



Agreement	
for	
Operation and Maintenance	
of	
<b>Dabhoi Workshop (ELW/DB) and Maintenance of 3-Phase Locomotive (POH of WAP7 and WAG9, IOH of Motorized Bogie of CO-CO type, IOH of Traction Motor of 6FRA 6068 type) for a period of 18 years</b>	



**Ministry of Railways  
Government of India**

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## OPERATION AND MAINTENANCE AGREEMENT

THIS AGREEMENT is entered into on this {the ..... day of..... 20 }<sup>§</sup>

### BETWEEN

- 1 **THE PRESIDENT OF INDIA** represented by **Sr.DEE/ELW/Dabhoi** Government of India and having its principal office at **PCEE office, Church gate, Mumbai** (hereinafter referred to as the “**Government**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

### AND

- 2 {name of the selected bidder/Lead Member} or {.....Limited, a company incorporated under the provisions of the Companies Act 2013 and}<sup>1</sup>, having its registered office at .....[Office address of the selected Railway PSU shall be filled by Zonal Railways,] (hereinafter referred to as the “the **PSU**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

### WHEREAS:

- (A) The Government has resolved to operate and maintain **Electric loco workshop, Dabhoi and Locomotives** through an operation and maintenance agreement (the “**Agreement**”) which will *inter alia* include up-gradation of the available existing infrastructure/facilities and development of additional infrastructure/facilities to meet the requirement to maintain the Locomotives at **Electric loco workshop, Dabhoi** of Indian Railways in accordance with the terms and conditions to be set forth in this Agreement(the “**Project**”).
- (B) The Government had accordingly invited a single stage two packet Bid proposals by its Request for Proposal No. \*\*\*\*\* dated\*\*\*\*\* (the “**Request for Proposal**” or “**RFP**”) for the selection of the Bidder to whom the Project will be awarded
- (C) The Government had prescribed the technical and commercial terms and conditions in the RFP and invited bids (the “**Request for Proposal**” or “**RFP**”) from the bidders.
- (D) After evaluation of the bids received, the Government had accepted the bid of the {selected bidder(s)} (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 30 (thirty) days of the date of issue thereof.

<sup>§</sup>The provisions in curly parenthesis and the 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 particular

<sup>1</sup>This will apply in case an SPV is incorporated

- (E) {The selected bidder shall undertake and perform the obligations to enter into this Agreement pursuant to the LOA for executing the Project. {Further, in accordance with the terms of the RFP, the {selected bidder had proposed the name of [●] as the selected O&M Contractor (the “**Specialist Sub Contractor**”) for entering into an O&M Contract and the Government has approved the same vide the LOA.}<sup>2</sup>
- (F) Deleted
- (G) The Government has agreed to the said request of the {selected bidder}, and has accordingly agreed to enter into this Agreement with the PSU for ***Operation and Maintenance of Dabhoi Workshop (ELW/DB) and Maintenance of 3 phase Locomotive (POH of WAP7 and WAG9, IOH of Motorized Bogie of CO-CO type, IOH of Traction Motor of 6FRA 6068 type) for a period of 18 years extendable up to 4 (four) years as per the quantity in schedule-L,*** (Filled Blank) 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:

<sup>2</sup> This will apply in the event the bidder is proposing to enter into a sub-contract for maintenance obligations in accordance with Clause 2.2.12 of the RFP.

## ARTICLE 1

**1. DEFINITIONS AND INTERPRETATION****1.1 Definitions**

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 48) 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, PSU, corporation, society, trust, authority, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words **“include”** and **“including”** are to be construed without limitation and shall be deemed to be followed by **“without limitation”** or **“but not limited to”** whether or not they are followed by such phrases;
- (f) references to **“minor construction or alteration”** include, unless the context otherwise requires, investigation, design, developing, engineering, Manufacture, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the **minor construction or alteration** shall be construed accordingly;
- (g) 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;
- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (i) any reference to **“hour”** shall mean a period of 60 (sixty) minutes;
- (j) any reference to day shall mean a reference to a calendar day;
- (k) references to a **“business day”** shall be construed as a reference to a day (other than a

Sunday) on which banks in Delhi are generally open for business;

- (l) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (m) any reference to “**quarter**” shall mean a reference to the period of 3 (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 scheduled completion date shall mean and include such date, period or scheduled completion date 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 PSU or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such PSU or corporation is incorporated or any jurisdiction in which such PSU or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- (u) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause (u) shall not operate so as to increase liabilities or obligations of the Government hereunder or pursuant hereto in any manner whatsoever;
- (v) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing (either in hand or electronically) under the hand of a duly authorised representative of such Party in this behalf and not otherwise;
- (w) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (x) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;

- (y) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”);
- (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; and
- (aa) all documents, drawings, reports, manuals to be supplied in terms of this agreement shall also be accompanied by a soft copy.

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the PSU to the Government shall be provided free of cost and in three copies (in print) and shall also be provided in electronic form, and if the Government is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

### **1.3 Measurements and arithmetic conventions**

All measurements and calculations shall, as far as possible, 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 and errors/discrepancies**

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

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

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

- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- (c) between any two Schedules, the Schedule relevant to the issue shall prevail;

- (d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- (e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- (f) between any value written in numerals and that in words, the latter shall prevail.

## 1.5 Order of Precedence of Documents

- 1.5.1 In the contract agreement, in case of any difference, contradiction, discrepancy, with regard to conditions of tender/contract, specifications, etc., forming part of the tender/contract, the following shall be the order of precedence:
- (a) LOA (Letter of Acceptance/Award)
  - (b) Tender Document - Volume 2- this Agreement
  - (c) Tender Document - Volume 1- RFP (Request for Proposal)
  - (d) Tender Document - Volume 3 - Scope of work and Special terms and Conditions of Contract
  - (e) Indian Railway Standard GCC-2022 Works with all latest correction slips
- 1.5.2 If any terms and conditions are not specifically provided in the Tender Documents (i.e., RFP – Volume 1, Agreement – Volume 2, and Scope of Work along with Special Terms and Conditions – Volume 3), then the provisions contained in the Indian Railway Standard General Conditions of Contract (GCC)–2022, along with all latest correction slips, shall apply mutatis mutandis.

## ARTICLE 2

## 2. SCOPE OF THE AGREEMENT

### 2.1 Scope of the Agreement

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

- (a) deleted
- (b) ***POH of three - phase Locomotives along with overhauling of motorized bogie and traction motor to be done in accordance with the provisions of the agreement and Scope of Work & Special terms and condition of Contract.***
- (c) deleted
- (d) up-gradation of the available existing infrastructure/facilities and development of additional infrastructure / facilities to meet to ***maintenance requirement as proposed of the Locomotives and overhauling of Motorized bogie and Traction motor at Electric loco workshop Dabhoi*** of Indian Railways and its operation in accordance with the provisions of this Agreement
- (e) any other obligations to meet the objective either implied or deemed necessary as per the Agreement.



## ARTICLE 3

**3. AWARD OF CONTRACT****3.1 The Contract**

- 3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Government hereby awards to the PSU the right to maintain the Locomotives for the period specified herein and up-gradation of the available existing infrastructure/facilities and development of additional infrastructure/facilities to meet the requirement to maintain at **Electric loco workshop Dabhoi** of Indian Railways, as set forth herein (the “**Contract**”), and the PSU hereby accepts the Contract and agrees to implement the same subject to and in accordance with the terms and conditions set forth herein.
- 3.1.2 Subject to and in accordance with the provisions of this Agreement, the Contract hereby granted shall oblige or entitle (as the case may be) the PSU to:
- (a) Deleted
  - (b) **POH of the three phase locomotives and overhauling of motorised bogie and traction motor** in accordance with the provisions of this Agreement;
  - (c) Deleted
  - (d) access and right of way and use **Electric loco workshop Dabhoi** over Indian Railways for performing its Maintenance Obligations;
  - (e) Deleted
  - (f) finance, Minor Construction or Alteration, operate and maintain the **Electric loco workshop Dabhoi**
  - (g) perform and fulfil all of the PSU’s obligations under and in accordance with this Agreement;
  - (h) save as otherwise provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the PSU under this Agreement; and
  - (i) Neither assign, transfer or sublet or create any lien or Encumbrance on this Agreement nor transfer, sub-lease or part possession of the **Electric loco workshop Dabhoi** over Indian Railways, save and except as expressly permitted by this Agreement.

**3.2 Agreement Period**

Subject to the provisions of Clause 4.1, this Agreement shall come into effect on the date hereof, and shall expire **upon completion of the maintenance activity as mentioned in the schedule - L**, unless terminated earlier in accordance with the provisions of this Agreement.

## ARTICLE 4

### 4. CONDITIONS PRECEDENT

#### 4.1 Conditions Precedent

4.1.1 Save and except as provided in Clauses 5.2 and 5.3, and in Articles 4, 7, 8, 9, 10, 34, 35, 40, 42, 44 and 47, 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 Clause 4.1 (the "Conditions Precedent").

#### 4.1.2 Not used

4.1.3 The Conditions Precedent required to be satisfied by the PSU within 60 (sixty) days from the date of this Agreement, shall be deemed to have been fulfilled when the PSU shall have:

- (a) provided Performance Security to the Government;
- (b) delivered to the Government, the Confirmation Certificate executed by it and {the selected bidder} in original in the form attached hereto as Schedule-K; and
- (c) delivered to the Government a legal opinion from the legal counsel of the PSU with respect to the authority of the PSU to enter into this Agreement and the enforceability of the provisions thereof:

Provided that upon request in writing by the PSU, the Government may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3.

4.1.4 The PSU shall make all reasonable endeavors to satisfy the Conditions Precedent within the time stipulated and the Government shall provide the PSU with such reasonable cooperation as may be required to assist the PSU in satisfying the Conditions Precedent for which it is responsible.

4.1.5 The PSU shall notify the Government in writing at least once a week on the progress made in satisfying the Conditions Precedent. The PSU shall promptly inform the Government when any Condition Precedent for which it is responsible has been satisfied. For the avoidance of doubt, the Government shall, upon satisfaction of all the Conditions Precedent, notify the PSU of the occurrence of the Appointed Date.

#### 4.2 Not used.

#### 4.3 Damages for delay by the PSU

In the event that (i) the PSU does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within a period of 60 (sixty) days from the date hereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Government or due to Force Majeure, the PSU shall pay to the Government, Damages in an amount calculated at the rate of 0.25% (zero point two five percent) of the Performance Security for each week or part thereof subject to a maximum of 10% (ten percent) of the Performance Security until the fulfilment of such Conditions Precedent.

## ARTICLE 5

**5. OBLIGATIONS OF THE RAILWAY PSU****5.1 Obligations of the Railway PSU (the “PSU”)**

- 5.1.1 The PSU shall maintain the existing infrastructures, infrastructures created by the PSU and M&Ps as per good industrial practice in accordance with the terms and conditions of this Agreement.
- 5.1.2 The PSU shall carry out POH of the locomotives, IOH of motorized bogie and IOH of traction motor in accordance with the terms and conditions of this Agreement.
- 5.1.3 Subject to and on the terms and conditions of this Agreement, the PSU shall at its own cost and expense, procure, finance, operate and maintain the up-gradation of the available existing infrastructure/facilities and development of additional infrastructure/facilities to suit the requirement of maintenance of the locomotives;
- (ii) ***Electric loco workshop Dabhoi*** over Indian Railways for maintenance obligations; and
  - (iii) observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.4 The PSU shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.5 Subject to the provisions of Clauses 5.1.3 and 5.1.4, the PSU shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.6 The PSU shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- (a) PSU shall provide skilled and qualified technicians and experienced staff at the ***Electric loco workshop Dabhoi*** capable of ensuring fulfilment of Maintenance Obligations by the PSU.
  - (b) Deleted.
  - (c) Deleted.
  - (d) up-gradation of the available existing infrastructure/facilities and development of additional infrastructure/facilities at ***Electric loco workshop Dabhoi*** over Indian Railways, including Government Store Depots to keep the material.
  - (e) The existing facilities available at ***Electric loco workshop Dabhoi*** are given in Schedule C. The PSU shall assess the additional requirement and shall procure, install and commission such requirements to comply with Maintenance Obligation.
  - (f) All the above items supplied by the PSU shall be accompanied by drawings, manuals and full operating instructions of the additional requirement assessed to enable them to be used by suitably skilled staff in a non-hazardous manner and to achieve the desired result in terms of accuracy and quality.
  - (g) PSU shall be responsible for the ***complete operation and maintenance of the workshop, maintenance obligations of POH of three phase locomotive along with overhauling requirement of motorized bogie and Traction motor in accordance with Scope of Work & Special terms and Condition of Contract and maintenance and operation of all such plant and machineries used for maintenance activity*** including

those provided by the Government like EOT or any other M&Ps as per the details indicated in Schedule-B and Schedule-C respectively.

- (h) PSU shall also be responsible for internal security, day to day cleaning and housekeeping of the **Electric loco workshop Dabhoi** at its own cost and expenses including maintenance and operation of the Mechanical, Electrical, Pneumatic, Plumbing, Fire Fighting systems etc. so as to keep such facilities in healthy condition and in accordance with the Applicable Laws. A joint inspection of the premises between the PSU and the Government shall be fixed in a trustworthy manner between the Parties to ensure proper functioning of these contracts.
- (i) PSU shall be responsible for internal shunting of locomotives within **Electric loco workshop, Dabhoi**, except those shunting which involve placement and withdrawal of the locomotives in the main line. Operating procedure for the safe procedure for internal shunting shall be **jointly finalized between the nominated representatives of CWM/ELW/Dabhoi and PSU as per shunting procedures mentioned in G&SR**. PSU shall use the battery powered rail cum road shunting for regular shunting of locomotives.
- (j) For the avoidance of doubt, it is clarified it is clarified that **CWM/ ELW / Dabhoi or his nominated representative** may utilize the exclusive facility at **Electric loco workshop Dabhoi** for maintenance of Locomotives, other than those which are under the maintenance obligation of the PSU, on terms and conditions as may be mutually agreed between the Parties without any financial obligation on Government.
- (k) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits, and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
- (l) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Locomotives, **Electric loco workshop Dabhoi**
- (m) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Sub-Contractors in connection with the performance of its obligations under this Agreement;
- (n) ensure and procure that its Sub-Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the PSU's obligations under this Agreement;
- (o) always act in manner consistent with the provisions of this Agreement and not to cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violative of any of the provisions of this Agreement;
- (p) take all reasonable precautions for the prevention of accidents on or around the **Electric loco workshop Dabhoi** and provide all reasonable assistance and emergency medical aid to accident victims; and
- (q) handover the assets of up-graded available existing infrastructure/facilities and developed additional infrastructure/facilities at **Electric loco workshop Dabhoi** of Indian Railways etc. to the Government in accordance with the provisions thereof.
- (r) **Deleted**

- (s) ***Indian Railway Standard GCC-2022 (Works) with all latest correction slips is the part of the tender Document. PSU shall refer to IR Standard GCC-2022 for any terms and conditions not mentioned in the Tender Document (i.e. RFP – Volume 1, Agreement – Volume 2, and Scope of Work along with Special Terms and Conditions – Volume 3).***

## **5.2 Obligations relating to Project Agreements**

- 5.2.1 It is expressly agreed that the PSU shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the PSU from its obligations or liability hereunder.
- 5.2.2 The PSU shall submit to the Government the drafts of all Project Agreements or any amendments or replacements thereto for its review and comments, and the Government shall have the right but not the obligation to undertake such review and provide its comments, if any, to the PSU within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the PSU shall submit to the Government a true copy thereof, duly attested by a Director of the PSU, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Government to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Government. No review and/or observation of the Government and/or its failure to review and/or convey its observations on any document shall relieve the PSU of its obligations and liabilities under this Agreement in any manner nor shall the Government be liable for the same in any manner whatsoever.
- 5.2.3 Notwithstanding anything to the contrary contained in this Agreement, the PSU shall not assign or in any manner create an Encumbrance at ***Electric loco workshop Dabhoi*** over Indian Railways, without prior written approval of the Government, which approval the Government 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 the Government under this Agreement or Applicable Laws.
- 5.2.4 The PSU shall ensure that each of the Project Agreements contains provisions that entitle the Government to step into such agreement, in its sole discretion, in substitution of the PSU in the event of Termination or Suspension (the ***“Covenant”***). For the avoidance of doubt, it is expressly agreed that in the event the Government does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Handing over Date, the Project Agreements shall be deemed to cease to be in force and effect on the Handing over Date without any liability whatsoever on the Government and the Covenant shall expressly provide for such eventuality. The PSU expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Government an acknowledgment and undertaking, in a form acceptable to the Government from the counter party(s) of each of the Project Agreements, where under such counter party(s) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Government in the event of Termination or Suspension.
- 5.2.5 Notwithstanding anything to the contrary contained in this Agreement, the PSU agrees and acknowledges that selection or replacement of an O&M contractor or the Specialist Sub-Contractor or OEM or Approved vendor or eligible vendor and execution of the O&M Contract shall be subject to the prior approval of the Government from national security and

public interest perspective, the decision of the Government in this behalf being final, conclusive and binding on the PSU, and undertakes that it shall not give effect to any such selection or contract without prior approval of the Government. For the avoidance of doubt, it is expressly agreed that approval of the Government hereunder shall be limited to national security, public procurement policy of Government issued by Department for Promotion of Industry and Internal Trade and public interest perspective, and the Government shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Government shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the PSU or its Specialist Sub- Contractor or its Sub-Contractor or OEM or Approved vendor or eligible vendor from any liability or obligation under this Agreement. Further, the approval of the Government with respect to any person proposed by the PSU as an O&M contractor or replacement for Specialist Sub- Contractor or OEM or Approved vendor or eligible vendor shall be subject to the proposed O&M contractor or Specialist Sub- Contractor or OEM or Approved vendor or eligible vendor fulfilling the following qualifications:

Qualifications are as mentioned in the RFP clause no 2.2.2.

It is also agreed that the Government shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the PSU or its Sub-Contractors or the {Specialist Sub-Contractor or any O&M contractor} or OEMs or Approved vendor or eligible vendor from any liability or obligation under this Agreement

### **5.3 Obligations relating to Change in Specialist Sub-Contractor or O&M contractor**

- 5.3.1 The PSU shall not substitute or drop any or Specialist Sub-Contractor or any O&M contractor or OEMs or Approved vendor or eligible vendor not appointed as of date of the Agreement, as the case may be, for maintenance of locomotives, except with the prior written approval of the Government. Such change may be permitted by the Government, only where: PSU
- (a) Deleted
  - (b) the PSU along with its Specialist Sub-Contractor or any O&M Contractor or OEMs or Approved vendor or eligible vendor as the case may be, continues to meet the Eligibility requirements specified in the Bid Document;

### **5.4 Obligations relating to employment of foreign nationals**

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

### **5.5 Obligations relating to employment of trained personnel**

- 5.5.1 The PSU shall ensure that the personnel engaged by it or by its Sub-Contractors or by OEM or by Approved vendor or by eligible vendor in the performance of its obligations under this Agreement are at all times appropriately qualified, skilled, experienced and trained in their respective functions in conformity with Good Industry Practice The Government, for reasons to be specified in writing, direct the PSU to remove any member of the PSU's or Specialist

Sub-Contractor or OEM or Approved vendor or eligible vendor or any O&M Contractor's personnel. Provided that any such direction issued by the Government shall specify the reasons for the removal of such person.

## **5.6 Branding of Locomotives**

The Locomotives or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the PSU or its shareholders / members.

## **5.7 Clean Development Mechanism**

The PSU 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 PSU expressly agrees and undertakes to transfer forthwith to the Government one-half of all revenues, credits or other benefits accruing to it from such mechanism.

## **5.8 Obligations regarding risk of loss or damage**

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

## **5.9 Obligations relating to information**

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

## **ARTICLE 6**

## **6. OBLIGATIONS OF THE GOVERNMENT**

### **6.1 Obligations of the Government**

- 6.1.1 The Government shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2 The Government agrees to provide support to the PSU and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:

- (a) hand over the site of **Electric loco workshop Dabhoi** to PSU for maintenance obligations as per details specified in Schedule C in accordance with the provisions of this Agreement;
- (b) Deleted.
- (c) hand over available existing facilities at **Electric loco workshop Dabhoi** over Indian Railways for maintenance of Locomotives.
- (d) provide and maintain a rail track and electrified traction lines connecting the **Electric loco workshop Dabhoi** to the existing railway network of the Government; for avoidance of doubt the government shall maintain the rail track and electrified traction lines(OHE) within the workshop premises.
- (e) provide and maintain, or cause to be provided, road connectivity at any location on the boundary of the **Electric loco workshop Dabhoi** as required to meet the obligations in accordance with this Agreement;
- (f) The Government may provide the available existing facilities with regard to Railway accommodation, rest houses, community hall, railway clubs etc to the PSU and its staff at the prevailing rates charged to the Railway officials as per extent rules (subject to availability).
- (g) Upon written request from the PSU, assist the PSU in obtaining access to all necessary existing infrastructure facilities and utilities, including free connection for water and electricity subject to payment by PSU to the Government for actual consumption of water and electricity at the rates as applicable, at **Electric loco workshop Dabhoi**. If required the augmentation in connection for water and electricity shall be done.
- (h) upon written request from the PSU, and subject to the PSU complying with the Applicable Laws, provide all reasonable support and assistance to the PSU in procuring Applicable Permits, including environmental clearance for Minor Construction or Alteration and up-gradation of the available existing infrastructure/facilities and development of additional infrastructure/facilities, as required, to meet the requirement to maintain the Locomotives at **Electric loco workshop Dabhoi** of Indian Railways, required from any Government Instrumentality for implementation and operation of the objectives set forth in this Agreement;
- (i) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- (j) support, cooperate with and facilitate the PSU in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
- (k) upon written request from the PSU and subject to the provisions of Clause 5.4, provide reasonable assistance to the PSU and any expatriate personnel of the PSU or its Sub-Contractors including Specialist Sub-Contractor or O&M contractor, as the case may be, to obtain applicable visas and work permits for the purposes of discharge by the PSU or its Sub-Contractors including Specialist Sub-Contractor or O&M contractor, as the case may be, their obligations under this Agreement.
- (l) Further Government will also make available unfurnished covered space at **Electric loco workshop Dabhoi** which are already available and separable to the PSU for setting up offices, Stores, canteen etc., subject to availability.



## ARTICLE 7

**7. REPRESENTATIONS AND WARRANTIES****7.1 Representations and Warranties of the PSU**

The PSU represents and warrants to the Government that:

- (a) it is duly organised and validly existing under the laws of India, and has full power and Authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) 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 will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (f) the information furnished in the Bid by {the selected bidder} and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association {or those of the Selected Bidder} 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 ;
- (h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;

- (k) {it shall at no time substitute or drop Specialist Sub-Contractor except in accordance with the provisions of Clause 5.3};
- (l) {the selected bidder} is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Government to enter into this Agreement with the PSU pursuant to the LOA , and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (m) all assets of the site of ***Electric loco workshop Dabhoi*** etc. shall be handed over to the Government on the Handover Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Government;
- (n) no representation or warranty by it contained herein or in any other document furnished by it to the Government or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (o) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Agreement or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Government in connection therewith;
- (p) all information provided by the {selected bidder} in response to the Request for Proposal or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and
- (q) Neither it nor {selected bidder} have intentionally withheld from the Government, any material information or material document, whose nondisclosure would have a Material Adverse Effect or would have adversely affected the evaluation or acceptance of the Bid submitted by {selected bidder}.
- (r) all undertakings and obligations of the PSU arising from the Request for Proposal or otherwise shall be binding on the PSU as if they form part of this Agreement.

## 7.2 Representations and Warranties of the Government

The Government represents and warrants to the PSU 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 this Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Government's ability to perform its obligations under this Agreement;

- (f) it has complied with Applicable Laws in all material respects;
- (g) Upon the PSU submitting the Performance Security and complying with the covenants herein, it shall not at any time during the term hereof, interfere with peaceful exercise of the rights and discharge of the obligations by the PSU, subject to and in accordance with the provisions of this Agreement.

### 7.3 Disclosure

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

## ARTICLE 8

### 8. DISCLAIMER

#### 8.1 Disclaimer

- 8.1.1 The PSU acknowledges that prior to the execution of this Agreement, the PSU has, after a complete and careful examination, made an independent evaluation of the Request for Proposal, Scope of the Agreement, Specifications and Standards, site of ***Electric loco workshop Dabhoi***, existing structures, local conditions, physical qualities of ground, subsoil and geology and all information provided by the Government or obtained procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. Save as provided in Clause 7.2, the Government makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumption, statement or information provided by it and the PSU confirms that it shall have no claim whatsoever against the Government in this regard.
- 8.1.2 The PSU acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Government shall not be liable for the same in any manner whatsoever to the PSU and its associates or any person claiming through or under any of them.
- 8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement.
- 8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Government to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Government contained in Clause 8.1.1 and shall not in any manner shift to the Government any risks assumed by the PSU 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 PSU and the Government shall not be liable in any manner for such risks or the consequences thereof.

## ARTICLE 9

-Deleted-

## ARTICLE 10

### 10. SITE DETAILS OF GOVERNMENT : *Electric Loco Workshop Dabhoi*

10.1 Deleted

#### 10.2 Site details of *Electric Loco Works Dabhoi*

10.2.1 The site details along with available existing infrastructure/facilities for Maintenance of the Locomotives at *Electric loco workshop Dabhoi* as set forth in Schedule C.

10.2.2 *Electric loco workshop Dabhoi* will be handed over exclusively to Railway PSU. PSU shall upgrade, operate and maintain the *Electric loco workshop Dabhoi*. Emergency repair of other Indian Railway Locomotives shall however be permitted to be undertaken at the *Electric loco workshop Dabhoi* with staff and material provided by Government.

#### 10.3 Replacement / Maintenance of M&Ps of the *Electric loco workshop Dabhoi*

10.3.1 M&Ps available at the time of handing over to PSU or provided by the PSU shall be replaced by PSU after expiry of its codal life. The Government shall reimburse the cost of such replacement subject to the Book Value of such M&P is more than 05 (five) lakh. ***However, the proposal shall be concurred by CWM/ELW/Dabhoi, in terms of technical specifications and cost, before actual purchase.*** The codal life details of the M&P shall be made available to the PSU by the Government. The responsibility for the upkeep, maintenance, and repairs of the M&P available and provided by the PSU shall be with the PSU. In case the replacement is required at any time before the codal life for any reason, the replacement shall be, at the cost of the PSU.

#### 10.4 Memorandum of Understanding (MoU)

10.4.1 An MoU shall be entered between both the Parties, after signing of the Agreement and at the time of Handing Over of the existing infrastructure/facilities to address miscellaneous issues for the smooth performance of the obligation such as use of facilities, canteen, office, stores, maintenance rooms, use of shunting locomotives and shunters and any other assistance required for the purpose considered by the Government as per its Obligations under the Agreement.

A provision for schedule of review and issue of amendment of the MoU based on the learning during the execution of Agreement shall also be provided for.

#### 10.5 Website and App

10.5.1 The PSU shall create and maintain a website and app, at its own cost and expenses, to update maintenance progress, upgradation of facilities etc. based on the MoU between the parties about the features, requirements, review, user identity, security, newsletter covering the latest development etc.

## ARTICLE 11

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ARTICLE 17

## 17. MAINTENANCE OF LOCOMOTIVES

### 17.1 POH Maintenance of three phase Locomotives and overhauling of Motorized Bogie and Traction Motor

- 17.1.1 ***The PSU shall carry out a major overhauling schedule (POH) of Locomotives, under this Agreement*** in accordance with the provisions of Article 17, the Specifications and Standards, the Maintenance Manual and the Maintenance Requirements (the "Maintenance Obligations"). In case of emergencies, the PSU can avail the facilities available in IR sheds/depots/workshops and similarly facilities at PSU can be utilized for IR rolling stock. The expenditure incurred can be adjusted in the payment to the PSU. No assistance shall be given to PSU from the Workshops/Maintenance Sheds for any repair / rehabilitation except in case of exigencies.

***POH maintenance of three phase locomotives and IOH of motorized Bogie and TM overhauling quantity*** is available in schedule-L.

The PSU 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 Government and shall endeavor to protect the Intellectual Property rights of the Government therein

- 17.1.2 The Government shall pay to the PSU a Maintenance Fee, as specified in Article 26, for performance of its Maintenance Obligations.
- 17.1.3 The PSU shall provide its adequate competent and experienced staff for supervision, material, must change items, unit exchange spares and consumables, maintenance management system for maintenance of electric locomotives and operation & maintenance of up-graded available existing infrastructure/facilities and developed additional infrastructure/facilities etc to meet the requirement ***to do the POH of the locomotives, & overhauling of motorized Bogie and Traction motor at Electric loco workshop Dabhoi*** of Indian Railways in accordance with the agreement.
- 17.1.4 In accordance with the requirement of the Maintenance Obligations, the PSU shall ensure readiness of qualified, experienced, competent & trained maintenance staff before the start of the maintenance obligation at ***Electric loco workshop Dabhoi***

- 17.1.5 ***PSU should aim to keep the unit exchange spares according to RB letter no. 2008/Elect.(TRS)\441\5 dated 13/05/2014 or latest to minimize the cycle time of POH up to 15 (fifteen days) days. Cycle time of POH is defined as 25 (twenty five) days, however there will be incentive to PSU, if cycle time is reduced below 21 (twenty one) days. Incentive will be paid as 80% (eighty percent) of the per hour engine cost (according to RB letter No.TC-I/2002/214/5 Pt.A (3318949) dt.04.06.2024 or latest ) for each hour below 21 (twenty one) days. However, this clause is not at all a mandate to PSU but to promote the idea to reduce cycle time.***
- 17.1.6 The cycle time of any locomotive, along with the responsibility for its safety, shall commence from the date and time of handing over of the locomotive by the Railway to the PSU. However, in cases where the locomotive is handed over between 18:00 hours and 08:00 hours of the following day, the cycle time shall be deemed to commence from 08:00 hours on that day. For the avoidance of doubt, if a locomotive is handed over between 18:00 hours on date "X" and 08:00 hours on date "X+1", the cycle time shall commence from 08:00 hours on date "X+1".

