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OPERATIONS & MAINTENANCE AGREEMENT

This Operations & Maintenance Agreement is signed at Mumbai on this the 21st day of August 2007.

BETWEEN

KUTCH RAILWAY COMPANY LIMITED, a company incorporated under provisions of the Companies Act, 1956, having its registered office at 14-A, SPWD House, Vishnu Digambar Marg, (Rouse Avenue Lane), New Delhi, India (hereinafter referred to as "**KRC**" or "**the Company**" which expression shall, unless repugnant to or inconsistent with the context, mean and include the successors and permitted assigns) of the **FIRST PART**.

AND

THE PRESIDENT OF INDIA, acting through its nominated agency, Western Railway (hereinafter referred to as "**WR**", which expression shall include all its successors and permitted assigns) of the **OTHER PART**

WHEREAS

- A) MoR, an integral part of the Government of India, is the ministry in charge of all activities including construction, operation and maintenance of railway lines in India.
- B) KRC is a special purpose vehicle set up to implement a broad gauge railway link between Gandhidham station and Palanpur station.

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- C) KRC has entered into a Concession Agreement on 8th November 2005 with MOR for a period of 32 years for the development, financing, design, construction, Operations and Maintenance of the broad gauge rail link between Gandhidham station and Palanpur station;
- D) In order to fulfill its Operations and Maintenance obligations under the Concession Agreement, KRC intends to appoint an operations and maintenance agency for carrying out the Operations and Maintenance of the broad gauge line;
- E) KRC has invited and WR has accepted the offer to be the Operator to undertake the Operations and Maintenance of the broad gauge rail line between Gandhidham station and Palanpur station;

NOW THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1.0 PRELIMINARY

1.1 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:

"Additional Facilities" means the facilities which KRC may provide or procure for the benefit of the users of the Project Railway and which are in addition to the facilities planned in the project estimate prepared by the Western Railway and sanctioned by the Railway Board, and includes additional stations and freight handling facilities.

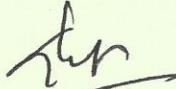
"Affected Party" shall have the meaning set out in Article 10.1.

"Agreement" means this Agreement, and any amendments thereto made in accordance with the provisions contained in this Agreement.

"Applicable Law" means all laws, promulgated or brought into force and effect by the Government of India or the Government of Gujarat or the concerned municipal/local government including regulations and rules made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, as may be in force and effect during the subsistence of this Agreement.

"Applicable Permits" means all clearances, permits, authorizations, consents and approvals required to be obtained or maintained under Applicable Laws in connection with the design, engineering, financing, procurement and construction of the Project Railway during the subsistence of this Agreement.

"Appointed Date" means the date of signing this Agreement.


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"BG" mean broad gauge railway track, which shall in turn mean that the distance between the two parallel rails of the track is 1676 mm

Change in Law means the occurrence of any of the following after the Appointed Date:

- (i) the enactment of any new Indian Law;
- (ii) the repeal, modification or re-enactment of any existing Indian Law;
- (iii) the commencement of any Indian law which has not come into effect until the date of this Agreement;
- (iv) a change in the interpretation or application of any Indian Law by a competent court of law
- (v) any change in the taxation laws

"Commercial Operations Date" or **"COD"** means the date on which the Safety Certificate has been issued for freight operations by Chief Engineer, WR.

"Commissioning" of the Project Railway means:

- a) In the case of commissioning of freight operations, the issue of the Safety Certificate by the Chief Engineer of WR; and
- b) In the case of commissioning for public carriage of passengers, the issue of the Safety Certificate by the Commissioner of Railway Safety, Western Circle, Mumbai.

"Company" means KRC.

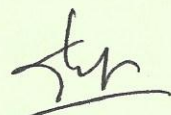
"Existing Assets" means and includes the land, station buildings, MG formation, bridges, and all other assets along with the work previously carried out by WR till 26.04.2002 which already exist in the Project Area as part of the rail network, and which shall be used for the Broad Gauge network between Gandhidham to Palanpur but excludes the assets and materials such as, but not limited to, MG rails, sleepers, fastenings, signalling gears and electrical equipment, and other non-operational assets like staff colonies, welfare structures and non-operational land/buildings which are not required for gauge conversion.

"Financial Year" shall be the period commencing on 1st April of one calendar year, and ending on the 31st March of the next calendar year.

"Force Majeure" or **"Force Majeure Event"** means an act, event, condition or occurrence as specified in Article 10.

"Freight Traffic" means bulk cargo, liquid cargo, container cargo and any other cargo in whatsoever size or nature indented to the O&M Operator for rail movement on the Project Railway.

"Gauge Conversion" means the conversion of the existing metre gauge track between Gandhidham and Palanpur to Broad Gauge Track.


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"GOI" means the Government of India.

"GOG" means the Government of Gujarat.

"Governmental Authority" shall include GOI, GOG, any municipal or local government, or any other department under the control of GOI or GOG having jurisdiction over all or any part of the Project Railway or the performance of all or any of the services or obligations of KRC under or pursuant to this Agreement, and having the authority and jurisdiction to frame laws and rules relating to the Project.

"Maintenance" means all activities associated with standard maintenance procedures on a similar line as prevalent in the Indian Railways for all aspects concerned with train movement, including but not limited to maintenance procedure for track and structures, depots, rolling stock, motive power, signalling and telecommunication. In addition, it shall include any emergency or out-of-course repair or restoration activity, and all necessary periodic and other inspections regarding maintenance and safety procedure.

"Material Adverse Effect" means any act or event materially and adversely affecting the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement.

"Material Breach" means a breach by either Party of any of its obligations under this Agreement.

"National Emergency" shall include an emergency declared by the President of India under Article 352 and 360 of the Constitution of India or direction by the GOI affecting the normal movement of traffic in case of declared or undeclared war, military exercise, drought, epidemic, earthquakes, cyclone, or any other disaster.

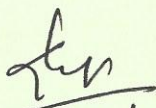
"New Assets" means the assets created on the Existing Assets till Commissioning.

"O&M" means Operations and Maintenance of the Project Railway.

"Operations" means all activities associated with train movement, train running, loading and unloading freight, storage of consignments and the security of consignments.

"Operations Period" means the period commencing from COD and ending on the Termination Date.

"Operator" means Western Railway, including its successors, entrusted and authorized by KRC to carry out the Operations and Maintenance for the Project under this Agreement.


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“Project” means and includes Gauge Conversion and all activities relating to development, financing, construction, Operations and Maintenance of the Project Railway.

