schedule -A of this Agreement;
- (d) cure all Trainset of all defects and deficiencies so that the Trainset 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, DMRC shall grant to the Lessor such additional time, not exceeding 240 (two hundred forty) days, as may be reasonably required for repair and rectification thereof;
- (e) cure all the equipment at the Maintenance Depots, Depot Sites and crew control and restrooms of any defect or deficiency such that it can continue to be used efficiently and economically in accordance with Good Industry Practice;
- (f) deliver and transfer relevant records, reports and Intellectual Property pertaining to the Trainsets and Maintenance Depots and crew control and restrooms including all software and manuals pertaining thereto, and complete “as built” Drawings as on the Termination Date so as to enable DMRC to operate and maintain the Trainsets and Maintenance Depots and execute such deeds of conveyance, documents and other writings as DMRC may reasonably require in connection therewith. For avoidance of doubt, the Lessor represents and warrants that the Intellectual Property shall be adequate and complete for the operation and maintenance of the Trainsets and shall be assigned or licensed to DMRC free of any Encumbrance;
- (g) transfer and/or deliver all Applicable Permits in respect of the Project Assets including Trainsets to the extent permissible under Applicable Laws;

- (h) execute such deeds of conveyance, documents and other writings as DMRC may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Lessor in respect of the outstanding insurance claims to the extent due and payable to DMRC;
- (i) execute such deeds of conveyance, documents and other writings as DMRC may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Lessor in the Maintenance Depots and Trainsets;
- (j) 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 Lessor in the Trainsets, Maintenance Depots and Insurance Cover, free from all Encumbrances, absolutely unto DMRC or to its nominee; and
- (k) pay all dues pending towards its staff and/or Contractors, energy and water consumption charges etc. and any other amounts due and payable under this Agreement.

36.1.2 Subject to the exercise by DMRC 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 Lessor, 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.

36.1.3. In order to assist DMRC, or a replacement to the Lessor appointed by the Senior Lender in accordance with the Substitution Agreement, assuming Works in the event that the Lessor ceases to execute the Works for whatever reason, the Lessor shall be responsible for preparing and updating a Handback Package. The Handback Package must include details of all the matters listed in Schedule-C of this Agreement. The Lessor must update the Handback Package regularly and in the same manner as a competent provider of similar services would do and promptly provide an electronic and 2 (two) hard copies of the updated Handback Package to DMRC. For each version of the Handback Package provided to DMRC, the Lessor must provide written confirmation to DMRC that the Handback Packages contains the information required under Schedule-C. Where the Lessor decides that the Handback Package is not required to be updated in a 6 (six) month period on the basis that it is already up to date, the Lessor must advise DMRC in writing within 20 (twenty) days after the end of each 6 (six) month period that the Handback Package is up to date. The Lessor must also retain copies of the most recent version of the Handback Package and provide these to any new operator nominated by DMRC or appointed as the replacement by the Senior Lender in accordance with the Substitution Agreement.

36.2 Inspection and cure

Not earlier than 3 (three) months before the expiry of the Agreement Period but not later than 15 (fifteen) days before such expiry, or in the event of earlier Termination of this Agreement, immediately upon but not later than 15 (fifteen) days from the date of issue of Termination Notice, DMRC shall verify, in the presence of a representative of the Lessor, compliance by the Lessor with the Divestment Requirements set forth in Article 36.1 in relation to the Project Assets and, if required, cause appropriate tests to be carried out at the Lessor's cost

for determining the compliance therewith. If any shortcomings in the Divestment Requirements are found by either Party, it shall notify the other of the same and the Lessor shall rectify the same at its cost. The provisions of Article 37 shall apply *mutatis mutandis* in relation to repair or curing of defects under this Article 36.

36.3 Cooperation and assistance on transfer of Maintenance Depots

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 assets specified in Article 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 Depot Sites and Maintenance Depots.

36.3.2 The Parties shall provide to each other, 9 (nine) months prior to the Termination 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 Termination Date. The Lessor shall further provide such reasonable advice and assistance as DMRC, its nominee or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Termination Date.

36.4 Vesting Certificate

The divestment of all rights, title and interest in the assets specified in Article 36.1.1 shall be deemed to be complete on the date on which all of the Divestment Requirements have been fulfilled, and DMRC shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule –P (the “**Vesting Certificate**”), which shall have the effect of constituting evidence of divestment by the Lessor of all of its rights, title and interest in such assets, and their vesting in DMRC 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 DMRC or its nominee on, or in respect of, the Trainsets and Maintenance Depots on the footing that all Divestment Requirements have been complied with by the Lessor.

36.5 Divestment costs etc.

36.5.1 Upon expiry of the Agreement Period, the Parties shall bear and pay equally, all costs incidental to divestment of all of the rights, title and interest of the Lessor in the Trainsets (such as stamp duty, registration costs, etc.), and Maintenance Depots in favour of DMRC. For avoidance of doubt, it is clarified that the divestment of the rights, title and interest of the Lessor in the Trainsets to DMRC shall be at no additional costs to DMRC, other than the divestment costs specified above, which are to be borne equally by the Parties.

36.5.2 In the event of Termination attributable to the Lessor, it shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Lessor in the Trainsets and Maintenance Depots in favour of DMRC upon such Termination (such as stamp duty, registration costs, etc.).

- 36.5.3 In the event of Termination attributable to DMRC, it shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Lessor in the Trainsets and Maintenance Depot in favour of DMRC upon such Termination (such as stamp duty, registration costs, etc.).
- 36.5.4 In the event of Termination on account of Force Majeure, the Parties shall bear and pay equally all costs incidental to divestment of all of the rights, title and interest of the Lessor in the Trainsets and Maintenance Depots in favour of DMRC upon such Termination (such as stamp duty, registration costs, etc.).
- 36.5.5 In the event of any dispute relating to matters covered by and under this Article 36, the Dispute Resolution Procedure under Article 42 shall apply.

ARTICLE 37

DEFECTS LIABILITY AFTER AGREEMENT PERIOD

37.1 Liability for defects after Termination

- 37.1.1 Not less than 30 (thirty) months nor more than 36 (thirty six) months prior to the expiry of the Agreement Period, or in the event of earlier Termination of this Agreement, immediately upon but not later than 15 (fifteen) days from the date of issue of Termination Notice, the Lessor and DMRC shall conduct a joint inspection (the “**Initial Inspection**”) of the Project Assets. In the event of earlier Termination of this Agreement, the Lessor shall be responsible for all defects and deficiencies in the Trainsets for a period of 180(one hundred and eighty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by DMRC in the Trainsets during the aforesaid period.
- 37.1.2 Within 90 (ninety) days after the completion of the Initial Inspection, the Lessor shall provide to DMRC a report on the condition of the Project Assets and a notice setting out the Lessor’s proposals as to the renewal works required to comply with the Divestment Requirements.
- 37.1.3 DMRC may, within 90 (ninety) days after receipt of the notice from the Lessor in accordance with Article 37.1.2, by notice to the Lessor object to the proposals giving details of the grounds for such objection.
- 37.1.4 If no agreement is reached between the Lessor and DMRC within 30 (thirty) days of receipt of such notice, then either the Lessor or DMRC may refer the matter to the Disputes Resolution Procedure.
- 37.1.5 Upon agreement, or determination in accordance with the Disputes Resolution Procedure as to what the scope of the renewal works shall be, the Lessor shall carry out the renewal works at its own cost.
- 37.1.6 Not less than 9 (nine) months nor more than 12 (twelve) months prior to the expiry of the Agreement Period, the Lessor and DMRC shall conduct a joint inspection (the “**Second Inspection**”) of all elements of the Project (whether or not the Renewal Works have been carried out).
- 37.1.7 Within 30 (thirty) days after the completion of the Second Inspection, the Lessor shall provide to DMRC a report on the condition of the Project and a notice setting out any revisions or additions to the renewal works required in order to ensure compliance with the Divestment Requirements.
- 37.1.8 DMRC may, within 30 (thirty) days after receipt of the notice from the Lessor in accordance with Article 37.1.8, by notice to the Lessor object to the proposed revisions giving details of the grounds for such objection.
- 37.1.9 If no agreement is reached between the Lessor and DMRC within 30 (thirty) days of receipt of such notice, then either the Lessor or DMRC may refer the matter to the Dispute Resolution Procedure.