## **17.2 Maintenance Period**

- 17.2.1 The PSU shall, in respect of each locomotive allotted for Periodic Overhaul (POH), perform its Maintenance Obligations commencing from the Appointed Date. The Maintenance Period shall be for a duration of 18 (eighteen) years from the Appointed Date. The Government shall have the right, at its discretion, to extend the Maintenance Period for a further period of up to 4 (four) years, on the same terms and conditions, including the Maintenance Fee, which shall remain unchanged during such extended period.
- 17.2.2 The Maintenance Obligations of the PSU shall cease upon completion of the Maintenance Period and no Maintenance Fee shall be due and payable thereafter.

## **17.3 Maintenance Manual & work instructions / procedures**

- 17.3.1 Railways shall provide a repair and maintenance manual (the "**Maintenance Manual**") in pdf format for the predictive, preventive and curative maintenance of Locomotives to the PSU within 30 (thirty) days from signing of the Agreement.
- 17.3.2 PSU shall supply a copy of work instructions related to maintenance activity of various components of locomotive. Implementation of these instructions can be verified by IR personnel to ensure proper quality and correct procedure of maintenance is ensured by the PSU.
- 17.3.3 ***The PSU shall, while preparing work instructions and check sheets, incorporate the already issued relevant SMIs, MS, TCs and O&M manuals therein. Every work instruction and check sheet shall be prepared by integrating the necessary safety guidelines. These may be revised from time to time as and when required; provided, however, that the prior written approval of the authorised representatives of CWM/ELW/Dabhoi shall be obtained before implementation.***

## **17.4 Spares and Consumables**

- 17.4.1 During the POH schedule, the PSU shall, at its own cost and expense, replace and install materials, which get consumed or wear out beyond serviceable limits of a Locomotive, including oils, lubricants, brake blocks, pantograph strips, rubber parts/hoses, fuses, bulbs, seat covers, look out glass, pneumatic valves, miniature circuit breaker, printed circuit boards, bearings and insulators etc. (the “Consumables”). Save and except as provided in this Agreement, the Consumables shall be replaced and installed by the PSU when a Locomotive is brought to the Electric loco workshop Dabhoi in accordance with the provisions of this Agreement.
- 17.4.2 During the Maintenance Period, the PSU shall, at its own cost and expense, replace any part or equipment of a Locomotive, which may be defective or worn out, by a substitute thereof (the “**Spares**”) which may be necessary for the efficient operation and maintenance of a Locomotive depending on kilometers of service, aging etc. - **Not Applicable**
- 17.4.3 The Parties expressly agree that the PSU shall, during the Maintenance Period of a Locomotive, supply and install Spares like cattle-guards, gear case, axle-boxes, bogie liners, break gear components, windshield and under-gear piping/cabling at its own cost and expense; provided, however, that if such supply and installation have arisen on account of accidents, vandalism, arson, riots or natural calamities, the obligations hereunder shall form part of Unscheduled Maintenance and the cost thereof shall be borne in accordance with the provisions of Clause 17.13.- **Not Applicable**
- 17.4.4 The PSU shall maintain a sufficient inventory of Consumables and Spares for timely repair and maintenance of Locomotives. Inventory Management shall be one of the modules of MMIS (Maintenance Management and Information System).
- 17.4.5 The Government shall be entitled to seek details of material consumption on the Locomotive under the Maintenance Obligations of the PSU.
- 17.4.6 PSU may take spares on loan from any Railway Unit and return new one(s) within 90(ninety) days or as mutually agreed with the concerned Railway Unit. In case of non- compliance of the time period agreed under this Clause, Government may recover a cost equal to 110%(one hundred ten percent) of the latest purchase rate of Railway for such spares from the Maintenance Fee.
- 17.4.7 On receipt of request from PSU, Railways shall arrange capital intensive spares like wheel discs, axles, etc., not being available in open market, through Wheel Tyre and Axle (WTA) indent on a chargeable basis.

## 17.5 Scheduled Maintenance

- 17.5.1 Save and except as otherwise provided in this Agreement, the PSU shall perform its Maintenance Obligations at the periodic intervals set forth herein (the “**Scheduled Maintenance**”). Schedule maintenance for the Locomotives shall be carried out for a period of **18 (eighteen) years as mentioned in the schedule L.**
- 17.5.2 The date on which Scheduled Maintenance shall be due hereunder (the “**Due Date**”) shall be determined by the PSU in accordance with the provisions of this Article 17.
- 17.5.3 The PSU shall undertake and carry out the *Operation and Maintenance of Dabhoi Workshop (ELW/DB)* and the *Maintenance of 3-Phase Locomotives* (including the POH of WAP7 and WAG9, IOH of Motorized Bogie of CO-CO type, and IOH of Traction Motor of 6FRA 6068 type)

for a period of 18 (eighteen) years in accordance with the *Scope of Work & Special term and condition of Contract*.

- 17.6 Schedule maintenance (POH) of the locomotives shall be as per the maintenance schedule issued by Railway Board vide letter no. 2022/M(L)/165/5 dated 07.12.2022 or latest. Regarding maintenance of locomotives, PSU shall examine all the guidelines issued from time to time by the Railway Board/RDSO and the same shall be implemented during the maintenance. On receipt of request from PSU, Government shall arrange trial run of any Locomotive on Government Rail lines. The government shall facilitate such trials by providing blocks, crew. PSU staff shall accompany such trials. If there is any failure of the locomotive during such a trial run, the PSU shall attend the same. However, no penalty, damages or levies shall be imposed by Government on PSU for such failure during trial run.**

Locomotives shall arrive working at Workshop on its own power, and if possible working as a train to the nearest station to the Workshop. If any defects/damages are noticed at the Workshop, then a Joint assessment shall be done PSU and Owing Railway Shed to work out additional cost, other than POH. Cost shall be based on Scheduled Rates of Payable Spares along with 10% (ten percent) of the spares cost toward manpower.

During overhauling of Locomotives, all its Must Change Items should be replaced as per Railway Board's L. No. 20216/Elect (TRS)/138/2 Pt., dated 18.01.2023 or latest. Details of work done and modifications carried out shall be entered in the History Book which shall be returned along with the Locomotives.

After completion of POH, the Locomotive shall be subjected to detailed HT & LT testing and shall be given a short trial run. The government shall facilitate such trials by providing blocks, crew. PSU staff shall accompany such trials. If there is any failure of the locomotive during such a trial run, the PSU shall attend the same. However, no penalty, damages or levies shall be imposed by Government on PSU for such failure during trial run.

After completion of the major overhauling schedule of locomotives, the Owing Railway Shed representative shall be called for Testing and Checking of the locomotive by a notice, prior 7(seven) days to the completion of the POH, mentioning the date of completion of POH. The Bookings/Defects highlighted by Owing Railway representative shall be attended by PSU and re-checked by Owing Railway representative. If the Owing Railway Shed representative does not arrive for Testing and Checking of the Locomotives prior to 3 (three) days to the completion of the POH then the Bookings/Defects will be highlighted by the CWM representatives / Quality Assurance team and the same shall be attended by PSU. The Locomotive shall be dispatched to the Owing Railway Shed after the Testing and checking of the locomotive by PSU.

The locomotive shall be returned working on its own power, and if possible working as a train, after POH to the Owing Railway Shed.



**17.7 Deleted**

**17.8 Deleted**

**17.9 Deleted**

**17.10 Deleted**

**17.11 Extension of Due Date**

***The Parties expressly Schedule due date would be decided as per railway board letter No. 2022/M/L/165/5 dated 07/12/2022 or latest***

**17.12 Notice for Scheduled Maintenance**

17.12.1 The PSU shall, no later than:

- (a) 7 (seven) days prior to the anticipated Due Date for Schedule-IA, IB, IC; - **not applicable**
- (b) 15 (fifteen) days prior to the anticipated Due Date for Term Overhaul (TOH); and **not applicable**
- (c) 30 (thirty) days prior to the anticipated Due Date Periodic Overhaul Schedule (POH), as the case may be,

deliver a notice to the Government requiring the specified Locomotive to be made available for such Scheduled Maintenance, and the Government shall, no later than:

- (a) 10 (ten) days from the Due Date for Schedule-IA, IB, IC; **not applicable**
- (b) 20 (twenty) days from the Due Date for Term Overhaul Schedule (TOH) and **not applicable**
- (c) 60 (sixty) days from the Due Date for Periodic Overhaul Schedule (POH), as the case may be, (allowance should be as per railway board later)

deliver the Locomotive to the PSU at the ***Electric loco workshop Dabhoi***. The Government shall, no later than 7 (three) days prior to the date on which the Locomotive shall be made available for Scheduled Maintenance, notify the PSU of the date on which the Locomotive shall be made available hereunder.

17.12.2 Deleted.

**17.13 Unscheduled Maintenance- Not Applicable**

17.13.1 Any maintenance or repair of a Locomotive, not being Scheduled Maintenance, and arising during the **scheduled maintenance** out of any reason including Failure, unsatisfactory performance, defects, deficiencies, accident, vandalism, natural calamity, fire, riots, arson or negligence, shall be undertaken by the PSU as unscheduled maintenance (the **“Unscheduled Maintenance”**). The Parties expressly agree that any and all Unscheduled Maintenance shall be undertaken promptly to procure efficient, safe and reliable operation of the Locomotive.

17.13.2 For the purposes of Maintenance Obligations, failure of a Locomotive, save and except when it occurs solely as a result of any breach of this Agreement by the Government including the negligence of its staff or due to Force Majeure shall mean any of the following events (the **“Failure”**), namely:

- (a) inability to haul the train attached to it for more than **30 (thirty)** minutes on account of a malfunction;

- (b) detention at any railway station for more than **30 (thirty)** minutes on account of a malfunction;
  - (c) detention at any place, not being a railway station, for more than **30 (thirty)** minutes on account of a malfunction;
  - (d) inability to achieve at least 75% of (seventy five percent) of **average speed**. it is ordinarily required to achieve in accordance with Specifications and Standards; or
- 17.13.3 Any and all Unscheduled Maintenance, shall form part of Maintenance Obligations and shall be undertaken by the PSU at its own cost and expense, save and except as provided in Clause 17.13.4.
- 17.13.4 If the total cost of all Unscheduled Maintenance arising out of reasons not attributable to the PSU, including accidents, vandalism, arson, riots or natural calamities, shall in any Accounting Year, exceed 0.025% (zero point zero two five percent) of the sum of Locomotive Price computed for each Locomotive in the Fleet, such excess cost shall be reimbursed by the Government to the PSU and shall be deemed to be additional Maintenance Fee for the respective year. For the avoidance of doubt and by way of illustration, if the total cost of all Unscheduled Maintenance in an Accounting Year is Rs. 10 Crore (Rupees ten crore) and the Locomotive Price for the Fleet under Maintenance Obligations of the PSU is Rs. 3,000 (Rupees three thousand crore), the Government shall pay to the PSU a sum of Rs. 9.25 Crore (Rupees nine point two five crore) as Maintenance Fee for Unscheduled Maintenance.
- 17.13.5 The Parties agree that the PSU shall be entitled to undertake Unscheduled Maintenance of a Locomotive which is attached to a stationary train or is in a railway yard or is in the **Electric loco workshop Dabhoi** and the Government hereby agrees and undertakes to provide the PSU and its representatives access for such maintenance, subject to any operational or safety constraints.
- 17.13.6 Notwithstanding anything to the contrary contained in this Agreement, the PSU shall, upon arrival of a Locomotive at the **Electric loco workshop Dabhoi** for carrying out Unscheduled Maintenance, commence the repair thereof as soon as may be; provided that if the Locomotive is determined to be fit for withdrawal the provisions of Article 30 shall apply.
- 17.13.7 The PSU shall, within 3 (three) days of arrival of a Locomotive at the **Electric loco workshop Dabhoi** for Unscheduled Maintenance arising out of the reasons specified in Clause 17.13.4, furnish to the Government in reasonable detail the particulars of defects, deficiencies or damages and the estimated cost of repair thereof. Upon completion of repairs hereunder, the PSU shall furnish to the Government the actual cost of repairs as determined in accordance with the provisions of Clauses 29.2 and 29.3.
- 17.13.8 The Government may at any time inspect the Locomotive to verify the defect, deficiency or damages reported in accordance with the Clause 17.13.7.
- 17.13.9 The Government shall, no later than 30 (thirty) days of submission of particulars with respect to the actual cost of Unscheduled Maintenance of a Locomotive convey its acknowledgment thereof and in the event such costs exceed the limit specified in Clause 17.13.4, the PSU may submit its invoice for payment in accordance with the provisions of Clause 28.1. The Parties agree that the PSU shall return to the Government all the systems, parts and components that have been replaced by it in the course of such Unscheduled Maintenance.
- 17.13.10 Spares required to repair the locomotives arrived for Unscheduled Maintenance, arising out of reasons not attributable to the PSU, shall be provided either by the PSU or supplied by

Railways till finalization of the list of payable spares. In case spares are provided by PSU then the cost of these spares shall be paid to the PSU, equivalent to the procurement cost of spare by PSU or Railway, whichever is lower. In case the spares provided by the Railway, no any additional cost shall be paid to the PSU for unscheduled maintenance of the locomotives. This Clause 17.13.10 is applicable only up to the 1<sup>st</sup> anniversary of the Appointed Date or date of finalization of the list payable spare whichever is earlier.

#### **17.14 Maintenance Requirements**

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

#### **17.15 Maintenance Organization**

17.15.1 The PSU shall establish a maintenance organization for the maintenance of Locomotives/sub-system/equipment, and shall be responsible in all respects to ensure compliance of the Maintenance Obligations. In case PSU engages specialist sub-contractors, then the PSU shall deploy at least 25% (twenty five percent) of manpower on its roll (manpower directly involved in the Loco maintenance) or in case where PSU carry out the overhauling of the loco Sub-system/ equipment by OEMs/approved vendor/eligible vendor then at least 40% (forty percent) of manpower deployed for Loco maintenance activities, including supervisory staff, shall be on the roll of the Bidder (Railway PSU). The PSU shall be fully responsible to ensure availability of adequate number of suitably qualified and competent manpower for carrying out all supervision and other maintenance obligations during the Maintenance Period. Only skilled and qualified technicians shall be deployed by PSU for Locomotive maintenance activity. PSU will deploy an overall in-charge Chief Project Manager (CPM)/General Manager (GM)/Additional General manager (AGM) assisted by all the key functional managers for POH activities, production/ repairing, inventory management, planning, inspection, quality Control, Finance management, assets maintenance etc.

17.15.2 Deleted

17.15.3 The PSU shall also make use of predictive maintenance by making use of monitoring tools of the Maintenance Management Information System, On-board diagnostic System on the Locomotives and any other means which the PSU shall adopt to minimize maintenance manpower requirement. rules to meet the contractual obligations including the following:

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

The PSU shall provide, within 30(thirty) days from the signing of this Agreement, a Maintenance Quality Plan which shall detail all the operative methods and rules to meet the contractual obligations including the following:

- (a) Maintenance organization and responsibilities
- (b) Management of all the maintenance activities, inclusive of daily Handover/takeover procedures of Locomotives for operations.
- (c) Quality monitoring, management and improvement of the maintenance tasks.
- (d) Configuration management plan for the assets under maintenance.

- (e) Maintenance Safety Management Plan.
- (f) Reporting, inclusive of monitoring of maintenance as per Article 19.

#### **17.16 Prompt Response Teams- Not applicable**

- 17.16.1 The PSU shall engage its own trained personnel and constitute teams comprising of at least 2 (two) such personnel each to provide a prompt response for Unscheduled Maintenance outside the *[Workshop/Depot/Maintenance Shed]* and for conforming with the Maintenance Requirements (the “**Prompt Response Teams**” or “**PR Teams**”). The PSU shall procure that 1 (one) PR Team is available round-the-clock at locations to be jointly agreed between the Parties for every 50 (fifty) Locomotives or part thereof and that such PR Teams are able to leave for their destination, along with a suitable maintenance kit, within 1 (one) hour of being notified of an event requiring Unscheduled Maintenance hereunder. For the avoidance of doubt, the Parties expressly agree that the PSU may, with the consent of the Government, employ other forms of prompt response which can be demonstrated as equivalent to or better than the prompt response specified herein.
- 17.16.2 The PR Team shall, to the extent possible, repair and rectify the defects and deficiencies, including those specified in the Maintenance Requirements, and notify the Government of further repairs, if any, required to be taken for safe and reliable operation of the Locomotive. Upon receiving such a report, the Parties agree to take action as may be necessary to procure safe and reliable operation of the Locomotive.
- 17.16.3 The Parties agree that the obligation of the PSU to provide PR Teams shall be restricted to Operational Routes, and the PSU shall provide assistance for other routes on a ‘best effort’ basis.

#### **17.17 Damages for breach of Maintenance Obligations- Not Applicable**

In the event that the PSU fails to repair or rectify any defect or deficiency in a Locomotive, as set forth in the Maintenance Requirements and within the period specified therein, it shall be deemed to be in breach of this Agreement and the Government shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the rate of 0.1% (zero-point one percent) of the Maintenance Fee of that Locomotive. Recovery of such Damages shall be without prejudice to the rights of the Government under this Agreement, including the right of Termination thereof. Provided that the aforesaid Damages are applicable only for Unscheduled Maintenance arising out of the reasons specified in Clause 17.13.4.

#### **17.18 De-commissioning due to Emergency- Not applicable**

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

### 17.19 Epidemic Defect Warranty

- 17.19.1 The PSU agrees that if any identical defect or deficiency occurs on more than 20% (twenty percent) of Locomotives in any rolling period of 36 (thirty-six) months commencing from Maintenance Obligations, such defect or deficiency shall be deemed to be an epidemic defect (the “**Epidemic Defect**”) and the PSU shall cover such Epidemic Defect under an epidemic defect warranty to be maintained by the PSU for the Maintenance Period (the “**Epidemic Defect Warranty**”).
- 17.19.2 If during the Agreement Period, the Government notifies the PSU that an Epidemic Defect has occurred, the PSU shall remedy such Epidemic Defect on all Locomotives, and shall undertake such other work and measures as may be necessary for enabling the Locomotives to continue in operation in conformity with the Maintenance Obligations until such defects are rectified. Within 30 (thirty) days of having been notified of such Epidemic Defect by the Government, the PSU shall submit to the Government a programme for rectification of the Epidemic Defect as soon as practicable and the PSU and the Government shall negotiate and agree to such programme in good faith, within a period of 30 (thirty) days after receipt of such programme.
- 17.19.3 If the PSU and the Government are unable to agree to a programme within 30 (thirty) days of its receipt, the Government may rectify the defect, or cause rectification of the defect, at the PSU’s cost and expense, and recover the same from the PSU in accordance with Clause 17.20, along with the Damages specified therein.

### 17.20 Government’s right to take remedial measures

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

### 17.21 Overriding powers of the Government

- 17.21.1 If in the reasonable opinion of the Government, the PSU is in material breach of its obligations under this Agreement and, in particular, the Maintenance Obligations, and such breach is causing or is likely to cause material hardship to the Government or render the use of a Locomotive unsafe for operation, the Government may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice, require the PSU to take reasonable measures immediately for rectifying or removing such hardship or unsafe condition, as the case may be.
- 17.21.2 In the event that the PSU, upon notice under the provisions of this Clause 17.21, fails to rectify or remove any hardship or unsafe situation affecting the operation of any Locomotive, within 15 (fifteen) days from the date of the notice, the Government may exercise overriding powers under this Clause 17.21 and take over the performance of any or all the obligations of the PSU to the extent deemed necessary by it for rectifying or removing such hardship or unsafe situation; provided that the exercise of such overriding powers by the Government shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that for any costs and expenses incurred by the Government in discharge of such obligations, the Government shall be entitled to recover them from the PSU in accordance with

the provisions of Clause 17.20 along with the Damages specified therein.

- 17.21.3 In the event of a national emergency, civil commotion, labour unrest or any such other event, the Government may take over the performance of any or all the obligations of the PSU to the extent deemed necessary by it, and exercise such control over the ***Electric loco workshop Dabhoi*** or Locomotives or give such directions to the PSU as may be deemed necessary; provided that the exercise of such overriding powers by the Government shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Government. It is agreed that the PSU shall comply with such instructions as the Government may issue in pursuance of the provisions of this Clause 17.21 and shall provide assistance and cooperation to the Government, on a best effort basis, for performance of its obligations hereunder.

#### **17.22 Restoration of loss or damage to the Locomotives**

Save and except as otherwise expressly provided in this Agreement, in the event that the Locomotive or any part thereof suffers any loss or damage during the Maintenance of locomotive/motorized bogie/traction motor in the workshop from any cause whatsoever, the PSU shall, at its own cost and expense, rectify and remedy such loss or damage forthwith so that the Locomotive conforms to the provisions of this Agreement.

#### **17.23 Modifications to the Locomotives**

The PSU agreed to implement, integrate and operationalize all the modifications as per the Modification Sheet (MS), Technical Circular (TC) and Special Maintenance Instructions (SMIs) issued from time to time by RDSO. The modification shall be carried out during the scheduled visit of the locomotives. To work out the time frame and cost of modification, a MOU shall be signed between Government and the PSU to mutually finalize frame and cost of the modifications and Special Maintenance Instructions (MS, TC & SMIs) carried out shall be paid to the PSU along with the Maintenance Fee in accordance with the Clause 26.3. However, all SMIs, TCs, MS issued before the bid due date are part of maintenance obligations.

If new equipment/sub-assembly/sub-system such as EoTT, DPCWS, WFL, KAVACH, RMS and Mobile Train Radio Communication (MTRC) etc. are installed in some of locomotives of ***Electric loco workshop Dabhoi*** at the time of Award of Contract then maintenance of such equipment shall be covered under maintenance obligation of the PSU. After award of the contract, if the Government supplies such equipment to the PSU for installation in the balance locomotives of the holding of the ***Electric loco workshop Dabhoi*** the Government shall pay 10% of the procurement cost of the said item to the PSU towards installation, integration, testing etc. If the Government arranges for installation of such equipment in the Locomotives after award of the contract through OEMs or third party, the PSU shall facilitate installation, integration, testing etc of such equipment free of cost. Maintenance of all such equipment shall be covered under maintenance obligation of the PSU.

If new equipment/sub-assembly/sub-system are installed in all of locomotives of ***Electric loco workshop Dabhoi*** after award of the Contract then maintenance of such equipment shall not be covered under maintenance obligation of the PSU. After award of the contract, if the Government supplies such equipment to the PSU for installation in the balance locomotives of the holding of the ***Electric loco workshop Dabhoi***, the Government shall pay 10%(ten percent) of the procurement cost of the said item to the PSU towards installation, integration, testing etc. If the Government arranges for installation of such equipment in the Locomotives after award of the contract through OEMs or third party, the PSU shall facilitate installation, integration, testing etc

of such equipment free of cost. Additional maintenance fee, as mutually agreed between Government and the PSU, shall be payable for maintenance of such additional new equipment/sub-assembly/sub-system

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

#### **17.24 Maintenance Support for Operation of Locomotives- not applicable**

- 17.24.1 To provide maintenance support in accordance with the provisions of this Agreement, the PSU shall, without prejudice to its Maintenance Obligations, set up and operate, round the clock, a control centre (the “**Helpline**”) connected to the operation control centres of the Government (the “**Operation Control Centres**”). The Helpline shall provide such advice and guidance to the Operation Control Centres as may be necessary for performing its Maintenance Obligations hereunder.
- 17.24.2 The Parties agree that the location of the Operation Control Centres shall be restricted to Operational Routes and shall be at least 300 km (three hundred kilometres) apart from one another. The likely locations for the Operation Control Centres shall be either at Government *[Workshop/Depot/Maintenance Shed]* or at the Divisional HQ or at any other location mutually agreed between the Parties
- 17.24.3 The Government shall, upon request from the PSU, provide covered space of at least 30 (thirty) square meters at each Operation Control Centre to facilitate the PSU in performing its Maintenance Obligations.
- 17.24.4 Deleted.

#### **17.25 Deleted**

- 17.25.1 Deleted.
- 17.25.2 Deleted.
- 17.25.3 Deleted

#### **17.26 Excuse from performance of Maintenance Obligations -Not Applicable**

The PSU shall not be considered in breach of its Maintenance Obligations under this Agreement if any Locomotive is not available for operation on account of any of the following:

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

Provided, that any such non-availability and particulars thereof shall be notified by the PSU to the

Government without any delay:

Notwithstanding the above, the PSU shall keep all unaffected Locomotives available for operations.

#### **17.27 Maintenance Report - Not Applicable**

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

- a. an analysis of the defects and deficiencies affecting the performance or safe operation of the Locomotive;
- b. time of arrival of the Locomotive in the ***Electric loco workshop Dabhoi***, and the time of departure of the Locomotive from the ***Electric loco workshop Dabhoi*** or the time of rectification of malfunction by the PR Team at the site of Failure, as the case may be, counter signed by the driver of the Locomotive or by any other Railway official in the event the driver is not available; and
- c. details of Failure including date and time of such Failure, counter signed by the Government Representative.

#### **17.28 Predictive Maintenance- Not applicable**

- 17.28.1 The PSU shall perform predictive maintenance, for all Locomotives equipped with Remote Monitoring System (RMS), in line with the best practices in railway industry to reduce safety hazards, operation downtime and minimizing the Total Cost of Ownership (TCO). The PSU shall deploy, a continuous remote monitoring and diagnostic predictive maintenance tool that enables turn asset condition data into action for operators and maintainers by using advanced algorithms to predict the future state of given component, its remaining useful life ("**Predictive Maintenance Tool**").
- 17.28.2 The Predictive Maintenance Tool shall be able to monitor in real time situations to better support Locomotive operation in case of problem during running.
- 17.28.3 The predictive maintenance information shall be shared on the web access so that the status and location of Locomotives can be monitored in real time. It shall enable receive of data from the on-board systems on the Locomotives in operation in order to capture failure and operating data while the Locomotive is still in operation ("**Predictive Maintenance Information**").
- 17.28.4 The database of failure and events produced by the Predictive Maintenance Tool shall allow detecting, developing anomalies and failure trends at fleet level. The Predictive Maintenance Tool shall not only monitor fleet health but also assist with advanced data analytics to predict their remaining useful life of assets, so they are replaced on a truly as-needed basis.
- 17.28.5 The Predictive Maintenance Tool system should have the minimum following features:
  - (a) Real time condition monitoring of Locomotive
  - (b) Real time data transmission
  - (c) Web-based user interface with various dashboard views, Fleet status, event status, fleet location/map etc/
  - (d) Data analysis/reporting function
  - (e) Alert function ('watched faults') and e-mail notifications



- (f) Data import/export via XML and other data formats.

The comprehensive predictive maintenance system, including but not limited to the Predictive Maintenance Tool/Periodic Maintenance Information must focus on asset parameters which will provide meaningful indicators in detecting faults, particularly those with high risk or impact.

### 17.29 Maintenance Management Information System

17.29.1 Daily monitoring of all Locomotives shall be carried out from the Government Maintenance Depot as per Clause 10.2.1, by making use of event and fault data recorded in TCMS. TCMS fault & event data collected through remote monitoring or otherwise shall be integrated with 'Maintenance Management Information System' provided in the Electric loco workshop Dabhoi by PSU on a real time basis. This data / Predictive Maintenance Information shall be interfaced with the Government's Asset Management System and authorised Government representatives shall be able to access the TCMS fault & event data on real time.- **Not Applicable**

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

- (a) Scheduling and controlling Maintenance work, outstanding work and new work planning;
- (b) Technical incident, failures, fault control and monitoring including trend analysis;- **Not Applicable**
- (c) Materials management ;
- (d) Configuration control; - **Not Applicable**
- (e) Reporting the following : - **Not applicable**
  - I. Fleet status;
  - II. Kilometres travelled;
  - III. RAMs and Key Performance Indicators;
  - IV. Preventive Maintenance Summary Report;
  - V. Weekly/monthly incidents (failures/faults/unusual) statement;
  - VI. Corrective Maintenance Summary Report;
  - VII. Action plan follow up report;
- (f) Effective Maintenance planning and efficient fault diagnostics; and - **Not Applicable**
- (g) Reactive monitoring to identify past or existing faults, failures or incidents leading to a Service Affecting Failure.- **Not Applicable**
- (h) PSU will supply a copy of work instructions related to maintenance activity of various components of the locomotive. Implementation of these instructions can be verified by IR personnel to ensure proper quality and correct procedure of maintenance is ensured by the PSU.
- (i) Integration with Software for Loco Asset Management (SLAM) and Workshop Information System (WISE), Government shall facilitate PSU for the integration of the same.