“Project Area” means the entire MG formation from Gandhidham Station to Palanpur Station as well as the land, stations, existing yards, and building along this track within the same range belonging to MOR.

“Project Assets” shall refer to Existing Assets, New Assets and other assets relating to and forming part of the Project Railway including but not limited to

- a) right over the Project Area,
- b) tangible assets such as civil works and others undertaken by KRC.
- c) insurance proceeds, Applicable Permits, including authorizations relating to or in respect of the Project Railway.

“Project Railway” means broad gauge rail link connectivity of 301 km between Gandhidham Station and Palanpur Station.

“Railway” shall have the meaning prescribed under the Railways Act, 1989

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

“Safety Certificate” means the certificate of safety issued by the Chief Engineer, WR in respect of freight operations, and/or certificate of safety issued by the Commissioner of Railway Safety, Western circle, Mumbai for public carriage of passengers.

“Western Railway” or **“WR”** means the Zonal Railway of MoR headquartered at Mumbai.

“State Bank of India Prime Lending Rate” or **“SBI PLR”** means the prime lending rate per annum of the State Bank for India for loans having a tenor of one year. This term shall also refer to any other arrangement that replaces the State Bank of India prime lending rate.

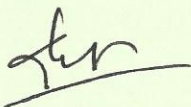
“Termination” shall refer to the expiry of a period of thirty years, or such extended period as is mutually agreed between the Parties in accordance with the provisions of this Agreement, from the COD, unless the Concession Agreement is terminated earlier in accordance with the provisions hereof.

“Termination Date” means the date on which Termination occurs.

1.1.1 Interpretations


In this Agreement, unless the context otherwise requires:

- (a) any reference to a statutory provision shall include such provision as



is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;

- (b) references to Indian law shall include the laws, acts, ordinances, rules, regulations, or bye laws which have the force of law in any State or Union Territory forming part of the Union of India;
- (c) the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations, or other entities (whether or not having a separate legal entity);
- (d) the headings are for convenience of reference only and shall not be used in and shall not affect the construction or interpretation of this Agreement;
- (e) terms and words beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein and the terms and words defined in the Appendices and used therein shall have the meaning ascribed thereto in the Appendices;
- (f) the words "include" and "including" are to be construed without limitation;
- (g) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (h) any reference to day shall mean a reference to a calendar day;
- (i) any reference to month shall mean a reference to a calendar month;
- (j) the Schedules to this Agreement form an integral part of this Agreement and shall be in full force and effect as though they were expressly set out in the body of this Agreement;
- (k) any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
- (l) references to Recitals, Articles, Articles, Sub-clauses, Paragraphs, or Appendices in this Agreement shall, except where the context otherwise requires, be deemed to be references to Recitals, Articles, Articles, Sub-clauses, Paragraphs, and Appendices of or to this Agreement.
- (m) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Consultant


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shall be valid and effectual only if it is in writing under the hands of duly authorized representative of such Party or the Independent Consultant, as the case may be, in this behalf and not otherwise;

(n) 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;

(o) any term not expressly defined in this agreement shall have the meaning specified under the Railways Act, 1989.

1.1.2 Measurements and Arithmetic Conventions

All measurements and calculations shall be in metric system and calculations done to two decimal places, with the third digit of 5 or above being rounded up and below 5 being rounded down.

1.1.3 Priority of contract documents and errors/discrepancies.

The several documents forming this Agreement are to be taken as mutually explanatory to one another and, unless otherwise expressly provided elsewhere in this Agreement, the priority of the following documents shall in the event of any conflict between them be in the order they are set out;

- (a) this Agreement
- (b) all other documents forming part of this Agreement

i.e. documents at (a) above shall prevail over the documents at (b) above.

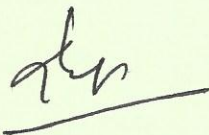
1.1.4 In case of ambiguities or discrepancies within this Agreement the following shall apply:

- (a) between two articles of this Agreement, the provisions of the specific article relevant to the issue under consideration shall prevail over those in other articles;
- (b) between the articles and the Schedules, the articles shall prevail save as otherwise expressly set forth in Article 1.1.3;
- (c) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail;
- (d) between any value written in numerals and that in words, the latter shall prevail.

1.2 Scope of Agreement

The scope of the agreement shall include:

1.2.1 By WR:



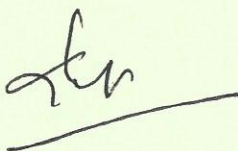
- (a) Performance of Operations and Maintenance of the Project Railway and in particular shall cover Gandhidham Station (identified by the Indian Railways as chainage point Kilometer 300.81) to Palanpur Station (identified by the Indian Railways as chainage point Kilometer 0.00), a total distance of **300.81** kilometers. This shall comprise of the following sections:
 - (i) Gandhidham Station to Samakhiali Station measuring approximately **53.08** kilometers;
 - (ii) Samakhiali station to Bhildi Jn. Station measuring approximately **202.23** kilometers;
 - (iii) Bhildi Jn. Station to Palanpur Station measuring approximately **45.50** kilometers;
- (b) Ensuring prompt evacuation and clearance of the traffic on the Project Railway by making available sufficient number of wagons and locomotives.
- (c) Collection of revenues from the movement of non-container freight traffic, haulage charges and all other revenues in respect of the container traffic, apportioning and making payment of net revenues to KRC after deducting the O&M cost.
- (d) Management of accidents, interruptions or any other events affecting the movement of traffic on the Project Railway.

1.2.2 By KRC:

- (a) Payment of O&M costs in accordance with Article 3.0 to WR.
- (b) In accordance with its future expansion plans, WR shall be entitled to provide rail connections along the length of the Project Railway to build a new railway line without adversely affecting the traffic movement and functioning of Project Railway. Such additions shall be outside the purview of this Agreement.
- (c) KRC shall have the right to develop at their cost Additional Facilities in its business interest, whether in terms of additional stations and freight handling facilities, crossing stations, or any other facility for this purpose. This Agreement shall cover the Operations & Maintenance of such Additional Facilities as well.