37.1.10 Upon agreement, or determination in accordance with the Disputes Resolution Procedure as to what the scope of remaining renewal works may be, the Lessor shall carry out the renewal works (as so revised) at its own cost.

37.2 Retention of payments due

37.2.1. Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Article 37.2.3, a sum equal to 10% (ten per cent) of the Maintenance Charges payable for the Fleet in respect of the Accounting Year immediately preceding the Termination Date shall be retained by DMRC for a period of 180 (one hundred and eighty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Article 37.1.

37.2.2 Without prejudice to the provisions of Article 37.2.1, DMRC shall carry out an inspection of the Project Assets including Trainsets at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the Termination and if it determines that the status of the Trainsets is such that a sum larger than the amount stipulated in Article 37.2.1 should be retained by DMRC and for a period longer than the aforesaid 180 (one hundred and eighty) days, the amount so determined, subject to a ceiling equivalent to twice the amount specified in Article 37.2.1 shall be retained by DMRC for a period not exceeding 240 (two hundred and forty) days.

37.2.3 The Lessor may, for the performance of its obligations under this Article 37, provide to DMRC a guarantee from a Bank for a sum equivalent to the amount determined under Article 37.2.1 or 37.2.2, as the case may be, and for the period specified therein, substantially in the form set forth in Schedule-E (the "**Performance Guarantee**"), to be modified, *mutatis mutandis*, for this purpose, and DMRC shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Lessor's risk and cost in accordance with the provisions of this Article 37. Upon furnishing of a Performance Guarantee under this Article 37.2.3, the retention of funds in terms of Article 37.2.1 or 37.2.2, as the case may be, shall be dispensed with. The validity of the Performance Guarantee shall not be less than 240 (Two Hundred Forty) days from the Termination Date, inclusive of an additional claim period of 60 (Sixty) days, and may be extended as may be mutually agreed between DMRC and the Lessor.

PART VI
OTHER PROVISIONS

ARTICLE 38

ASSIGNMENT AND CHARGES

38.1 Restrictions on assignment and charges

38.1.1 Subject to Article 38.2, this Agreement shall not be assigned by the Lessor to any person, save and except with the prior consent in writing of DMRC, which consent DMRC shall be entitled to decline without assigning any reason whatsoever.

38.1.2 Subject to the provisions of Article 38.2, the Lessor 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 Lessor is a party except with prior consent in writing of DMRC, which consent DMRC shall be entitled to decline without assigning any reason whatsoever.

38.2 Permitted assignment and charges

The restraints set forth in Article 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 Lessor;
- (b) mortgages/pledges/hypothecation of goods/assets other than Project Assets, and those covered by the Substitution Agreement and their related documents of title arising or created in the ordinary course of business of the Project and as security only for indebtedness to the FI under the Financing Documents and/or for working capital arrangements for the Project;
- (c) assignment of rights, title and interest to or in favour of the Lenders pursuant to and in accordance with the Substitution Agreement in respect of financing by the Senior Lenders under the Financing Documents for the Project; and
- (d) liens or encumbrances required by any Applicable Law.

38.3 Assignment to any Government Instrumentality

Notwithstanding anything to the contrary contained in this Agreement, DMRC, in its discretion, may assign, transfer or dispose of all or any of its rights and benefits under this Agreement to any Government Instrumentality (“**Permitted Transferee**”) or any substitute thereof for leasing out the Trainsets on terms to be agreed between DMRC and the Permitted Transferee. 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 Lessor suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds Rs. 3 crore (Rupees three crore) in any Accounting Year, the Lessor may so notify DMRC and propose amendments to this Agreement so as to place the Lessor 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 notification by the Lessor as aforesaid, the Parties shall meet, as soon as reasonably practicable as but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on alternative arrangements to implement the foregoing:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Lessor may by notice require DMRC to pay an amount that would place the Lessor 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, DMRC shall pay the amount specified therein; provided that if DMRC shall dispute such claim of the Lessor, the same shall be settled in accordance with the Dispute Resolution Procedure. For avoidance of doubt, it is agreed that this Article 39.1 shall be restricted to changes in law directly affecting the Lessor's costs of performing its obligations under this Agreement.

39.2 Reduction in costs

If as a result of Change in Law, the Lessor benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds Rs. 3 crore (Rupees three crore) in any Accounting Year, DMRC may so notify the Lessor and propose amendments to this Agreement so as to place the Lessor 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 DMRC, 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 alternative arrangements to implement the foregoing:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, DMRC may by notice require the Lessor to pay an amount that would place the Lessor 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 Lessor shall pay the amount specified therein to DMRC; provided that if the Lessor shall dispute such claim of DMRC, the same shall be settled in accordance with the Dispute Resolution Procedure. For avoidance of doubt, it is agreed that this Article 39.2 shall be restricted to changes in law directly affecting the Lessor's costs of performing its obligations under this Agreement.

39.3 Protection of NPV

Pursuant to the provisions of Articles 39.1 and 39.2 and for the purposes of placing the Lessor 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 avoidance of doubt, the Parties expressly agree that for determination of NPV, the discount rate to be used shall be equal to the weighted average rate of interest at which the Lessor has raised its debt under its Financing Agreements.

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 Lease Charges

Notwithstanding anything to the contrary contained in this Agreement, DMRC shall not in any manner be liable to reimburse the Lessor any sums on account of a Change in Law if the same are recoverable as part of Lease Charges or in any other manner.

ARTICLE 40

LIABILITY AND INDEMNITY

40.1 General indemnity

40.1.1 The Lessor shall indemnify, defend and hold DMRC harmless against any and all proceedings, actions and, third party claims (other than a claim by DMRC or GOI for loss), damage and expense of whatever kind and nature arising out of the Supply and maintenance of the Trainset and operation and maintenance of the Depot Sites and Maintenance Depots, or arising out of a breach by Lessor of any of its obligations under this Agreement except to the extent that any such claim has arisen due to DMRC Default.

40.1.2 DMRC shall, indemnify, defend and hold harmless the Lessor against any and all proceedings, actions, third party claims for loss, damage and expense of whatever kind and nature arising out of defect in title and/or the rights of DMRC in the land comprised in the Depot Sites adversely affecting the performance of the Lessor's obligations under this Agreement and/or arising out of acts done in discharge of their lawful functions by DMRC, its officers, servants, agents, subsidiaries and contractors ("**DMRC Indemnified Persons**") including DMRC Default except to the extent that any such claim has arisen due to a negligent act or omission, breach of contract or breach of statutory duty on the part of the Lessor, its Subsidiaries, Affiliates, contractors, servants or agents including due to Lessor Event of Default.

40.2 Indemnity by the Lessor

40.2.1 Without limiting the generality of Article 40.1, the Lessor shall fully indemnify, hold harmless and defend DMRC and DMRC Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- (a) failure of the Lessor to comply with Applicable Laws and Applicable Permits;
- (b) payments of taxes relating to the Lessor contractors, suppliers and representatives, income or other taxes required to be paid by the Lessor without reimbursement hereunder;
- (c) non-payment of amounts due as a result of materials or services furnished to the Lessor or any of its contractors which are payable by the Lessor or any of its contractors;
- (d) its omissions or acts of fraud, gross negligence and wilful misconduct;
- (e) any personal bodily injury or death of any person caused by, arising out of or in connection with its performance of this Agreement; or
- (f) loss of or physical damage to property of DMRC or any third party caused by, arising out of or in connection with the performance of this Agreement.