### 17.30 Obsolescence Management

- (a) The PSU is required to manage obsolescence of all Equipment, Spares and Consumables to enable the Locomotives to continue in service for the duration of the Agreement.
- (b) This obsolescence management service must include:

- i. timely identification of any obsolete items of equipment;
- ii. development of mitigation strategies to minimise the impact of the imminent obsolescence on Locomotives or equipment operations or availability, including:
  - establishing alternative supply paths;
  - provision of equivalent or interchange parts or equipment; and
  - development of replacement products or design modifications to accept market available alternatives.
- (c) The obsolescence management service must form part of the cost included in the Agreement, and separate additional cost claims must not be contemplated over the duration of the Agreement.

### **17.31 Locomotive Wheel Wear Management- not applicable**

17.31.1 The PSU shall put in place the wheel wear management of the Locomotive to achieve a good wheel life and reduced wheel turning frequency without any compromise on Safety Requirement.

17.31.2 Deleted

17.31.3 Deleted

17.31.4 Deleted

## **ARTICLE 18**

### **18. SAFETY REQUIREMENTS**

#### **18.1 Safety Requirements**

The PSU shall develop, implement and administer a safety programme for providing a safe environment on or about the Locomotives, and the ***Electric loco workshop Dabhoi***, and shall comply with the safety requirements set forth in this Article 18 and Schedule-H (the “**Safety Requirements**”). PSU shall be fully responsible for ensuring safety in the activities performed within the shed/depot/workshop, which can be audited and cross-checked by Railway at any point of time at short notice.

#### **18.2 Guiding Principles**

- 18.2.1 Safety Requirements aim at reduction in injuries, loss of human life and damage to property resulting from accidents on account of the Locomotives or in the ***Electric loco workshop Dabhoi***, irrespective of the person(s) at fault.
- 18.2.2 Safety Requirements shall apply to all phases of Minor Construction or Alteration, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.

#### **18.3 Obligations of the PSU**

- 18.3.1 The PSU shall abide by the following to ensure safety of the Locomotives, and Electric loco workshop Dabhoi, human life and property:
  - (a) instructions issued by Commissioner of Railway Safety;
  - (b) Applicable Laws and Applicable Permits;
  - (c) A.C. Traction Manual, General Rules and Subsidiary Rules issued by the Government;

- (d) provisions of this Agreement;
- (e) relevant standards/guidelines contained in internationally accepted codes; and
- (f) Good Industry Practice as intimated to and approved by the Government.

- 18.3.2 The PSU shall impart safety training to its employees and Government's staff, and shall at all-time be responsible for observance of safety procedures by its staff, Specialist Sub-Contractor, Sub-Contractor and agents.
- 18.3.3 The PSU shall be responsible for undertaking all the measures under its control to ensure safe operation of Locomotives.
- 18.3.4 The PSU agrees that the Government shall be entitled to inspect any Locomotive to verify adherence to Safety Requirements and the PSU shall be obliged to facilitate such inspection and implement the corrective measures identified in such inspection.

#### **18.4 Safety measures during Minor Construction or Alteration**

The PSU shall, during Minor Construction or Alteration for up-gradation of the available existing infrastructure/facilities and development of additional infrastructure/facilities to meet the requirement to maintain the Locomotives at ***Electric loco workshop Dabhoi***, provide an environment for procuring the safety of human life and property in accordance with Applicable Laws and Good Industry Practice.

#### **18.5 Annual Safety Report**

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

### **ARTICLE 19**

#### **19. MONITORING OF MAINTENANCE**

##### **19.1 Maintenance status reports**

- 19.1.1 The provisions of this Article 19 shall apply to all the Locomotives under the Maintenance Obligations of the PSU.
- 19.1.2 The PSU shall, no later than 7 (seven) days after the end of Maintenance Schedule furnish to the Government a schedule maintenance report stating in reasonable detail the maintenance services performed by the PSU on the Locomotives and the defects and deficiencies that required rectification. The PSU shall promptly give such other relevant information as may be required by the Government.

The proforma for submission of such report shall be finalized before the start of the Maintenance Obligations and shall form part of the Maintenance Manual with provision to review every three years similar to review of the Maintenance Manual. Before the proforma is finalised,

there may be a requirement of revision of the proforma earlier than three years and can be done through a joint action of the Government and PSU.

## 19.2 Reports of unusual occurrence

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

- (a) failure of Locomotives;
- (b) accidents involving Locomotives;
- (c) trouble on Locomotives during operation (During trial run)
- (d) Unscheduled Maintenance performed on Locomotives.- Not Applicable
- (e) Route Cause Analysis
- (f) Additional Work other than the Schedule maintenance
- (g) Failures/Attention of locomotive within 100 days

## 19.3 Inspection

19.3.1 The Government shall be entitled to inspect the Locomotives after any Scheduled or Unscheduled Maintenance, as the case may be, for evaluating the compliance of Locomotives 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 PSU of the same for taking remedial measures in accordance with the provisions of Clause 19.5. For the avoidance of doubt, any inspection undertaken after a Locomotive is declared available under the provisions of Clause 21.2.2 shall be deemed to form part of Available Hours under the provisions of Clause 21.2.1.

19.3.2 Final safety certification of rolling stock shall be given by nominated Railway officials, as nominated by the Government, based on records and certificates by PSU and after random super- checking after each schedule/un-schedule attention in ***Electric loco workshop Dabhoi***.

## 19.4 Tests

19.4.1 For determining that the maintenance of Locomotives conforms to the Maintenance Obligations, the Government may require the PSU to carry out, or cause to be carried out, the tests specified by it in accordance with Good Industry Practice. The PSU shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Government and furnish the results of such tests to the Government within 15 (fifteen) days of such tests being conducted. One half of the costs incurred on such tests shall be reimbursed by the Government to the PSU.

19.4.2 Upon written request from the PSU, Railway shall facilitate trial run of rolling stock on IR network.

## 19.5 Remedial measures

19.5.1 The PSU shall repair or rectify the defects or deficiencies, if any, set forth in the Maintenance Inspection Report or in the test results referred to in Clause 19.4 and furnish a report in respect

thereof to the Government within 15 (fifteen) days of receiving the Maintenance Inspection Report or the test results, as the case may be.

- 19.5.2 The Government shall require the PSU to carry out or cause to be carried out tests, at the cost of the PSU, to determine whether the remedial measures have brought the Locomotives into compliance with the Maintenance Obligations and Safety Requirements, and the procedure set forth in this Clause 19.5 shall be repeated until the maintenance of Locomotives conforms to the Maintenance Obligations and Safety Requirements. In the event that remedial measures are not completed by the PSU in conformity with the provisions of this Agreement, the Government shall be entitled to recover Damages from the PSU under and in accordance with the provisions of Clause 17.17. For the avoidance of doubt, the remedial measures hereunder and the tests relating thereto shall be deemed as part of Unscheduled Maintenance, and the period for which the Locomotive remains out of service on account thereof shall be included in Non-Available Hours.

## **19.6 Responsibility of the PSU**

- 19.6.1 It is expressly agreed between the Parties that any inspection carried out by the Government or the submission of any Maintenance Inspection Report by the Government as per the provisions of this Article 19 shall not relieve or absolve the PSU of its obligations and liabilities hereunder in any manner whatsoever.
- 19.6.2 It is further agreed that the PSU shall be solely responsible for adherence to the Key Performance Indicators specified in Article 21.

## **ARTICLE 20**

### **20. Electric loco workshop Dabhoi**

#### **20.1 Electric loco workshop Dabhoi**

- 20.1.1 For discharging its Maintenance Obligations under and in accordance with the provisions of this Agreement, the available existing maintenance infrastructure/facilities at ***Electric loco workshop Dabhoi*** shall be utilised by the PSU in accordance with the provisions of this Article 20 (the "***Electric loco workshop Dabhoi***").
- 20.1.2 ***Electric loco workshop Dabhoi*** at the place specified in Clauses 20.1.7, 20.1.8 & 20.1.9 shall be provided by the Government to the PSU in accordance with the provisions of Clause 10.2.
- 20.1.3 The ***Electric loco workshop Dabhoi*** includes an electrified maintenance line, with isolation arrangement, for repair and maintenance of locomotives.
- 20.1.4 Connection for electricity and water at the ***Electric loco workshop Dabhoi*** shall be provided free of cost by the Government, the consumption of utilities will be chargeable to the PSU on actual consumption basis.
- 20.1.5 The PSU agrees and undertakes to up-grade the available existing infrastructure/facilities and develop additional infrastructure/facilities to meet to maintain Electric Locomotives at ***Electric loco workshop Dabhoi*** of Indian Railways to comply with the minimum facilities specified in Clause 20.2.1. The PSU shall submit its plan, all details related to execution of the work with cost assessment of the additional facility required to comply with the requirement, and operationalize the ***Electric loco workshop Dabhoi*** on or prior to the date specified in Clause 20.1.8.

In the event of delay for any reason other than Force Majeure or breach of this Agreement by the Government, and the PSU is unable to provide any agreed facility above due to a long lead time, the same shall be intimated to the Government at the time of submission of the plan with the assurance that delay in provision of such facility will not delay in the start of the maintenance of Locomotive in accordance with Maintenance Obligation.

The Parties agrees that if there is a delay in the start of meeting the Maintenance Obligations of Locomotive, the PSU shall pay to the Government, a delay damages in a sum equal to Rs. 100,000 (Rupees one lakh) for each day of delay from the due date of Maintenance Obligation till the start of the Maintenance Obligation. The Parties also agrees that the PSU shall complete 80% (eighty percent) of the planned work within the time as specified and delay beyond this shall result an additional damages of 0.5% (zero point five percent) of the cost of the balance work per week of delay till completion of minimum 80% (eighty percent) of the planned work. The Parties agrees that this delay damages is over and above what is specified in Clause 20.1.5 which is on account of non-start of the Maintenance Obligation and is a reasonable pre-estimate of the Damages for an Agreement of this nature.

The PSU shall be responsible, at its own cost and expense, for Minor Construction or Alteration, of all infrastructures inside the ***Electric loco workshop Dabhoi*** during the execution of the Maintenance Obligation as and when required and agrees to maintain the infrastructure and M&P as per Good Industry Practice.

- 20.1.6 In case of exigencies, the PSU can avail the facilities available in IR sheds/depots/workshops and similarly facilities at PSU can be utilized for IR rolling stock. The expenditure incurred can be adjusted in the payment to the PSU.
- 20.1.7 To discharge the Maintenance Obligations with respect to all the Locomotives of ***Electric loco workshop Dabhoi***, shall be provided by the Government in accordance with the provisions of Article 10.2
- 20.1.8 The PSU shall not later than 2nd (second) anniversary of the Appointed Date, upgrade/develop the ***Electric loco workshop Dabhoi***. In order to meet the said requirement, the PSU shall submit within 4 (four) months of the Appointed Date, stage wise schedule of works to be done, and the target date planned for completion of the works so that it is completed before the 2nd (second) anniversary of the Appointed Date.
- 20.1.9 PSU shall obtain the required statutory clearance like environmental etc. from the Government on its own cost and expenses. PSU shall ensure proper disposal of scrap and hazardous waste.
- 20.1.10 deleted
- 20.1.11 deleted

## **20.2 Maintenance Facilities**

- 20.2.1 The PSU shall, at ***Electric loco workshop Dabhoi***, upgrade, develop and operate the maintenance facilities and equipment necessary for performing its Maintenance Obligations at its own cost and expense under and in accordance with this Agreement. Such maintenance facilities and equipment shall include the minimum but not limited to:
  - (a) portable lifting jacks with capacity to lift the complete locomotive with or without bogies as per the maintenance plan of the PSU;
  - (b) fork lifters for replacement of under-slung equipment;

- (c) work and test benches to facilities complete testing of spare parts before installing on the locomotive;
- (d) centralized compressed air supply system with a distributed pneumatic line to different sections;
- (e) evacuation plant for sucking out dust/dirt with suitable dust disposal arrangements;
- (f) battery charging facilities;
- (g) measuring, testing and recording devices;
- (h) all types of special tools, jigs & fixtures;
- (i) Wi-Fi data retrieval and diagnostic system facilities;
- (j) hardware (2 desktop computers) and software for the Maintenance Management Information System (the “**MMIS**”) including inventory management system and all working systems shall be dovetailed accordingly with a minimum of paper work.
- (k) pneumatic torque wrench lines;
- (l) Surface wheel lathe
- (m) electrical overhead travelling cranes for locomotive lifting and equipment lifting with capacity to lift motorized bogie, transformer etc.;
- (n) paint shop (a covered spray-painting booth for painting 1 (one) complete Locomotive at a time with accessories /fixtures to paint locomotive parts like bogie, traction motor etc.);
- (o) wheel repair shop (shall include Wheel Press, Axle Journal Turning and Burnishing (AJBT) Machine, Vertical Turret Lathe, Wheel Disc Extractor etc),
  - (i) the availability of wheel repair shop facility including surface wheel lathe shall be six months prior to the likely need for wheel changing and not in accordance with clause 20.1.8, and the plan shall be detailed in the MoU with the Government as per 20.1.5;
  - (ii) The PSU shall submit a proposal if a multifunctional M&P for wheel shop is available as an alternative to the listed requirement.
- (p) Overhead crane (upgradation of sub-clause (t), (u) & (v) below as required, based on the maintenance philosophy of the PSU as per clause 20.1.5);
- (q) 5 (five) ton crane with auxiliary hook;
- (r) 45 (forty-five) ton crane with 10 (ten) ton auxiliary hook;
- (s) 10 (ten) ton crane with 5 (five) ton auxiliary hook;
- (t) Laboratory to carry out all condition monitoring test of oil , lubricant, axle, bearing, insulation level , metals, USFD, crack detection;
- (u) Standby power back up facility suitable to its requirement; and
- (v) A Depot control centre equipped with work desk computers along with all its auxiliary items etc,
- (w) road-rail vehicle for shunting etc.

#### 20.2.2 Deleted

### 20.3 Inspection and Warranty

- 20.3.1 The PSU shall ensure that the infrastructure and maintenance facilities at the ***Electric loco workshop Dabhoi*** are not less than (in terms of quality and quantity) the infrastructure and maintenance facilities provided as in Clause
- 20.2.1. The Government reserves the right to inspect the infrastructure and maintenance facilities at the ***Electric loco workshop Dabhoi*** in order to ascertain the compliance of Clause 20.3 by the PSU.
- 20.3.2 With respect to all the maintenance facilities by up-gradation of existing infrastructure/facilities and by developing the additional infrastructure/facilities and equipment to be provided by the PSU at the ***Electric loco workshop Dabhoi*** the PSU agrees that for a period of 24 (twenty four) months, commencing from the date on which the relevant maintenance facility and/or equipment is commissioned at the ***Electric loco workshop Dabhoi***, in case of any defect arising in any of the said maintenance facility and/or equipment on account of faulty workmanship or material or manufacture/construction, the PSU shall, at its own cost and expense, undertake repair/rectification of such defects within a reasonable timeframe as per Good Industry Practice.
- 20.4 Payment for up-gradation/development of the facilities at *Electric loco workshop Dabhoi***
- 20.4.1 Lump sum payments of the average cost of 05 (five) locomotives for Workshop or total value of Project Assets provided by the PSU for the up-gradation of the available existing infrastructure/facilities and development of additional infrastructure/facilities at ***Electric loco workshop Dabhoi***, whichever is lower, shall be paid to the PSU upon completion of all the facilities required for Maintenance Obligations of the Locomotives by the PSU. The above payment will become due and payable when running bill value exceeds minimum 5 (five) Crore and on quarterly basis.

## ARTICLE 21

### 21. KEY PERFORMANCE INDICATORS

#### 21.1 Key Performance Indicators

Without prejudice to the obligations specified in this Agreement, the PSU shall perform its Maintenance Obligations such that the Locomotives under the Fleet, achieve the performance indicators specified in this Article 21 (the “**Key Performance Indicators**”).

#### 21.2 Availability:

##### { In case of Workshop: Time for POH/IOH

The duration of POH activities in Workshop shall be as per the RDSO letter no. EL/3.1.28 (DML) dated 13.01.2023 or latest.

PSU agrees that for every delay of every one week or part thereof, as compared to the time as per RDSO letter no. EL/3.1.28 (DML) dated 13.01.2023 or latest, it shall pay to the Government 0.5% (zero point five percent) of the Maintenance Fee of POH for the concerned Locomotive as Damages.}

**OR**



**{In case of Maintenance Shed: - Availability - NOT APPLICABLE**

- 21.2.1 During the Maintenance Period, a Locomotive shall be deemed to be available for operation at all times, save and except the Non-Available Hours specified in Clause 21.2.2, and the sum of hours in an Accounting Year when a Locomotive is deemed to be available shall be reckoned as available hours (the “**Available Hours**”).
- 21.2.2 The Parties agree that the period for which a Locomotive is deemed to be not available for operation (the “**Non-Available Hours**”) shall be reckoned as follows:
- (a) in the case of Scheduled Maintenance, the period between entry of a Locomotive at the **Electric loco workshop Dabhoi** and the time when it is declared by the PSU or the Government, as the case may be, as available for operation;
  - (b) in the case of Unscheduled Maintenance arising out of the reasons specified in Clause 17.13.4, the period between entry of a Locomotive at the **Electric loco workshop Dabhoi** and the time when it is declared by the PSU as available for operation; provided further that the total period of Unscheduled Maintenance to be reckoned hereunder shall be subject to the remission specified in Clause 21.2.3;
  - (c) in the case of Unscheduled Maintenance arising out of reasons attributable to the PSU, the period between the time of occurrence of an event that renders the Locomotive unfit or unavailable for service and the time when it is declared by the PSU as available for operation; provided that the time taken for transporting the Locomotive from its location to the **Electric loco workshop Dabhoi** shall be deemed to be 24 (twenty four) hours and shall form part of Non-Available Hours herein; and
  - (d) In the case of delay by the PSU in supply of a Payable Spare, one-half of the delay determined under Clause 29.2.6.
- 21.2.3 In computing the Non-Available Hours for the Unscheduled Maintenance specified in sub-clause (b) of Clause 21.2.2, the following time shall be excluded by way of remission, namely:
- (a) in the event that the Unscheduled Maintenance is caused by an event or reason specified in Clause 17.13.4, 85% (eighty five percent) of the Non- Available Hours;
  - (b) up to 1 (one) hour of Unscheduled Maintenance per month, as specified in Clause 17.13.5; and
- 21.2.4 The Parties agree that the sum of Available Hours of all the Locomotive in the Fleet as a proportion of the total hours of the Maintenance Period of all the Locomotives in the Fleet in any Accounting Year, shall be deemed to be the availability of the Fleet in that year (the “**Availability**”). For the avoidance of doubt and by way of illustration, if the total hours of all Locomotive in the Maintenance Obligation Fleet in the 1<sup>st</sup> (first) Accounting Year are 10,000 (ten thousand) and if their Available Hours are 9,600 (nine thousand six hundred), the Availability hereunder shall be 96% (ninety six percent).
- 21.2.5 The PSU shall procure that the Availability of the Fleet in every Accounting Year shall be at least 95% (ninety five percent) (the “**Guaranteed Availability**”).
- 21.2.6 The PSU agrees that for every 1% (one percent) reduction in the Availability of the Fleet, as compared to the Guaranteed Availability, it shall pay to the Government 4% (four percent) of the Maintenance Fee as Damages.}

**21.3 Reliability :**

**{In Case of Workshop: Reliability**

Any failure of a locomotive within 100 days of POH by PSU shall be on the account of PSU. Such failure shall be attended by Railway loco shed or PSU. The actual material cost for such attention shall be borne by PSU. If a locomotive is attended by the loco shed then PSU may request the loco shed for joint assessment of actual material cost of such attention. The PSU shall be liable to pay additional 20% of this cost as Damages. If there is any failure purely on account of poor workmanship, the PSU shall pay to Railway an amount equal to 0.5 % of Maintenance Fee of POH for the concerned Locomotive as Damages for each such failure up to the ceiling limit of 10% of Maintenance Fee of POH for the concerned Locomotive.

}

**OR**

**{In case of Maintenance Shed: - Reliability - NOT APPLICABLE**

- 21.3.1 The Parties agree that the reliability of the Fleet in any Accounting Year shall be measured in terms of the mean distance travelled between two Failures (the “**Reliability**”) i.e. the Reliability of the Fleet shall be computed by dividing the cumulative distance travelled by all the Locomotives in the Fleet in an Accounting Year by aggregate number of Failures of all the Locomotives in the Fleet in such Accounting Year. For the avoidance of doubt and by way of illustration, if the cumulative distance travelled by all the Locomotives in the Fleet is 5,00,00,000 km (five crore kilometres) and aggregate number of Failures of all the Locomotives in the Fleet in such Accounting Year is 200 (two hundred), then the Reliability of such Fleet in such Accounting Year shall be 250,000 km (two hundred fifty thousand kilometres).

The PSU shall procure that the Reliability of the Fleet shall be 175000 km (distance travelled between two failures, in case of Passenger Locomotives) or 130000 km (distance travelled between two failures, in case of Freight Locomotives) (the “**Guaranteed Reliability**”).

- 21.3.3 The PSU agrees that for every 10,000 km (ten thousand kilometres) reduction in the Reliability of the Fleet, it shall pay to the Government 2% (two percent) of the Maintenance Fee as Damages. }

**21.4 Adjustments in Maintenance Fee**

- 21.4.1 Any recoveries, required to be made in accordance with this Article 21, shall be made on an annual basis and adjusted in the Maintenance Fee payable to the PSU for the Fleet.
- 21.4.2 In the event that the amount payable by the PSU in accordance with the provisions of Clause 21.4.1 shall exceed 10% (ten percent) of the total Maintenance Fee payable for the Fleet during an Accounting Year, the amount payable in excess of such 10% (ten percent) shall be carried forward to the subsequent Accounting Year. For the avoidance of doubt, if the amount carried forward under this Clause 21.4.2 cannot be adjusted in the subsequent year, it shall continue to be carried forward to the following Accounting Years until it is fully adjusted, but only within the ceiling of 10% (ten percent) per annum specified herein above.
- 21.4.3 The Parties expressly agree that notwithstanding anything to the contrary contained in this Agreement, for computing the Damages for any Accounting Year under this Article 21, the Maintenance Fees shall be in accordance with Article 26.

## 21.5 Monthly Report - Not Applicable

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

## ARTICLE 22

### 22. OPERATIONAL ROUTES- NOT APPLICABLE

#### 22.1 Operational routes

- 22.1.1 The Parties agree that the Government shall allocate Locomotives which are under Maintenance Obligations of the PSU for operation on all the routes of the Indian Railways including DFC routes (the “**Operational Routes**”) and the Locomotives operating on such route shall ordinarily be assigned to the *[Workshop/Depot/Maintenance Shed]* for Scheduled Maintenance thereof.
- 22.1.2 Provided further that any Unscheduled Maintenance that is required to be undertaken by the PSU beyond a distance of 150 km (one hundred and fifty kilometers) of any *[Workshop/Depot/Maintenance Shed]* or PR team, shall be on a ‘best effort’ basis and the time taken for such Unscheduled Maintenance shall be deemed to form part of Available Hours.

## ARTICLE 23 -Deleted-

## ARTICLE 24

### 24. LOCOMOTIVE PRICE

#### 24.1 Locomotive Price

- 24.1.1 Deleted
- 24.1.2 The Locomotive Price for WAP-7 is **Rs 10.59Cr (Rupees Ten Crore Fifty Nine lakhs)**, for WAG9/9H/9HH is **Rs 9.54Cr.(Rupees Nine Crore Fifty Four Lakhs)**, (average latest manufacturing unit cost of concerned locomotives published by Production Units i.e. CLW,BLW BLW as Locomotive Price in this Clause)

## ARTICLE 25

### 25. PERFORMANCE SECURITY

#### 25.1 Performance Security

- 25.1.1 The PSU shall, for the performance of its obligations, provide to the Government, no later than 30 (thirty) days to the issuance of LOA, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs.-----Crore [10% (ten percent) of the 5-year agreement value, calculated on the basis of the average annual agreement value over the total contract

period of 18 years] amount shall be decided as per the contract substantially in the form set forth in Schedule-D (the “**Performance Security**”), to be modified, *mutatis mutandis*, for this purpose.

- 25.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the PSU within the period specified in Clause 25.1.1, such failure shall be deemed to be a PSU Default and the Government shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages, in accordance with the provisions of Clause 25.2.

## **25.2 Appropriation of Performance Security**

Upon occurrence of a PSU Default, the Government shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such PSU Default. Upon such encashment and appropriation from the Performance Security, the PSU shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the PSU shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Government shall be entitled to terminate this Agreement in accordance with Article 37. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the PSU shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the PSU Default, and in the event of the PSU not curing its default within such Cure Period, the Government shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 37.

## **25.3 Release of Performance Security**

- 25.3.1 Subject to the PSU not being in default under this Agreement, the Government shall, no later than 30 (thirty) days from the Handing over Date, release the Performance Security.
- 25.3.2 The Parties expressly agree that the PSU may furnish Performance Security valid for 2 (two) years at a time; provided that the PSU shall, 2 (two) months prior to the expiry of such Performance Security, submit a new Performance Security valid for a further period of 2 (two) years and repeat the process hereunder until expiry of the Agreement Period.

# **ARTICLE 26**

## **26. MAINTENANCE FEE**

### **26.1 Maintenance Fee**

- 26.1.1 The Government shall pay to the PSU, an annual fee for undertaking the Maintenance Obligations, including insurance thereof, (the “**Maintenance Fee**”), to be determined in accordance with the provisions of this Article 26.
- 26.1.2 The Maintenance Fee due and payable for an Accounting Year shall be computed with reference to the Bid Price determined in accordance with Clause 26.2 (the “**Bid Price**”).
- 26.1.3 The Locomotive Price for WAP-7 is **Rs 10.59Cr (Rupees Ten Crore Fifty Nine lakhs)**, for WAG9/9H/9HH is **Rs 9.54Cr. (Rupees Nine Crore Fifty Four Lakhs)**, (average latest

*manufacturing unit cost of concerned locomotives published by Production Units i.e. CLW,BLW BLW as Locomotive Price in this Clause)*

## 26.2 Determination of Maintenance Fee

26.2.1 The Maintenance Fee per Locomotive, due and payable, during the Maintenance Period, shall be as follows:

### ***POH activity performed in Workshop-***

<b>Age of the Locomotive</b>	<b>Maintenance Fee as % (per cent) of Locomotive Price of WAG9/WAG9H/ WAG9HH</b>	<b>Maintenance Fee as % (per cent) of Locomotive Price of WAP7</b>
1	-	-
2	-	-
3	-	-
4	-	-
5	-	-
6	-	-
7	-	-
8	-	-
9	-	<b>19.00</b>
10	-	-
11	-	-
12	-	-
13	-	-
14	-	-
15	-	-
16	-	-
17	-	-
18	<b>24.04</b>	<b>24.04</b>
19	-	-
20	-	-
21	-	-
22	-	-
23	-	-
24	-	-
25	-	-
26	-	-
27	-	<b>19.00</b>
28	-	-
29	-	-
30	-	-
31	-	-
32	-	-
33	-	-
34	-	-
35	-	-

}

(A) For Other Maintenance activity of IOH, Maintenance Fee % of average locomotive price as below:

SN	Description	% of average Locomotive price (as per clause 26.1.3)
1	Overhauling of Motorised Bogie (IOH schedule) of Co-Co type.	4.31
2	Overhauling (IOH) of a Traction Motor of 6FRA 6068 type.	0.32
3	Conditional basis Replacement of DE & NDE End frame with its components during IOH of Traction Motor of 6FRA 6068	0.13
4	Conditional basis Rewinding of Stator during IOH of Traction Motor of 6FRA 6068	0.99
5	Conditional basis Replacement of Rotor Bar during IOH of Traction Motor of 6FRA 6068	0.60
6	Conditional basis Rotor re-shafting during IOH of Traction Motor of 6FRA 6068	0.15

**The maintenance fee of the above activities in item (A) is taken in the tender schedule and estimate as per the % of average locomotive price of WAP-7 & WAG-9 locomotive i.e. Rs. 10.06 /- Cr (Rupees Ten Crore Six Lakhs Only) as per above clause 26.1.3.**

*For the clarity on calculation, Maintenance fee of a Locomotive shall be calculated by Zonal Railway as under:*

- (i) *Let's take a WAP-7 (1st POH)- Locomotive, The Maintenance Fee for POH of that Locomotive will be =  $\{19.00\% \times (1 \pm X/100) \times (\text{Locomotive Price})\}$ .*
- (ii) *Let's take another Locomotive (WAG-9) and the case where POH is performed at Workshop then the Maintenance Fee will be =  $\{24.04\% \times (1 \pm X/100) \times (\text{Locomotive Price})\}$ .*
- (iii) *For any accounting year, the locomotive price applicable for payment purposes shall be determined by adjusting the base amount specified under Clause 26.1.3, to account for variation in locomotive price as per the Maintenance Index. The annual adjustment of the locomotive price shall be carried out strictly in accordance with the Maintenance Index formula specified in Article 48 of the Tender Document / Agreement.*

*The amount arrived at after applying the Maintenance Index adjustment to the locomotive price shall be treated as the applicable locomotive price for that accounting year, and payments to the PSU shall be made accordingly.*

**X** is the percentage above or below, quoted by the PSU

26.2.2 -Deleted-

26.2.3 -Deleted-

### **26.3 Payment of Maintenance Fee**

Maintenance Fee and cost of modifications shall be due and payable in arrears at the end of each quarter of an Accounting Year. Instalments equal to 25% (twenty five percent) each of the Maintenance Fee for an Accounting Year and the cost of modifications carried out in quarter shall be paid at the close of each of the first 3 (three) quarters of an Accounting Year and the last such instalment shall be due and payable in the first month of the succeeding Accounting Year after carrying out all adjustments in accordance with this Agreement.