1.3 Term of Agreement

This Agreement shall come into force from the Appointed Date and shall commence from the Commercial Operation Date. The term of this Agreement shall be co-terminus with the Concession Agreement, entered into between the MoR and KRC,



2.0 OPERATIONS AND MAINTENANCE (O&M)

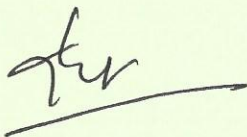
2.1 Responsibilities of WR

- 2.1.1. Immediately upon certification by Chief Engineer (CE)/WR for freight operations, the Existing Assets leased by MOR to KRC for the Project Railway, and the New Assets created by KRC shall be deemed to be handed over to WR for Operations of freight movement and Maintenance of the Project Railway.
- 2.1.2 The Operations and Maintenance of the broad gauge rail link between Gandhidham Station and Palanpur Station shall be the responsibility of WR.
- 2.1.3 WR shall take all necessary action, to ensure that it is in a position and capacity to take up O&M immediately after the BG line is constructed and certified fit by the CE/WR.
- 2.1.4 WR shall ensure that the maintenance of the Project Assets is as per standards laid down by MOR or its nominated agencies. This includes periodic inspection or any necessary activity. MOR shall ensure that all such activities are sufficient and cost effective.

3.0 O&M COST

3.1 Basis of O&M Cost

- 3.1.1 KRC shall be liable to pay to WR the O&M cost for carrying out O&M on the Project Railway.
- 3.1.2 The O&M cost shall be payable from COD.
- 3.1.3 The O&M cost shall consist of two parts:
 - (i) the fixed cost which shall remain fixed for a particular year and which shall be payable by KRC regardless of the level of traffic carried for that year, and
 - (ii) the variable cost which shall be linked with the freight traffic handled on the Project Railway. The fixed and variable cost, of Operations, shall be computed in accordance with Schedule 1.
- 3.1.4 To contain O&M Cost WR shall implement Konkan Railway Corporation Limited (KRCL) pattern of manning of staff by providing for mechanized maintenance and use of Information Technology within a timeframe of five years. However, the manpower requirement and implementation of KRCL pattern of maintenance will be guided by the following:-
 - i The staff to be deployed on the KRC line from COD is enclosed as Schedule-3 for various departments. The staff cost will be borne by KRC which shall form part of the Fixed Cost.



- ii A Survey Team shall be formed consisting of WR and KRC officers, wherein review will be done quarterly to implement the KRCL report in regard to deployment of staff as per KRCL pattern as early as possible. With the increase in traffic on the Project Railway any increase in staff as identified by the Survey Team shall be provided in due course.
 - iii. For the purpose of mechanized Operations & Maintenance on the Project Railway, the requirement of vehicles and equipments shall be mutually decided by the Survey Team. The cost of such vehicles and equipments shall be borne by KRC.
- 3.1.5 Western Railway shall defer the recovery of overhead charges on O&M cost for the first ten years of operation of the line and the same shall be fully recovered in a period of 20 years commencing from the 11th year of Operations.

3.2 Revision of O&M Cost

The principles governing the computation of fixed and variable costs as detailed in Schedule- 1 shall remain unchanged unless there is need for a revision, following such audit and the principles governing such revision are mutually acceptable to WR and KRC.

i. Fixed Costs:

The number of staff deployed on the Project Railway for O&M shall generally remain fixed at the level indicated in the Schedule- 3. However, any upward revision in the level of staff shall need acceptance of KRC. The fixed cost of material shall be determined by costs survey. The survey team shall scrutinize the record of the actual stores used by the various departments specifically for maintenance of the project area. It shall cover P.Way, signaling, telecom, electrical operating and commercial connection with freight operation. The direct and indirect supervision charges not covered in the manpower Costs shall be estimated by the survey team. For the first year of Operations, such costs shall be calculated as detailed out in Schedule-1. At the end of the first year from COD, the fixed costs incurred during the year shall be verified and audited by survey team. The survey team shall include representatives of Railways, KRC and a reputed chartered accountancy firm. It may be used for 5 years by inflating it by WPI and survey may be repeated after every five years.

ii Variable Cost

At the end of the first year from COD, the variable costs incurred during the year shall be verified and audited by the survey team. For the first year of Operations, such costs shall be calculated as detailed out in Schedule 1. It may be used for 5 years by inflating it by WPI and survey may be repeated after every five years.




4.0 REPLACEMENT OF PROJECT ASSETS

- 4.1 In consideration of costs enumerated in Article 3.0 the repairs and maintenance of Project Assets in order to keep them in proper condition, shall be carried out by WR.
- 4.2 WR shall, also carry out the replacement of Project Assets due to accidents and shall bear the cost of such replacements.
- 4.3 The replacement of Project Assets after the lives of the assets have expired, shall be carried out by KRC either through itself or WR. The life cycle of assets as stipulated in the codal guidelines/standards (Schedule 2) of the MoR shall be generally used for the replacement of New Assets. The cost of the replacement of such replaceable Project Assets shall be borne by KRC.
- 4.4 WR shall be responsible for issuing prior written information to KRC clearly specifying the asset to be replaced, when the replacement has become due according to the codal lives of such assets (Schedule 2), the cost of such replacements, the lead time involved for such replacements and any other related matters on such replacements.

5.0 TRAFFIC PLAN, SCHEDULE AND OPERATION, EXPANSION PLANS, CLAIMS AND LIABILITIES

5.1 Traffic Plan

- 5.1.1. KRC shall prepare an Annual Traffic Plan (ATP) indicating the estimated freight traffic likely to be moved by rail on the Project Railway, the likely quantities/destinations. KRC shall furnish the ATP to the Chief Operations Manager/WR, Divisional Railway Manager/Ahmedabad, 3 (three) months before the beginning of a financial year.
- 5.1.2 KRC shall also prepare a Quarterly Traffic Plan (QTP) and a Monthly Traffic Plan (MTP) based on the ATP, to enable WR, to plan the wagon supply, train movement for prompt evacuation of the estimated Traffic and scheduling maintenance of the Project Railway. KRC shall submit the QTP one month in advance and MTP at least 10 days prior to the commencement of the period to which such QTP and MTP pertains.
- 5.1.3 KRC shall advise any changes in the QTP and MTP based on immediate requirements of freight movement by rail to COM/WR and DRM/Ahmedabad giving a notice of 10 days.
- 5.1.4 Both parties shall make all efforts to achieve the plans as per their respective responsibilities.

5.2 Train Schedule and Operation on the Project Railway

- 5.2.1 Indents placed at any station or loading points on the Project Railway shall be accepted and expeditiously dealt with in accordance with the extant rules, procedure of MoR, and relevant provisions of this




Agreement.

5.2.2 Subject to the requirements of normal operation and discipline of traffic movement including observance of operation restrictions, quota, ceiling limits etc. imposed by Railways from time to time, WR shall move the traffic originating/ terminating either from Kandla/Mundra Port or Gandhidham area on priority after meeting the passenger traffic requirements.

5.2.3 Notwithstanding any terms and conditions regarding train operations agreed upon, in case of National Emergency, the exigencies of national requirement shall take precedence over everything else without payment of any compensation to KRC.