40.2.2 Without limiting the generality of the provisions of this Article 40, the Lessor shall fully indemnify, hold harmless and defend DMRC Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which DMRC 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 Lessor or by the Lessor's Contractors in performing the Lessor'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 Lessor 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 Work or any part thereof or comprised therein, is held to constitute an infringement and their use is permanently enjoined, the Lessor shall promptly make every reasonable effort to secure for DMRC a licence, at no cost to DMRC, authorising continued use of the infringing work. If the Lessor is unable to secure such licence within a reasonable time, the Lessor 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 become 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 Article 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 has not exercised its rights under Article 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-Articles (b), (c) or (d) of this Article 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, save and except Termination Payment, shall not exceed the Total Project Cost. The limitation hereunder shall not apply to any or all liabilities in respect of third parties. The Parties agree that the Lessor's liability will be uncapped in case of any liabilities arising due to:

- (a) any amount payable as indemnity to DMRC due to its acts or omissions or fraud, gross negligence and wilful misconduct;
- (b) breach of any Applicable Laws or any Applicable Permits;
- (c) any claims or loss on account of Intellectual Property rights violation by the Lessor;

- (d) any personal bodily injury or death of any person caused by, arising out of or in connection with its performance of this Agreement; or
- (e) any loss of or physical damage to property of DMRC or any third party caused by, arising out of or in connection with the performance of this Agreement.

40.7 Survival on Termination

The provisions of this Article 40 shall survive Termination.

ARTICLE 41

RIGHTS AND TITLE OVER DEPOT SITES AND MAINTENANCE DEPOTS

41.1 Lessor's rights

For the purpose of this Agreement, the Lessor shall have rights to the use of the Depot Sites and Maintenance Depots including crew control and associated rest rooms as licensee, as the case may be, subject to and in accordance with this Agreement, and to this end, it may regulate the entry and use of the Depot Sites and Maintenance Depots by third parties in accordance with and subject to the provisions of this Agreement and the Licence Agreement.

41.2 Access rights of DMRC and others

41.2.1 The Lessor shall allow free access to the Depot Sites and Maintenance Depots including crew control and associated rest rooms at all times for the authorised representatives of DMRC and for the persons duly authorised by any DMRC Instrumentality to inspect the Maintenance Depots as the case may be, and to investigate any matter within their authority, and upon reasonable notice, the Lessor shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

41.2.2 The Lessor shall, for the purposes of operation and maintenance of any utility, rail or road, allow free access to the Depot Sites and Maintenance Depots including crew control and associated rest rooms, at all times for the authorised persons and vehicles of the controlling body of such utility, rail or road.

41.3 Property taxes

All property taxes on the Depot Sites and Maintenance Depots including crew control and associated rest rooms shall be payable by DMRC as owner of the Depot Sites.

41.4 Restriction on sub-letting

The Lessor shall not sublicense or sublet the whole or any part of the Depot Sites and Maintenance Depots including crew control and associated rest rooms; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Lessor to appoint Contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Depot Sites and Maintenance Depots including crew control and associated rest rooms.

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, (the “**Dispute**”) and so notified in writing by either Party to the other Party shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Article 42.2. In the event of any Dispute between the Parties, either Party may give a notice to the other Party of the Dispute, clearly mentioning the nature of Dispute and the amount claimed (“**Dispute Notice**”).

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 Amicable Resolution of Dispute

The Parties shall endeavour to resolve the Disputes amicably by referring the Dispute to PMC upon receipt of the Dispute Notice. PMC shall endeavour to resolve the Dispute and help the Parties arrive a settlement within 15 (fifteen) days of reference of Dispute to PMC. If the Parties fail to resolve the Dispute at this stage then the Dispute shall be referred to conciliation or arbitration in accordance with the Article 42.3 and 42.4. The conciliation and arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 as amended from time to time.

42.3. Conciliation

42.3.1 If the Dispute remains unresolved, then either Party may send a notice for initiating conciliation proceedings to the other Party. Conciliation proceedings shall commence when the other Party has accepted the invitation for conciliation. Conciliation proceedings shall be initiated within 30 (thirty) days of the other Party receiving the invitation for conciliation. If the Party inviting for initiation of conciliation proceedings does not receive a response from the other Party within 30 (thirty) days of such invitation, then the Party shall treat it as a rejection of invitation for conciliation.

42.3.2. Conciliation shall be conducted by one conciliator selected from the panel of conciliators maintained by DMRC. DMRC shall send a list of three conciliators from the panel of conciliators and the Lessor shall be entitled to select one conciliator from the list of three conciliators provided to the Lessor by DMRC.

42.3.2. The panel of conciliators maintained by DMRC shall comprise of either serving or retired engineers of government departments or public sector undertakings, including serving or retired officers of DMRC, provided any serving officer of DMRC shall be Deputy HOD level officer or above.

42.3.3 The conciliator shall provide its recommendations and formulate possible terms of settlement of the Dispute within 60 (sixty) days of the commencement of the conciliation proceedings. If the Parties reach agreement on settlement of the Dispute, then the Parties shall execute a settlement agreement which shall be binding on the Parties. The Parties shall not initiate any arbitral or judicial proceedings during the conciliation proceedings. Either Party may, by giving a written notice to the other Party, terminate the conciliation proceedings.

42.4 Arbitration

42.4.1 Any Dispute which is not resolved amicably as provided in Article 42.2 or by conciliation under Article 42.3, or where either Party has rejected the invitation for conciliation, shall be decided by reference to arbitration by an arbitral tribunal in accordance with Arbitration and Conciliation Act, 1996 as amended from time to time and constituted as per Article 42.4.2. The place of such arbitration shall be Delhi, and the language of arbitration proceedings shall be English.

42.4.2 Matters to be arbitrated upon shall be referred to a sole Arbitrator where the total value of claims does not exceed Rs. 2 crore (Rupees two crores) and three arbitrators for claims above the value of Rs.2 crores (Rupees two crores). The Arbitrator/Arbitrators shall be appointed within a period of 30 (thirty) days from the date of receipt of written notice of appointment of arbitrator from either party.

42.4.3. In case of a single arbitrator, DMRC shall form propose names of three arbitrators, either from the panel of arbitrators maintained by DMRC or otherwise, out of which the Lessor shall choose one arbitrator. In case three arbitrators are to be appointed, DMRC propose names of five arbitrators. The Lessor and DMRC shall choose one arbitrator each and the two arbitrators so chosen shall choose the third arbitrator. If the two arbitrators fail to appoint the third arbitrator, then DMRC shall have the right to appoint the presiding arbitrator.

42.4.4. The arbitrators proposed by DMRC shall be officers of the following grades having experience in contract management or construction contracts:

- (a) either serving or retired officer of a grade not below E8 grade in a public sector undertakings in which DMRC has no business relationship;
- (b) a retired officer of a rank not below SAG level of any engineering services of Indian Railways or Indian Railways Accounts Service;
- (c) a retired officer not below the E8 grade in DMRC or a public sector undertaking with whom DMRC has business relations who shall have retired more than 3 years prior to the date of appointment as an arbitrator, of any engineering discipline or accounts/finance department;
- (d) a retired judge of the High Court or Supreme Court of India; or
- (e) a reputed Chartered Accountant who is a member of ICAI.

42.4.5. Neither party shall be limited in the proceedings before such arbitrator/s to the evidence / arguments put before the arbitrator for the purpose of obtaining his decision. No decision given by the arbitrator in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrator/s on any matter, whatsoever, relevant to dispute or difference referred to arbitrator/s. The language of

proceedings, that of documents and communication shall be English and the awards shall be made in writing.

- 42.4.6 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 Lessor and DMRC agree and undertake to carry out such Award without delay.
- 42.4.7 The Lessor and DMRC agree that an Award may be enforced against the Lessor and/or DMRC, as the case may be, and their respective assets wherever situated.
- 42.4.8 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.

42.5 No Suspension of Work

The reference to arbitration shall proceed notwithstanding that Works shall not then be or be alleged to be complete, provided always that the obligations of DMRC, the Engineer and the Lessor shall not be altered by reasons of arbitration being conducted during the progress of Works. Neither party shall be entitled to suspend the work to which the dispute relates on account of arbitration and payments to the Lessor shall continue to be made in terms of the Agreement.