## 26.4 Taxes and Duties

26.4.1 All duties, taxes, royalties, cess and other levies except Goods and Services Tax (GST), payable by the PSU under this Agreement, or for any other cause, as of 28 (twenty-eight) days prior to the deadline for submission of bids, shall be included in the quoted bid price submitted by the bidder. The Maintenance Fee and price towards Payable Spares are exclusive of Goods and Services Tax (GST). GST will be paid extra as applicable on the submission of GST invoices subject to submission of documentary evidence towards payment of GST collected on the previous bills/invoices to the GST Authorities.

26.4.2 PSU shall provide following declarations while claiming payment:

- (i) "It is certified that the GST % at which has been charged for the item billed for herein is as per relevant sections of CGST/SGST/IGST Acts and is legally leviable. If, however, it is found later that the rate at which the GST tariff rate has been charged is not correct, we indemnify Indian Railways against any loss on this account."
- (ii) "It is certified that no refund of GST already reimbursed to me/us on the order/contract has been obtained by me/us during the quarter. And that in respect of refund/increase of refund of GST obtained on this order/contract will be passed on to the purchaser."
- (iii) No additional duty setoffs on the goods supplied have accrued under the Applicable Law on or any future scheme which may be introduced while submitting the present bill.
- (iv) Any additional Input Tax Credit benefit, if become available to supplier, the same shall be passed on to purchaser without any undue delay.

OR

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

## ARTICLE 27 NOT USED

## ARTICLE 28

### 28. BILLING AND PAYMENT

#### 28.1 Billing and Payment

28.1.1 On or after the date on which an amount has become due and payable to the PSU in accordance with the provisions of this Agreement, it shall submit, in triplicate, an invoice with necessary particulars to the Principal Financial Advisor & Chief Accounts officer of Railways or such other officer that the Government may designate as the payment authority for this purpose (the "**Payment Authority**").

28.1.2 The Payment Authority shall, within 30 (thirty) days of receipt of an invoice in accordance with Clause 28.1.1 (the "**Payment Due Date**"), make payment of the amount claimed directly, through electronic transfer, to the nominated bank account of the PSU, save and except any amounts which it determines as not payable or disputed (the "**Disputed Amounts**").

28.1.3 All Damages payable by the PSU in accordance with the provisions of this Agreement shall be

deducted from the Maintenance Fee due and payable to the PSU.

**28.1.4 deleted**

**28.1.5** For claiming payment of Maintenance Fee from the Government, the PSU shall submit (i) the original invoice and a copy thereof in respect of Maintenance Obligations for the preceding quarter; (ii) PSU's certificate that the amounts claimed in the invoice are correct and in accordance with the provisions of the Agreement; (iii) a copy of maintenance reports as specified in Clause 19.1.2, duly verified by the Government Representative; (iv) official documents in support of Maintenance Index variation as specified in Article 48 "Maintenance index"; (v) detailed calculation for Maintenance Fee claimed in accordance with Clause 26.2; (vi) details in respect of taxes/duties which are reimbursable in accordance with the provisions of this Agreement; and (vii) details of Damages payable in respect of Key Performance Indicators in accordance with the provisions of this Agreement alongwith true copies of the original documents in support of the same.

**28.2 Disputed Amounts**

**28.2.1** The Payment Authority shall, within 15 (fifteen) days of receiving an invoice, notify the PSU of the Disputed Amounts, with particulars thereof. Within 7 (seven) days of receiving such notice, the PSU shall present any information or evidence as may reasonably be required for determining that such Disputed Amounts are payable. The Payment Authority may, if necessary, meet a representative of the PSU for resolving the dispute and in the event that the dispute is not resolved amicably, the Dispute Resolution Procedure shall apply. For the avoidance of doubt, even if a dispute is resolved amicably, any amount paid after the Payment Due Date shall be deemed as delayed payment.

**28.2.2** If any amount is payable by either Party to the other Party upon determination of a dispute under the Dispute Resolution Procedure, such amount shall be deemed to be payable on the date when it first became due under this Agreement, and interest for the period of delay shall be due and payable at the rate specified in Clause 28.3.

**28.3 Delayed Payments**

All amounts due and payable to the PSU under the provisions of this Agreement shall be paid within the period set forth in Clause 28.1.2. In the event of delay beyond such period, the Government shall pay interest for the period of delay, calculated at a rate equal to 3% (three percent) above the Bank Rate on the amounts payable.

**28.4 Discount for early payment**

The Parties expressly agree that in the event the Government pays the Maintenance Fee within 15 (fifteen) days of the date of submission of the invoice and particulars thereof, the Government shall be entitled to deduct 0.5% (zero point five percent) of the Maintenance Fee by way of discount for early payment.

## **ARTICLE 29**

### **29. SUPPLY OF SPARES AND CONSUMABLES**

#### **29.1 Supply of Spares**



- 29.1.1 The PSU shall, in accordance with the provisions of this Article 29, supply all Spares and Consumables required for the operation, repair and maintenance of Locomotives as per Standards and Specifications issued by Railways from time to time from sources approved by RDSO/CLW/PLW/BLW/ICF during the Agreement Period.

***In case PSU is having any doubt regarding material technical specification may get it cleared with an authorized representative of CWM/ELW/DB from time to time.***

- 29.1.2 Save and except as otherwise provided in Clause 29.2, all Spares and Consumables required for operation, repair and maintenance of Locomotives during the POH schedule shall be supplied and installed by the PSU, at its cost and expense, as part of its Maintenance Obligations, and no payment or compensation other than Maintenance Fee shall be due and payable for this purpose.
- 29.1.3 All Spares provided by the PSU under this Article 29 shall carry a warranty as per ***IRS Conditions / specifications*** for repair or replacement, as the case may be, free of cost to the Government. The terms of such warranty shall be determined in accordance with Good Industry Practice.

## **29.2 Payable Spares**

- 29.2.1 The PSU shall, for the price determined under this Clause 29.2, provide Spares for (i) Unscheduled Maintenance/Other then Schedule maintenance specified in Clause 17.13 & 17.6 during the Maintenance Period with respect to the Locomotives under the Maintenance Obligations; (the "**Payable Spares**").
- 29.2.2 The Parties agree that the PSU shall, no later than 1<sup>st</sup> anniversary of the Appointed Date, furnish to the Government, in consultation with Railways locomotive production units(PLW/BLW/CLW)/RDSO, a schedule of rates for Payable Spares to be specified in terms of their percentage with reference to the Locomotive Price and the aggregate percentage of all the Payable Spares, including components, parts and systems forming part of a complete Locomotive, shall be equal to 100 (one hundred). The PSU agrees and undertakes that the costing of individual parts, components and systems shall reflect their true proportion to the Locomotive Price and the Parties shall make good faith efforts to negotiate and finalise the offer of the PSU within 3 (three) months of its submission, subject however to the aforesaid ceiling of 100 (one hundred); provided that after an interval of 5 (five) years, the Parties may, with mutual consent, negotiate the aforesaid percentages for Payable Spares and determine the revised rates in accordance with the provisions of this Clause 29.2.2.
- 29.2.3 The Parties agree that the price payable by the Government for a Payable Spare shall be determined by applying the percentage specified under Clause 29.2.2 to the Locomotive Price. For the avoidance of doubt and by way of illustration, if the rate of a Payable Spare is 0.1% (zero-point one percent) and the Locomotive Price is Rs. 20 crore (Rupees twenty crore), the price of that Payable Spare shall be Rs. 2 lakh (Rupees two lakh).
- 29.2.4 In the event that 20 (twenty) or more units of any Payable Spare are supplied by the PSU in any Accounting Year, the price determined in accordance with Clause 29.2.3 above shall be reduced by 5% (five percent) thereof for all the units supplied in that year.
- 29.2.5 In the event that 100 (one hundred) or more units of any Payable Spare are supplied by the PSU in any Accounting Year, the price determined in accordance with Clause 29.2.3 above shall be reduced by 10% (ten percent) thereof for all the units supplied in that year.
- 29.2.6 The PSU shall maintain an adequate inventory of Payable Spares and shall supply every

Payable Spare within a period of 4 (four) hours from the time a notice is delivered by the Government to the PSU, at the **Electric loco workshop Dabhoi** specified therein; provided, however, that in case of Payable Spares that were required in quantities of 12 (twelve) units or less during the immediately preceding Accounting Year, the period of delivery hereunder shall be 48 (forty eight) hours.

29.2.7 In the event of failure to supply a Payable Spare within the time specified in Clause 29.2.6, the PSU shall pay Damages equal to 0.5% (Zero point five percent) of the price of Payable Spare hereunder for each day of delay, or part thereof, until that Payable Spare is supplied, subject to maximum damages shall not exceed 10% (ten percent) per item. In the event that any delay hereunder shall cause Failure of a Locomotive, one-half of the delay in supply hereunder shall be deemed as Non-Available Hours.

29.2.8 **-Deleted-**

29.2.9 The Ownership of the released/replaced material would be of IR and it would be transported to neighbouring/nearest scrap depot by the PSU.

### 29.3 Cost of installation

The cost of installation shall be applicable to the extent when PSU's staff is engaged for installing the Payable Spares.

29.3.1 A sum equal to 10% (ten percent) of the price of a Payable Spare, determined in accordance with Clause 29.2.3, shall be due and payable to the PSU for installation of that Payable Spare in a Locomotive. For the avoidance of doubt, the Government may purchase a Payable Spare after completion of Maintenance Period of any Locomotive and install the same in its own premises, and in such an event no payment shall be due for installation under this Clause 29.3.1.

29.3.2 In the event the PSU determines that a Spare can be repaired and installed in substitution of a Payable Spare, it may undertake repair and installation thereof for a reasonable charge based on Good Industry Practice, but at no time exceeding 35% (thirty five percent) of the price of such Payable Spare; provided, however, that if the price of any Payable Spare, determined in accordance with Clause 29.2, shall exceed Rs. 500,000 (Rupees five lakhs), the PSU may, with prior approval of the Government, undertake repair and installation thereof for such higher charges as the Government may, in its discretion, permit.

### 29.4 Inventory Management

29.4.1 The PSU shall, during the Maintenance Period, maintain at its own cost, an inventory of Spares and Consumables required for Scheduled Maintenance and Un-Scheduled Maintenance, under its own supervision and in its own custody.

29.4.2 The PSU shall upgrade the available existing infrastructure/facilities and develop additional infrastructure/facilities to meet the requirement of keeping the material in Indian Railway's Store Depots at **Electric loco workshop Dabhoi** of Indian Railways, as a part of the **Electric loco workshop Dabhoi** for use during the Maintenance Period. The PSU shall equip the same according to requirement, at their own cost.

29.4.3 The PSU shall develop and implement an "Inventory Management System" as one of the modules of MMIS according to Good Industry Practice.

29.4.4 Inventory management data shall be in sufficient detail to enable assessment of consumption

trends and optimum stocking limits. It should be transparent and accessible to the Government.

29.4.5 The PSU shall provide information about their supply chain to the Government.

## ARTICLE 30

### 30. CONDEMNATION OF LOCOMOTIVES- Not Applicable

#### 30.1 Condemnation of Locomotives

30.1.1 The Parties agree that in the event of the cost of repair of a Locomotive, arising out of any reason or event not attributable to the PSU, including negligence, accident, natural calamities, vandalism, arson, riots or any event of a nature analogous to the foregoing, is more than 50% (fifty per cent) of its depreciated book value, the Government may, in its discretion, withdraw such Locomotive from the Fleet.

30.1.2 The Parties agree that in the event of the cost of repair of a Locomotive, arising out of any reason or event attributable to the PSU, including defect, negligence, accident or fire, is more than its depreciated book value, the PSU may, subject to payment to the Government a sum equal to the depreciated book value determined by applying an annual depreciation rate of 2.85% (two point eight five percent), condemn the Locomotive with prior approval of the Government. Ownership and salvage value of the condemned Locomotive shall be retained by the Government.

#### 30.2 Termination of Maintenance Obligations

The Parties expressly agree that the Maintenance Obligations of the PSU with respect to a Locomotive which is withdrawn or condemned, as the case may be, in accordance with the provisions of Clause 30.1 shall be deemed to be terminated. For the avoidance of doubt, no Maintenance Fee shall be payable by the Government from the date of withdrawal or condemnation hereunder.

## ARTICLE 31

### 31. HANDING OVER THE PROJECT ASSETS

#### 31.1 Handing over the site of *Electric loco workshop Dabhoi*

31.1.1 The site of *Electric loco workshop Dabhoi*, in accordance with the provisions of this Agreement, be handed over to the Government by the PSU upon completion of Maintenance Period with respect to all maintenance activities or Termination of this Agreement whichever is earlier.

31.1.2 Upon handing over of a site of *Electric loco workshop Dabhoi hereunder*, all Project Assets lying in the site of *Electric loco workshop Dabhoi* including all equipment, machinery, building, structures, hardware, software and other assets shall vest in the Government without any Encumbrance.

#### 31.2 Provision of Spares upon Termination

31.2.1 In case of Termination before completion of Maintenance Period, the PSU shall provide to the Government, free of charge, an inventory of Spares along with the site of *Electric loco*

**workshop Dabhoi** handed over under this Article 31. The inventory shall comprise of Spares equivalent to one half of the average annual consumption of Spares at the **Electric loco workshop Dabhoi** during the preceding 3 (three) Accounting Years. For this purpose, the PSU shall compute the total consumption of each Spare during the preceding 3 (three) Accounting 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.

31.2.2 All Spares provided by the PSU under this Clause 31.2 shall carry a warranty as per **IRS Conditions / specifications** for repair or replacement, as the case may be, free of cost to the Government. The terms of such warranty shall be determined in accordance with Good Industry Practice.

31.2.3 -Deleted-

## ARTICLE 32

### 32. INSURANCE

#### 32.1 Insurance during Agreement Period

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

32.1.2 Without prejudice to the provisions contained in Clause 32.1.1, the PSU shall, during the Agreement Period, procure and maintain Insurance Cover including but not limited to the following:

- (i) loss, damage or destruction of the Project Assets, site of the **Electric loco workshop Dabhoi** or any Locomotive on account of defect or deficiency or negligence attributable to the PSU which are under the exclusive use of the PSU;
- (ii) comprehensive third party liability insurance for life, goods or property, including injury to or death of personnel of the Government or others, arising from any accident at the site of **Electric loco workshop Dabhoi** or on account of any negligence of the PSU or a defect or deficiency in a Locomotive which are under the exclusive use of the PSU;
- (iii) the PSU's general liability arising out of the Agreement;
- (iv) workmen's compensation insurance of the PSU employees; and
- (v) any other insurance that may be necessary to protect the PSU and its employees, including all Force Majeure Events that are insurable and not otherwise covered in items (i) to (iv) above.

### **32.2 Notice to the Government**

No later than 45 (forty five) days from the commencement of the Agreement Period, the PSU shall by notice furnish to the Government, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 32. Within 60 (sixty) days after the possession of the exclusive facility of the Government by the PSU, the Government may require the PSU 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.

### **32.3 Evidence of Insurance Cover**

All insurances obtained by the PSU in accordance with this Article 32 shall be maintained with insurers on terms consistent with Good Industry Practice and provision of Insurance Act. Within 15 (fifteen) days of obtaining any Insurance Cover, the PSU shall furnish to the Government, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premium 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 60 (sixty) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the PSU to the Government.

### **32.4 Remedy for failure to insure**

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

### **32.5 Waiver of subrogation**

All insurance policies in respect of the insurance obtained by the PSU pursuant to this Article 32 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, *inter alia*, the Government, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance. The waiver of subrogation shall be applicable as per Insurance Act.

### **32.6 PSU's waiver**

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

### **32.7 Application of insurance proceeds**

The proceeds from all insurance claims, except life and injury, shall be paid to the PSU, and it

shall apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Locomotives, the site of the ***Electric loco workshop Dabhoi***, as the case may be, and the balance remaining, if any, shall be paid to the Government.

### **32.8 Compliance with conditions of insurance policies**

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

## **ARTICLE 33**

### **33. ACCOUNTS AND AUDIT**

#### **33.1 Not Used**

#### **33.2 Certification of claims by Statutory Auditors**

Any claim or document provided by the PSU to the Government 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 the 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 Locomotive Price and Maintenance Fee.

#### **33.3 Set-off**

In the event any amount is due and payable by the Government to the PSU, it may set-off any sums payable to it by the PSU and pay the balance remaining forthwith.

## **ARTICLE 34**

### **34. FORCE MAJEURE**

#### **34.1 Force Majeure**

As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall mean occurrence in India of any or all of Non-Political Events, Indirect Political Events and Political Events, as defined in Clauses 34.2, 34.3 and 34.4 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 (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

#### **34.2 Non-Political Event**

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

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the site of the ***Electric loco workshop Dabhoi***, as the case may be);
- (b) strikes or boycotts (other than those involving the PSU, Sub- contractors/Specialist

Sub-Contractor/O&M contractor or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty-four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 34.3;

- (c) any failure or delay of a Sub-contractors/ Specialist Sub-Contractor/O&M 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 PSU by or on behalf of such Sub-contractors/ Specialist Sub- Contractor/O&M contractor;
- (d) any delay or failure of an overseas Sub-contractor/ Specialist Sub- Contractor/O&M contractor to deliver rolling stock or equipment in India if such delay or failure is caused outside India by any event specified in Sub-clause (a) above and which does not result in any offsetting compensation being payable to the PSU by or on behalf of such Sub-contractor/ Specialist Sub-Contractor/O&M contractor;
- (e) any judgement or order of any court of competent jurisdiction or statutory authority made against the PSU in any proceedings for reasons other than (i) failure of the PSU to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Government;
- (f) the discovery of geological conditions, toxic contamination or archaeological remains on the site of the ***Electric loco workshop Dabhoi*** that could not reasonably have been expected to be discovered through a site inspection; or
- (g) any event or circumstances of a nature analogous to any of the foregoing.

### **34.3 Indirect Political Event**

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

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty-four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (c) any civil commotion, boycott or political agitation which prevents production and assembly of Locomotives by the PSU for an aggregate period exceeding 15 (fifteen) days in an Accounting Year;
- (d) any failure or delay of a Sub-contractor/Specialist Sub-Contractor/O&M contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the PSU by or on behalf of such Sub-contractor/Specialist Sub-Contractor/O&M contractor;
- (e) any Indirect Political Event that causes a Non-Political Event; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

### **34.4 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 41 and its effect, in financial terms, exceeds the sum specified in Clause 41.1;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the PSU or of the Sub-contractors/Specialist Sub- Contract/O&M contractor;
- (c) unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the PSU or any of the Sub-contractors/Specialist Sub- Contract/O&M contractor 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 PSU's or any Sub-contractors/Specialist Sub-Contract/O&M contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorization, no objection certificate, exemption, consent, approval or permit;
- (d) any failure or delay of a Sub-contractors/Specialist Sub-Contract/O&M contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the PSU by or on behalf of such PSU; or
- (e) any event or circumstance of a nature analogous to any of the foregoing

### **34.5 Duty to report Force Majeure Event**

34.5.1 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 34 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

34.5.2 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.

34.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports



containing information as required by Clause 34.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

### **34.6 Effect of Force Majeure Event on the Agreement**

34.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 4.1 for achieving the Appointed Date shall be extended by a period equal in length to the duration of the Force Majeure Event.

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

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

### **34.7 Allocation of costs arising out of Force Majeure**

34.7.1 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.

34.7.2 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 PSU, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Government to the PSU; and
- (c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Government to the PSU.

For the avoidance of doubt, Force Majeure Costs may include O&M Expenses and all other costs directly attributable to the Force Majeure Event but shall not include loss of income or other consequential losses.

34.7.3 Save and except as expressly provided in this Article 34, 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.

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

If a Force Majeure Event subsists for a period of 180 (one hundred eighty) days or more within a continuous period of 365 (three hundred 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 34, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

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

- 34.9.1 If Termination is on account of a Non-Political Event, the Government shall not make any Termination Payment to the PSU.
- 34.9.2 If Termination is on account of an Indirect Political Event, the Government shall make a Termination Payment to the PSU in an amount equal to 75% (seventy five percent) of the Adjusted Depreciated Value of the Project Asset 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 Termination Payment.
- 34.9.3 If Termination is on account of a Political Event, the Government shall make a Termination Payment to the PSU in an amount that would be payable under Clause 37.3.2 as if it were a Government Default.

### **34.10 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.

### **34.11 Excuse from performance of obligations**

- 34.11.1 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.
- 34.11.2 The Parties agree that the PSU 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 PSU from performance of its obligations hereunder.

## **ARTICLE 35**

### **35. COMPENSATION FOR BREACH OF AGREEMENT**

#### **35.1 Compensation for default by the PSU**

In the event of the PSU being in material default or breach of this Agreement, it shall pay to the Government by way of compensation, all direct costs suffered or incurred by the Government as a consequence of such material default or breach within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any breach or default in respect of which Damages have been expressly specified in this Agreement.

#### **35.2 Compensation for default by the Government**

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

#### **35.3 Extension of Agreement Period**

In the event that a material default or breach of this Agreement set forth in Clause 35.2 causes delay in complying with the Maintenance Obligations, the Government shall, in addition to payment of compensation under Clause 35.2, extend the Maintenance Period and the Agreement Period, such extension being equal in duration to the period by which the Maintenance Obligations was delayed or remained suspended on account thereof, as the case may be.

#### **35.4 Compensation to be in addition**

Compensation payable under this Article 35 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any.

#### **35.5 Mitigation of costs and damage**

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

## **ARTICLE 36**

### **36. SUSPENSION OF PSU'S RIGHTS**

#### **36.1 Suspension upon PSU Default**

Upon occurrence of a PSU Default, the Government shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the PSU under this Agreement including the PSU's right to receive Locomotive Price or Maintenance Fee, as the case may be, and other payments pursuant

hereto, and (ii) exercise such rights itself and perform the obligations hereunder or authorise any other person to exercise or perform the same on its behalf during such suspension (the “**Suspension**”). Suspension hereunder shall be effective forthwith upon issue of notice by the Government to the PSU and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice.

### **36.2 Government to act on behalf of the PSU**

- 36.2.1 During the period of Suspension, the Government may, at its option and at the risk and cost of the PSU, remedy and rectify the cause of Suspension. The Government shall, on behalf of the PSU, appropriate the Maintenance Fee and other revenues under and in accordance with this Agreement and deposit the same in an account to be opened by the Government’s nominee for this purpose. The Government shall be entitled to make withdrawals from such account for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and for defraying the expenses on maintenance of Locomotives.
- 36.2.2 During the period of Suspension hereunder, all assets and liabilities in relation to the maintenance of Locomotives, including the site of ***Electric Loco Workshop , Dabhoi*** shall continue to vest in the PSU in accordance with the provisions of this Agreement and all things done or actions taken, including expenditure incurred by the Government for discharging the obligations of the PSU 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 PSU and the PSU undertakes to indemnify the Government for all costs incurred during such period. The PSU hereby licenses and sub-licenses respectively, to the Government or any other person authorised by it under Clause 36.1 to use during Suspension, all Intellectual Property belonging to or licensed to the PSU for and in respect of operation and maintenance of Locomotives.

### **36.3 Revocation of Suspension**

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

### **36.4 Termination**

- 36.4.1 At any time during the period of Suspension under this Article 36, the PSU may by notice require the Government to revoke the Suspension and issue a Termination Notice. The Government shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 37.
- 36.4.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder, the Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had

been issued by the Government upon occurrence of a PSU Default.

## ARTICLE 37

### 37. TERMINATION

#### 37.1 Termination for PSU Default

- 37.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the PSU fails to cure the default, within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 120 (one hundred and twenty) days, the PSU shall be deemed to be in default of this Agreement (the “**PSU Default**”), unless the default has occurred solely as a result of any breach of this Agreement by the Government or due to Force Majeure. The defaults referred to herein shall mean and include:
- (a) the Performance Security has been encashed and appropriated in accordance with Clause 25.2 and the PSU fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
  - (b) subsequent to the replenishment or furnishing of fresh Performance Security or the Performance Security, as the case may be, in accordance with Clause 25.2 the PSU fails to cure, within a Cure Period of 90 (ninety) days, the PSU Default for which whole or part of the Performance Security was appropriated;
  - (c) Deleted
  - (d) the PSU does not achieve the latest outstanding scheduled completion date due in accordance with the provisions and continues to be in default upon the expiry of a Cure Period of 210 (two hundred and ten) days;
  - (e) the PSU abandons or manifests intention to abandon the Minor Construction or Alteration or operation of the up-graded available existing infrastructure/facilities and developed additional infrastructure/facilities to meet the requirement to maintain at **Electric loco workshop Dabhoi** of Indian Railways without the prior written consent of the Government;
  - (f) Deleted
  - (g) Scheduled completion date does not occur within the period specified in Clauses 20.1.8 for up-gradation of the available existing infrastructure/facilities and development of additional infrastructure/facilities to meet to be maintained at the **Electric loco workshop Dabhoi** of Indian Railways.
  - (h) the PSU is in material breach of the Maintenance Obligations or the Safety Requirements, as the case may be;
  - (i) the average Availability of the Fleet, in any Accounting Year, is 85% (eighty five percent) or less and fails to improve above such 85% (eighty five percent) during the succeeding Accounting Year;- Not Applicable
  - (j) deleted
  - (k) the PSU has failed to make any payment to the Government within the period specified in this Agreement;

- (l) a material breach of any of the Project Agreements by the PSU has caused a Material Adverse Effect;
- (m) the PSU creates any Encumbrance in breach of this Agreement;
- (n) the PSU repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (o) a Change in Specialist Sub-Contractor or O&M contractor has occurred in breach of the provisions of Clause 5.3;
- (p) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the PSU under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the PSU, and such transfer causes a Material Adverse Effect;
- (q) an execution levied on any of the assets of the PSU has caused a Material Adverse Effect;
- (r) the PSU is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the PSU or for the whole or material part of its assets that has a material bearing on the Project;
- (s) the PSU has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Government, a Material Adverse Effect;
- (t) a resolution for winding up of the PSU is passed, or any petition for winding up of the PSU is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the PSU is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the PSU are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the PSU under this Agreement and the Project Agreements; and provided that:
  - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
  - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the PSU as at the Appointed Date; and
  - (iii) each of the Project Agreements remains in full force and effect;
- (u) any representation or warranty of the PSU herein contained which is, as of the date hereof, found to be materially false or the PSU is at any time hereafter found to be in breach thereof;
- (v) the PSU submits to the Government any statement, notice or other document, in written or electronic form, which has a material effect on the Government's rights, obligations or interests and which is false in material particulars;
- (w) the PSU has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;
- (x) the PSU commits a default in complying with any other provision of this Agreement if such

default causes a Material Adverse Effect on the Government;

- (y) breach of the terms of the Confirmation Certificate issued under Clause 4.1.3(b) by any of the parties thereto;
- (z) when it is discovered by the Government that the PSU and their respective officers, employees, agents and advisers have:
  - (i) not acted in a bonafide manner during the bidding process and the execution of the Agreement; and/or
  - (ii) directly or indirectly or through an agent, engaged in corrupt, fraudulent, coercive, undesirable or restrictive practices in the bidding process or the execution of the Project or other works under the Agreement.

For the purposes of this sub-clause (y), the terms set forth are defined as follows:

“corrupt practice: means the offering, giving, receiving, directly or indirectly, of anything of value to influence the action of a public official in the bidding process or the execution of the Project or other works under the Agreement;

“fraudulent practice” means a misrepresentation or omission of facts in order to influence the bidding process, or to obtain payments from the Government for the execution of the Project or other works under the Agreement;

“coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or in discharging their duties in the execution of the Project or other works under the Agreement;

“undesirable practice” means establishing contact with any person connected with or employed by the Government with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the bidding process or the monitoring, inspection or reporting the execution of the Project or other works under the Agreement; and

“restrictive practice” means forming a cartel or arriving at any understanding or arrangement among bidders with the objective of restrictive or manipulating a full and fair competition in the bidding process.

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

## **37.2 Termination for Government Default**

- 37.2.1 In the event that any of the defaults specified below shall have occurred, and the Government fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Government shall be deemed to be in default of this Agreement (the “**Government Default**”) unless the default has occurred as a result of any breach of this Agreement by the PSU or due to Force Majeure. The defaults referred to herein shall mean and include:
  - (a) the Government commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the PSU;

- (b) the Government has failed to make any payment to the PSU within the period specified in this Agreement; or
- (c) the Government repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

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

### 37.3 Termination Payment

37.3.1 Upon Termination on account of a PSU Default, the Government shall not be liable to pay any Termination Payment to the PSU, and the amount invested by the PSU to meet the requirement to maintain the Locomotives.

37.3.2 deleted

37.3.3 Termination Payment shall become due and payable to the PSU within 30 (fifteen) days of a demand being made by the PSU to the Government with the necessary particulars, and in the event of any delay, the Government shall pay interest at a rate equal to 3% (three percent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days; provided further that liability of the Government to make the Termination Payment hereof is subject to the fulfilment of the Divestment Requirements in accordance with Article 38 of this Agreement. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Government of its payment obligations in respect thereof hereunder.