5.3 Co-ordination

5.3.1 For the purpose of facilitating the planning and operations of the Freight Traffic on the Project Railway, a Co-ordination Committee (CC) shall be formed at the Zonal Level and Divisional level.

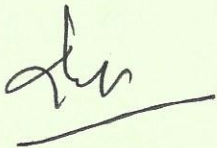
5.3.2 The Zonal Committee CC-ZL shall include (Chief Track Engineer, Chief Freight Transportation Manager, Chief Commercial Manager, Financial Advisor & Chief Accounts Officer, Divisional Railway Manager/ Ahmedabad, WR, Chief Executive Officer, KRC and shall be headed by CFTM. The Zonal Committee may co-opt any other person or organisation as a member of the committee whom it considers relevant and useful for the purpose.

5.3.3 The Divisional Committee shall include Additional Divisional Railway Manager, (ADRM)/ Ahmedabad, Senior Divisional Engineer or Division Engineer, Senior Divisional Operations Manager or Divisional Operations Manager, Senior Divisional Commercial Manager or Divisional Commercial Manager, Senior Divisional Accounts Officer or Divisional Accounts Officer, and representative of Managing Director, KRC and shall be headed by ADRM. The Divisional Committee may co-opt any other person or organisation as a member of the committee whom it considers relevant and useful for the purpose.

5.3.4 These Committees shall meet at regular quarterly intervals to review the operations and maintenance activities and suggest improvements to both WR and KRC.

5.4 Claims and Liabilities

5.4.1 KRC shall not be responsible for any claims and liabilities for the consignments under the charge of WR. Claims and liabilities shall be settled by WR as per extant rules of the MOR.




6.0 TARIFF, REVENUE COLLECTION, REVENUE APPORTIONMENT AND OTHER RELATED MATTERS

6.1 Revenue Collection

6.1.1 **Non-Container Traffic:** Public Tariff Rates as notified by MOR shall be charged and collected by WR for the non-container traffic on the Project Railway. Special tariff may be quoted as per the provisions of the Railways Act, 1989 by KRC and in accordance with the notifications/instructions of MOR as issued from time to time.

6.1.2 **Container Traffic:** WR shall collect the haulage charges as notified by MoR from time to time from the operator of the container trains.

6.2 Apportionment of Revenue

6.2.1 WR shall maintain details of all outward freight traffic (from Gandhidham towards Samakhiali/Bhildi/Palanpur) originating or moving on the Project Railway as per the rules prescribed by MOR/WR for the maintenance of such information.

6.2.2 Similarly WR shall maintain details of all inward freight traffic moving via Palanpur, Bhildi terminating or moving on the Project Railway.

6.2.3 Based on the above details of outward and inward freight traffic, WR shall calculate the provisional apportionment of earnings due to KRC (KRC's share) every month, as per the extant rules for apportionment of such earnings amongst zonal railways.

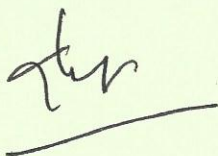
6.2.4 From the second year onwards after the O&M costs are established, provisional apportionment may be made by the 5th of the next month based on a pre-determined formula for various levels of traffic, using the previous year's cost. Below a break-even monthly level of traffic KRC shall make necessary payments to WR by the 5th of the next month. A detailed joint procedure order shall be prepared by WR and KRC in this regard.

6.2.5 The above payment shall be provisional and shall be adjusted later based on the results of actual apportionment exchanged between the zonal railways and other charges payable by the respective parties to each other. Such adjustments shall be made before the close of the month.

6.3 Documentation of Accounts

6.3.1 WR shall advise KRC the details of inward and outward traffic in the format and as per the details advised to other zonal Railways.

6.3.2 WR and KRC shall arrange to reconcile the above details of traffic before the accounts for the month are closed.



6.4 Other Revenues

- 6.4.1 Wharfage and Demurrage: Standard Wharfage and Demurrage Charges or any other charges by whatsoever name called, as announced by MOR shall apply for the non-container freight traffic on the Project Railway. The Wharfage charges collected by WR shall be paid to KRC in accordance with Article 6.2. Demurrage charges shall be retained by WR. However the hire charges shall not accrue for the period the wagons have incurred demurrage.

6.5 Mode of Payments

All payments under this Agreement shall be made as follows:

- (a) If to KRC: All payments shall be through bank cheques issued in favour of "Kutch Railway Company Ltd."
- (b) If to WR: All payments shall be through acceptable mode as per the extant instructions of Ministry of Finance. If cheques or demand drafts are acceptable, these shall be issued in the favour of "Financial Advisor and Chief Accounts Officer, Western Railway".

7.0 GENERAL OBLIGATIONS UNDER THE O&M AGREEMENT

7.1 Obligations of WR

Subject to this Agreement and Applicable Laws, WR hereby undertakes to do the following:

- (a) to perform and fulfill all of its obligations under this Agreement;
- (b) without the prior approval of KRC, not to assign or create any lien or encumbrance on the Project Assets
- (c) to operate and maintain the Project Railway in accordance with the terms of this Agreement and Applicable Laws.
- (d) to pay KRC the apportionment of revenues of freight traffic and other revenues relating to freight on the Project Railway in accordance with Article 6.
- (e) Bear the running and operating costs of passenger services to be provided in accordance with Article 7.2.
- (f) to comply with all obligations and safety standards for freight and passenger services provided on the Project Railway as prescribed under the Railways Act, 1989.
- (g) to afford access to the Project Area to the authorized representatives of KRC, lenders, and to the persons duly authorized by GOI and GOG and any other Governmental Authority having jurisdiction over the Project, including those concerned with safety,



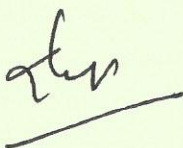

security or environmental protection to inspect the Project Railway and to investigate any matter within their authority. Upon reasonable notice WR shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions with minimum disruption to the Operations and Maintenance of the Project Railway consistent with the purpose for which such persons have gained such access to the Project Area.

