MEMORANDUM OF UNDERSTANDING

BETWEEN

MINISTRY OF RAILWAYS
AND
GOVERNMENT OF [State]

FOR

FORMATION OF A JOINT VENTURE

August [●], 2015
MEMORANDUM OF UNDERSTANDING

BETWEEN

THE GOVERNMENT OF INDIA

THROUGH THE MINISTRY OF RAILWAYS

AND

THE GOVERNMENT OF [STATE]

ON FORMATION OF A JOINT VENTURE COMPANY

TO UNDERTAKE PROJECT DEVELOPMENT, FINANCING AND IMPLEMENTATION OF IDENTIFIED RAILWAY PROJECTS

This binding Memorandum of Understanding (“MOU”) is made on the ___ day of ______, 2015 (“Execution Date”) by and between:

The President of India represented by the __________, Railway Board, of the Ministry of Railways (hereinafter referred to as “MoR”);

AND

The Governor of [State] represented by __________, to the Government of [State] (hereinafter referred to as “[State Govt. Initials]”).

The expressions “MoR” and “[State Govt. Initials]” shall, wherever the context admits, mean and include their respective successors-in-interest and permitted assigns and shall hereafter be referred to individually as “Party” and collectively as “Parties”.

WHEREAS, this MOU is signed between Ministry of Railways and Government of [State], for formation of a Joint Venture Company (“JVC”) to undertake project development, financing and implementation of identified railway projects. The JVC would be incorporated as a limited liability company under the Companies Act 2013, and MoR and [State Govt. Initials] will participate in the equity of the JVC.

AND WHEREAS, the Parties agree that there is a need for development of rail infrastructure for critical connectivity/capacity enhancement.
NOW, THEREFORE, in consideration of the foregoing, the Parties hereby have agreed upon the following:

1. Projects important for critical connectivity/capacity enhancement, as agreed by the Parties, will be taken up for development, financing and implementation. An indicative list of projects along with the indicative cost of implementation is placed at Annexure-I.

2. The JVC will have the following shareholding:

<table>
<thead>
<tr>
<th>Party</th>
<th>Equity Share (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministry of Railways</td>
<td>26%</td>
</tr>
<tr>
<td>Government of [State]</td>
<td>74%</td>
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</tbody>
</table>

3. The JVC will have an authorized share capital of Rs. [200] Cr. with the initial paid-up capital of Rs. [100] cr. The initial paid-up capital will be contributed by the Parties in proportion of their aforementioned shareholding percentage.

4. In order to record their understanding in relation to the management and control of the JVC as well as the inter se rights of the Parties, the Parties shall execute a joint venture/sharholders agreement to set out the terms and conditions which shall govern the inter se rights and obligations of the shareholders of the JVC.

5. The MoU shall expire upon execution of the Joint Venture/Shareholders Agreement.

6. The JVC would, either directly or through its subsidiaries (as the case may be) undertake project development works for an identified basket of projects, which will inter alia include surveys, preparation of Detailed Project Report (DPR) and its approval from MoR/State Government, processing for sanctioning of identified projects both by the State Government and the MoR. The JVC may charge a fee from the Parties and the Project SPV for the co-ordination, supervision and facilitation work undertaken by it.

7. Salary and perks of the officials of the JVC shall be at par with the salary and perks of the officers of the Schedule ‘A’ public sector companies of Central Government.

8. The JVC would have corporate headquarter at concerned state capital. The management of the JVC shall vest with the directors who shall be responsible for the supervision of the JVC in relation to the execution of the projects. The officers of the JVC shall have the
authority and responsibilities delegated by the Board consistent with the articles of association of the JVC and such other documents as may be considered relevant. The JVC will have [one part time Chairman], one whole time managing director, two whole time directors and six [non-whole time/ non-executive] directors. The JVC will have two [non-whole time/ non-executive] directors each from the State Government and MoR. Two independent directors shall be drawn from private sector/ Public Sector Units/ educational institutes, and shall be experts in the respective fields, who shall be appointed following due process. The Managing Director would be having requisite knowledge of implementation of Railway Infrastructure Projects. Managing Director and two full time Directors shall be selected by a Select Committee comprising of representatives from MoR and the concerned [State Govt. Initials]. The Board shall also have the all the powers to decide on the projects including but not limited to project design, scope of work and all other aspects relating to the project.

9. The JVC can form project specific subsidiary companies (“Project SPVs”) to undertake each of the identified projects. The Project SPVs would be incorporated as limited liability company(ies) under the Companies Act, 2013. The initial equity in the Project SPVs is to be contributed by the JVC. The MoR and State Government would infuse equity in Project SPV only through the JVC, and hence, subject to para 3 and 10 of this MOU, their stake would be mirroring their shareholding in the JVC. The Project SPV will, at all times, have a nominee of the JVC on its Board.

10. The Project SPVs may have equity holding by other stakeholders also, such as banks, PSUs, ports, mines etc. as well, to cater to a specific project. The equity holding of the JVC in the Project SPV should be at least 26% of the paid up equity share capital of the Project SPVs on a fully diluted basis, at all times.