37.3.4 Upon Termination on expiry of the Agreement Period by efflux of time, no Termination Payment shall be due and payable to the PSU; provided that in the event any assets and equipment at the site of **Electric loco workshop Dabhoi**, essential for the efficient, economic and safe operation of the Locomotives, shall have been acquired and installed within 3 (three) years of the expiry of the Agreement Period, with prior written consent of the Government (which consent shall not be unreasonably denied, a Termination Payment equal to 80% (eighty percent) of the Adjusted Depreciated Value of such assets and equipment shall, notwithstanding the provisions of Clause 37.4, be made by the Government to the PSU.

37.3.5 Notwithstanding anything to the contrary in this Agreement, but subject to the provisions of Clause 37.3.4, in the event any assets and equipment at the site of **Electric loco workshop Dabhoi**, essential for the efficient, economic and safe operation of the Locomotives, shall have been acquired and installed within 3 (three) years of the expiry of the Agreement Period,, with prior written consent of the Government(which consent shall not be unreasonably denied, a sum equal to 80% (eighty percent) of the Adjusted Depreciated Value thereof shall be included in Termination Payment.

37.3.6 The PSU expressly agrees that Termination Payment under this Article 37 shall constitute a full and final settlement of all claims of the PSU on account of Termination of this Agreement for any reason whatsoever and that the PSU or any shareholder, shall not have any further right or claim under any law, treaty, convention, contract or otherwise.



### 37.4 Certain limitations on Termination Payment

Termination Payment, due and payable under this Agreement shall be limited and the Government shall at no time be liable to pay the Termination Payment in excess Rs. 200 crores (Rupees two hundred crore).

### 37.5 Other rights and obligations of the Government

Upon Termination for any reason whatsoever, the Government shall:

- (a) be deemed to have taken possession and control of the site of ***Electric loco workshop Dabhoi*** forthwith which are deemed to be, or which should have been in possession and/or control of the PSU;
- (b) take possession and control of all materials, stores, implements, plants and equipment on or about the site of ***Electric loco workshop Dabhoi***
- (c) Be entitled to restrain the PSU and any person claiming through or under the PSU from entering upon the site of ***Electric loco workshop Dabhoi*** or any part of the Government's premises;
- (d) require the PSU to comply with the Divestment Requirements set forth in Clause 38.1; and
- (e) succeed upon election by the Government, without the necessity of any further action by the PSU, to the interests of the PSU under such of the Project Agreements as the Government may in its discretion deem appropriate, and shall upon such election be liable to the Sub-Contractors and/or the Specialist Sub Contractor or any other O&M contractor, as the case may be, only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Government elects to succeed to the interests of the PSU. For the avoidance of doubt, the PSU acknowledges and agrees that all sums claimed by such Sub-Contractors and/or the Specialist Sub- Contractor or any other O&M contractor, as the case may be, 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 PSU and such Sub-Contractors and/or the Specialist Sub Contractor or any other O&M contractor, as the case may be, and the Government shall not in any manner be liable for such sums. It is further agreed that in the event the Government elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Government for this purpose shall be deducted from the Termination Payment.

### 37.6 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 37.3.6, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

## ARTICLE 38

### 38. DIVESTMENT OF RIGHTS AND INTEREST

#### 38.1 Divestment requirements

- 38.1.1 Upon Termination or expiry of the Agreement Period, the PSU 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) transfer forthwith all Project assets along with the infrastructure and all the facilities, equipment and systems therein, free and clear of all Encumbrances;
  - (b) cure all Locomotives, under PSU’s Maintenance Obligations, of all defects and deficiencies so that the Locomotives are compliant with the Maintenance Obligations; provided that if such defects and deficiencies have arisen on account of accident, vandalism, arson, riot or natural calamity occurring no earlier than 120 (one hundred and twenty) days prior to such Termination or expiry of the Agreement Period, the Government shall grant to the PSU such additional time, not exceeding 240 (two hundred forty) days, as may be reasonably required for repair and rectification thereof;
  - (c) deliver and transfer relevant records, reports and Intellectual Property pertaining to the Locomotives and site of **Electric loco workshop Dabhoi** including all software and manuals pertaining thereto, and complete ‘as built’ Drawings as on the Handing over Date so as to enable the Government to operate and maintain the Locomotives. For the avoidance of doubt, the Intellectual Property shall be adequate and complete for the operation and maintenance of the Locomotive and shall be assigned or licensed to the Government free of any Encumbrance;
  - (d) transfer and/or deliver all Applicable Permits in respect of the PSU’s equipment, plant, material, structures, hardware, software & other assets comprising the site of **Electric loco workshop Dabhoi** and Locomotives, which shall vest with the Government without any Encumbrance and to the extent permissible under Applicable Laws;
  - (e) execute such deeds of conveyance, documents and other writings as the Government may reasonably require for conveying, divesting and assigning all the rights, title and interest of the PSU in respect of the outstanding insurance claims to the extent due and payable to the Government; and
  - (f) 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 PSU in the Locomotives, Insurance Cover, Project Assets and site of **Electric loco workshop Dabhoi** etc, free from all Encumbrances, absolutely unto the Government or to its nominee.
- 38.1.2 Subject to the exercise by the Government of its rights under this Agreement or any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the PSU, 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.

## 38.2 Inspection and cure

Not earlier than 90 (ninety) days before Termination but not later than 15 (fifteen) days before the effective date of such Termination, the Government shall verify, after giving due notice to the PSU specifying the time, date and venue of such verification and/or inspection, compliance by the PSU with the Maintenance Obligations, and if required, cause appropriate tests to be carried out at the PSU’s cost for this purpose. The PSU shall at its own cost and expense, cure defaults if any, in the Maintenance Obligations and the provisions of Article 39 shall apply, *mutatis*

*mutandis*, in relation to curing of defects or deficiencies under this Article 38.

### **38.3 Co-operation and assistance on handing over of site of *Electric loco workshop Dabhoi***

- 38.3.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth handing over of the assets specified in Clause 38.1.1, 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 site of ***Electric loco workshop Dabhoi***.
- 38.3.2 The Parties shall provide to each other, 9 (nine) months prior to the Handing over 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 Handing over Date. The PSU shall further provide such reasonable advice and assistance as the Government, its Specialist Sub-Contractor or O&M contractors as the case may be or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Handing over Date.
- 38.3.3 The Government shall have the option to purchase or hire from the PSU at a fair market value and free from any Encumbrance all or any part of the plant and machinery used in connection with the Project but which does not form part of the assets specified in Clause 38.1.1 and is reasonably required in connection with operation of the site of ***Electric loco workshop Dabhoi***. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

### **38.4 Vesting Certificate**

The divestment of all rights, title and interest in the assets specified in Clause 38.1.1 shall be deemed to be complete on the date on which all of the Divestment Requirements have been fulfilled, and the Government shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule-I (the "**Vesting Certificate**"), which will have the effect of constituting evidence of divestment by the PSU of all of its rights, title and interest in such assets, and their vesting in the Government pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Government or its nominee on, or in respect of, the Locomotives and site of ***Electric loco workshop Dabhoi*** on the footing that all Divestment Requirements have been complied with by the PSU.

### **38.5 Divestment costs etc.**

- 38.5.1 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 PSU in the Locomotives and site of ***Electric loco workshop Dabhoi*** in favour of the Government.
- 38.5.2 In the event of Termination attributable to the PSU, it shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the PSU in the Locomotives and site of ***Electric loco workshop Dabhoi*** in favour of the Government upon such Termination.
- 38.5.3 In the event of Termination attributable to the Government, it shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the PSU in the Locomotives and site of ***Electric loco workshop Dabhoi*** in favour of the Government upon such Termination.
- 38.5.4 In the event of any dispute relating to matters covered by and under this Article 38, the Dispute Resolution Procedure shall apply.

### 38.6 Divestment of site of ***Electric loco workshop Dabhoi***

- 38.6.1 The PSU expressly agreed to hand over the site of ***Electric loco workshop Dabhoi*** and transfer the Project Assets upon Termination. The provisions of this Article 38 shall apply *mutatis mutandis* to such handing over of the site of ***Electric loco workshop Dabhoi*** and transfer of Project Assets. For the avoidance of doubt, the Parties agree that in the event of handover/transfer hereunder, the PSU shall deliver the relevant records and reports , including the software and manuals in respect thereof, and complete 'as built' drawings required for continuing the operations in the site of ***Electric loco workshop Dabhoi*** at the same level as prevailing prior to Termination, and shall also grant the license in respect of the use of its know-how of maintenance of Locomotives and operations in the ***Electric loco workshop Dabhoi***, by the Government (“**Transfer of Technology**”).
- 38.6.2 The PSU hereby irrevocably appoints the Government (acting directly or through a nominee) to be its true and lawful attorney, upon Suspension, Termination or expiry of the Agreement Period, to execute, sign and register in the name of the PSU, all deeds of assignment, license, sub-license, handing over, conveyance, agreements, documents, filings, records, other writings as the Government may reasonably require in connection with handing over, transfer and vesting of all Locomotives, site of ***Electric loco workshop Dabhoi*** and Project Assets including all technology, software and manuals pertaining thereto, and complete 'as built' Drawings as on the Handing over Date.
- 38.6.3 The PSU shall procure that each of the agreements for manufacture of components, equipment, sub-systems and systems for manufacturing of Locomotives contains provisions that entitle the Government to step into such agreement, in its sole discretion, in substitution of the PSU in the event of Termination and the PSU expressly agree to handing over the site of the ***Electric loco workshop Dabhoi*** in accordance with the provisions the Clause 31.1 or the Government taking over the site of ***Electric loco workshop Dabhoi*** in accordance with the provisions of the Clause 37.5, as the case may be. For the avoidance of doubt, it is expressly agreed that in the event the Government does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Handing over Date, the aforesaid agreements shall be deemed to cease to be in force and effect on the Handing over Date without any liability whatsoever on the Government and the agreements shall expressly provide for such eventuality. The PSU expressly agrees to include the aforesaid covenant in all its agreements for manufacture of components, equipment, sub-systems and systems for manufacturing of Locomotives and undertakes that it shall, in respect of each of the aforesaid agreements, procure and deliver to the Government an acknowledgment and undertaking, in a form acceptable to the Government, from the counter party(s) of each of the aforesaid agreements, where-under such counter party(s) shall acknowledge and accept the covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Government in the event of Termination and the PSU expressly agree to handover the site of ***Electric loco workshop Dabhoi*** in accordance with the provisions of the Clause 31.1 or the Government taking over the site of ***Electric loco workshop Dabhoi*** in accordance with the provisions of the Clause 37.5, as the case may be.
- 38.6.4 The PSU shall hand over and/or deliver all Applicable Permits in respect of the site of ***Electric loco workshop Dabhoi***, to the extent permissible under Applicable Laws.

## ARTICLE 39

## 39. DEFECTS LIABILITY AFTER TERMINATION

### 39.1 Liability for defects after Termination

The PSU shall be responsible for all defects and deficiencies in the Locomotives 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 the Government in the Locomotives during the aforesaid period. In the event that the PSU fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Government in this behalf, the Government shall be entitled to get the same repaired or rectified at the PSU's risk and cost so as to make the Locomotives conform to the Maintenance Obligations. All costs incurred by the Government hereunder shall be reimbursed by the PSU to the Government within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Government shall be entitled to recover the same from the PSU. For the avoidance of doubt, the Parties expressly agree that if the Maintenance Period of a Locomotive shall have expired prior to Termination, the provisions of this Clause 39.1 shall apply to that Locomotive for a period of 180 (one hundred and eighty) days after the expiry of such Maintenance Period.

### 39.2 Retention of payments due

- 39.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 39.2.3, a sum equal to 10% (ten percent) of the Maintenance Fee payable for the Fleet in respect of the Accounting Year immediately preceding the Handing over Date shall be retained by the Government 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 Clause 39.1.
- 39.2.2 Without prejudice to the provisions of Clause 39.2.1, the Government shall carry out an inspection of the Locomotives 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 Locomotives is such that a sum larger than the amount stipulated in Clause 39.2.1 should be retained by the Government 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 Clause 39.2.1 shall be retained by the Government for a period not exceeding 240 (two hundred and forty) days. For the avoidance of doubt, in the event of either Party serving Termination Notice on the other Party on account of the events specified in the Clause 37.1 or 37.2, as the case may be, 20% (twenty percent) of the Maintenance Fee payable for the Fleet in respect of the Accounting Year immediately preceding the Handing over Date shall be retained by the Government.
- 39.2.3 The PSU may, for the performance of its obligations under this Article 39, provide to the Government a guarantee from a Bank for a sum equivalent to the amount determined under Clause 39.2.1 or 39.2.2, as the case may be, and for the period specified therein, in the form set forth in Schedule-D (the "**Performance Guarantee**"), to be modified, *mutatis mutandis*, for this purpose, and the Government shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Maintenance Guarantee for undertaking the repairs or rectification at the PSU's risk and cost in accordance with the provisions of this Article 39. Upon furnishing a Maintenance Guarantee under this Clause 39.2.3, the retention of funds in terms of Clause 39.2.1 or 39.2.2, as the case may be, shall be dispensed with.

## **ARTICLE 40**

### **40. ASSIGNMENT AND CHARGES**

#### **40.1 Restrictions on assignment and charges**

40.1.1 Subject to Clause 40.2, this Agreement shall not be assigned by the PSU to any person, save and except with the prior consent in writing of the Government, which consent the Government shall be entitled to decline without assigning any reason.

40.1.2 Subject to the provisions of Clause 40.2, the PSU 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 PSU is a party except with prior consent in writing of the Government, which consent the Government shall be entitled to decline without assigning any reason.

#### **40.2 Permitted assignment and charges**

The restraints set forth in Clause 40.1 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 PSU;
- (b) mortgages/pledges/hypothecation of goods/assets, and their related documents of title, arising or created in the ordinary course of business of the PSU and
- (c) liens or encumbrances required by any Applicable Law.

#### **40.3 Deleted**

## **ARTICLE 41**

### **41. CHANGE IN LAW**

#### **41.1 Increase in costs**

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

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the PSU may by notice require the Government to pay an amount that would place the PSU in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Government shall pay the amount specified therein; provided that if the Government shall dispute such claim of the PSU, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 41.1 shall be restricted to Changes in Law directly affecting the PSU's costs of performing its obligations under this Agreement.

#### **41.2 Reduction in costs**

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

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Government may by notice require the PSU to pay an amount that would place the PSU 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 PSU shall pay the amount specified therein to the Government; provided that if the PSU shall dispute such claim of the Government, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 41.2 shall be restricted to Changes in Law directly affecting the PSU's costs of performing its obligations under this Agreement.

#### **41.3 Protection of NPV**

Pursuant to the provisions of Clauses 41.1 and 41.2 and for the purposes of placing the PSU in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall endeavour to establish a net present value (the "NPV") of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred. For the purposes of determination of NPV hereinabove, discount rate shall be equal to the Bank Rate.

#### **41.4 Restriction on cash compensation**

The Parties acknowledge and agree that the demand for cash compensation under this Article 41 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.

#### **41.5 Revision of Locomotive Price**

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

### **ARTICLE 42**

#### **42. LIABILITY AND INDEMNITY**

##### **42.1 General indemnity**

42.1.1 The PSU will indemnify, defend, save and hold harmless the Government and its officers, servants, agents, Government Instrumentalities and Government owned and/or controlled

entities/enterprises, (the “**Government Indemnified Persons**”) against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the PSU of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the PSU to any person or from any negligence of the PSU under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Government Indemnified Persons.

42.1.2 The Government will indemnify, defend, save and hold harmless the PSU against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of (i) defect in title and/or the rights of the Government in the site of **Electric loco workshop Dabhoi** of Indian Railways, and/or (ii) breach by the Government of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the PSU of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the PSU, its subsidiaries, affiliates, Sub-contractors including Specialist Sub- Contracts or O&M contractors, servants or agents, the same shall be the liability of the PSU.

## **42.2 Indemnity by the PSU**

42.2.1 Without limiting the generality of the PSU shall fully indemnify, hold harmless and defend the Government and the Government Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- (a) failure of the PSU to comply with Applicable Laws and Applicable Permits;
- (b) payment of taxes required to be made by the PSU in respect of the income or other taxes of the PSU's Sub-contractors including Specialist Sub-Contracts or O&M contractors, suppliers and representatives; or
- (c) non-payment of amounts due as a result of materials or services furnished to the PSU or any of its Sub-contractors including Specialist Sub-Contracts or O&M contractors which are payable by the PSU or any of its Sub- contractors including Specialist Sub-Contracts or O&M contractors.

42.2.2 Without limiting the generality of the provisions of this Article 42, the PSU shall fully indemnify, hold harmless and defend the Government Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Government Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other Intellectual Property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the PSU or by the PSU's Sub- contractors including Specialist Sub-Contracts or O&M contractors in performing the PSU'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 PSU 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 Locomotive or upgradation and development of infrastructure/facilities at the site of **Electric loco workshop Dabhoi**, as the case may be, or any part thereof or comprised



therein, are held to constitute an infringement and their use is permanently enjoined, the PSU shall promptly make every reasonable effort to secure for the Government a license, at no cost to the Government, authorizing continued use of the infringing work. If the PSU is unable to secure such license within a reasonable time, the PSU 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.

### **42.3 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 42 (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.

### **42.4 Defence of claims**

- 42.4.1 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 42, 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.
- 42.4.2 If the Indemnifying Party has exercised its rights under Clause 42.3, 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).
- 42.4.3 If the Indemnifying Party exercises its rights under Clause 42.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:
- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
  - (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of

interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or

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

Provided that if Sub-clauses (b), (c) or (d) of this Clause 42.4.3 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.

#### **42.5 No consequential claims**

Notwithstanding anything to the contrary contained in this Article 42, 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.

#### **42.6 Limitation of Liability**

42.6.1 Notwithstanding anything to the contrary in this Agreement, the liability of one Party towards the other Party for any damages or compensation of any nature whatsoever under this Agreement shall not exceed Rs. 200 crore (Rupees two hundred crore). For the avoidance of doubt, the limitation hereunder shall not apply to any or all liabilities in respect of third parties.

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

#### **42.7 Survival on Termination**

The provisions of this Article 42 shall survive Termination.

### **ARTICLE 43**

#### **43. WORKING RIGHTS OVER THE SITE OF *ELECTRIC LOCO WORKSHOP DABHOI***

##### **43.1 PSU's Working rights**

For the purpose of this agreement, the PSU shall have rights to the use of the site of ***Electric loco workshop Dabhoi*** for maintenance of Locomotives as specified in the Agreement. The PSU shall have no right to use the site other than use for maintenance of the Locomotives.

##### **43.2 Access rights of the Government and others**

43.2.1 The PSU shall allow free access to the site of ***Electric loco workshop Dabhoi*** at all times for the authorised representatives of the Government and for the persons duly authorised by any Government Instrumentality to inspect the site of ***Electric loco workshop Dabhoi***, as the case

may be, and to investigate any matter within their authority, and upon reasonable notice, the PSU shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

- 43.2.2 The PSU shall, for the purpose of operation and maintenance of any utility, rail or road, allow free access to the site of ***Electric loco workshop Dabhoi***, as the case may be, at all times for the authorized persons and vehicles of the controlling body of such utility, rail or road.

### **43.3 Property taxes**

- 43.3.1 All property taxes on the site of ***Electric loco workshop Dabhoi*** shall be payable by the Government as owner of the real estate comprising such site of ***Electric loco workshop Dabhoi***.

### **43.4 Restriction on sub-letting**

The PSU shall not sublicense or sublet the whole or any part of the site of ***Electric loco workshop Dabhoi***, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the PSU to appoint Sub Contractors or O&M contractors or the Specialist Sub Contractor for the performance of its obligations hereunder including for operation and maintenance of all or any part of the site of ***Electric loco workshop Dabhoi***, as the case may be.

## **ARTICLE 44**

### **44. DISPUTE RESOLUTION**

#### **44.1 Dispute resolution**

- 44.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 44.2.
- 44.1.2 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.

#### **44.2 Conciliation**

In the event of any Dispute between the Parties, either Party may call upon a mutually accepted person to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by such person or without the intervention of such person, either Party may require such Dispute to be referred to the PCEE/WR and the Chairman of the Board of Directors of the PSU for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 44.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 44.3.

### 44.3 Arbitration

- 44.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 44.2, shall be finally decided by reference to arbitration by a board of arbitrators appointed in accordance with Clause 44.3.2. Such arbitration shall be held in accordance with the International Chamber of Commerce (ICC) Arbitration Rules, as amended from time to time (the “**Rules**”) and shall be subject to the provisions of the Arbitrations and Conciliation Act, 1996 (26 of 1996) or any statutory modification or re-enactment thereof. The venue of such arbitration shall be Delhi, and the language of arbitration proceedings shall be English.
- 44.3.2 There shall be a board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.
- 44.3.3 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 44 shall be final and binding on the Parties as from the date it is made, and the PSU and the Government agree and undertake to carry out such Award without delay, subject to any legal remedy available under applicable Law.
- 44.3.4 The PSU and the Government agree that an Award may be enforced against the PSU and/or the Government, as the case may be, and their respective assets wherever situated.
- 44.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

## ARTICLE 45

### 45. DISCLOSURE

#### 45.1 Disclosure of Specified Documents

The PSU shall make available for inspection by any person, copies of this Agreement, the Maintenance Manual and the Manual of Specifications and Standards (hereinafter collectively referred to as the “**Specified Documents**”), free of charge, during normal business hours on all working days at the PSU’s registered office. The PSU shall prominently display at the site of ***Electric loco workshop Dabhoi***, public notices stating the availability of the Specified Documents for such inspection and shall make copies of the same available to any person upon payment of copying charges on a ‘no profit no loss’ basis.

#### 45.2 Disclosure of Documents relating to safety

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

#### 45.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 45.1 and 45.2, the Government shall be entitled to direct the PSU, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

*Explanation:*

The expression Protected Documents shall mean such of the Specified Documents or

documents referred to in Clauses 45.1 and 45.2, or portions thereof, the disclosure of which the Government is entitled to withhold under the provisions of the Right to Information Act, 2005.

## **ARTICLE 46**

### **46. REDRESSAL OF COMPLAINTS**

#### **46.1 Complaint Register**

- 46.1.1 The PSU shall keep a register (the “**Complaint Register / LOG Book**”) in every locomotive for recording of complaints by drivers and maintenance staff.
- 46.1.2 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 PSU.
- 46.1.3 Without prejudice to the provisions of Clauses 46.1.1 and 46.1.2, the Government may, in consultation with the PSU, specify the procedure for making complaints in electronic form and for responses thereto.

#### **46.2 Redressal of complaints**

- 46.2.1 The PSU shall inspect the Complaint Register / LOG book of every Locomotive before undertaking any Scheduled Maintenance or Unscheduled Maintenance, as the case may be, and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly recorded by the PSU in the Complaint Register.
- 46.2.2 In the event that a complaint shall require an urgent response from the PSU, the driver of a Locomotive or any maintenance staff, as the case may be, shall inform the ***Electric loco workshop Dabhoi*** forthwith and upon receiving such complaint, the PSU shall dispatch its Prompt Response Team and take such other action as may be necessary.- Not applicable
- 46.2.3 No later than 7 (seven) days after each Scheduled Maintenance, the PSU shall send to the Government a true photocopy each or a soft copy thereof, as the case may be, of all the pages of the Complaint Register on which any entry has been recorded during the course of the preceding quarter, and upon perusal thereof, the Government may, in its discretion, advise the PSU to take such further action as the Government may deem appropriate. The PSU shall consider such advice and inform the Government of the remedial action taken by the PSU.

## **ARTICLE 47**

### **47. MISCELLANEOUS**

#### **47.1 Governing law and jurisdiction**

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

#### **47.2 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).

### **47.3 Delayed payments**

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

### **47.4 Waiver**

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

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

47.4.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation there under 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.

### **47.5 Liability for review of Documents and Drawings**

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the Government of any Project Agreement, Document or Drawing submitted by the PSU nor any observation or inspection of the Minor Construction or Alteration, operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the PSU from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- (b) the Government shall not be liable to the PSU by reason of any review, comment,

approval, observation or inspection referred to in Sub-clause (a) above.

#### **47.6 Exclusion of implied warranties etc.**

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

#### **47.7 Survival**

##### **47.7.1 Termination shall:**

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

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

#### **47.8 Entire Agreement**

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

#### **47.9 Severability**

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

#### **47.10 No partnership**

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

#### **47.11 Third Parties**

This Agreement is intended solely for the benefit of the Parties, and their respective successors

and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

#### **47.12 Successors and Assigns**

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

#### **47.13 Notices**

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

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

Attention:

Designation:

Address:

Email:

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

Attention:

Designation:

Address:

Email:

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

#### **47.14 Language**

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

#### **47.15 Counterparts**



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

## ARTICLE 48.

### 48. DEFINITIONS

#### 48.1 Definitions

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

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

**“Adjusted Depreciated Value”** for Project Assets means the amount arrived at after adjusting the depreciated book value of such asset (by applying an annual depreciation rate of 5% (five percent) based on the written down value method) to reflect the variation occurring in WPI between the date of purchase thereof and the Handing over Date and multiplying the same by the Unpaid Project Asset Factor;

**“Affected Party”** shall have the meaning set forth in Clause 34.1;

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

**“Agreement Period”** means the period starting on and from the Appointed Date and ending on the Handing over Date;

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

**“Applicable Permits”** means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the Minor Construction or Alteration, operation and maintenance of the site of **Electric loco workshop Dabhoi** and Locomotives, as the case may be, during the subsistence of this Agreement;

**“Appointed Date”** means the date on which all the Condition Precedents are satisfied or an earlier date that the Parties may by mutual consent determine. For the 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;

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

**“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 PSU or corporation, the ownership, directly or indirectly, of more than 50% (fifty percent) of the voting shares of such person, and with

respect to a person which is not a PSU or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

**"Availability"** shall have the meaning set forth in Clause 21.2.4;

**"Available Hours"** shall have the meaning set forth in Clause 21.2.1;

**"Award"** shall mean the arbitral award passed in accordance with Clause 44.3.3;

**"Bank"** means a nationalised bank, or a scheduled bank incorporated in India and having a minimum net worth of Rs. 1000 crore (Rupees one thousand crore). For the avoidance of doubt, scheduled bank shall mean a bank as defined under section 2(e) of the Reserve Bank of India Act, 1934;

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

**"Base Price"** shall have the meaning set forth in Clause 24.2.1

**"Bid"** means the documents in their entirety comprised in the bid submitted by the {selected bidder} in response to the Request for Proposal in accordance with the provisions thereof and

**"Bids"** shall mean the bids submitted by any and all pre-qualified bidders;

**"Bid Security"** means the security provided by the PSU to the Government along with the Bid in a sum of Rs. *[amount to be fill by Zonal Railways]* in accordance with the Request for Proposal, and which is to remain in force until substituted by the Performance Security;

**"Biennial Schedule"** shall have the meaning set forth in Clause 17.8;

**"Board of Directors"** or **"Board"** means the board of director(s) of the PSU;

**"Book Value of M&P"** means the value as recorded in the **Electric loco workshop Dabhoi's** M&P book.

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

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

**"Complaint Register"** shall have the meaning set forth in Clause 46.1;

**"Conditions Precedent"** shall have the meaning set forth in Clause 4.1.1;

{**"Consortium"** shall have the meaning set forth in Recital (B);

{**"Consortium Member"** means a member of the Consortium;}

**"Consumables"** shall have the meaning set forth in Clause 17.4.1;

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

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

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

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

**"Dispute"** shall have the meaning set forth in Clause 44.1.1;

**"Disputed Amounts"** shall have the meaning set forth in Clause 28.1.2;

**"Dispute Resolution Procedure"** means the procedure for resolution of Disputes set forth in Article 44;

**"Divestment Requirements"** means the obligations of the PSU for and in respect of Termination as set forth in Clause 38.1.1;

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

**"Emergency"** means a condition or situation that is likely to endanger the security of the individuals on or about the site of **Electric loco workshop Dabhoi** or Locomotives, 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 site of **Electric loco workshop Dabhoi** or Locomotives, 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 site of **Electric loco workshop Dabhoi** or Locomotives, as the case may be, where applicable herein;

**"Epidemic Defect"** shall have the meaning set forth in Clause 17.19.1;

**"Epidemic Defect Warranty"** shall have the meaning set forth in Clause 17.19.1;

**"Exchange Rate"** means, in respect of Indian Rupees to be converted into Euro (€) 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;

**"Failure"** shall have the meaning set forth in Clause 17.13.2;

**"Fleet"** means and includes, for any Accounting Year, all Locomotives in respect of which the PSU has Maintenance Obligations during that Accounting Year;

**"Force Majeure"** or **"Force Majeure Event"** shall have the meaning ascribed to it in Clause 34.1;

**"Force Majeure Costs"** shall have the meaning ascribed to it in Clause 34.7.2

**"Government Default"** shall have the meaning set forth in Clause 37.2.1;

**"Government Indemnified Persons"** shall have the meaning set forth in Clause 42.1.1;

**"Government Instrumentality"** means any department, division or sub-division of the Government of India or the State Government and includes any commission, board, authority, agency or municipal and other local Government or statutory body including Panchayat under the control of the Government of India or the State Government, as the case may be, and having jurisdiction over all or any part of the site of **Electric loco workshop Dabhoi** or Locomotives, as the case may be, or the performance of all or any of the services or obligations of the PSU under or pursuant to this Agreement;

**"Government Representative"** means such person or persons as may be authorised in writing by the Government to act on its behalf under this Agreement and shall include any person or

persons having authority to exercise any rights or perform and fulfil any obligations of the Government under this Agreement;

**“GOI” or “Government”** means the Government of India / Western Railway ;

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

**“Guaranteed Availability”** shall have the meaning set forth in Clause 21.2.5;

**“Guaranteed Reliability”** shall have the meaning set forth in Clause 21.3.2;

**“Handing over Date”** means the date of completion of the Maintenance Period with respect to the Locomotives under this Agreement or termination of the Agreement by a Termination Notice

**“Helpline”** shall have the meaning set forth in Clause 17.24.1;

**“IGBT”** means Insulated Gate Bipolar Transistor;

**“IEC”** means the International Electro-technical Commission;

**“Indemnified Party”** means the Party entitled to the benefit of an indemnity pursuant to Article 42;

**“Indemnifying Party”** means the Party obligated to indemnify the other Party pursuant to Article 42;

**“Indirect Political Event”** shall have the meaning set forth in Clause 34.3;

**“Insurance Cover”** means the aggregate of the maximum sums insured under the insurances taken out by the PSU pursuant to Article 32, and includes all insurances required to be taken out by the PSU under Clause 32.1 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

**“Intellectual Property”** means all patents, trademarks, service marks, logos, get- up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, 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;

**“Intermediate Overhaul Schedule or IOH”** shall have meaning set forth in Clause 17.9

**“IRFC”** means the Indian Railway Finance Corporation;

**“Key Performance Indicators”** shall have the meaning set forth in Clause 21.1;

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

**“Locomotives”** shall have the meaning set forth in Clause 2.1;

**“Locomotive Price”** shall have the meaning set forth in Clause 24.1.1;

**“Maintenance Fee”** shall have the meaning set forth in Clause 26.1.1;

**“Maintenance Index”** means:

- (a) for the period between the Reference Dates for January of the Calendar Year in which the Bid was submitted and January preceding the Second Year of Maintenance Period, the sum of:
  - (i) 15% (fifteen percent) of CPIIW;
  - (ii) 20% (twenty percent) of WPIBMA;
  - (iii) 30% (thirty percent) of WPI; and
  - (iv) 35% (thirty five percent) of WPIEIM; and

- (b) for the period commencing from the Reference Date for January preceding the Third Year of Maintenance Period onwards, the sum of:
- (i) 15% (fifteen percent) of CPIIW;
  - (ii) 20% (twenty percent) of WPIBMA;
  - (iii) 15% (fifteen percent) of WPI;
  - (iv) 35% (thirty five percent) of WPIEIM; and
  - (v) 15% (fifteen percent) remaining constant as compared to the preceding revision, if any, of the Maintenance Index;

The index for WPIBMA, WPIEIM and WPIC shall be substituted as under,

- i. WPIBMA is substituted with new index which shall be calculated as  $0.75 \times \text{WPI for Basic Metals (Index Code-1314000000)} + 0.25 \times \text{WPI for Fabricated Metal Products, Except Machinery and Equipment (Index Code-1315000000)}$  in the 2011-12 WPI series.
- ii. WPIEIM is substituted with new index which shall be calculated as  $0.40 \times \text{WPI for AC Motors (Index Code-1317010005)} + 0.60 \times \text{WPI for Motors and other DC equipment (Index Code-1317070002)}$  in the 2011-12 WPI series.
- iii. WPIC is substituted with a new index which shall be WPI for Manufacture of Electrical equipment (Index Code-1317000000) in the 2011-12 WPI series.