- (h) To keep the Project Assets in a proper working condition, including making replacements in accordance with the standards laid down by MoR.
- (i) Remove promptly from the Project Area all surplus construction machinery and materials, waster materials (including without limitation, hazardous materials, waste water), rubbish and other debris (including without limitation to accident debris) and shall keep the Project Area in a neat and clean condition and in conformity with the Applicable Laws and Application permits.
- (j) To make all efforts to ensure that O&M is performed to ensure that the O&M and associated safety standards laid down by Indian Railways are complied with and fitness of track for 100 Kilometers per hour speed is maintained, throughout the tenure of this Agreement.
- (k) To ensure the movement of traffic on the Project Railway without undue hindrance or delay, which may have a Material Adverse Effect on the interests of KRC.
- (l) To arrange supply of sufficient number of rakes, wagons, locomotives and other rolling stock for the efficient movement and clearance of Freight Traffic on the Project Railway subject to operating restrictions, quota, ceiling limits imposed by Railways from time to time as well as timely release of rakes, wagons etc. at the terminals.
- (m) Notwithstanding anything contained anywhere in this Agreement, it is clearly understood and agreed by both the parties that WR shall discharge the obligations under Article 7.0 subject to and in conformity with the rules of Railway associated with safety, speed restrictions, preferential traffic schedules and restrictions.

7.2 Rights of WR under this Agreement

As the Operator, WR shall be entitled to the following:

- (a) The utilisation of the Project Assets of KRC for the operation and maintenance of the Project Railway.
- (b) The right to collect revenues from the customers for the movement of non-container freight traffic and haulage charges for container traffic on the Project Railway in accordance with Article 6.0.




- (c) WR shall be entitled to run on the Project Railway, the equivalent of the passenger services that already was operational on the MG track in the Project Area without payment of any access charges. Provided however that, any new passenger service on the Project Railway shall be commenced only with the prior written consent of KRC.
- (d) Right to collect revenues for passenger services and provide facilities incidental thereto at its cost.
- (e) Without in any way adversely affecting the movement of traffic on the Project Railway, or otherwise adversely affecting the functioning of the Project Railway, the right to connect to the Project Railway, at any point along its length, other rail lines which are constructed in accordance with the normal expansion plans of WR.

7.3 Obligations of KRC under this Agreement

Subject to this Agreement and Applicable Laws, KRC hereby undertakes to do the following:

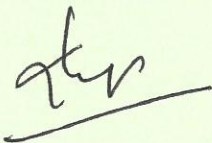
- (a) To perform and fulfill all of its obligations under this Agreement;
- (b) To make timely payment to WR of all costs incurred on account of O&M. In case the apportioned revenue payable by WR to the Company falls short of the requirement of such payment, the Company shall on its own arrange the full payment in accordance with the provisions of Article 3.0.
- (c) To permit peaceful use of the Project Area by WR under and in accordance with the provisions of this Agreement;

7.4 Rights of KRC

- a) To receive its due share of apportionment of freight earnings and other revenues in accordance with Article 6.0.
- b) Right to put to commercial use certain assets in the Project Area, as per Applicable Law and on terms and conditions to be mutually agreed between WR and the Company.
- c) Right to grant station to station rate concession for traffic moving within KRC territory within the station to station rates policy guidelines issued by the Board from time to time.

7.5 Confidentiality Obligations of WR and KRC to Each Other

- 7.5.1 Information received from any Party by the other Party shall be treated as confidential ("**Confidential Information**"). The Confidential Information is to be used by the recipient Party, their directors, officers,



employees, advisors, accountants and such other persons only for the purpose of the Project, and for no other purposes whatsoever.

7.5.2 The Confidential Information shall be kept in strict confidence by either party and shall not be divulged or disclosed to any person (which term shall be interpreted broadly to include, without limitation, any company, partnership or individual), other than such of the directors, officers, employees, advisors, accountants and such other persons, of the recipient Party who directly have a need to know such Confidential Information in accordance with the intent and purpose of this Agreement, provided always that each such person to whom Confidential Information is disclosed shall have been made aware of its confidential nature and of the terms of this agreement prior to such disclosure.

7.5.3 The restrictions set forth in Articles 7.5.1 and 7.5.2 herein shall not apply to any part of the Confidential Information which:

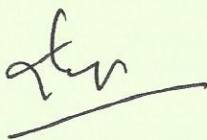
- a) is at the time of disclosure to the recipient Party, or thereafter, becomes part of the public domain, other than as a result of a disclosure by the recipient Party, their directors, officers or employees; or
- b) was, at the time of disclosure to the recipient Party, already in the possession of the recipient Party on a lawful basis; or
- c) is required to be disclosed by the recipient Party by judicial, administrative or stock exchange process, any enquiry, investigation, action, suit, proceeding or claim or otherwise by Applicable Law or by any Governmental Authority, provided that the recipient Party shall advise the disclosing Party of any disclosure hereunder so as to enable the disclosing Party to take appropriate steps as it may so desire.

7.6 Conditions and Warranties

7.6.1 Representations and Warranties of the KRC

The KRC represents and warrants to WR that:

- (a) It is a Company duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation;
- (b) It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (c) It has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- (d) This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms thereof;

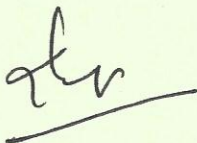


- (e) It is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- (f) The execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default under or accelerate performances required by any of the terms of the Memorandum and Articles of Association of the KRC or any Applicable Laws or any covenant, agreement, understanding, decree or order to which, it is a Party or by which it or any of its properties or assets is bound or affected;
- (g) There are no actions, suits, proceedings, or investigations pending or, to the KRC's knowledge, threatened against it at law or in equity before any Court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of or constitute a default of the KRC under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect on its business, properties or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations and duties under this Agreement.
- (h) All the Applicable Permits have been obtained and are in full force and effect on the Appointed Date, or shall be obtained in due course from time to time and all the Applicable Permits shall be maintained in full force and effect until the Termination Date.

7.6.2 Representations and Warranties of WR:

WR represents and warrants to the KRC that:

- (a) WR is a zonal Railway of MoR duly organized and validly existing under the laws of India;
- (b) WR has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (c) WR has taken all necessary actions to authorize the execution, delivery and performance of this Agreement;
- (d) This Agreement when executed constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms thereof;
- (e) WR is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any sovereign immunity in any jurisdiction in regard to matters set forth in this Agreement; and
- (f) There are no actions, suits, proceedings, or investigations pending




or, to the WR's knowledge, threatened against it at law or in equity before any Court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of or constitute a default of WR under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect on its business, properties or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations and duties under this Agreement.

- (g) All the Applicable Permits have been obtained and are in full force and effect on the Appointed Date, or shall be obtained in due course from time to time and all the Applicable Permits shall be maintained in full force and effect until the Termination Date.

7.7 Due diligence

WR and KRC agree to abide by provisions relating to exercise of diligence laid down in the Railway Act, 1989.