42.6 Costs

- 42.6.1 Where the arbitral award is for payment of money, no interest shall be payable on the whole or any part of the money for any period till the date on which the award is made.
- 42.6.2 The cost of arbitration shall be borne by the respective parties. The cost shall inter-alia the fees of the arbitrator(s) as per the rates fixed by DMRC from time to time.
- 42.6.3. The cost of conciliation shall be borne equally by the Parties or as may be decided between the Parties in terms of the settlement agreement, if executed.

ARTICLE 43

DISCLOSURE

43.1 Disclosure of Specified Documents

The Lessor shall make available for inspection by members of public through DMRC's Representative free of charge during normal business hours on all Working Days copies of this Agreement, Operations and Maintenance Manual, the Safety Requirements, the Manual of Specifications and Standards and the O&M contract (if any) (hereinafter collectively referred to as "**Public Documents**") at the Lessor's office in the Depot Sites and Maintenance Depots from the Appointed Date until the Termination Date. The Lessor shall prominently display at the stations public notices about the availability of the Public Documents for inspection and shall make available upon request and payment in advance of copying charges on no profit no loss basis to members of public copies of the said Public Documents.

43.2 Disclosure of Documents relating to safety

The Lessor shall make available for inspection by any person copies of all documents and data relating to safety of the Trainsets, free of charge, during normal business hours on all Working Days, at the Lessor's registered office. The Lessor 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 Articles 43.1 and 43.2, DMRC shall be entitled to direct the Lessor, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Articles.

Explanation:

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

ARTICLE 44

REDRESSAL OF COMPLAINTS

44.1 Complaint Register

- 44.1.1 At each station, DMRC shall open and maintain a register (the “**Complaints Register**”) for recording of complaints by any person (the “**Complainant**”) at any time of the day. The availability of and access to such office and the Complaints Register shall be prominently displayed by DMRC at each station so as to bring it to the attention of all persons who are entering and exiting the Project area. Public complaints/grievances are also received by DMRC via e-mails etc. the relevant complaints pertaining to the Project which are received by DMRC shall be forwarded to Lessor for redressal/reply within a reasonable period.
- 44.1.2 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 Lessor.
- 44.1.3 Without prejudice to the provisions of Articles 44.1.1 and 44.1.2, DMRC may, in consultation with the Lessor, specify the procedure for making complaints in electronic form and for responses thereto.

44.2 Redressal of complaints

- 44.2.1 The Lessor shall inspect the Complaint Register and the complaints forwarded by DMRC to the Lessor weekly and before undertaking any Scheduled or Unscheduled Maintenance, and take prompt steps for redressal of the grievances stated in each complaint. The action so taken by the Lessor shall be briefly noted in the ‘Action taken’ column of the Complaints Register or in the manner specified by DMRC in accordance with Article 44.1.3.
- 44.2.2 In the event that a complaint shall require an urgent response from the Lessor, the OCC or T.O. or any staff of DMRC, as the case may be, shall inform the DCC at the Maintenance Depot and upon receiving such complaint, the Lessor shall take such other action as may be necessary.
- 44.2.3 No later than 7 (seven) days after each Scheduled Maintenance, the Lessor shall send to DMRC a true photocopy each or a soft copy thereof, as the case may be, of all the pages of the Complaint Register or individual complains received by DMRC or in the manner prescribed under Article 44.1.3, on which any entry and the action taken for redressal of each complaint has been recorded during the course of the preceding quarter, and upon perusal thereof, DMRC may, in its discretion, advise the Lessor to take such further action as DMRC may deem appropriate. The Lessor shall consider such advice and inform DMRC of the remedial action taken by the Lessor.
- 44.2.4 DMRC may in its discretion direct the Lessor to take such further reasonable action as DMRC may deem appropriate for a fair and just redressal of any grievance. In case of any dispute between the Lessor and DMRC regarding redressal of the grievance of the Complainant, the Parties may refer the matter to PMC for resolution of the dispute. The decision of PMC in this regard shall be final.

44.2.5. Where DMRC is of the opinion that the Complainant is entitled to any further redressal or compensation beyond what the Lessor has provided, DMRC may refer the matter to the Consumer Redressal Forum having jurisdiction for its disposal in accordance with the provisions of the Applicable Laws.

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 New Delhi, India 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 Depreciation

For the purposes of depreciation under Applicable Laws, the property representing the capital investment made by the Lessor in the Maintenance Depots and Trainsets shall be deemed to be acquired and owned by the Lessor. For avoidance of doubt, DMRC shall not in any manner be liable in respect of any claims for depreciation to be made by the Lessor under Applicable Laws.

45.4 Delayed payments

- 45.4.1 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 3% (three 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.

45.4.2 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.

45.5 Waiver

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

45.5.2 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.

45.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by DMRC of any Project Agreement, document or Drawing submitted by the Lessor nor any observation or inspection of the Works, operation or maintenance of the Project and Trainsets nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Lessor from its obligations, duties and liabilities under this Agreement, Applicable Laws and Applicable Permits; and
- (b) DMRC shall not be liable to the Lessor by reason of any review, comment, approval, observation or inspection referred to in Sub-Article (a) above.

45.7 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.

45.8 Survival

45.8.1 Termination shall:

- (a) not relieve the Lessor or DMRC, 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.

45.8.2 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 Lessor in relation to licensing, sub-licensing, assignment or transfer of the specified Intellectual Property to DMRC shall survive the Termination in perpetuity.

45.9 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 avoidance of doubt, the Parties hereto agree that any obligations of the Lessor arising from the Expression of Interest or Request for Proposals, as the case may be, shall be deemed to form part of this Agreement and treated as such.

45.10 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 shall 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.

45.11 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.

45.12 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.

45.13 Successors and assigns

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

45.14 Confidentiality

45.14.1 Each Party shall keep the Confidential Information confidential, and shall not disclose the same to any other person without the prior written consent of the other Party.

45.14.2 Clause 45.14.1 shall not apply in the following circumstances:

- (a) any disclosure required by Applicable Laws or in respect of information already in the public domain;
- (b) any disclosure required by any applicable stock exchange listing rule; and
- (c) disclosure to under a Financing Agreement, to the extent required for the purposes of raising funds or maintaining compliance with credit arrangements.

45.14.3. Either Party shall have the right to disclose Confidential Information pursuant to this Agreement or otherwise to the extent required to its personnel and consultants, including technical and legal consultants. Such personnel and/or consultants shall agree and undertake to keep such information disclosed as confidential.

45.14.4. In the event a disclosure is required by Applicable Law, upon reasonable request by the non-disclosing Party, the disclosing Party shall use all reasonable efforts and co-operate with other Party's efforts to obtain confidential treatment of material so disclosed.

45.14.5. Each Party shall utilise the same degree of care to preserve and protect the other Party's Confidential Information from disclosure that they use to protect their own Confidential Information, which shall not be less than reasonable care.

45.14.6. Confidential Information disclosed shall be and remain the property of the disclosing Party. The obligations of the Parties to protect Confidential Information shall survive 3 (three) years from Termination.

45.15. 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 Lessor, 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 Lessor may from time to time designate by notice to DMRC; 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 Lessor may from time to time designate by notice to DMRC;

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

- (b) in the case of DMRC, 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 DMRC Representative or such other person as DMRC may from time to time designate by notice to the Lessor; provided that if the Lessor 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 after 7 (seven) days of dispatch; 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.

45.15 Language

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

45.16 Counterparts

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

45.17 Corrupt and Fraudulent Practices

The Lessor warrants that no sum, in cash or kind, have been paid or shall be paid by or on behalf of the Lessor, to any person by way of fee, commission, or otherwise for securing this Agreement or entering into this Agreement or for influencing or attempting to influence any officer or employee of DMRC, GOI or GNCTD in connection therewith.

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:

“**Accident**” means any occurrence which causes or has the potential to cause death or injury to any staff, passengers of other persons or causes damage to property of DMRC, passenger or any person.

“**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.

“**Actual Annual Availability**” shall have the meaning as set forth in Schedule-Q.

“**Actual Daily Availability**” shall have the meaning as set forth in Schedule-Q.