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

**“Maintenance Manual”** shall have the meaning ascribed to it in Clause 17.3.2;

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

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

**“Maintenance Requirements”** shall have the meaning set forth in Clause 17.14;

**“Performance Security ”** shall have the meaning set forth in Clause 25.1.1;

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

**“Minor Construction or Alteration”** means any minor construction or alteration for up-gradation of the available existing infrastructure/facilities and development of additional infrastructure/facilities to meet the requirement at the site of **Electric loco workshop Dabhoi** to maintain .....Locomotives of Indian Railways etc.

**“M&Ps”** means machinery and plant;

**“/Electric loco workshop Dabhoi”** shall have the meaning set forth in Clause 20.1;

**“Non-Available Hours”** shall have the meaning set forth in Clause 21.2.2;

**“Non-Political Event”** shall have the meaning set forth in Clause 34.2;

**“Normative Distance”** shall have the meaning set forth in Clause 26.2.2;

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

**“O&M Contract”** means the maintenance contract that may be entered into between the PSU and the Specialist Sub Contractor or O&M contractors, as the case may be before performance of all or any of the O&M obligations;

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

**“O&M Expenses”** means expenses incurred by or on behalf of the PSU or by the Government, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance,

(d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Contract or any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

**“Operation Control Centre”** shall have the meaning set forth in Clause 17.24.1;

**“Operational Route”** shall have the meaning set forth in Clause 22.1.1;

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

**“Payable Spares”** shall have the meaning set forth in Clause 29.2.1;

**“Payment Authority”** shall have the meaning set forth in Clause 28.1.1;

**“Payment Due Date”** shall have the meaning set forth in Clause 28.1.2;

**“Political Event”** shall have the meaning set forth in Clause 34.4;

**“Project”** shall have the meaning set forth in Recital A and includes all supplies, works, services and equipment relating to or in respect of the Scope of the Agreement in accordance with the provision of this Agreement.

**“Project Agreements”** means this Agreement, contracts for up-gradation/development of the infrastructure/facilities at the site of **Electric loco workshop Dabhoi**, Specialist Sub-Contractor’s contract and any other material agreements or contracts that may be entered into by the PSU with any person in connection with matters relating to, arising out of or incidental to this Agreement, but does not include any Agreement in respect of the site of **Electric loco workshop Dabhoi** or an agreement for manufacture of the component, sub-systems for the Locomotives and other goods and services for the site of **Electric loco workshop Dabhoi**

**“Project Assets”** means all physical and other assets relating to and forming part of the site of **Electric loco workshop Dabhoi**, which are maintained, operated or used by the PSU for maintenance of the Locomotives as part of their obligations under this Agreement. The Project Assets may be provided either by the PSU or by the Government and include physical assets like civil structures, mechanical, engineering and plumbing (MEP) system, communication systems, offices, **Electric loco workshop Dabhoi**, Plant and Machineries, tools, software & hardware system etc. as well as non-tangible assets like insurance proceeds, Applicable Permits and other rights of the PSU to or in respect of the Project however excludes tracks, OHE, Signalling which are provided and maintained by the Government;

**“Prompt Response Teams”** or **“PR Teams”** shall have the meaning set forth in Clause 17.16.1;

**“Protected Documents”** shall have the meaning set forth in Clause 45.3;

**“PSU”** means Indian Railway’s PSU;

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

**“Reference Date”** means, in respect of the specified month, that last day of the preceding month with reference to which the constituents of the Maintenance Index, as the case may be, are revised;

**“Reliability”** shall have the meaning set forth in Clause 21.3.1;

**“Request for Proposal”** or **“RFP”** shall have the meaning set forth in Recital (B);

**“Right of Way”** means the constructive possession of the site of **Electric loco workshop Dabhoi**, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for Minor Construction or Alteration, O&M of the site of **Electric loco workshop Dabhoi**, in accordance with this Agreement;

**"Safety Requirements"** shall have the meaning set forth in Clause 18.1;

**"Schedule-A"** shall have the meaning set forth in Clause 17.6;

**"Schedule-B"** shall have the meaning set forth in Clause 17.7;

**"Scheduled Maintenance"** shall have the meaning set forth in Clause 17.5.1;

**"Scope of the Agreement"** shall have the meaning set forth in Clause 2.1;

**"Spares"** shall have the meaning set forth in Clause 17.4.2;

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

**"Specialist Sub-Contractor"** means the person or persons, as the case may be, whom the PSU has proposed in the RFP and approved by the Government to undertake the maintenance of Locomotive in accordance with the Agreement;

**"Specified Documents"** shall have the meaning set forth in Clause 45.1;

**"State"** means the States of India where the site of **Electric loco workshop Dabhoi** is located and "State Government" means the Governments of those States;

**"Statutory Auditors"** means a reputable firm of chartered accountants acting as the statutory auditors of the PSU under the provisions of the Companies Act, 1956/2013 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 33.1.1;

**"Sub-Contractor"** means the person or persons, as the case may be, with whom the PSU has entered into any of the contracts, any other material contract for up gradation/development, operation and/or maintenance of the site of **Electric loco workshop Dabhoi** or Locomotives, 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 PSU;

**"Suspension"** shall have the meaning set forth in Clause 36.1;

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

**"PSU"** shall have the meaning attributed thereto in the array of Parties as set forth in the Recitals.

**"PSU Default"** shall have the meaning set forth in Clause 37.1.1;

**"Termination"** means the expiry or termination of this Agreement;

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

**"Termination Payment"** means the amount payable, by the Government under and in accordance with the provisions of this Agreement, upon termination. For the avoidance of doubt, it is expressly agreed that the amount payable shall be subject to the limitations specified in Clause 37.4;

**"Tests"** means the tests set forth in Schedule-F to determine the conformity of Locomotives with the provisions of this Agreement;

**"Transfer of Technology"** shall have the meaning set forth in Clause 38.6.1; **"Unscheduled Maintenance"** shall have the meaning set forth in Clause 17.13.1;

**“Unpaid Project Asset Factor”** mean one minus the ratio of the total lump sum payment made to the PSU as per Clause 20.4 and purchase value of all such Project Assets provided by the PSU;

**“Vesting Certificate”** shall have the meaning set forth in Clause 38.4;

**“WPI”** means the Wholesale Price Index for all commodities as published by the Office of the Economic Advisor, 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;

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

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

**“WPIEIM”** means the Wholesale Price Index for Electric Motors as published by Office of the Economic Advisor, Ministry of Commerce and Industry, GOI and shall include any index which substitutes the WPIEIM, and any reference to WPIEIM shall, unless the context otherwise requires, be construed as a reference to the WPIEIM published for the period ending with the preceding month; and

**“WPIT”** means the Wholesale Price Index for Transformers as published by Office of the Economic Advisor, Ministry of Commerce and Industry, GOI and shall include any index which substitutes the WPIT, and any reference to WPIT shall, unless the context otherwise requires, be construed as a reference to the WPIT published for the period ending with the preceding month.

**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

SIGNED, SEALED AND  
DELIVERED

For and on behalf of

THE PRESIDENT OF INDIA By:

THE COMMON SEAL OF [PSU/Lead Member] 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

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

In the presence of:

1.)

2.)

## **SCHEDULES**

**SCHEDULE – A***(See Clause 2.1)***SPECIFICATIONS AND STANDARDS****1 Locomotives**

The PSU shall comply with the Specifications and Standards set forth in Annex-I of this Schedule-A for maintenance of the Locomotives.

## Annex - I

*(Schedule-A)***Specifications and Standards for Locomotives****1. Manual of Specifications and Standards to apply**

- a. The Locomotives shall conform to the Manual of Specifications and Standards for Locomotives published by the Government (***Maintenance manual of WAG-9 Locomotives containing Volume-1, Volume-2 and Volume-3***)
- b. All Special Maintenance Instructions (SMI), Technical Circulars (TC), and Modification Sheets (MS), including all latest amendments thereto, investigation reports, and the Maintenance Manual issued by RB & RDSO;
- c. All Specifications, Drawings, Schedules of Technical Requirements (STR), and Maintenance Instructions issued by CLW, BLW, or PLW; and
- d. Any other Document pertaining to the safety, operation, maintenance, or upgradation of Locomotives issued by the Railway Board, Western Railway, or any other Competent Authority.

SCHEDULE – B  
(See Article 10.1)

**Deleted**

Annex - I  
(Schedule-B)

**Deleted**

SCHEDULE – C  
(See Article 20 Clause 20.1.7)

**Electric loco workshop Dabhoi**

**1. *Electric loco workshop Dabhoi***

***Electric loco workshop Dabhoi*** shall include the land, buildings, structures, machinery and plants (M&Ps), road works and other systems as described in Annex-I of this Schedule-C.

**2. Inventory of Electric loco workshop Dabhoi**

An inventory of the ***Electric loco workshop Dabhoi*** including the land, buildings, structures, machinery and plants (M&Ps), road works, trees and any other immovable property on, or attached to, the ***Electric loco workshop Dabhoi*** shall be prepared jointly by the Government Representative and the PSU.

Annex - I  
(Schedule-C)

**Details of available existing infrastructure/facilities at  
Electric loco workshop Dabhoi**

**A. Infrastructure / Facility available at ELW/DB:**

Sr. No.	Description	Status	Sr. No.	Description	Status
1	Loco Lifting Shed	Completed	9	Security Cabin	Completed
2	Equipment Over Hauling Shed	Completed	10	STP Plant Shed	Completed
3	Admin Block	Completed	11	Fire Hydrant Plant	Completed
4	Security Block	Completed	12	Store Shed	Completed
5	Canteen	Completed	13	Paint Booth	Under construction
6	Inspection Shed	Completed	14	Water Testing Shed	Under construction
7	Toilet Block	Completed	15	Bogie Shed	Under construction
8	Pump Room	Completed	16	TM Shed	Under construction

**B. Commissioned T&P and M&P at ELW/DB :**

Sn	Item	Description	Unit	Qty.
1	M&P	CNC Surface Wheel Lathe	No	1
2	M&P	Wheel Press 500T	No	1
3	M&P	CNC Vertical Turret Lathe	No	1
4	M&P	CNC Axle Turning Lathe Slant Bed	No	1
5	M&P	Axle Journal Turning and Burnishing Machine	No	1
6	M&P	Horizontal Boring and drilling Machine (HDBM)	No	1
7	M&P	Heavy Duty Lathe (HDL)	No	1
8	M&P	EOT Crane 65/15T,	No	4
9	M&P	EOT Crane 5T	No	3
10	M&P	EOT Crane 25/5T	No	1
11	M&P	EOT Crane 15/3T	No	1
12	M&P	Pit Traverser for Loco Bogie of 25 Ton	No	1
13	M&P	Turn Table for turning wheelsets of 2Ton, Spare parts	No	2
14	M&P	10 KLD STP	No	1
15	M&P	Pneumatic Test Bench For E- 70 Brake System	Set	1
16	M&P	Hydraulic Pinion Extraction Unit working pressure of 2500 bar	Set	1
17	M&P	Hydraulic Shock Absorber Testing Machine	No	1
18	M&P	Magnaflux Testing Machine	No	1
19	M&P	Electric Oven, Chamber: 2750mm*2100mm*2250mm	No	1
20	M&P	Air Compressor, Capacity: 500 Cfm, Operating Pressure: 10kg/cm2,	No	1
21	M&P	Fully Automatic Tan Delta Tester,	No	2
22	M&P	Hydraulic Spring Testing Machine, Capacity 25 Ton,	No	1
23	M&P	Transformer Oil Filtration Plant of Capacity 3000 LPH,	No	2
24	M&P	Dissolved Gas Analyzer,	No	1
25	M&P	VVVF Drive Kit for Testing of light run test of loco Traction Motor	No	1

26	M&P	Induction Heater for dismounting and mounting of bearing races with capacity 50 KVA	No	1
27	M&P	Utility Vehicle Mahindra Marrazzo 7 STR M6-EVR WHT (Diesel).	No	1
28	M&P	Reach Truck, Make Godrej, Capacity 1400 Kg	No	1
29	M&P	Battery Operated Fork Lift Truck with 3T capacity,	No	1
30	M&P	Easy Mover for moving Electric Loco Bogie	No	1
31	M&P	Road Mobile Crane 9T,	No	1
32	M&P	Platform Truck 2T,	No	1
33	M&P	Godrej Hydraulic Hand Pallet Truck, Capacity 2500 kg,	No	4
34	M&P	Truck Tata model LPT 1616 BS-VI, Capacity 10.55 Ton	No	1
35	M&P	Lead Acid Battery Charger	No	1
36	M&P	Nickel Cadmium Battery Charger	No	1
37	M&P	Auxiliary Motor Test Bench	No	1
38	M&P	VCB Testing Kit	No	1
39	M&P	Speedometer Test Bench	No	1
40	M&P	Fork Lift 3T	No	1
41	M&P	Easy Movers RE1500 for electric loco bogie	No	1
42	M&P	Platform Truck 2T		2
43	T&P	Welding Plant Pulse Synergic MIG/MAG, 500Amp, Model ESAB ARISTO 500ix	No	3
44	T&P	Welding Plant MMA, 400Amp, Model ESAB ARC 400i	No	2
45	T&P	Traction Rod Bush Dismantling And Assembly Fixture, Double Acting Hollow Plunger: 30T-20T	No	2
46	T&P	Automatic Digital Surge Comparison Tester, Model ADST-10	No	1
47	T&P	Storage Racking System-5 Level-Starter bay,	No	4
48	T&P	Storage Racking System-5 Level-Extended bay,	No	48
49	T&P	Storage Racking System-3 Level-Starter bay,	No	10
50	T&P	Storage Racking System-3 Level-Extended bay,	No	30
51	T&P	Cage Pallet Bin, Cage Steel Size: 800(W)*800(D)*1000(H)mm, LCapacity 1000 kgs	No	250
52	T&P	Flat Pallet, Size: 800(W)*800(D)mm, Capacity 1000 kgs	No	50
53	T&P	Set of Trestles consisting of 04 Nos of 30T capacity	Set	12
54	T&P	Slotted angle steel rack overall dimension 1830x900x450mm, 7 shelves making 6 compartment,	No	20
55	T&P	High Pressure Jet Cleaning Machine for cleaning of Traction motor stator, rotor and Transformer radiator	No	1
56	T&P	Floor Scrubbing Machine to Karcher Model No SCRUBBER DRIER BD 50/50 C	No	1
57	T&P	Industrial vacuum cleaner to Karcher Model No WET AND DRY VACUUM CLEANER NT 75/2 Tact2 Me Tc.	No	1
58	T&P	Wet & Dry Vacuum Cleaner to Karcher Model No WET AND DRY VACUUM CLEANER NT 40/1 Ap L.	No	1
59	T&P	Airless Painting Equipment Graco Make	No	1
60	T&P	Semiautomatic Oxy-Fuel Cutting Equipment to Messer Model Portacut ,	Set	2
61	T&P	Pipe Bending Machine, Bending	No	1



62	T&P	Pipe Threading Machine,	No	1
63	T&P	Pedestal Grinder,	No	1
64	T&P	De-mineralizing plant 500 LPH of Ion Exchange model no CA 50,	No	1
65	T&P	Ultrasonic Flaw Detector Machine	No	1
66	T&P	Set of Static free handling of PCBs	No	1
67	T&P	LCR Meter	No	1
68	T&P	Pneumatic Drilling Machine, Chicago Pneumatic (CP) model No.CP1014P24 - 1/4",	Set	1
69	T&P	Pneumatic Drilling Machine, CP model No. CP1117P09 - 1/2",	Set	1
70	T&P	Pneumatic Vertical Wheel Grinder 150 mm, CP model no. CP3330-Salavet with spare Cup resinoid Wheel of 150x25mm	Set	2
71	T&P	Pneumatic Straight Wheel Grinder 150 mm, CP model no. P3249-GABSYG	Set	2
72	T&P	Pneumatic Impact Wrench 1/2" square drive Pistol type, CP model No. CP6500-RSR with Impact Socket set of CP model No. SS4114	Set	5
73	T&P	Pneumatic Impact Wrench 3/8" square drive Pistol type, CP model No. CP7729- Side-R-Side with Impact Socket set of CP model No. SS3113	Set	3
74	T&P	Pneumatic Impact Wrench 1/2" square drive Straight type, CP model No. CP7830HQ with Impact Socket set of CP model No. SS4114	Set	3
75	T&P	Pneumatic Impact Wrench 3/8" square drive Straight type, CP model No. CP7830Q with Impact Socket set of CP model No. SS3113	Set	3
76	T&P	Complete air line Plug & Play set for Pneumatic tools consisting of FRL 1/2" 2Pc one no (CP Part No.- 8940171929),	Set	3
77	T&P	Complete air line Plug & Play set for Pneumatics tools	Set	3
78	T&P	10X Magnifying Loupe with illumination to model OPTOMAG6	No	1
79	T&P	Pressure gauge Electric contact type 0-2000 grams, Dial size-4" to Baumer BJ.F.2.RK.4BM	No	1
80	T&P	Dead Weight Tester 0.2 to 16 kg of Make-RAVIKA Instruments,	No	1
81	T&P	Micrometer 0-150 mm external digital, make Mitutoyo	No	1
82	T&P	Micrometer 150-300 mm external digital make Mitutoyo	No	1
83	T&P	Vernier Depth Gauge 200 mm digital make Mitutoyo	No	2
84	T&P	Vernier Height Gauge 300 mm digital make Mitutoyo	No	1
85	T&P	Vernier Height Gauge 450 mm make Mitutoyo	No	1
86	T&P	Vernier Height Gauge 600 mm, make Mitutoyo	No	1
87	T&P	Internal Micrometer 50-150 mm, make Mitutoyo	No	1
88	T&P	Dial Gauge 50 mm dial accuracy 0.01 mm, make Mitutoyo	No	10
89	T&P	Magnetic Stand for dial, make Mitutoyo	No	4
90	T&P	Dial Calibrator, make Mitutoyo	No	1
91	T&P	Radius Gauges internal, make Mitutoyo	No	1
92	T&P	Radius Gauges external, make Mitutoyo	No	1
93	T&P	Stick Micrometer 50-150 mm, make Mitutoyo	No	1
94	T&P	Digital Vernier Caliper inside/outside-300 mm, make Mitutoyo	No	1
95	T&P	Outside Micrometer 0-25mm, make Mitutoyo	No	2
96	T&P	Inside Micrometer 5-30 mm, make Mitutoyo	No	2
97	T&P	Outside Micrometer 100-200 mm, make Mitutoyo	No	2

98	T&P	Inside Micrometer 25-50 mm, make Mitutoyo	No	2
99	T&P	Inside Micrometer 50-200 mm, make Mitutoyo	No	2
100	T&P	Inside Micrometer 50-300mm, make Mitutoyo	No	2
101	T&P	Dial Gauge with Magnetic Stand, make Mitutoyo	No	1
102	T&P	Spring Balance with dial 0- 25 kg, least count 0.25 kg, Salter model No. S50	No	1
103	T&P	Spring Balance with dial 0- 50 kg, least count 0.5 kg, Salter model No. S50	No	2
104	T&P	Digital Flange Thickness Gauge accuracy 0.1mm, Paragon Instrumentation Engineers Pvt. Ltd (PIE) model No-FWG-1(D)	No	2
105	T&P	Digital Root Thickness Gauge accuracy 0.1 mm, PIE	No	2
106	T&P	Digital Tread Thickness Gauge accuracy 0.1 mm, PIE	No	2
107	T&P	Digital Wheel Distance Measuring Gauge, PIE	No	2
108	T&P	Wheel Dia Measuring Gauge 1000 mm to 1150 mm gauge accuracy 0.1 mm,	No	2
109	T&P	Digital Buffer Height Gauge, PIE	No	2
110	T&P	Hand Crimping Tool (0.5 to 6.0 sq mm) to Jainson model CHETAK-6	Set	5
111	T&P	Hand Crimping Tool (0.5 to 16 sq mm) to Jainson model SAMRAT-16	Set	7
112	T&P	Hand Crimping Tool (10 to 16 sq mm) to Jainson model CHETAK-16	Set	2
113	T&P	Hand Crimping Tool with dies of 10 sets (10 to 185 sq mm) to Jainson model VISHAL-185	Set	1
114	T&P	Hand Crimping Tool with dies of 11 sets (25 to 400 sq mm) to Jainson model SANGRAM-400	Set	1
115	T&P	Hand Hydraulic Crimping Tool with dies of 8 sets (10 to 240 sq mm) to Jainsonmodel HPCT-20B	Set	2
116	T&P	Hand Crimping Tool (10 to 95 sq mm) with dies of 07 sets to Jainson model GRD-95 (Hexagonal)	Set	1
117	T&P	Hand Hydraulic Crimping Tool with dies of 13 sets (50 to 1000 sq mm) to Jainsonbmodel PRITHVI-1000	Set	3
118	T&P	Cable Cutter up to 6 mm to Jainson model TIGER-125	Set	2
119	T&P	Cable cutter (up to 500 sq mm unarmored cables) to Jainson model JAGUAR-52J	Set	1
120	T&P	220V Electric Hand Drill 10 mm capacity, along with spare HSS drill bit (parallel) set 3 mm to 10 mm, Bosch model No-GBM 350	No	5
121	T&P	220V Electric Hand Drill 12mm capacity, along with spare HSS drill bit (parallel) set 3 mm to 12 mm, Bosch model No-GBM 13-RE	No	5
122	T&P	220V Electric Hand Grinder 100 mm disc dia along with spare Grinding wheel 125 mm, Bosch model No-GWS 14-125	No	5
123	T&P	220V Electric Hand Grinder 180 mm disc dia along with spare Grinding wheel 180 mm, Bosch model No-GWS 2000	No	5
124	T&P	220V Electric Hand Drill impact 2 speed 12 mm capacity, along with spare HSS drill bit(parallel) set 3 mm to 12 mm, Bosch model No- GBM 13-2	No	2
125	T&P	220V Electric Hand Jig Saw 6 mm capacity, along with spare Jig saw blade set for Wood, Aluminium and steel,Bosch model No- GST-700	No	2
126	T&P	220V Electric Cut off Saw 350 mm portable type along with spare set of wheel size 355 mm, Bosch model No-GCO 220	No	2
127	T&P	220V Electric Angle Grinder 100 mm capacity, along with spare grinding wheel set of size 100 mm, Bosch model No- GWS 750-100	No	3

128	T&P	220V Electric Straight Grinder along with spare wheels, Bosch model No-GGS 28 LCE	No	3
129	T&P	220V Electric Hand Blower 800 watt, Bosch model No- GBL 82-270.	No	2
130	T&P	Main Desk as per Godrej model No Maestro(1800x900x750)	No	3
131	T&P	Joining Table as per Godrej model No Maestro RHS- 1200x1050x750	No	1
132	T&P	Mobile Pedestal as per Godrej model No Maestro	No	3
133	T&P	Return Desk as per Godrej model No Maestro LHS- 1200x600x730	No	3
134	T&P	Bookcase as per Godrej model No Maestro Bookcase 790x400x2010	No	1
135	T&P	High Back Chair as per Godrej model No Rich VeryHigh Back	No	1
136	T&P	2 Door Bookcase with DL top Godrej model No 2 Door Bookcase (940x914x320)	No	2
137	T&P	Executive Table as per Godrej model No Enterprise Office Desk with CPU mount (1650x900x728)	No	5
138	T&P	High Back Chair as per Godrej model No Regency	No	7
139	T&P	Office Table as per Godrej model No T-9 (1365x680x735)	No	30
140	T&P	Office Chair as per Godrej model No Diva Revolving Mid-back with fixed loop arm rest.	No	70
141	T&P	Visitor Chair as per Godrej model No Kareena NXT Visitor	No	30
142	T&P	Conference Table-21 seater as per Godrej model No Mingle Modular Table	No	1
143	T&P	Chair as per Godrej model No Economy Executive (EII) Mid Back	No	60
144	T&P	Office Table as per Godrej model No Stylo 1200x600x750 CPU Storage on RHS & 3 Drawer unit on RHS	No	20
145	T&P	Modular Workstation 4 cluster size 1500mm x 1500mm x 600mm each cluster as per Godrej Xpress office 4 Seater Plus with Middle Fin 60x60 (cluster of four)	No	4
146	T&P	Sofa Set as per Godrej model No Parto (3+1+1).	No	2
147	T&P	Coffee Table as per Godrej model no Alice (1000x650x450)	No	2
148	T&P	Reading Table as per Godrej Model No WorkTable 5026	No	9
149	T&P	Library Chair as per Godrej model No Bravo Mid Back	No	9
150	T&P	Steel Almirah with overall size of 1830Hx900Wx450D mm with four adjustable shelves making 5 compartments without locker	No	30
151	T&P	Personal Locker Unit of size 1830Hx760Wx450D with 8 partitions,	No	25
152	T&P	Stools of adjustable heights with seats of P.U.	No	5
153	T&P	Sliding door Cabinet 710Hx900Wx450D as per Godrej model No VSDU-2	No	13
154	T&P	Book Rack size 1890x925x300mm,	No	5
155	T&P	All in One Desktop to Lenovo IdeaCentre A340 60.45cms - years onsite warranty or latest or similar model from HP/DELL.	No	13
156	T&P	LG Projector model No. HF60LG Powerful Full HD LED (1920x1080),	No	1
157	T&P	HP Design Jet SD Pro 44-in MFP- Colour, Functions Print, copy, scan,	No	1
158	T&P	Canon imageRUNNER Advance Dx C3700 (latest) or similar from HP, EPSON.	No	2
159	T&P	iBall Nirantar UPS 622 or latest.	No	19
160	T&P	HP Color Laser MFP 178nword latest.	No	2
161	T&P	Epson L6160 Wi-Fi DuplexAll-in-One Ink Tank Printer or latest.	No	5
162	T&P	battery operated loco shunter 300T	No	1