8. EVENTS OF DEFAULT & COMPENSATION

8.1 Events of Default

8.1.1 WR's Event of Default

The following shall constitute WR's Default:

- (a) The normal functioning of the Project Railway has been non-operational for freight trains for more than 7 (seven) days, provided that such suspension is not on account of Force Majeure events or for reasons attributable to KRC.
- (b) Repudiation of this Agreement by MOR.
- (c) Non-payment of dues by WR to KRC, in accordance with the terms of this Agreement for three consecutive months.

8.1.2 KRC's Event of Default

The following (unless arising as a result of Force Majeure Event or WR's Default) shall constitute KRC's Default:

- (a) The non-payment of dues by KRC to WR, in accordance with the terms of this Agreement, exceeds by more than 3 (three) months.
- (b) Repudiation of this Agreement by KRC.
- (c) Appointment of a provisional liquidator providing for winding up of KRC, unless such appointment has been set aside within 45 days.

8.1.3 Consequences of Default




In the event of WR's Default or KRC's Default ("**Event of Default**") the remedy procedure as set out in Article 8.1.4 and 8.1.5 shall apply.

8.1.4 Notice of Default

On the happening of any Event of Default as set out above, the non-defaulting party shall issue a written notice to the defaulting party of the Event of Default specifying the nature of default and the date of default.

8.1.5 Remedy Period

- (a) Following the service of the Notice of Default, the Defaulting Party shall have a period of 30 days ("Remedy Period") to cure the Event of Default. Pursuant to which the Notice of Default was issued.
- (b) During the Remedy Period, the Defaulting Party shall continue to undertake all efforts to cure the default, and the Non Defaulting Party shall not, by any act or omission, impede or otherwise interfere with the Defaulting Party's endeavours to remedy the Event of Default.
- (c) During the Remedy Period, both the parties shall, save as otherwise provided herein, continue to perform their respective obligations under this Agreement.

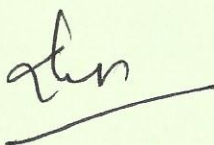
8.2 Compensation Payable by the Defaulting Party to the Non-Defaulting Party

8.2.1 Payments to KRC - WR's Event of Default

- (a) WR shall be liable to pay all outstanding amounts due to KRC within seven days from the date of receipt of the written intimation from KRC.
- (b) WR shall not be entitled to collect the proportionate fixed cost for the entire period of default with reference to Article 8.1.1, which shall include 7 days of non-operation with reference to Article 8.1.1.
- (c) In the event of WR's Event of Default on account of non-payment, WR shall be liable to pay KRC, an interest equal to the SBI PLR prevailing on the date on which the Notice of Default of was issued for the period from the date when the payment was due to the date of payment.

8.2.2 Payments to WR - KRC's Event of Default

- (a) KRC shall be liable to pay all outstanding amounts due to WR within seven days from the date of receipt of the written intimation from WR.
- (b) In the event of KRC's Event of Default, KRC shall be liable to pay WR, an interest equal to the SBI PLR prevailing on the date on



which the Notice of Default was issued for the period from the date when the payment was due to the date of payment. The interest shall be payable on the amounts under Article 8.2.2(a) till such time the Default has been cured.

8.3 Early Termination

In the event of early termination, the procedure for termination set forth in the Concession Agreement shall be followed along with the Article 8.2.1 and 8.2.2 being the default payments payable by the Defaulting Party to the Non-Defaulting Party.

8.4 Indemnity

8.4.1 General Indemnity

(a) KRC shall indemnify, defend and hold WR harmless against any and all proceedings, actions and third party claims (other than a claim by MOR or GOI for loss, damage and expense of whatever kind and nature arising out of the design, engineering and construction of the Project Assets or arising out of a breach by KRC of any of its obligations under this Agreement except to the extent that any such claim has arisen due to WR Event of Default).

(b) WR shall, indemnify, defend and hold harmless KRC against any and all proceedings, actions and, third party claims for loss, damage and expense of whatever kind and nature arising out of defect in title and/or the rights of WR in the land comprised in the Project Area adversely affecting the performance of KRC's obligations under this Agreement and/or arising out of acts done in discharge of their lawful functions by WR, its Officers, servants, agents, subsidiaries and contractors including WR Events of Default except to the extent that any such claim has arisen due to a negligent act or omission, breach of contract or breach of statutory duty on the part of KRC, its assigns, subsidiaries, affiliates, contractors, servants or agents including due to KRC Event of Default.

8.4.2 In the event that either Party receives a claim from a third Party in respect of which it is entitled to the benefit of an indemnity under this Article 8.4 ("the Indemnified Party") it shall notify the other Party ("Indemnifying Party") within 14 (fourteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim it may conduct the proceedings in the name of the Indemnified Party subject the Indemnified Party being secured against any costs involved to its reasonable satisfaction.

8.5 Defence of Claims

8.5.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, actions, 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 their reasonable costs and expenses shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the person indemnified in respect of loss to the full extent provided by the Article 8.4, 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 counsel of its choice provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburse 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, 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 compromises or settled.

- 8.5.2 If the Indemnifying Party or the Indemnified Party have exercised their rights the Indemnifying Party or the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the other (which consent shall not be unreasonably withheld or delayed).

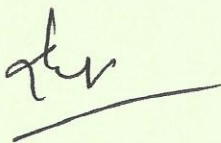
9.0 ACCIDENTS AND INTERRUPTIONS

- 9.1 WR shall be responsible for any train accident unless it is attributable to a Force Majeure event.

9.2 In case of accident or interruption

- (a) WR shall take prompt action in restoring the line to the normal level in the quickest possible manner. The cost of restoration and relief work including any compensation payable to any third party, as per the extant rules of MOR, shall be borne by WR in accordance with Article 4.2.
- (b) after restoration of the line, all repair works including renewal of track, structures, signalling systems and such other works related to normal functioning of the Project Railway, shall be arranged by WR at its own cost;
- (c) in case the line is closed on account of the following Force Majeure Events:
 - (i) heavy rains, floods and consequent breaches
 - (ii) any other act of God beyond the control of WR,

the restoration of the line shall be the responsibility of WR. The costs of such restoration shall be borne by KRC.



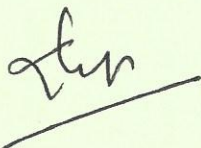

10.0 FORCE MAJEURE

10.1 **Force Majeure** shall mean any event or circumstance or combination of events or circumstances that materially and adversely affects the performance by either Party (the "**Affected Party**") of its obligations under this Agreement (including by preventing or hindering or delaying such performance), but only if and to the extent that such events and circumstances in all probability are not within the Affected Party's reasonable control.