11. The JVC / respective Project SPV would coordinate with the respective authorities / departments at MoR and State Government for sanction of the project to be undertaken. The State Government will provide proactive support, as may be required for land acquisition and for obtaining governmental/ regulatory approvals for the implementation of the project.

12. In view of the limited availability of the resources, including funds, the JVC should prefer only the viable projects for implementation, mutually determined after undertaking an analysis and pre-feasibility/ feasibility study of the potential projects.

13. Once the project is sanctioned, a Concession Agreement, with concession period upto 30 years (beginning from the date as per the respective Concession Agreement for the project) will be signed.
between the Railways and the Project SPV. The land acquisition will be done by the State Government and project implementation by concerned Zonal Railway or any other agency as decided by the Project SPV in consultation with MoR. Notwithstanding anything contained elsewhere, other options may also be considered for the acquisition of land (as required for the implementation of the project). Operations and maintenance of the project will be done by Indian Railways, cost of which will be chargeable to the Project SPV. The Indian Railways will provide last mile connectivity to the projects (which have a close interface with the existing IR network) and the costs for such last mile connectivity shall be borne by Project SPVs, through an appropriate mechanism as mutually agreed.

14. The ownership of the land acquired for the project will vest with the Project SPV which will bear the cost of land. In case of non-viable projects, apart from equity etc., [State Govt. Initials] may consider providing the land free of cost to the Project SPV so that the project can be implemented by the Project SPV.

15. Railway will have the option to take over the assets at the end of the concession period of 30 years, or at termination of the Concession Agreement at a nominal price of Re. 1. The land however would be transferred to Railway at the original acquisition cost incurred by the Project SPV, if any. However, if the Railway does not exercise the option of taking over the assets, these will continue to be with the Project SPV under existing terms and conditions as per the Concession Agreement.

16. Project SPVs would arrange financial support and resources from various stakeholders of the projects, and if feasible, in the form of debt from banks/multi-lateral agencies/ Financial Institutions as debt funding.

17. The entire debt for the project will be serviced by the Project SPV during the concession period, out of the apportioned earning transferred to the Project SPV by the Railways. The apportionment of earning for the project between Railways and Project SPV will be based on the principles specified in Indian Railways Financial Adjustment (IRFA) Rules. The Project SPV may also be given the benefit of like inflated mileage etc. to make the project bankable.

18. In the unlikely event of the Project SPV making loss, the losses will be borne by the equity partners of the Project SPV in proportion of their (then) shareholding on a fully diluted basis. In the event of Railways exercising the option of taking over the assets from the Project SPV, the Railway will not be liable to bear the accumulated losses.

19. In case more than one State Governments are interested in a project, the Project SPV may be formed with equity investment by the JVC
(i.e. equity contribution by the MoR and the [State]) and direct equity investment from other interested states. Shareholding of such Project SPV will be mutually agreed and the inter-se rights will be governed by the respective shareholders’ agreement.

20. A joint committee shall be formed for expediting the projects being implemented under the JVC (including the Project SPVs). The joint committee shall comprise of representatives of the [State Govt. Initials] and the MoR. The joint committee shall meet once in two months, or such interval as may be required to resolve problems being faced in speedier execution of the projects.

21. Each Party shall nominate at least one representative and a Nodal officer for implementation of this MOU.

22. Any dispute or difference arising between the Parties in relation to or arising out of the subject matter of this MOU, will be settled by mutual discussion between the authorized representatives of the respective Parties.

23. This MoU shall be without prejudice to any other MoU entered into between the Parties earlier, and shall not in any way affect any other understanding as may be necessary for any other project.

24. The Parties may, with mutual consent, decide on further amendments to this MOU, as may be considered necessary to ensure smooth and efficient execution of the Projects.

25. All notices, statements or other communication required or permitted to be given or made under this MOU shall be in writing in the English language and delivered by hand, email or facsimile transmission addressed to the intended recipient at its address set forth below:

If to the **MoR**:

Attention: [●]

Fax: [●]

Email: [●]

If to **[State Govt. Initials]**:

Attention: [●]

Fax: [●]
25. Subject to clause 5 above, this MOU will remain valid for a period of [●] years from the Execution Date, unless mutually terminated earlier by the Parties. The Parties may extend the validity of the MoU as may be mutually agreed.

IN WITNESS thereof, the PARTIES hereto have signed this MOU on the date first written above by their duly authorized representatives.

For and on behalf of the
President of India

(                     )
____________________
Railway Board
Ministry of Railways
[Location]

For and on behalf of the
Governor of [State]

(                     )
____________________
Government of [State]
[Location]

WITNESSES:

1.

2.
### ANNEXURE-I

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Railway</th>
<th>Name of work</th>
<th>Cost</th>
<th>Balance to complete as on [Date]</th>
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<td><strong>Total</strong></td>
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