“**Actual Hourly Availability**” shall have the meaning as set forth in Schedule-Q.

“**Actual Monthly Availability**” shall have the meaning as set forth in Schedule-Q.

“**Actual Time-In**” shall have the meaning as set forth in Schedule-Q.

“**Actual Time-Out**” shall have the meaning as set forth in Schedule-Q.

“**Additional Auditors**” shall have the meaning as set forth in Article 31.2.3.

“**Additional Lease Charges**” shall have the meaning as set forth in Article 23.3.2.

“**Additional Maintenance Charges**” shall have the meaning as set forth in Article 24.4.2

“**Additional Quantity Option**” shall have the meaning as set forth in Article 12.6.1.

“**Additional Quantity Option Order**” shall have the meaning as set forth in Article 12.6.2.

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

- (a) on or before the Scheduled Completion Date, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Relevant Date;

- (b) from the Scheduled Completion Date and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on the Scheduled Completion Date shall be deemed to be the base (the “**Base Adjusted Equity**”) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following the Scheduled Completion Date to the extent of variation in WPI occurring between the Scheduled Completion Date and the Relevant Date; and
- (c) after the 4th (fourth) anniversary of the Scheduled Completion Date, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.24% (zero point two four per cent) thereof at the commencement of each month following the 4th (fourth) anniversary of the Scheduled Completion Date and the amount so arrived at shall be revised to the extent of variation in WPI occurring between the Scheduled Completion Date and the Relevant Date.

For avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the relevant date immediately preceding the Termination Date.

“**Advertiser**” shall have the meaning as set forth in Article 5.7.

“**Advertising Rights**” shall have the meaning as set forth in Article 5.7.

“**Advertising Spaces**” shall have the meaning as set forth in Article 5.7.

“**Affected Party**” shall have the meaning as set forth in Article 32.1.

“**Agreement**” means this Agreement as set forth in Recital (A), its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement between DMRC and the Lessor.

“**Agreement Period**” shall have the meaning as set forth in Article 3.2.

“**AMS**” means the availability management system as described in Schedule R.

“**AMIMS**” shall have the meaning as set forth in Article 16.1.1 (j).

“**Annual Non-Availability**” shall have the meaning as set forth in Schedule-Q.

“**Annual Safety Report**” shall have the meaning as set forth in Article 17.5.1.

“**Applicable Laws**” means all laws, brought into force and effect by GOI or the GNCTD including rules, regulations, notifications, directives, policies, and executive orders, memorandums 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 as on Bid Date, including specific legislations and documents as set out in Schedule-V.

“**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 Supply, operation and maintenance of Trainsets and operation and maintenance of the Maintenance Depots, as the case may be, during the Agreement Period.

“**Appointed Date**” means the date on which all the Condition Precedents are satisfied or waived in accordance with Article 4. For avoidance of doubt, every Condition Precedent shall have been satisfied or waived prior to the Appointed Date and in the event all Conditions Precedent are not satisfied or waived, as the case may be, the Appointed Date shall be deemed to occur only when each and every Condition Precedent is either satisfied or waived, as the case may be.

“**Associate**” or “**Affiliate**” means, in relation to either Party, a person who controls, is controlled by, or is under the common control with such Party { (as used in this definition, the expression “control” means, with respect to a person which is a Lessor, 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 Lessor, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise).

“**Available Trainset**” shall have the meaning as set forth in Schedule-Q.

“**Availability Plan**” shall have the meaning as set forth in Schedule-Q.

“**Award**” shall have the meaning as set forth in Article 42.4.6.

“**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).

“**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.

“**Base Maintenance Charge**” shall have the meaning as set forth in Article 24.2.1.

“**Bid**” or “**Bids**” means the documents in their entirety comprised in the bid submitted by the {Selected bidder/Consortium} in response to the Request for Proposals in accordance with the provisions thereof and will includes the bids submitted by any and all EoI Shortlisted Bidders .

“**Bid Date**” means the last date on which the Bid may have been submitted in accordance with the provisions of the Request for Proposals.

“**Bid Security**” means the security provided by the Lessor to DMRC along with the Bid in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security.

“**Blocks**” means a power block on the Section which will be discharged and/or a traffic block on the Section on which the traffic will not run during Tests and/or Scheduled Maintenance and/or Unscheduled Maintenance

“**Book Value**” means the value of an asset as carried on a balance sheet. In other words, it means (i) cost of an asset minus accumulated depreciation; (ii) the net asset value of a company, calculated by total asset minus intangible assets (patents, goodwill) and liabilities; (iii) the initial outlay for an investment. This number may be net or gross of expenses such as trading costs, sales tax, service charges, GST and so on. It is the total value of the company’s assets that shareholders would theoretically receive if a company were liquidated.

“**Business Day**” or “**Working Day**” means a calendar day in New Delhi that is not a Saturday, Sunday or Public Holiday and on which banks are open for business generally.

“**Cars**” means the Trainset cars to be Supplied and maintained by the Lessor under this Agreement.

“**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 Applicable 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 Applicable 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 in Ownership**” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares or a fresh issue of any of the foregoing, that causes the aggregate holding of the {Selected Bidder/Consortium Members}, in the total Equity to decline below (i) collectively, 100% (one hundred per cent) thereof till the expiry of a period of 2 (two) years from the date of expiry of the Supply Period and (ii) 26% (twenty six per cent) thereof by the Member whose technical and financial experience was relied on at the time of submission of the Bid and 5% (five per cent) of the Total Project Cost, till the expiry of a period of 4 (four) years from the date of expiry of the supply period or successful completion of the Defects Liability Period, whichever is earlier; provided that any material variation (as compared to the representations made by or on behalf of the Lessor during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be,) in the proportion of the equity holding of {the Selected Bidder/ Consortium Members} to the total Equity, if it occurs prior to the expiry of a period of 4 (four years from the date of expiry of the Supply Period or successful

completion of the Defects Liability Period, whichever is earlier, shall constitute Change in Ownership. Any direct and/or indirect transfer of legal or beneficial ownership of any shares, or securities convertible into shares, (i) such that the Consortium Members cease to collectively hold a minimum of 100% (one hundred per cent) of the subscribed and paid-up Equity by the Member whose technical and financial experience was relied on at the time of submission of the Bid and 5% (five per cent) of the Total Project Cost, of the Lessor, or (a) 26% (twenty six per cent) of the Equity, till the expiry of a period of 4 (four) years from the date of expiry of the Supply Period or successful completion of the Defects Liability Period, whichever is earlier, shall constitute a Change in Ownership.

“**Change of Scope**” shall have the meaning as set forth in Article 15.1.1.

“**Change of Scope Order**” shall have the meaning as set forth in Article 15.1.1.

“**Change of Scope Notice**” shall have the meaning as set forth in Article 15.2.1.

“**Civil Works**” means all works including but not limited to masonry, construction, steel/other fabricated structures, plumbing, sanitation, drainage, floorings, roads, tiling, painting, sewage/effluent treatment plant.

“**CMV**” means the catenary maintenance vehicle

“**COD**” means the commercial operations date of a Trainset pursuant to issue of the Completion Certificate by DMRC upon completion of the testing and commissioning requirements in accordance with the Agreement.

“**Complainant**” shall have the meaning as set forth in Article 14.1.1.

“**Complaints Register**” shall have the meaning as set forth in Article 44.1.1.

“**Completion Certificate**” means the certificate issued by DMRC pursuant to Article 12.2.10 (a) and as per Schedule – F of this Agreement.

“**Confidential Information**” means and includes any information shared pursuant to the issuance of the LOA, all books, documents (whether electronic or in hard copy), reports and information made available to a Party for the purposes of performing the Works (irrespective of whether such information was shared orally or in writing or such information that was shared in the course of the performance of this Agreement).

“**Conditions Precedent**” shall have the meaning as set forth in Article 4.1.1.

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

“**Consortium Member**” means a member of the Consortium.

“**Consumables**” shall have the meaning as set forth in Schedule-M.