The Following circumstances and events shall constitute an event or circumstance of Force Majeure to the extent that they or their consequences satisfy the above requirements:

- (a) the effect of natural elements or other acts of God, including but not limited to any storm, flood, drought, lightning, earthquake, cyclone or other natural disaster;
- (b) fire, accident, breakage of facilities or equipment, structural collapse or explosion which the Party claiming to have been subject to Force Majeure demonstrates to have been attributable to a cause other than -
 - (i) inherent defects of any equipment, or
 - (ii) circumstances within the reasonable control of the Affected Party or its contractors;
- (c) epidemic or quarantine
- (d) acts of war (whether declared or undeclared), sabotage, terrorism or acts of public enemy (including the acts of independent units or individuals engaged in activities of foreign program of irregular warfare), acts of belligerence of foreign enemies (whether declared or undeclared), blockades, embargoes, civil disturbances, revolution, rebellion or insurrection, exercise of military or usurped power or any attempt at usurpation of power;
- (e) radioactive contamination or ionization radiation
- (f) events of strikes, work to rule actions, go-slows or similar labour related problems caused in whole or in part by agitation or unrest except where such events which are site specific or attributable to the Party claiming relief.
- (g) any Change in Law
- (h) the expropriation or compulsory acquisition of the Project Railway by any Governmental Authority (except if such expropriation/ compulsory acquisition is due to the fault of the Concessionaire)

10.2 Duty to Report




10.2.1 A Party claiming to be affected by an event of Force Majeure shall notify the other Party in writing of the occurrence of the event of Force Majeure as soon as reasonably practicable, and in any event, within 15(Fifteen) days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the probable material effect that the event of Force Majeure is likely to have on the performance of its obligations under this Agreement.

10.2.2 Any notice pursuant to this Article 10.2.1 shall include full particulars of:

- (a) the nature and extent of the event of Force Majeure which is the subject of any claim for relief under this Article 10.0 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such event of Force Majeure is having or shall have on the Affected Party's performance of its obligations under this Agreement; and
- (c) the measures which the Affected Party is taking or proposes to take, to alleviate the impact of such event Force Majeure ; and
- (d) any other information the Affected Party wishes to present in support of its claim.

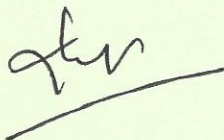
10.2.3 For so long as the Affected Party continues to claim to be affected by such event of Force Majeure, it shall continue to provide to the other Party written reports on every alternate day, containing information as required by this Article 10.0 and such other information as the other Party may reasonably request the Affected Party to provide.

10.2.4 Any party claiming to have been affected by an event of Force Majeure shall not be entitled to any relief unless it has complied with all the provisions of Articles 10.2.1, 10.2.2, and 10.2.3 above.

10.3 Excuse from performance of obligations

An Affected Party who is rendered wholly or partially unable to perform its obligations under this Agreement shall be excused from performance of such of its obligations as are directly and materially adversely affected by the event of Force Majeure, provided however that:

- (a) an obligation to make any payment or meet any financial obligation shall not be excused on account of an event of Force Majeure, and
- (b) the maximum period for which relief can be claimed by an Affected Party in respect of an event of Force Majeure shall not exceed one hundred and twenty (120) days, beyond which the parties shall be free to mutually decide the future course of action and
- (c) the suspension of performance of its obligations by the Affected Party shall be of no greater scope and of no longer duration than is



reasonably necessitated by the event of Force Majeure, and

- (d) the Affected Party shall continue to make all reasonable efforts to mitigate or limit the damage to the other Party arising out of or as a result of the existence or occurrence of such event of Force Majeure and to cure the same with due diligence; and
- (e) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder.

10.4 No Liability for other losses, damages, etc.

Save and except as expressly provided in this Article 10, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of the occurrence or existence of any event of Force Majeure or the exercise by it of any right pursuant to this Article 10.

11.0 SETTLEMENT OF DISPUTES THROUGH GOOD FAITH NEGOTIATIONS AND CONCILIATION

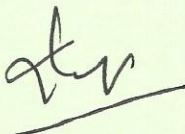
11.1 Good Faith Negotiation

The Parties shall endeavour, in the first instance, to resolve any dispute, disagreement or difference arising out of or in connection with this Agreement, including any question regarding its performance, existence, validity, termination and the rights and liabilities of the Parties to this Agreement (a "**Dispute**") through good faith negotiations.

- 11.2 For the purpose of conducting good faith negotiations, each Party shall, within one month of the Appointed Date, designate in writing to the other Party a representative who shall be authorized to negotiate on its behalf with a view to resolving any Dispute (the "**Representative**"). Each such Representative shall remain so authorized until his replacement has been designated in writing to the other Party by the Party he represents.

- 11.3 Unless otherwise provided for in this Agreement, the following provisions shall apply to the resolution of any Dispute:

- (a) The Dispute shall not be referred to Arbitration under Article 12.0, unless and until the provisions of this Article have been complied with.
- (b) The Representative of the Party, which considers that a Dispute has arisen, shall give to the Representative of the other Party, a written notice setting out the material particulars of the Dispute (a "**Dispute Notice**").




(c) Within thirty days, or such longer period as may be mutually agreed (the "**Negotiation Date**"), of the Dispute Notice having been delivered to the other Party, the Representatives of both Parties shall meet in person at the registered office of the Company or at any other designated place to attempt in good faith, and using their best endeavours at all times, to resolve the Dispute. Once the Dispute is resolved, the terms of the settlement shall be reduced in writing and signed by the Representatives of the Parties (the "**Settlement**").

(d) If a Settlement is not reached within Thirty (30) days after the Negotiation Date, such Dispute shall be referred for Conciliation to one conciliator in accordance with the provisions of Arbitration and Conciliation Act, 1996. The conciliator shall be appointed by Member (Engineering), Railway Board.

12.0 ARBITRATION

12.1 If good faith negotiation and conciliation under Article 11.0 has not been able to resolve a Dispute, such Dispute shall be referred to and be finally resolved by arbitration in accordance with the Arbitration and Conciliation Act, 1996 and the rules made thereunder.

12.2 The place of arbitration shall be Mumbai, Maharashtra.

12.3 Each Party to the Dispute shall appoint one arbitrator and the two arbitrators so appointed shall mutually agree to and appoint the third arbitrator. The arbitral agency so constituted, shall be the "**Arbitral Tribunal**". The provisions of the Arbitration and Conciliation Act, 1996 as may be amended from time to time and the rules, if any made there under shall apply to such arbitration proceedings.