163	T&P	Pantograph test bench	No	1
164	T&P	Induction heater with temp setting capacity 1500 watt	No	1
165	T&P	Induction heater 11 KVA	No	1
166	T&P	Induction heater of horizontal yoke for heating end frame of TM	No	1
167	T&P	MCB Test Unit with MV drop checking	No	1
168	T&P	Test Bench For Angle Transmitter	No	1
169	T&P	VCD Test Bench	No	1
170	T&P	Induction heater 40 KVA	No	1
171	T&P	Hydraulic posi.lock puller with 10 ton capacity jack	No	1
172	T&P	Digital Anemometer	No	4
173	T&P	Shock pulse meter for bearing health checkup by SPM	No	2
174	T&P	Universal Growler	No	2
175	T&P	Ultrasonic air Leak Detector	No	2
176	T&P	Digital refractometer for ethylene glycol	No	1
177	T&P	Hot air oven	No	1
178	T&P	pH meter	No	1
179	T&P	Hot gun	No	2
180	T&P	Cut off machine for cutting various material	No	2
181	T&P	Pneumatic Grease Pump 50KG for different type of grease	No	4
182	T&P	Hand held greasing pump	No	2
183	T&P	Portable Gas Cutting Plant	No	2
184	T&P	Hydro meter	No	1
185	T&P	Magnetic drilling machine with tapping arrangement.	No	1
186	T&P	Power Hacksaw machine Light Duty Semi Hydraulic	No	1
187	T&P	Thermovision camera	No	1
188	T&P	Temperature Gun meter 50 to 550 degree cent	No	2
189	T&P	Pipe cutting machine (PowerHacksaw)	No	2
190	T&P	Ultrasonic Thickness Gauge	No	1
191	T&P	Pipe Gripping Jaws Bench Vise	No	1
192	T&P	Hardness tester for rubber	No	1
193	T&P	Discharge rods	No	6
194	T&P	50-150 mm 2 leg bore gauge	Nos	2
195	T&P	160-250 mm 2 leg bore gauge	Nos	1
196	T&P	75-88 mm 3 leg digital bore gauge	Nos	2
197	T&P	87-100mm 3 leg digital bore gauge	Nos	2
198	T&P	125-150 mm 3 leg digital bore gauge	Nos	1
199	T&P	150-175mm 3 leg digital bore gauge	Nos	1
200	T&P	175-200mm 3 leg digital bore gauge	Nos	1
201	T&P	250-275 mm 3 leg digital bore gauge	Nos	2
202	T&P	150-175 mm snap gauge	Nos	2
203	T&P	Digital Outside Micrometer 0- 150 mm	Nos	1
204	T&P	Digital Vernier Caliper 0-300 mm	Nos	4

205	T&P	bore gauge 250-400mm	Nos	2
206	T&P	Set of Gauges for H-Type CBC Coupler	Nos	1
207	T&P	Digital Vernier Caliper 0-450 mm	Nos	1
208	T&P	Snap gauge 225-250 mm Least count 0.001 mm with digital dial indicator	Nos	1
209	T&P	Snap gauge 300-325 mm Least count 0.001 mm with digital dial indicator	Nos	1
210	T&P	"ITI" Make Setting ring for dial snap gauge 175- 180mm	Nos	1
211	T&P	"ITI" Make Setting ring for dial snap gauge 200- 225mm	Nos	1
212	T&P	"ITI" Make Setting ring for dial snap gauge 100- 125mm	Nos	1
213	T&P	"ITI" Make Setting ring for dial snap gauge 75- 100mm	Nos	1
214	T&P	"ITI" Make Setting ring for dial snap gauge 125- 150mm	Nos	1
215	T&P	"ITI" MakeSetting Ring for Bore Gauge ID Checking 160-250mm		1
216	T&P	Blue Star Water cooler with inbuilt RO+UV Model SWCSDLX6080UVRO	No	1
217	T&P	PureIT Water Purifier UV (Classic UV)	No	2
218	T&P	Voltas Water Dispenser (Magic Spring)	No	2
219	T&P	Tie Rod for 65/15T EOT Crane with fitment	Set	2
220	T&P	Stand (Jack) for wheel set use in wheel press machine	No	4
221	T&P	Self supporting sliding aluminium ladder 24 feet height	No	1
222	T&P	S.S Canteen Table	No	12
223	T&P	S.S Canteen Benches	No	24
224	T&P	3D Static Model of ELECTRIC LOCO WORKSHOP DABHOI	No	1
225	T&P	Work Center for OCB & TMB	No	2
226	T&P	Roof Stacking Stand	No	10
227	T&P	TM Testing Stand	No	2
228	T&P	TM Rotor Stand	No	8
229	T&P	Filter Access or Maintenance Trolley	No	3
230	T&P	Wheel Disc Stacking Stand	No	20
231	T&P	Material Trolley	No	3
232	T&P	Stand for Wheel	No	1
233	T&P	Stand for Auxiliary	No	1
234	T&P	VCB Storage Stand	No	1
235	T&P	VCB Working Stand	No	4
236	T&P	High Reach Pantograph Overhauling & Testing	No	1
237	T&P	Platform for Transformer	No	2
238	T&P	Stacking Stand of HRPT Pantograph	No	1
239	T&P	TM Run Test Base Plate	No.	1
240	T&P	CUTTING TORCH	No	1
241	T&P	Multimeter Digital (0.0 mV to 1000 V)	No.	2
242	T&P	Reversible Ratchet handle with socket 6 to 19 mm (3/8")	No.	3
243	T&P	Reversible Ratchet handle and Extension Bar (3/4")	No.	1
244	T&P	Flat file Smooth 300 mm	No.	2
245	T&P	Flat file Smooth 150 mm	No.	2
246	T&P	File Round Basted smooth (300 mm)	No.	2

247	T&P	Triangular File smooth (200 mm)	No.	2
248	T&P	Triangular File Bastard (150 mm)	No.	2
249	T&P	DE Spanner (46x50)	No.	2
250	T&P	DE Spanner (8x9)	No.	2
251	T&P	DE Spanner (6x7)	No.	2
252	T&P	DE Spanner (17x19)	No.	2
253	T&P	DE Spanner (27x30)	No.	2
254	T&P	DE Spanner (24x30)	No.	2
255	T&P	Pipe Wrench (36")	No.	2
256	T&P	Oil Injection Kit with Accessories (-)	No.	1
257	T&P	Spring Tension Measuring Gauge (10-40 kg)	No.	1
258	T&P	Digital LCR Meter (Key Sight)	No.	2
259	T&P	Tread wear Measuring Gauge Paragon (-)	No.	2
260	T&P	Pipe Wrench (24")	No.	1
261	T&P	DE Spanner (65x70)	No.	4
262	T&P	Digital Vernier Caliper (0-450 mm)	No.	1
263	T&P	Ratchet spanner with drive handle	No.	2
264	T&P	Bench Vice (10", 6") Each	No.	1
265	T&P	Bench Vice (10", 6") Each	No.	1
266	T&P	Submersible Pump Set (230 V Single Phase)	No.	2
267	T&P	Ring Spanner (6x7)	No.	1
268	T&P	Ring Spanner (8x9)	No.	1
269	T&P	Ring Spanner (14x15)	No.	1
270	T&P	Screw Driver flat (150 mm)	No.	2
271	T&P	Tubular Box Spanner (6x7)	No.	1
272	T&P	Tubular Box Spanner (30x32)	No.	1
273	T&P	Tubular Box Spanner (16)	No.	1
274	T&P	Tubular Box Spanner (27x30)	No.	1
275	T&P	Tubular Box Spanner (20x22)	No.	1
276	T&P	Tubular Box Spanner (18)	No.	1
277	T&P	Hex Socket 1" (55 mm)	No.	1
278	T&P	Hex Socket 1/2" (14 mm)	No.	2
279	T&P	Hex Socket 1/2" (21 mm)	No.	2
280	T&P	Hex Socket 1/2" (27 mm)	No.	2
281	T&P	Hex Socket 1/2" (32 mm)	No.	2
282	T&P	Hex Socket 1/2" (23 mm)	No.	2
283	T&P	Hex Socket 1/2" (24 mm)	No.	2
284	T&P	Hex Socket 1/2" (30 mm)	No.	2
285	T&P	Hex Socket 3/4" (24 mm)	No.	2
286	T&P	Hex Socket 3/4" (38 mm)	No.	2
287	T&P	Exhaust Fan Sweep 215V (300 mm)	No.	2
288	T&P	Pre-adjustable type Torque Wrench AVT-300 (5-33 Nm)	No.	2

289	T&P	Torque Wrench ( Ratchet Type ) 3/8" Sq. Drive (0.3 to 1.2 Kg/Mt))	No.	2
290	T&P	Allen Key Set (02 to 17 mm)	Set	1
291	T&P	Allen Key 05 mm	No.	1
292	T&P	Allen Key 17 mm	No.	1
293	T&P	Allen Key 12 mm	No.	1
294	T&P	Tap Wrench adjustable (14")	No.	1
295	T&P	Flat Chiesel 32 mm	No.	2
296	T&P	Flat Chiesel 12 mm	No.	2
297	T&P	Letter A to Z (6 mm)	No.	4
298	T&P	Insulation Tester Megger (500V & 1000 V) Each	No.	1
299	T&P	1/2" sq drive socket set (set)	No.	2
300	T&P	Digital Dial Indicator with magnetic stand	No.	2
301	T&P	Digital Insulation and Continuity Tester (500V)	No.	1
302	T&P	Bore Gauge (50-150 mm , 35-60 mm) Each	No.	1
303	T&P	Outside Micrometer ( 300-400 mm)	No.	1
304	T&P	Omega makes electronic Platform weight scale	No.	1
305	T&P	INDUCTION HATER FOR BEARING	No	1
306	T&P	Induction Heater Flexi Coil	No.	1
307	T&P	Bearing Puller	No.	1
308	T&P	Battery charger	No.	1
309	T&P	SHC Grease Gun ( 05 Kg)	No.	1
310	T&P	Portable Surface Roughness Tester	Nos	1
311	T&P	BORE GAUGE 50-150 MM "MITTUTOYO	NOS	1
312	T&P	BORE GAUGE 35-60 MM "MITTUTOYO	NOS	1
313	T&P	BORE GAUGE 18-35 MM "MITTUTOYO	NOS	1
314	T&P	CIRCLIP NOSE PLIER 7" (175MM OUTSIDE)	NOS	2
315	T&P	TUBLER BOX SPANNERS 27X30 MM	NOS	1
316	T&P	TUBLER BOX SPANNERS 30X32 MM	NOS	2
317	T&P	TUBLER BOX SPANNERS 18 MM	NOS	2
318	T&P	TUBLER BOX SPANNERS 10 MM	NOS	2
319	T&P	TUBLER BOX SPANNERS 6X7 MM	NOS	2
320	T&P	TUBLER BOX SPANNERS 16 MM	NOS	2
321	T&P	TUMBLER BOX SPANNERS 6X7 MM TO 20X22 MM	SET	1
322	T&P	RING SPANNERS 14X15 MM	NOS	2
323	T&P	RING SPANNERS 10X11 MM	NOS	2
324	T&P	RING SPANNERS 8X9	NOS	2
325	T&P	ALLEN KEY 8 MM	NOS	2
326	T&P	ALLEN KEY 10 MM	NOS	2
327	T&P	ALLEN KEY 12 MM	NOS	2
328	T&P	ALLEN KEY 2 MM	NOS	2
329	T&P	ALLEN KEY 6 MM	NOS	2
330	T&P	ALLEN KEY 7/32 MM	NOS	1

331	T&P	ALLEN KEY 14 MM	NOS	2
332	T&P	ALLEN KEY 17 MM	NOS	2
333	T&P	ALLEN KEY HANDLE 2.5 MM	NOS	1
334	T&P	ALLEN KEY HANDLE 5 MM	NOS	2
335	T&P	ALLEN KEY HANDLE 4 MM	NOS	2
336	T&P	TORQUE WRENCH AVT 100 PRE. ADJUSTABLE & PRE. SETTING 2.5 - 11NM 0.3-1.2 KGFM 20-100 IBFFT 2.8 IBFFT	NOS	2
337	T&P	TORQUE WRENCH AVT 300 PRE. ADJUSTABLE & PRE SETTING AVT 300 5-33 NM 0.5-3. KGFM 4-24 IBFFT	NOS	2
338	T&P	DISTANCE PIECE 1" SQUARE DRIVE	NOS	1
339	T&P	SE SPANNER 60 MM	NOS	1
340	T&P	DE SPANNER 24X27	NOS	1
341	T&P	DE SPANNER 8X9	NOS	2
342	T&P	DE SPANNER 11X12	NOS	2
343	T&P	DE SPANNER 46X50	NOS	1
344	T&P	PIPE WRENCH 36"	NOS	1
345	T&P	TRUE RMS MULTIMETER DIGITAL	NOS	1
346	T&P	3/8" REVERSIBLE RATCHET HANDLE 215 MM & HEX SOCKET SIZE - 6 MM TO 19 MM	Set	1
347	T&P	TRIP TORQUE WRENCH MODEL- T 750 %" SQ DRIVE CAP 350-750 FTLB 49-105 MKGS	NOS	2
348	T&P	CLICK TYPE ADJUSTABLE RATCHET TORQUE WRENCH FOR 3 PHASE	Nos	1
349	T&P	TORQUE WRENCH PRE - ADJUSTABLE TYPE 49-95 KGFM 1" SQ DRIVE, 350-700 LBFFT, 480-940 NM WITH TOMY ROD	Nos	2
350	T&P	SOCKET 14 MM 1/2" DRIVE	Nos	2
351	T&P	SOCKET 21 MM 1/2" DRIVE	Nos	2
352	T&P	SOCKET 22 MM 1/2" DRIVE	Nos	2
353	T&P	SOCKET 24 MM 1/2" DRIVE	Nos	2
354	T&P	SOCKET 27 MM 1/2" DRIVE	Nos	2
355	T&P	SOCKET 36 MM 1/2" DRIVE	Nos	2
356	T&P	SOCKET 32 MM 1/2" DRIVE	Nos	2
357	T&P	SOCKET 24 MM 1/2" DRIVE	Nos	2
358	T&P	SOCKET 38 MM 1/2" DRIVE	Nos	2
359	T&P	SOCKET 30 MM 1/2" DRIVE	Nos	1
360	T&P	DOWELL CRIMPING TOOL PSD 22-16	Nos	2
361	T&P	DOWELL CRIMPING TOOL KOP PSD 88	Nos	2
362	T&P	JAISON' CRIMPING TOOL CAPICITY 1.5 SQ. MM-10 SQ. MM	Nos	2
363	T&P	LIFTING TACKLE FOR GTO LOCO	NOS	1
364	T&P	6 Ton /4 Leg Sling	Nos	4
365	T&P	Allen key 6 mm	NOs	3
366	T&P	Allen key 8 mm	NOs	2
367	T&P	Allen key 10 mm	NOs	15
368	T&P	Allen key 14 mm	NOs	2
369	T&P	Alien key 17 mm	NOs	2



370	T&P	File triangular smooth 200 mm	NOs	8
371	T&P	File triangular Bustrad 150 mm	NOs	3
372	T&P	File flat smooth 300 mm	NOs	10
373	T&P	SE Spanner 2 3/4" (70 mm)	NOs	1
374	T&P	DE Spanner 1 5/8" X 1 3/4" (65x70 mm)	NOs	15
375	T&P	DE Spanner 11x12 mm	NOs	25
376	T&P	3/8" Reversible ratchet handle 215 mm	NOs	1
377	T&P	3/8" Drive hex socket 6,7,8,9,10,11,12,13,14,16,17,18,19mm(13 NOS)	set	1
378	T&P	Soket 36mm 3/4" sq Drive	Nos	1
379	T&P	Soket 24mm 3/4" sq Drive	Nos	4
380	T&P	Soket 38mm 3/4" sq Drive	Nos	3
381	T&P	Soket 14mm 1/2" sq Drive	Nos	9
382	T&P	Soket 24mm 1/2" sq Drive	Nos	10
383	T&P	Soket 27mm 1/2" sq Drive	Nos	10
384	T&P	Soket 32mm 1/2" sq Drive	Nos	6
385	T&P	DE Spanner 30x32 mm	Nos	4
386	T&P	DE Spanner 41x46 mm	Nos	4
387	T&P	Ring Spanner 24-27 mm	Nos	4
388	T&P	Ring Spanner 30-32 mm	Nos	4
389	T&P	6" Extension bar 1" Dowel	Nos	2
390	T&P	Digital three point /leg inside micrometer range 200-250 mm, LC 0.001 mm with a standard setting ring 215 mm	NO	1
391	T&P	Digital three point /leg inside micrometer range 175- 200 mm, LC 0.001 mm with a standard setting ring 180 mm	No	1
392	T&P	Digital three point /leg inside micrometer range 100- 125 mm LC 0.001 mm with a standard setting ring 120 mm	No	1
393	T&P	torque wrench (12 - 68 )NM.	Nos	1
394	T&P	induction heater (serviceable)	Nos	1
395	T&P	Variable dual DC power supply unit input 230V, 50Hz, make aplab model L1288	Nos	1
396	T&P	three cell torch	Nos	2
397	T&P	Digital dial gauge (0.01mm) with magnetic stand	Nos	2
398	T&P	50 Kg GREASE PUMP ( serviceable)	Nos	1
399	T&P	RING GAUGE ( RLW - RCT- 06)	Nos	1
400	T&P	induction heater yoke	Nos	1
401	T&P	Ring spanner (8x9)	Nos	1
402	T&P	Ring spanner (10x11)	Nos	1
403	T&P	Ring spanner (12x13)	Nos	1
404	T&P	Ring spanner (14x15)	Nos	1
405	T&P	Ring spanner (16x17)	Nos	1
406	T&P	Ring spanner (18x19)	Nos	1
407	T&P	Ring spanner (20x22)	Nos	1
408	T&P	Ring spanner (21x23)	Nos	1

409	T&P	Ring spanner (24x27)	Nos	1
410	T&P	Ring spanner (30x32)	Nos	2
411	T&P	Ring spanner (32x36)	Nos	1
412	T&P	DE spanner (30x32)	Nos	2
413	T&P	DE spanner (32x36)	Nos	2
414	T&P	DE spanner (36x41)	Nos	1
415	T&P	DE spanner (46x50)	Nos	1
416	T&P	Hammer with handle	Nos	2
417	T&P	Standard setting ring (179.9947mm) ( BAKER)	Nos	1
418	T&P	Standard setting ring (170.00mm) ( BAKER)	Nos	1
419	T&P	Standard setting ring (119.9963mm) ( BAKER)	Nos	1
420	T&P	Standard setting ring (100.0055mm) ( BAKER)	Nos	1
421	T&P	Standard setting ring (214.9980mm) ( BAKER)	Nos	1
422	T&P	Rod for Mounting / Dismounting Pinion	Nos	2
423	T&P	Oxy- acetylene cutting torch	Nos	1
424	T&P	Analog Tubular Inside Micrometer (Two Point)	Nos	1
425	T&P	TAPER PLUG GAUGE FOR 6FRA- 6068 TRACTION MOTOR AS PER RDSO DRAWING NO.	Nos	1
426	T&P	Growler tester SUITABLE FOR 6FRA6068 THREE PHASE ROTOR	Nos	1
427	T&P	Digital Snap Gauge 75-100	Nos	1
428	T&P	Digital Snap Gauge 100-125	Nos	1
429	T&P	Digital Snap Gauge 125-150	Nos	1
430	T&P	Digital Snap Gauge 175-200	Nos	1
431	T&P	Digital Snap Gauge 200-225	Nos	1
432	T&P	3-Point Inside Micrometer 50-100	Nos	1
433	T&P	3-Point Inside Micrometer 100-125	Nos	1
434	T&P	3-Point Inside Micrometer 150-175	Nos	1
435	T&P	3-Point Inside Micrometer 175-200	Nos	1
436	T&P	3-Point Inside Micrometer 200-225	Nos	1
437	T&P	3-Point Inside Micrometer 300-325	Nos	1
438	T&P	Digital Depth Gauge 0-25mm	Nos	1
439	T&P	Filler Gauge	Nos	1

### ***C. Under Commissioning T&P and M&P at ELW/DB :***

<b><i>Sn</i></b>	<b><i>Item</i></b>	<b><i>Description</i></b>	<b><i>Unit</i></b>	<b><i>Qty.</i></b>
1	M&P	Paint Booth without Oven	Nos	1
2	M&P	Crane 10T	Nos	3
3	M&P	Provision of Rain Water Testing Plant for AC loco maintenance (Lumpsum)	Nos	1
4	M&P	EOT Crane 25/5 T	Nos	1
5	M&P	Wheel Turn Table 2T	Nos	1
6	M&P	VVVF drive kit for testing of Motorized Wheel Set for light run test	Nos	2

7	M&P	Electrical industrial oven Heating load 45KW/440v, Phase	Nos	1
8	M&P	Jib Crane 2 T	Nos	1
9	M&P	Microprocessor Based Test Bench Electro Magnetic Contactor	Nos	1
10	M&P	Microprocessor Based Test Bench Electro Pneumatic Contactor	Nos	1
11	M&P	Main compressor test bench	Nos	1
12	M&P	Hydraulic Trolley Mounted Puller and Pusher Machine (Bearing Extractor) for WAP5	Nos	1
13	M&P	Hydraulic Trolley Mounted Puller and Pusher Machine (Bearing Extractor) for WAP7	Nos	1
14	M&P	Spheri blocks replacement machine with fixtures for wap-5 motor with 30ton jack	Nos	1
15	M&P	Sphero blocs replacement machine with fixtures for bogie (p-5 and P-7)	Nos	1
16	M&P	Transformer lifting / lowering trolley(hydraulic)	Nos	1
17	M&P	Dynamic balancing machine	Nos	1
18	M&P	Air dryer test bench	Nos	1
19	M&P	VVVF Drive Panel for Auxiliary AC Motors run test of WAP 7 & WAG 9	Nos	1
20	M&P	Trolley mounted hydraulic bearing extractor 50ton	Nos	1
21	M&P	Induction Heater for dismounting and mounting of bearing races	Nos	1
22	T&P	50-63 mm 3 leg digital bore gauge	Nos	2
23	T&P	62-75 mm 3 leg digital bore gauge	Nos	2
24	T&P	100-125 mm 3 leg digital bore gauge	Nos	1
25	T&P	200-225 mm 3 leg digital bore gauge	Nos	2
26	T&P	275-300 mm 3 leg digital bore gauge	Nos	1
27	T&P	125-150 mm snap gauge	Nos	1
28	T&P	100-125mm snap gauge	Nos	1
29	T&P	150-175 mm outside micrometer	Nos	2
30	T&P	125-150mm inside micrometer	Nos	1
31	T&P	175-200 mm outside micrometer	Nos	1
32	T&P	Digital Outside Micrometer 150- 300 mm	Nos	1
33	T&P	Digital Dial gauge 12.7-001mm	Nos	6
34	T&P	Tubular inside micrometer 200-1000mm	Nos	1
35	T&P	Ring Gauge	Nos	1
36	T&P	Plug Gauge	Nos	1
37	T&P	Disc Micrometer 75-100 mm and 225-250 mm	Nos	1
38	T&P	"ITI" Make Setting Ring for Bore Gauge ID Checking 250-400mm	Nos	1
39	T&P	"ITI" Make Setting Ring for Bore Gauge ID Checking 50-160mm	Nos	1
40	T&P	LCR Meter	Nos	2
41	T&P	Wheel set stacking rack	Nos	12
42	T&P	TM stacking rack (4 level)	Nos	12
43	T&P	Wheel disc stacking rack	Nos	3
44	T&P	Multiaxle storage	Nos	3
45	T&P	Brake disc storage rack	Nos	4
46	T&P	Digital micro ohm meter for HFR resistance value checking	Nos	1

47	T&P	Phase and rotation meter	Nos	2
48	T&P	BATTERY LOAD METER	Nos	1
49	T&P	True RMS multimeter with capacitance measurement	Nos	5
50	T&P	Digital clamp meter	Nos	3
51	T&P	Digital Insulation tester 500v-5 KV with PI	Nos	3
52	T&P	Time Interval Meter T1 103	Nos	1
53	T&P	Battery operated Motorized trolley capacity 5 T	Nos	2
54	T&P	Ferrous debris monitors	Nos	1
55	T&P	FDU test set up	Nos	1
56	T&P	Hydraulic puller and pusher for aux. motor bearing dismantle and impeller puller cum pusher.	Nos	1
57	T&P	Run Test Bench of Transformer Oil Circulating (TOC) Pump	Nos	1
58	T&P	karl Fischer Titrator	Nos	1
59	T&P	Oil breakdown voltage tester	Nos	1
60	T&P	Hydraulic Puller for Draft Gear	Nos	1
61	T&P	3rd harmonic analyser for Lightning arrestor	Nos	1
62	T&P	Surge comparison tester	Nos	1
63	T&P	Speed sensor test bench for traction motor speed sensor	Nos	1
64	T&P	Pressure sensor test bench	Nos	1
65	T&P	Movable Primary AC current inject set 5V/1000 Amps for ratio checking of Primary CT	Nos	1
66	T&P	Current and voltage sensor test bench	Nos	1
67	T&P	Temp sensor test bench	Nos	1
68	T&P	Hydraulic system for removal of crown gear for WAP-5 motor	Nos	1
69	T&P	oil injector for WAP-5 crown gear	Nos	1
70	T&P	Dew point test meter For Airdryer	Nos	1
71	T&P	Flash point apparatus	Nos	1
72	T&P	Hot plate	Nos	1
73	T&P	Oven For Welding Rod Pre Heating	Nos	1
74	T&P	Lifting Tackle for BG Locomotive Wheel Set Assembly	Nos	2
75	T&P	Electronic Analytical balance	Nos	1
76	T&P	penetrometer	Nos	1
77	T&P	Plasma cutting machine	Nos	1
78	T&P	Air & Battery powered set of equipment for operation of accurate tightening and untightening of fastener assemblies (1 Set)	Nos	1
79	T&P	Taper Plug Gauge	Nos	1
80	T&P	Ring Gauge For Pinion	Nos	1
81	T&P	Analog Tubular Inside Micrometer	Nos	1

**Note:** The above list of infrastructure facilities and M&Ps & T&Ps available at ELW/DB is tentative and the final list will be provided at the time of Handing over to PSUs by Railways.

SCHEDULE –D  
(See Clause 25)  
PERFORMANCE SECURITY

**[Name and address of the concerned] WHEREAS:**

- (A) .....(the “**PSU**”) and the President of India through the Senior Divisional Electrical Engineer, Dabhoi, Government of India (the “**Government**”) have entered into a Maintenance and Operation Agreement dated ... (the “**Agreement**”) whereby the Government has agreed to the PSU undertaking the maintenance of Locomotives at ***Electric loco workshop Dabhoi***, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the PSU to furnish a Performance Security to the Government in a sum of [amount to be specified Rs.--- (10% (ten percent) of the 5-year agreement value, calculated on the basis of the average annual agreement value over the total contract period of 18 years)] (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Agreement Period (as defined in the Agreement).
- (C) We, ..... through our Branch at ..... (the “**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security (“**Guarantee**”).

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

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the PSU's obligations {during the Agreement Period/ for a period of 2 (two) years from the date hereof }<sup>3</sup>, under and in accordance with the Agreement, and agrees and undertakes to pay to the Government, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the PSU, such sum or sums up to an aggregate sum of the Guarantee Amount as the Government shall claim, without the Government being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Government, under the hand of an Officer not below the rank of Deputy Secretary to the Government, that the PSU has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Government shall be the sole judge as to whether the PSU is in default of the due and faithful performance of any of its obligations under the Agreement and its decision that the PSU is in default shall be final, and binding on the Bank, notwithstanding any differences between the Government and the PSU, or any dispute between them pending before any court, tribunal, arbitrators or any other Government or body, or by the discharge of the PSU for any reason whatsoever.

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<sup>3</sup> The date of expiry of the Guarantee to be specified depending on whether Clause 9.3 of the Agreement is applicable

3. In order to give effect to this Guarantee, the Government shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the PSU and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Government to proceed against the PSU before presenting to the Bank its demand under this Guarantee.
5. The Government shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the PSU contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Government against the PSU, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Government, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Government of the liberty with reference to the matters aforesaid or by reason of time being given to the PSU or any other forbearance, indulgence, act or omission on the part of the Government or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Government in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the PSU under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Government on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Government under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. This Guarantee shall cease to be in force and effect after the period specified in paragraph 1, provided the PSU is not in breach of the Agreement.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Government in writing and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a

certificate signed by an officer of the Government that the envelope was so posted shall be conclusive.

11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for the period specified in paragraph 1; and unless a demand or claim under this Guarantee is made in writing on or before the expiry of this Guarantee, the Bank shall be discharged from its liabilities hereunder.
12. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. .... crore (Rupees .....). The Bank shall be liable to pay the said amount or any part thereof only if the Government serves a written claim on the Bank in accordance with paragraph 1 hereof, on or before the {the date of expiry of this Guarantee}.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of

the BANK by:

Signature)

(Name)

(Designation)

(Code Number)

(Address)

#### NOTES:

- I. The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- II. The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

SCHEDULE –E  
(See Clause 13.1)

**Deleted**

SCHEDULE –F  
(Annex - I)

**Deleted**



## **SCHEDULE – G**

*(See Clause 17.14)*

### **MAINTENANCE REQUIREMENTS**

#### **1. Maintenance Requirements and Applicability**

- 1.1. The PSU shall carryout the POH of WAP7 and WAG9, IOH of Motorized Bogie of CO-CO type, IOH of Traction Motor of 6FRA 6068 type & Operation and maintenance of Dabhoi Workshop in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits.
- 1.2. The Scope encompasses the complete maintenance of 3-Phase Locomotives (specifically POH of WAP7 and WAG9, IOH of Motorized Bogie of CO-CO type, and IOH of Traction Motor of 6FRA 6068 type) in accordance with scope of work & special terms and condition of contract (TD - Volume-3) and the comprehensive Operation and Maintenance of the Electric loco workshop Dabhoi, including its civil, mechanical, electrical, and S&T infrastructure, together with tools & plant, materials, spares, and infrastructure up-gradation, along with all allied activities required to ensure the safe, reliable, and efficient operation of Locomotives during the entire Agreement Period.
- 1.3. All en-route damages, missing parts, additional or "out-of-course" defects must be documented in a Defect Deficiency List signed by both the PSU and the Owing Shed representative during the pre-inspection of the Incoming Locomotive and same shall be attended during Overhauling process.
- 1.4. The final safety certification of the unit/rolling stock shall be issued by the Nominated Railway Official in accordance with Clause 19.3.2. Upon such certification, the responsibility for the locomotive shall rest with the Government, unless otherwise expressly specified in this Agreement.