“**Contractor**” means the person or persons, as the case may be, with whom the Lessor has entered into any of the supply contracts, the O&M contract any other material contract for

operation and/or maintenance of the Depot Sites, Maintenance Depots or the Supply, operation and maintenance of 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 Lessor.

“**Consultant**” means the consultant appointed by Lessor for the Project.

“**Covenant**” shall have the meaning as set forth in Article 5.2.5.

“**CPIIW**” means the Consumer Price Index for Industrial Workers published by Labour Bureau, Ministry of Labour and Employment, 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.

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

“**Damages**” shall have the meaning as set forth in Sub-Article 1.2.1 (y).

“**DCC**” means the depot control center.

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

- (a) the principal amount of the debt which is included in the Financial Package and provided by the Senior Lenders under the Financing Agreements for financing the Supply, maintenance of the Trainsets and the operation and maintenance of Maintenance Depots, as the case may be, (the “**Principal**”) but excluding any part of the Principal that had fallen due for repayment 2 (two) years prior to the Termination Date;
- (b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-Article (a) above until the Termination Date but excluding (i) any interest, fees or charges that had fallen due 1 (one) year prior to the Termination Date, (ii) any penal interest or charges

payable under the Financing Agreements to any Senior Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to DMRC Default; and

- (c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Supply and operation and maintenance of the Trainsets and operation and maintenance of the Maintenance Depots, as the case may be.

provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Lessor, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the Principal thereof shall be dealt with as if such conversion had not been undertaken. Provided further that the Debt Due for the purposes of this Agreement, at any time during the Agreement Period, shall not be more than 70 % (seventy percent) of the Total Project Cost.

“Defects Liability Period” means the period of at least 2(two) years from the COD of the Trainset, for which Lessor shall obtain and provide to DMRC a warranty against any defect or deficiency in the workmanship, material or manufacture of a Trainset from the RSM and/or individual major subsystem manufacturer. .

“Degraded Trainset” shall have the meaning as set forth in Schedule-Q.

“Depot Sites” shall have the meaning as set forth in Article 10.1.

“Designs” or **“Drawings”** means the detailed design and drawings (of any kind) and technical specifications prepared by the Lessor to describe the Works, and which shall be developed from, and in accordance with, the drawings provided in Schedule -A.

“Design Report” shall have the meaning as set forth in Article 11.1.5.

“Detention” shall have the meaning set forth in Schedule-Q.

“Disclosed Data” means any information or data and documents made available or issued to the Lessor in connection with the Project by or on behalf of DMRC whether before or after the execution of this Agreement.

“Dispute” shall have the meaning as set forth in Article 42.1.1.

“Dispute Notice” shall have the meaning as set forth in Article 42.1.1.

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

“Disputed Amounts” shall have the meaning set forth in Article 26.1.2.

“Disruption of Revenue Services” shall have the meaning set forth in Schedule-Q.

“**Divestment Requirements**” means the obligations of the Lessor for and in respect of Termination as set forth in Article 36.1.

“**DMRC**” means Delhi Metro Rail Corporation Limited, hereinafter referred to as DMRC and its authorized successors and assignees at all times.

“**DMRC Default**” shall have the meaning as set forth in Article 35.2.1.

“**DMRC Indemnified Persons**” shall have the meaning as set forth in Article 40.1.2.

“**DMRC’s Representative**” means such person or persons as may be authorised in writing by DMRC 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 DMRC under this Agreement.

“**E&M**” means the electrical and mechanical equipment forming part of the Maintenance Depots.

“**EBE**” shall have the meaning as set forth in Article 17.7.1

“**Emergency**” means a condition or situation that is likely to endanger the security of the individuals on or about the Trainsets or Maintenance Depots, 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 Depot Sites, Maintenance 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 Maintenance Depots, e or Trains, as the case may be, where applicable herein.

“**EoI Shortlisted Bidder**” means the single entity/SPV/JV/Consortium, eligible pursuant to a change, subject to provisions contained in the initial eligibility criteria of EoI and who are eligible to bid under the RFP.

“**Epidemic Defect**” shall have the meaning as set forth in Schedule-M.

“**Epidemic Defect Warranty**” shall have the meaning as set forth in Schedule-M.

“**Equity**” means the paid up equity share capital of the Lessor for meeting the equity component of its financial obligations under this Agreement, and for the purposes of this Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Lessor, and any interest-free funds advanced by any shareholder of the Lessor for meeting such equity component.

“**ETU Workshop**” means the electric traction unit building in possession of DMRC for the purpose of maintenance of Traction Systems as indicated in Maintenance Depot layouts (Annexure 19 of Schedule - V).

“Exchange Rate” means, in respect of Indian Rupees to be converted into U.S. Dollars in accordance with the provisions of this Agreement, the exchange rate as of 12.00 (twelve) noon on the relevant date quoted in Delhi by the State Bank of India and shall be the bill selling rate.

“Existing Trains” means the trains owned by DMRC which are operated on the Line as on the Appointed Date.

“Expression of Interest” or **“EoI”** shall have the meaning as set forth in Recital (C).

“Fault” shall have the meaning as set forth in Schedule-Q.

“Fault Notification Procedure” means the fault notification procedure produced by the Lessor based on the template set out in Annex 3 to Schedule-M and agreed with DMRC in accordance with Clause 15.9.

“FI” or **“Financial Institution”** means the constituent member of the single entity/Consortium/JV/SPV who is responsible for providing finance for the Project.

“Final Train Operation Plan” shall have the meaning as set forth in Article 14.3.

“Financial Closure” means the date on which the Financing Agreements providing for funding by the Senior Lenders have become effective and the Lessor has immediate access to such funding under the Financing Documents.

“Financial Package” means the financial package indicating the total capital cost of the Trainsets, and the means of financing thereof, as approved by the Senior Lenders, on or prior to the Scheduled Completion Date, and includes Equity, all financial assistance specified in the Financing Agreements and Subordinated Debt, if any and shall be deemed to have been modified to the extent as submitted to the Senior Lenders and as approved by the Senior Lenders for the purposes of funding of the Project.

“Financial Model” means the financial model adopted by Senior Lenders, setting forth the capital and operating cost of the Project and revenue therefrom on the basis of which the financial viability of the Project has been determined by the Senior Lenders and includes a description of assumptions and parameters for making calculations and Projections therein.

“Financing Agreements” means the agreements executed by the Lessor in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of Supply, operation and maintenance of the Trainsets, operation and maintenance of Depot Sites and Maintenance Depots, and includes amendments or modifications made to such documents subject to the provisions of this Agreement.

“Fleet” means and includes, for any Year, all Trainsets in respect of which the Lessor has Maintenance Obligations during that Year.

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

“**Force Majeure Costs**” shall have the meaning as set forth in Article 32.7.2.

“**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 Lessor in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner.

“**GNCTD**” means the Government of the National Capital Territory of Delhi.

“**Government Instrumentality**” means any department, division or sub-division of the GOI or the State authority and includes any commission, board, authority, agency or municipal and other local authority or statutory body, including Panchayat, under the control of the Government or the State Government, as the case may be, and having jurisdiction over all or any part of the Depot Sites, Maintenance Depots, or Trainsets, as the case may be, or the performance of all or any of the services, rights or obligations of the Lessor under or pursuant to this Agreement

“**Handback Package**” means the assemblage of information provided by the Lessor in accordance with Article 35.1.3 and containing the information as per Schedule –C.

“**Hourly Non-Availability**” shall have the meaning as set forth in Schedule-Q.

“**Immobile Trainset**” shall have the meaning as set forth in Schedule-Q.

“**Indemnified Party**” means the Party entitled to the benefit of an indemnity pursuant to Article 40.3.

“**Indemnifying Party**” means the Party providing an indemnity pursuant to Article 40.3.

“**Indexed Maintenance Charge**” shall have the meaning as set forth in Article 24.3.

“**Indigenization Requirements**” shall have the meaning as set forth in Article 12.5.2

“**Indirect Political Event**” shall have the meaning as set forth in Article 32.3.

“**Initial Inspection**” shall have the meaning as set forth in Article 37.1.1.

“**Insolvent**” means, in relation to an entity:

- (a) wound up pursuant to the order by the court of competent jurisdiction, subject (except to reconstruct or amalgamate while solvent) to any arrangement, assignment or composition;

- (b) enters into a compromise arrangement with its creditors, after the date of the Agreement;
- (c) resolves by special resolution that it would be wound up voluntarily;
- (d) an attachment or restraint has been levied on the assets of such entity which materially affects such entity's ability to perform its obligations under this Agreement.

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Lessor pursuant to Article 30, and includes all insurances required to be taken out by the Lessor under Article 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, trade marks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, 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.

“Interchange Point” means the Station, stabling lines and nominated sidings described for the pickup/return of the Trainsets by DMRC in the Depot Site or such other area as decided by DMRC and provided in the Master Train Operation Plan.

“Joint Survey” shall have the meaning as set forth in Schedule-C

“Key Date(s)” means a date identified for various stages of the Project as per Schedule - K.

“Key Performance Indicators” shall have the meaning as set forth in Article 20.1.

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

“Lease Charges” shall have the meaning as set forth in Article 23.1.1.

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

“Lessor Default” shall have the meaning as set forth in Article 35.1.1.

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

“**Licence Agreement**” means the agreement executed between DMRC and the Lessor substantially in the format in Schedule – D.

“**Line**” or “**Line-5**” means the completely elevated line of DMRC network, also known as the Green Line operating from Kirti Nagar/Inderlok to City Park (Bahadurgarh) and covers 23 (twenty three) stations, with interchanges available at Kirti Nagar and Inderlok, as on the date of the Agreement.

“**LOA**” means the letter of award referred to in Recital (E).

“**M&P**” means machinery and plant.

“**Maintenance Depots**” means the depots on Line-5 at Bahadurgarh and Mundka handed over under the Licensed Agreement by DMRC to the Lessor under and in accordance with this Agreement together with relevant DMRC works thereon.

“**Maintenance Charges**” shall have the meaning as set forth in Article 24.1.1.

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

- (i) 50% (fifty per cent) of CPIIW; and
- (ii) 50% (fifty per cent) of WPI

“**Maintenance Inspection Report**” shall have the meaning as set forth in Article 18.3.

“**Maintenance Obligations**” shall have the meaning as set forth in Article 16.1.1.

“**Maintenance Period**” shall have the meaning as set forth in Article 16.2.1.

“**Maintenance Programme**” shall have the meaning ascribed to it in Article 16.4.1.

“**Maintenance Requirements of Trainsets**” shall have the meaning as set forth in Article 16.1.2.

“**Mandatory Modification**” means a modification considered necessary for safe and reliable working of Trainsets and which is required to be made under any Applicable Laws including, without limitation, any directive of the Railway Statutory Authority..

“**Master Train Operation Plan**” shall have the meaning as set forth in Article 14.

“**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.

“**Monthly Lease Charges**” shall have the meaning as set forth in Article 23.3.1

“**Monthly Maintenance Charges**” shall have the meaning as set forth in Article 24.4.1.

“**Minimum Guaranteed Annual Availability**” shall have the meaning as set forth in Schedule-Q.

“**Monthly Non-Availability**” shall have the meaning as set forth in Schedule-Q.

“**Non-Available Trainset**” shall have the meaning as set forth in Schedule-Q.

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

“**Non-Traction System**” means the system that is not a part of Traction System.

“**NPV**” shall have the meaning as set forth in Article 39.3.

“**OCC**” means the operation control center.

“**Operational Routes**” shall have the meaning as set forth in Article 21.1.1.

“**O&M**” means the operation and maintenance obligations under the Agreement.

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

“**O&M Contractor**” means the RSM or any other agency, if any, with whom the Lessor has entered into an O&M Contract for discharging O&M obligations for and on behalf of the Lessor.

“**Operation and Maintenance Manual**” shall have the meaning ascribed to it in Article 16.3.1.

“**Operating Obligations**” shall have the meaning as set forth in Article 22.1.

“**Panel of Chartered Accountants**” shall have the meaning set forth in Article 31.2.1.

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“**Party**” or “**Parties**” means the party(ies) to this Agreement.

“**Payment Authority**” shall have the meaning as set forth in Article 26.1.1

“**Payment Due Date**” shall have the meaning as set forth in Article 26.1.2.

“**Payment Security**” shall have the meaning as set forth in Article 26.4.

“**Performance Security**” shall have the meaning as set forth in Article 9.

“**Performance Guarantee**” shall have the meaning as set forth in Article 37.2.3.

“**Permanent Change**” shall have the meaning as set forth in Schedule-Q.

“Permanent Required Hourly Availability” shall have the meaning as set forth in Schedule-Q.

“Permitted Transferee” shall have the meaning as set forth in Article 38.3.

“PMC” means the project management committee, constituted by DMRC at least 30 (thirty) days prior to the COD of the first Trainset, to undertake management and other related operations of the Project. PMC shall be constituted of DMRC’s Representative, a Lessor’s representative and any other person which DMRC may desire. The costs towards the PMC shall be borne equally by the Parties.

“Political Event” shall have the meaning as set forth in Article 32.4.

“Project” shall have the meaning as set forth in Recital (A).

“Project Manager” means a person appointed by the Lessor to act on behalf of the Lessor in accordance with the terms of the Agreement. The Project Manager shall be appointed in accordance with Schedule-A

“Projected Annual Availability” shall have the meaning as set forth in Schedule-Q.

“Project Agreements” means this Agreement, the Financing Documents, the EPC Rolling Stock supply Contract(s), if any, the O&M Contract(s), if any, and any other agreements or contracts entered into by the Lessor with DMRC or others relating to the Project during the subsistence of this Agreement.

“Project Assets” means all assets relating to and forming part of the Project including the Depot Sites, Maintenance Depots crew control and associated rest room and all the Trainsets, ; either handed over by DMRC or installed, deployed or commissioned by the Lessor during the Agreement Period for the purposes of the Project.

“Preventive Maintenance Programme” shall have the meaning as set forth in Schedule-M

“Prompt Response Teams” or **“PR Teams”** shall have the meaning as set forth in Schedule-M

“Prompt Response and Emergency Breakdown Teams” or **“PREB Teams”** shall have the meaning set forth in Schedule-M

“Prototype” shall have the meaning as set forth in Article 11.2.1.

“Prototype Clearance Certificate” shall have the meaning as set forth in Article 11.4.1.

“Provisional Certificate” shall have the meaning as set forth in Article 12.2.7.

“Public Documents” shall have the meaning as set forth in Article 43.1.

“Punch List” shall have the meaning as set forth in Article 12.2.7.

“**Purchase Option**” shall have the meaning as set forth in Article 25.1.1.

“**Purchase Option Exercise Notice**” shall have the meaning as set forth in Article 25.1.1.

“**Purchase Option Price**” shall have the meaning as set forth in Article 25.1.1.

“**Railway Statutory Authority**” means the authority prescribed by the Ministry of Railways and the Ministry of Civil Aviation and includes RDSO and CMRS and such other authorities as may be prescribed by the GOI or the State Government from time to time which have jurisdiction on the Depot Sites, Maintenance Depots, Line and the Project.

“**Reference Exchange Rate**” means, in respect of any one currency that is to be converted into another currency in accordance with the provisions of this Agreement, the bill selling exchange rate as of 12:00 (twelve) noon on the relevant date quoted in Delhi by the State Bank of India, and in the absence of such rate, the average of similar rates quoted in Delhi by the State Bank of India and the Bank of Baroda.

“**Reference Index Date**” for and in respect of a Year, means the last date of the month which shall have closed no later than 30 (thirty) days prior to commencement of that Year.

“**Reference Train Operation Plan**” shall have the meaning as set forth in Article 14.2.

“**Replacement Trainset**” shall have the meaning as set forth in Schedule-Q.

“**Request for Proposals**” or “**RFP**” shall have the meaning as set forth in Recital (D).

“**Required Annual Availability**” shall have the meaning as set forth in Schedule-Q.