#### **2. Core Maintenance Requirements**

##### **2.1. POH of Locomotive (WAP7/WAG9)**

- 2.1.1. The PSU shall, in coordination with the Owing Shed and following the allotment of units/locomotives during the annual POH capacity allotment meeting, undertake the planning, scheduling, and requisitioning of Locomotives for POH, in strict accordance with the provisions of Clause 17.12 of this Agreement.
- 2.1.2. All internal shunting, handling, and movement of the Locomotives within the workshop premises shall be the sole responsibility of the PSU, as set forth in Clause 5.1.6(i) of this Agreement.
- 2.1.3. The Periodical Overhaul (POH) shall encompass the complete dismantling, rigorous cleaning, exhaustive inspection, repair or renewal, overhauling, and replacement of components, followed by the testing, re-assembly, and final commissioning of each Locomotive, inclusive of its systems, sub-systems, and all associated equipment.
- 2.1.4. The PSU agrees and undertakes that all Must Change Items shall be replaced during the POH of locomotive in accordance with the instructions of the Railway Board, as set forth in Letter No. 20216/Elect (TRS)/138/2 Pt., dated 18.01.2023 or any subsequent amendments thereto.

##### **2.2. Intermediate Overhaul (IOH) of Motorized Bogie ( Co-Co Type)**

- 2.2.1. The PSU shall, in coordination with the Owing Shed undertake the planning, scheduling, and requisitioning of Motorised Bogie of 3 Phase locomotives (Co-CO).
- 2.2.2. IOH of Motorised bogie shall encompass all Pre inspection and testing, dismantling, inspection, repair or rectification, re-assembly, and requisite testing procedures, ensuring strict compliance with the Maintenance Requirements Standards.

- 2.2.3. The PSU agrees and undertakes that all Must Change Items shall be replaced during the IOH of motorised bogie in accordance with the instructions of the Railway Board, as set forth in Letter No. 20216/Elect (TRS)/138/2 Pt., dated 18.01.2023 or any subsequent amendments thereto.

### 2.3. **Intermediate Overhaul (IOH) of Traction Motor (6FRA 6068 type)**

- 2.3.1. The PSU shall, in coordination with the Owning Shed undertake the planning, scheduling, and requisitioning of Traction Motor (6FRA 6068).
- 2.3.2. IOH of Traction Motor shall encompass all Pre inspection and testing, dismantling, inspection, repair or rectification, re-assembly, and requisite testing procedures, ensuring strict compliance with the Maintenance Requirements Standards.
- 2.3.3. The PSU agrees and undertakes that all Must Change Items shall be replaced during the IOH of traction motor in accordance with the instructions of the Railway Board, as set forth in Letter No. 20216/Elect (TRS)/138/2 Pt., dated 18.01.2023 or any subsequent amendments thereto.

## 3. **Standard Overhauling Time**

- 3.1. The compilation period for POH of locomotives is 25 days, which include pre-testing, overhauling, post testing, trial and handover to the Government. The PSU is entitled to an incentive as per clause no 17.1.5 and also pay damages as per clause no 21.2.6
- 3.2. The completion period for IOH of motorised bogie (Co-Co) is 11 days, which is inclusive of the time required for calling, transportation to/from the shed, overhauling, and testing.
- 3.3. The completion period for IOH of TM ( 6FRA 6068) is 08 days, also inclusive of the time required for calling, transportation to/from the shed, overhauling, and testing.

## 4. **Emergency repairs/restoration**

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

## 5. **Location of repairs**

Save and except as otherwise provided, all repairs specified herein shall be undertaken at the ***Electric loco workshop Dabhoi.***

Annex - I- **Not applicable**

(Schedule-G)

**Repair/Rectification of Defects and Deficiencies**

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

<b>SrN</b>	<b>Nature of defect or deficiency</b>	<b>Time limit for repair/rectification</b>
<b>I.</b>	<b>Electrical Equipment</b>	
(i)	Malfunction of Head Light	4(Four) hours
(ii)	Malfunction of flasher light unit	4(Four) hours
(iii)	Malfunction of flasher light roof unit	4(Four) hours
(iv)	Malfunction of Speedometer	4(Four) hours
(v)	Malfunction of Independent brake/Automatic brake/Emergency brake controller	4(Four) hours
(vi)	Malfunction of vigilance control device	4(Four) hours
(vii)	Non-activation of Locomotive cab	4(Four) hours
(viii)	Malfunction of pantograph	4(Four) hours
(ix)	Failure or breakage of roof insulator	4(Four) hours
(x)	Malfunction of constant speed mode	4(Four) hours
(xi)	Failure of traction motor	12(Twelve) hours
(xii)	Failure of compressor	8(Eight) hours
(xiii)	Malfunction of air conditioner	4(Four) hours
(xiv)	Failure of auxiliary rotating machine	4(Four) hours
(xv)	Failure of traction converter	24(Twenty Four) hours
(xvi)	Failure of transformer	36(Thirty Six) hours
(xvii)	Malfunction of master controller	4(Four) hours
(xviii)	Malfunction of main circuit breaker	4(Four) hours
(xix)	Malfunction of vehicle control unit	4(Four) hours
(xx)	Malfunction of cab meters	4(Four) hours
(xxi)	Malfunction of voice recorder	4(Four) hours
(xxii)	Malfunction of event recorder	4(Four) hours
(xxiii)	Malfunction of fire detection system	4(Four) hours
(xxiv)	Any fault in power circuit that inhibits Locomotive movement	4(Four) hours
(xxv)	Fault in cables	12(Twelve) hours
(xxvi)	Failure of auxiliary converter	18(Eighteen) hours
(xxvii)	Malfunction of electromagnetic and electro-pneumatic contactors	4(Four) hours
(xxviii)	Malfunction of any electronic card	4(Four) hours
<b>II.</b>	<b>Mechanical Equipment</b>	
(i)	Poor brake power of Locomotive	4(Four) hours
(ii)	Malfunction of central buffer coupling	10(Ten) hours
(iii)	Malfunction of buffer	4(Four) hours
(iv)	Water leakage in Locomotive during monsoon	8(Eight) hours
(v)	Skidding of Locomotive wheels	12(Twelve) hours
(vi)	Over heating or failure of axle box	12(Twelve) hours

(vii)	Abnormal sounds from under-gear	10(Ten) hours
(viii)	Malfunction of wheel	12(Twelve) hours
(ix)	Malfunction of gear case	10(Ten) hours
(x)	Malfunction of traction link / traction transfer mechanism	8(Eight) hours
(xi)	Malfunction of washers and wipers	4(Four) hours
(xii)	Malfunction of sanding equipment during monsoon	4(Four) hours
(xiii)	Malfunction of bogie suspension (including dampers)	8(Eight) hours
(xiv)	Malfunction of fire extinguishers	4(Four) hours
<b>III.</b>	<b>Pneumatic Equipment</b>	
(i)	Malfunction of horn switch	4(Four) hours
(ii)	Malfunction of air drier	4(Four) hours
(iii)	Malfunction of brake system	4(Four) hours
(iv)	Malfunction of cab gauge	4(Four) hours
<b>IV.</b>	<b>Damage to Locomotive</b>	
(i)	Damage to battery / box of the battery	4(Four) hours
(ii)	Damage or breakage of cattle guard	8 (Eight) hours
(iii)	Damage or breakage of look-out glass and window glass	4(Four) hours
(iv)	Damage or breakage of bogie/ bogie part/ brake rigging part	12(twelve) hours
(v)	Damage or breakage of driver seat	4(Four) hours
(vi)	Damage or breakage of door	4(Four) hours
(vii)	Damage to brake block	4(Four) hours
(viii)	Damage or breakage of blinds	4(Four) hours
(ix)	Damage or breakage of brake pipe and feed pipe/ hose leakage or other defects	4(Four) hours
(x)	Damage to pantograph due to entanglement	6(Six) hours

## SCHEDULE –H

*(See Clause 18.1)*

### SAFETY REQUIREMENTS

#### **1 Guiding principles**

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

#### **2 Obligations of the PSU**

The PSU shall abide by the following insofar as they relate to safety of the users:

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

#### **3 Appointment of Safety Consultant**

For carrying out safety audits of the Locomotives under and in accordance with this Schedule-H, the Government shall appoint from time to time, one or more qualified firms or organisations as its consultants (the “**Safety Consultant**”). The Safety Consultant shall employ a team comprising, without limitation, 1 (one) rail safety expert and 1 (one) locomotive expert to undertake safety audit of the Locomotives. For the avoidance of doubt, the Government may nominate any of its specialised agencies to be the Safety Consultant.

#### **4 Safety measures during Development Period**

- 4.1 No later than 180 (one hundred and eighty) days from the date of this Agreement, the Government shall appoint a Safety Consultant for carrying out safety audit at the design stage of the Locomotive.
- 4.2 The PSU shall provide to the Safety Consultant, in 4 (four) copies, the relevant drawings containing the design details that have a bearing on safety of Users (the “**Safety Drawings**”). The PSU shall also provide to the Safety Consultant all such relevant documentation as it may request, such as safety plans, hazard analyses and risk assessments.

- 4.3 The design details and safety information shall be compiled, analysed and used by the Safety Consultant for evolving a package of recommendations consisting of safety related measures. The safety audit shall be completed in a period of 3 (three) months and a report thereof (the “**Safety Report**”) shall be submitted to the Government, in 5 (five) copies. 1 (one) copy of the Safety Report shall be forwarded by the Government to the PSU forthwith.
- 4.4 The PSU shall endeavour to incorporate the recommendations of the Safety Report in the Manuals and Guidelines of the Government, Specifications and Standards, and Good Industry Practice. If the PSU does not agree with any or all of such recommendations, it shall state the reasons thereof and convey them to the Government forthwith. In the event that any or all of the works and services recommended in the Safety Report fall beyond the scope of Article 18 and this Schedule-H, the PSU shall make a report thereon and seek the instructions of the Government for funding such works in accordance with the provisions of Clause 17.23.
- 4.5 Without prejudice to the provisions of Paragraph 4., the PSU shall, within 15 (fifteen) days of receiving the Safety Report, send comments thereon to the Government, and not later than 15 (fifteen) days of receiving such comments, the Government shall review the same along with the Safety Report and by notice direct the PSU to carry out any or all of the recommendations contained therein with such modifications as the Government may specify; provided that any works or services required to be undertaken hereunder shall be governed by the provisions of Article 18.

## **5 Safety measures during Maintenance Period**

- 5.1 The PSU shall develop, implement and administer a surveillance and safety programme for users, including correction of safety violations and deficiencies and all other actions necessary to provide a safe environment in accordance with this Agreement.
- 5.2 The PSU shall submit to the Government before the 31<sup>st</sup>(thirty first) May of each year, an annual report (in 10 (ten) copies) containing, without limitation, a detailed listing and analysis of all accidents of the preceding Accounting Year and the measures taken by the PSU pursuant to the provisions of Paragraph 5.1 of this Schedule-H for averting or minimising such accidents in future.
- 5.3 Once in every Accounting Year, a safety audit shall be carried out by the Safety Consultant to be appointed by the Government. It shall review and analyse the annual report and accident data of the preceding year and undertake an inspection of the **Electric loco workshop Dabhoi** and a sample of Locomotives. The Safety Consultant shall complete the safety audit within a period of 1 (one) month and submit a Safety Report recommending specific improvements, if any, required to be made in the Locomotives and **Electric loco workshop Dabhoi**, as the case may be. Such recommendations shall be processed, *mutatis mutandis*, and acted upon in the manner set forth in Paragraphs 4.3, 4.4 and 4.5 of this Schedule-H

Annex - I  
(Schedule-H)  
**Safety Guidelines**

**1 Safe movement**

deleted

**2 System integrity**

In all aspects of the upgradation of available existing infrastructure/facilities and development of additional infrastructure/facilities at **Electric loco workshop Dabhoi** and their associated systems, particular care shall be taken to minimise the likely incidence of failure.

**3 Restoration of service**

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

**4 Safety management**

A safety statement shall be prepared by the PSU and provided to the Government every quarter to bring out clearly the system of management of checks and maintenance tolerances for various assets including the Locomotives, site of **Electric loco workshop Dabhoi** and compliance thereof. The statement shall also bring out the nature and extent of staff training and awareness in dealing with such checks and tolerances.

**5 Emergency Procedures**

The PSU shall have emergency procedures in place in respect of the site of **Electric loco workshop Dabhoi** in order to minimise the risks to staff and property or to visitors or neighbourhood in the event of an emergency.

**7. Maintenance and Overhaul of Locomotives**

7.1 All Scheduled Maintenance and Unscheduled Maintenance of the Locomotives shall be managed by the PSU to minimise risks to the staff of the PSU and the Government, sub-contractors, or passengers on the Government's railway or neighbours. The PSU shall at all times comply with Applicable Laws, and Good industry Practice.

7.2 The Maintenance Manual to be provided by the PSU shall include:

- (a) all maintenance activities and their periodicities that are required to keep the Locomotive safe and ensure that the prescribed tolerances of systems and components are not exceeded at any time, including any systems relevant to the maximum moving dimensions;
- (b) the inspection programme for regularly checking that the Locomotive is safe to con
- (c) tinuing in service;
- (d) the engineering facilities (such as pit facilities, special tools etc.) necessary for the mandated maintenance; and
- (e) minimum competencies required by staff for the maintenance activities.

- 7.3 The maintenance attention and periodicity prescribed in the Maintenance Manual shall be designed to ensure that the brake systems of the Locomotive shall function correctly and safely during the intervals between maintenance, to achieve the specified performance.
- 7.4 The brake systems shall be required to be subjected to a functional test at appropriate periodicities to prove the response of the system to brake application demands.
- 7.5 The Maintenance Manual shall specify appropriate functional brake tests to be undertaken whenever components of the brake system are replaced and reconnected on the Locomotive following component repair, renewal or disconnection.
- 7.6 The Maintenance Manual shall specify the required testing of speedometers and speed control equipment, particularly when wheel sets have been renewed or re-profiled or the speed measurement system or components have been renewed or disturbed.
- 7.7 The Maintenance Manual shall ensure that safety critical systems and components on the Locomotive are identified specifically and the minimum testing requirements that must be invoked in the event of their disturbance at examination or repair are defined.
- 7.8 Preparation of the Maintenance Manual shall give consideration to inspections, tests and maintenance of the following that have a bearing on safety
  - (a) Wheel set and constituent parts: Relative movement of wheels / axles / axle mounted equipment, cracks and fractures, dimensions affecting safe running (minimum wheel diameter, tolerances between wheel diameters, minimum throat thickness, back-to-back dimensions), flange and tread profile, condition of tread and flange (damage etc), limits of sizes of wheel flats.
  - (b) Bearings – Floats, clearance, condition and grease.
  - (c) Brake equipment (disc integrity, condition and dimensions), pad and brake block integrity and dimensions, brake rigging, integrity of operating devices, reservoirs, hoses, cocks, pipework, brake tests.
  - (d) Buffers: Heights, condition.
  - (e) Couplers and Drawgear: Dimensions, rubber condition, integrity and condition, operation.
  - (f) Primary and secondary suspension: Spring integrity, dimensional limits, damper integrity.
  - (g) Suspension tube bearings: Condition and security of components and installation, bearing float.
  - (h) Traction and auxiliary electrical machines: Integrity and security, earthing condition and integrity, condition of safety labelling.
  - (i) Cleaning: Ventilation ducts, bogies and under frame equipment.
  - (j) Transmissions: Security to body or bogie frame, condition checks of safety critical items, lubrication.
  - (k) Power systems (including protection systems): Integrity and security earthing condition and integrity, condition of safety labelling.
  - (l) Pantographs: Integrity and security - dimensions and condition of pantograph head, over height protection, earthing condition and integrity, condition of safety labelling.
  - (m) Locomotive structures and under frames: Integrity and condition of all loads bearing members or panels, integrity, operation and security of doors, openable and removable



- panels, integrity and security of all body mounted equipment, alignment,
- (n) Safety systems (e.g., Vigilance): Functional tests; sanding system.
  - (o) Hydraulic and pneumatic systems: Condition and integrity of hoses, pipework, valves, etc.
  - (p) Fire protection systems: Integrity and condition.
  - (q) Lighting Systems and visibility: Headlight and marker lights, adjustment, intensity.
  - (r) The inspection and/or testing of
    - axles;
    - brake valves, equipment and system and protection devices;
    - air reservoirs (a label showing the last test date should be secured to the reservoir);
    - fire equipment;
    - safety equipment (e.g. Vigilance);
    - windscreens, wipers and washers;
    - main transformers;
    - control systems, including safety interlocks;
    - speedometers;
    - headlights and marker lights.
- 7.9 The instructions within the Maintenance Manuals shall be such as to protect staff working on the Locomotives, with particular reference to safety precautions and implementing a specified safety condition of the Locomotive prior to starting work.
- 7.10 Any incident affecting safety on a Locomotive in service or on maintenance (or potentially affecting safety) shall be investigated by the PSU unless advised to the contrary by the Government. The PSU shall make its findings known to the Government.
- 7.11 If the PSU becomes aware of a safety incident due to a deficiency on a Locomotive of similar design supplied to another administration, it shall advise the Government of the essential details, and shall advise the Government of any precautionary action.
- 7.12 The PSU shall have a formal process for ensuring the competence of all members of staff engaged in maintenance. The PSU shall have a process for ensuring its staff are briefed on any relevant safety matters.
- 7.13 The PSU shall have a documented process for ensuring that the declared periodicity of maintenance on each Locomotive is not exceeded.
- 7.14 The PSU shall ensure that the supply arrangements for Consumables and Spares do not introduce safety hazards.
- 7.15 Records shall be maintained by the PSU of all attention given to locomotives on Scheduled Maintenance and Unscheduled Maintenance, and also of wheel re- profiling carried out by Government.
- 7.16 The PSU shall establish and implement for the duration of the Maintenance Period a configuration management system that to the extent applicable complies with the requirements of ISO 10007:2003 "Quality management systems. Guidelines for configuration management".
- 7.17 The PSU shall procure that its staff including its Specialist Sub-Contractor shall not take any action that could compromise the operational safety of the Government's railway network. If

the PSU becomes aware of a condition on a Locomotive in service that could affect safety, it shall immediately inform the Government by the most expeditious means.

- 7.18 The PSU shall not use any hazardous substances unless those substances are permitted by Applicable Laws and the Government has given prior written consent.

## **8. Site of *Electric loco workshop Dabhoi***

- 8.1 All upgradations of available existing infrastructure/facilities and development of additional infrastructure/facilities at the site of ***Electric loco workshop Dabhoi*** (the “**Facilities**”) shall be designed, constructed or altered, operated and maintained so as to facilitate the maintenance of Locomotives in a safe condition, and so as to minimise risks to the staff of the PSU or the Government, sub-contractors, neighbours or visitors to the Facilities, and passengers on the Government’s railway. The PSU shall comply with Applicable Laws and Good Industry Practice
- 8.2 All equipment such as lifting equipment, wheel lathes, jacks etc shall be procured from established industry suppliers, if required.
- 8.3 deleted .
- 8.4 A planned system of maintenance shall be implemented in respect of each Facility and its facilities, plant and equipment. Items shall be inspected and maintained without limitation in line with Applicable Laws, relevant standards and good industry practice.
- 8.5 The PSU shall document the process and responsibilities of personnel in respect of safe movements on the site of ***Electric loco workshop Dabhoi*** and shall provide equipment as appropriate to promote safe movements and to reduce risks to staff from movements. The only personnel of the PSU and/or the Government who may drive Locomotives at low speed within the site of ***Electric loco workshop Dabhoi*** shall be those who have been formally trained and qualified to do so.
- 8.6 Suitable equipment and measures shall be in place to protect staff from movements of Locomotives entering or leaving the ***Electric loco workshop Dabhoi***, or any other location where staff may be at risk.
- 8.7 The upgradation of available existing infrastructure and development of additional infrastructure at the Facilities shall be designed to include facilities that ensure the safety of staff, including with respect to hazards without limitation arising from movements, the 25kV overhead electric line, working at heights, or arising from fumes. The arrangements for protection of staff shall be integrated into a robust depot protection regime and processes.
- 8.8 The upgradation of available existing infrastructure/facilities and development of additional infrastructure/facilities at the Facilities shall be designed, equipped and operated in line with applicable requirements so as to minimise the risks to life and property arising from fire.
- 8.9 The PSU shall not use any hazardous substances unless those substances are permitted by applicable laws and the Government has given prior written consent.
- 8.10 The PSU shall confer and agree with Government and document at least 6 (six) months before operation of each Facility:
- (a) a safe system of movement of Locomotives from the Government’s railway system on to each Facility and vice versa, with particular reference to the defined limits of Government for movements and the signalling and signing arrangements;

- (b) the protocol for arranging as required safety inspections by the Government on Locomotives released from the Facility; and
- (c) a protocol for the management of planned and unplanned isolations of the 25kV OHE, on either the infrastructure of the Government or the PSU, including a procedure for dealing with emergencies on the Facility site.

**9.       deleted**

## SCHEDULE –I

(See Clause 38.4)

**VESTING CERTIFICATE**

- 1 The President of India represented by [name and address of the concerned] (the “**Government**”) refers to the Agreement dated \*\*\* (the “**Agreement**”) entered into between the Government and ..... (the “**PSU**”) for Maintenance of electric Locomotives.
- 2 The Government hereby acknowledges compliance and fulfilment by the PSU of the Divestment Requirements set forth in Clause 38.1 {and Clause 38.6} of the Agreement on the basis that upon issue of this Vesting Certificate, the Government shall be deemed to have acquired, and all title and interest of the PSU in or about the Locomotives, and possession of the site of ***Electric loco workshop Dabhoi*** shall be deemed to have vested unto the Government, free from any encumbrances, charges and liens whatsoever;
- 3 Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the PSU to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the PSU in any manner of the same.

Signed this ..... day of ....., 20 ..... at .....

AGREED, ACCEPTED AND SIGNED

SIGNED, SEALED AND DELIVERED

For and on behalf of

For and on behalf of

by:

THE PRESIDENT OF INDIA by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

In the presence of:

1.

2.

SCHEDULE – J  
(See *Clause 24.7*)  
**Deleted**

SCHEDULE – K  
(See Clause 4.1.3 (b))

**CONFIRMATION CERTIFICATE**

This **Confirmation Certificate** is made on this \_\_\_\_\_ day of \_\_\_\_\_, 20.... By:

1. [name and description of the Selected Bidder], having its registered office at [●] (the “**PSU**”); and
2. Entity/Each of the Entities listed in Annexure I hereof (shall in case of a single entity be referred to as the “**Selected Bidder**”).

In favour of:

3. The PRESIDENT OF INDIA represented by \_\_\_\_\_, Government of India and having its principal offices at \_\_\_\_\_ (the “**Government**”).

**WHEREAS:**

- A. The PSU is the Selected Bidder, implementing the Project with the objectives of up- grading the available existing infrastructure/facilities at the **Electric loco workshop Dabhoi** of Indian Railways (India) ;
- B. The Government and the PSU have entered into the Maintenance and Operation Agreement dated [●] (hereinafter referred to as “Agreement”).

NOW, THEREFORE for good and valuable consideration, the receipt, sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the PSU confirm, declare and acknowledge the following:

1. That it has read and understood the terms of the Agreement individually and collectively.
2. That capitalized terms not defined herein but defined in the Agreement shall, unless the context otherwise requires, have the meaning assigned thereto in the Agreement.
3. That it: -
  - (a) has made an independent evaluation and inspection of the site of **Electric loco workshop Dabhoi**, existing structures, local conditions, physical qualities of ground, subsoil and geology and all information provided by the Government or obtained procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder;
  - (b) has satisfied themselves as to the means of communication with, access to and accommodation on the site of **Electric loco workshop Dabhoi** it may require or as may be otherwise necessary for the performance of its obligations under the Agreement;
  - (c) has obtained all necessary information as to the risks, contingencies and all other circumstances which may influence or affect the PSU and its rights and obligations under the Agreement.
4. That the PSU has taken all due diligence and shall have no recourse against the Government in the event of any mistake made or misapprehension harboured by any of them in relation to any of the foregoing provisions of Article 3 above and the Government’s liability in respect thereof, if any, is waived. The PSU bind themselves that they shall not be entitled to make any claim

against the Government or any Government Instrumentality whether for rescission, in damages or otherwise on the grounds of any misunderstanding or misapprehension in respect of incorrect or insufficient information given to them by any person, whether or not in the employment of the Government or any Government Instrumentality, nor, unless expressly provided otherwise in the Agreement, shall the PSU be relieved from any obligations or risks imposed on or undertaken by it under the Agreement on any such ground or on the ground that it did not or could not foresee any matter which may, in fact, affect or have affected the performance of its obligations under the Agreement.

5. Subject to the provisions of the Agreement, that the PSU shall be fully and exclusively responsible for, and shall bear the financial, technical, commercial, legal and other risks in relation to the design, financing, minor construction or alteration, operation and maintenance of the site of ***Electric loco workshop Dabhoi*** (as the case may be) and all its other rights and obligations under or pursuant to the Agreement regardless of whatever risks, contingencies, circumstances and/or hazards may be encountered (foreseen or not foreseen) and notwithstanding any change(s) in any of such risks, contingencies, circumstances and/or hazards on exceptional grounds or otherwise and whether foreseen or not foreseen and none of the PSU shall have any right whether express or implied to bring any claim against, or to recover any compensation or other amount from the Government and/or any of their agencies other than in respect of those matters in respect of which express provision is made in the Agreement.
6. Deleted
7. That the PSU has the financial standing necessary for undertaking and implementing the Project in accordance with this Agreement.
8. That neither the PSU has intentionally withheld from the Government, any material information or material document, whose non-disclosure would have a Material Adverse Effect or would have adversely affected the evaluation or acceptance of the Bid submitted by the PSU.
9. That all information provided by the PSU in response to the RFP, is to the best of its/their knowledge and belief, true and accurate in all material respects.
10. That PSU is duly organized and validly existing under the laws of the jurisdiction of its incorporation, and has entered into the Agreement with the Government pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement.

**IN WITNESS WHEREOF**, PSU has caused their respective duly authorized representatives to execute this Confirmation Certificate on the day and year first above written.

SIGNED AND DELIVERED

BY WITHIN NAMED THE '**PSU**'

BY THE HAND OF MR. \_\_\_\_\_

(AUTHORIZED SIGNATORY)

**Annexure-I**  
Selected bidder

Name	Address, Telephone No. and Email



## SCHEDULE –L

**Tentative quantity for 18 (eighteen) years**

**This is the tentative quantity, actual allotment of the POH of locomotives will be done during the annual POH capacity allotment meeting.**

<b>Sr.No.</b>	<b>Year after tender</b>	<b>No. of Locos for POH / year</b>	<b>No. of Motorized Bogies for IOH / year.</b>	<b>No. of Traction Motors for IOH/ year</b>
<b>1</b>	<b>1st</b>	<b>12</b>	<b>12</b>	<b>12</b>
<b>2</b>	<b>2nd</b>	<b>24</b>	<b>24</b>	<b>24</b>
<b>3</b>	<b>3rd</b>	<b>60</b>	<b>60</b>	<b>60</b>
<b>4</b>	<b>4th</b>	<b>60</b>	<b>60</b>	<b>60</b>
<b>5</b>	<b>5th</b>	<b>60</b>	<b>60</b>	<b>60</b>
<b>6</b>	<b>6th</b>	<b>60</b>	<b>60</b>	<b>60</b>
<b>7</b>	<b>7th</b>	<b>60</b>	<b>60</b>	<b>60</b>
<b>8</b>	<b>8th</b>	<b>65</b>	<b>65</b>	<b>65</b>
<b>9</b>	<b>9th</b>	<b>65</b>	<b>65</b>	<b>65</b>
<b>10</b>	<b>10th</b>	<b>65</b>	<b>65</b>	<b>65</b>
<b>11</b>	<b>11th</b>	<b>65</b>	<b>65</b>	<b>65</b>
<b>12</b>	<b>12th</b>	<b>65</b>	<b>65</b>	<b>65</b>
<b>13</b>	<b>13th</b>	<b>70</b>	<b>70</b>	<b>70</b>
<b>14</b>	<b>14th</b>	<b>70</b>	<b>70</b>	<b>70</b>
<b>15</b>	<b>15th</b>	<b>70</b>	<b>70</b>	<b>70</b>
<b>16</b>	<b>16th</b>	<b>70</b>	<b>70</b>	<b>70</b>
<b>17</b>	<b>17th</b>	<b>70</b>	<b>70</b>	<b>70</b>
<b>18</b>	<b>18th</b>	<b>75</b>	<b>75</b>	<b>75</b>