“**Required Daily Availability**” shall have the meaning as set forth in Schedule-Q.

“**Required Hourly Availability**” shall have the meaning as set forth in Schedule-Q.

“**Required Monthly Availability**” shall have the meaning as set forth in Schedule-Q.

“**Required Time-In**” shall have the meaning as set forth in Schedule-Q.

“**Required Time-Out**” shall have the meaning as set forth in Schedule-Q.

“**Revenue Hours**” shall have the meaning as set forth in Schedule-Q.

“**Revenue Services**” means the operation of the Trainset by DMRC on the Line for the travel of the passengers.

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

“**RSM**” means the rolling stock manufacturer.

“**Right of Way**” means the partial or full licensed access to and possession of the Depot Sites and Maintenance Depots, together with all easements, unrestricted access and other rights of way, howsoever described, granted by DMRC to the Lessor in accordance with the Licensed Agreement for maintenance of the Trainsets and operation and maintenance of the Maintenance Depots, in accordance with the terms of this Agreement.

“**Safety Requirements**” shall have the meaning as set forth in Article 17.1.1.

“**Safety Related Software**” means any program operating a programmable electronic system whose function is to give assurance of safety for human life or the environment and as detailed in Schedule-A.

“**Scheduled Bank**” means a bank included in the second schedule to the Reserve Bank of India Act, 1934, or modifications thereto.

“**Scheduled Completion Date**” means the date when the last Trainset is scheduled to be commissioned and as set forth in Schedule –K.

“**Scheduled Maintenance**” shall have the meaning as set forth in Schedule-M.

“**Scheduled Trip**” means a scheduled trip of an Available Trainset from one Terminal Station to the next Terminal Station in accordance with the Final Train Operation Plan.

“**Scope of the Agreement**” shall have the meaning as set forth in Article 2.1.

“**Section**” means a section of the Line and/or the Maintenance Depot(s).

“**Second Inspection**” shall have the meaning as set forth in Article 37.1.

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

“**Senior Lenders**” mean the financial institutions, banks, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Lessor under any of the Financing Agreements for meeting Costs and who hold *pari passu* charge on the assets, rights, title and interest of the Lessor.

“**Shift Supervisor**” shall have the meaning set forth in Schedule-R

“**Spares**” shall have the meaning as set forth in Schedule-M.

“**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 Trainsets submitted by the Lessor to, and expressly approved by, DMRC.

“**Specified Hour Slot**” shall have the meaning as set forth in Schedule-Q.

“**Start Date**” shall have the meaning as set forth in Article 4.5.3.

“**State**” means the States of India and includes a union territory.

“**State Government**” means the Governments of States.

“**Station**” means a metro rail station on Line-5.

“**Statutory Auditors**” means an independent and reputable firm of Chartered Accountants duly licensed to practice in India acting as the Statutory Auditors of the Lessor under the provisions of the Companies Act, 2013 including any statutory modification or re-enactment or replacement thereof, for the time being in force, and appointed in accordance with Article 30.

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

- (a) the principal amount of debt provided by lenders and/or the shareholders of the Lessor for meeting the debt component of its financial obligations under this Agreement and subordinated to the financial assistance provided by the Senior Lenders; and
- (b) all accrued interest on the debt referred to in Sub-Article (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and six-month LIBOR (London Inter-Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due 1 (one) year prior to the Termination Date;

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

“**Substitution Agreement**” means the agreement referred to in Article 36 and to be entered into among between the Lessor and, DMRC and the Senior Lenders in the form set forth in Schedule-S, providing, *inter alia*, for the substitution of the Lessor by any other person including DMRC subject to and in accordance with the provisions of this Agreement and the Substitution Agreement.

“**Supply**” means design, manufacture, own, deploy testing, delivery at the Depot Sites and commissioning of a Trainset. The terms Supplied, Supplying shall be construed accordingly.

“**Supply Period**” shall have the meaning as set forth in Article 12.1.

“**Supply Programme**” shall have the meaning as set forth in Article 13.1.1.

“**Suspension**” shall have the meaning as set forth in Article 34.1.

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

“**TCMS**” shall have the meaning as set forth in Schedule-A

“**Temporary Change**” shall have the meaning as set forth in Schedule-Q.

“**Temporary Required Hourly Availability**” shall have the meaning as set forth in Schedule-Q.

“**Terminal Station**” shall have the meaning as set forth in Schedule-Q.

“**Terminate**” or “**Termination**” means the expiry with normal efflux of time or termination of this Agreement and or termination of the Agreement by a Termination Notice due to Lessor Default or DMRC Default.

“**Termination Date**” means the date on which this Agreement and the Lease hereunder expires upon 38 Years after the Appointed Date pursuant to the provisions of this Agreement or is terminated by a Termination Notice.

“**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 DMRC under and in accordance with the provisions of this Agreement, upon Termination.

“**Tests**” means the tests as set forth in Schedule A or prescribed by the Engineer or DMRC’s Representative, or Railway Statutory Authority to be performed by the Lessor or his representative or any agency acting under its direction to determine the conformity of Trainsets with the provisions of this Agreement including safety requirements.

“**Total Charges**” means the sum of the Lease Charges and the Indexed Maintenance Charges.

“**Total Project Cost**” means the capital cost incurred on performance of Works and financing of the Project and shall be limited to the lowest of:

- (a) the capital cost of the Project, as set forth in the Financial Package;
- (b) the actual capital cost of the Project upon completion of the Project; and
- (c) a sum of Rs. 1,200 crore (Rupees one thousand two hundred crore),

provided that in the event of Termination, the Total Project Cost, in case of (a) or (b) above, shall be deemed to be modified to the extent in WPI or Reference Exchange Rate occurring

in respect of Adjusted Equity and Debt Due, as the case may be, in accordance with the provisions of this Agreement.

“Traction System” means the railway electric distribution network used to provide energy for the Trainset. The Traction System may comprise of the contact line systems, return circuit of electric traction systems, running rails of non-electric traction systems, which are in the vicinity of and conductively connected to the running rails of an electric traction system, electrical installations, which are supplied from contact lines either directly or via a transformer, electrical installations in power plants and substations, which are utilized solely for generation and distribution of power directly to the contact line, electrical installations of switching stations.

“Train Operators” or **“T.O.”** means trained train operator deputed by Lessor as set forth in Schedule - T for operation of leased Trainsets on Line-5 throughout the Agreement Period;

“Trains” or **“Trainsets”** means the rolling stock (4 (four) Cars) that are being leased by DMRC from the Lessor for operating on Line-5.

“Trainhour” means the number of Trainsets during an hour.

“Train Operation Plan” means a schedule detailing the effective management of running of the Trainsets on the Line according to a time-table of a day for meeting the traffic demand by DMRC and prepared in consultation with the Lessor including its Maintenance Schedule, provided that the decision of DMRC shall be final and binding.

“Unit Lease Charges” shall have meaning as set forth in Article 23.2.1.

“Unscheduled Maintenance” shall have the meaning as set forth in Schedule-M.

“Valuation Report” shall have the meaning as set forth in Article 25.1.2.

“Vesting Certificate” shall have the meaning as set forth in Article 36.4.

“Warranty” means the obligations to rectify, replace any defect or deficiency in the workmanship, material or manufacture of a Trainset that accrue during Defects Liability Period.

“Wayside S&T installations” means the S&T equipment installed along the track on the Line and in the Maintenance Depots.

“Withdrawn Trainset” shall have the meaning as set forth in Schedule-Q.

“Works” means the work, both permanent and temporary, or services to be carried out, Supplied to the Depot Sites and remedying of any defects, and/ or supplied in accordance with the Agreement and include machinery & plant, rolling stock and materials and their accessories.

“WPI” means the Wholesale Price Index for all commodities as published by the Ministry of Commerce and Industry, GOI and shall include any index which substitutes the WPI,

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

“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 expiring on the date 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
DMRC 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,
Lessor Secretary / Authorised Officer who has
countersigned the

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

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

In the presence of:
1.

2.

To be affixed in accordance with the Articles of Association of the Lessor and the resolution passed by its Board of Directors.