12.4 The language of the arbitration shall be English.

12.5 Any decision or award of the Arbitral Tribunal appointed pursuant to this Article 12.0 shall, subject to correction/recourse provided for under the Arbitration and Conciliation Act, 1996 be final and binding upon the Parties. The Arbitral Tribunal shall give a speaking award.

12.6 Any amounts awarded by the Arbitral Tribunal to any party shall be paid by the other party within thirty days of the award having been made. In the event that the amount is not paid within thirty days, the party required to make the payment shall have to pay to the party in whose favour the award has been made, in addition to the amount of the award, interest on this amount at a rate that is four per cent above the SBI PLR. Such interest shall be payable from the date on which the payment was due to the date of actual payment.

13.0 NOTICES

13.1 Notice Requirements

All notices under this Agreement shall be in writing and are effective upon delivery to the applicable Party (whether by mail, fax, personal

delivery or otherwise) at the address indicated below (or such other address as any Party may notify in writing to all the other Parties in accordance with the provisions of this Article 13):

- (a) If to KRC at:
Managing Director,
Kutch Railway Company Ltd.
14-A, SPWD House,
Vishnu Digambar Marg,
(Rouse Avenue Lane),
New Delhi 110002.
Fax: 011-23217668
- (b) If to WR at:
Chief Commercial Manager,
Western Railway,
Church Gate,
Mumbai – 400 420.
Fax: 022-22082808

13.2 Delivery

Any notice, document or communication:

- (a) given by hand against acknowledgement is deemed to be received at commencement of the business day next following delivery to the address of the receiving Party set out in Article 13.1;
- (b) sent by fax is deemed to be received at the commencement of the business day next following receipt by the sending Party of an electronic confirmation of transmission of the notice to that addressee, which transmission is to be confirmed by a courier transmission date-marked the same day as the fax transmission it is confirming.

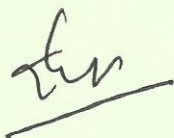
14.0 MISCELLANEOUS PROVISIONS

14.1 Partial Validity

If a provision is void, unenforceable or illegal, but shall be valid if some part of the provision were deleted, the provision in question shall apply with such minimum modification as may be necessary to make it valid.

14.2 Further Assurances

Each Party shall do all things required to give effect to its rights and obligations under this Agreement including executing all deeds and documents, convening all meetings, giving all waivers and consents, passing resolutions and otherwise exercising all powers and rights available to it.



14.3 Waiver

Failure by either Party to invoke the provisions of this Agreement in the event of any default by other Party in the observance and performance of its obligations under this Agreement

(a) shall not operate or be construed as a waiver of any such default, or any other or subsequent default, and

(b) shall not affect the validity or enforceability of this Agreement in any manner.

14.3.1 Failure by any Party to insist on upon the performance of the terms, conditions and provisions of this Agreement or any obligation hereunder, and time or other indulgence granted by a Party to the other Party shall not be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

14.4 Counterparts

This Agreement may be executed in two counterparts, both of which taken together shall constitute one and the same Agreement, and any Party may enter into this Agreement by executing a counterpart.

14.5 Whole Agreement

This Agreement contains the whole agreement between the Parties relating to the Project, and supersedes all previous agreements and understandings between the Parties in so far as these relate to the subject matters hereof.

14.6 No Reliance

Each Party acknowledges that, in agreeing to enter into this Agreement, it has not relied on any representation, warranty, collateral contract or other assurance (except those set out in this Agreement) and waives all rights and remedies which, but for this Article, may otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance (except those set out in this Agreement), provided that nothing in this Article limits or excludes any liability for fraud and/or misrepresentation or concealment of facts.

14.7 Compliance with Applicable Laws

Each Party shall comply with all Applicable Laws, rules and regulations applicable to the Project in the performance of its obligations under this Agreement.



14.8 Governing Law and Jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India and the courts at New Delhi and Mumbai, India shall have jurisdiction to the exclusion of all other Courts in respect of over all matters arising out of or relating to this Agreement.

14.9 Language

The language of this Agreement shall be English. All documents, Notices, waivers and all other communications, written or otherwise between the Parties in connection with this Agreement shall be in English.

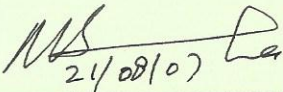
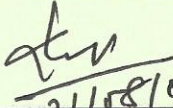


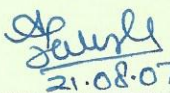
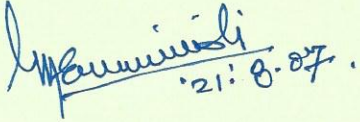
14.10 Amendments

No amendment or modification of the terms of this Agreement shall be binding on any Party unless reduced in writing and signed by both Parties.

14.11 Renewal

This Agreement may be extended beyond the Concession Period of 32 (thirty two) years on mutually agreed terms between WR and KRC.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT ON THE DATE FIRST ABOVE WRITTEN.

<div>SIGNED, SEALED AND DELIVERED For and on behalf of WR By</div> <div> 21/08/07</div> <div>(Signature) Shri <u>N. C. SINHA</u> Chief Commercial Manager Western Railway</div>	<div>SIGNED, SEALED AND DELIVERED For and on behalf of KRC By :</div> <div> 21/08/07</div> <div>(Signature) Shri Devendra Singh, Senior Vice President, Kutch Railway Company Ltd.</div> <div></div>
<div>In the presence of:</div> <div>1.  21.8.07</div> <div>2.  21.08.07</div>	<div>In the presence of:</div> <div>1.  21.8.07</div> <div>2.</div>

Schedule 1**COMPUTATION OF O&M COST****OPERATIONS AND MAINTENANCE COSTS FOR THE SPV LINE****1.0 Fixed Cost**

Fixed cost can be divided into two categories, namely, manpower and maintenance of a fixed nature.

1.1 Manpower

The total manpower to be deployed on the SPV line, including RPF, will be worked out with a view to implement Konkan Railway pattern of mechanized maintenance. The pension element is already covered in the overhead and will not be added here. Incidental charges as applicable on the basis of ratio of expenditure under PSUs 3 to 16 to expenditure PUs 1 to 2 on Western Railway for the relevant year will be added. A separate bill unit will be maintained to keep the accounts properly and bill the SPV accordingly.

1.2 Maintenance other than manpower

This would entail material costs of all kinds and will cover:

- P.Way
- Signal Telecommunication
- Electrical General
- Operating /Commercial
- Miscellaneous

The above costs, i.e. pro rata O&M cost shall be computed for the first year as suggested by the joint survey committee report of WR in case of PRCL. From second year onwards the O&M cost *will be calculated on the actual basis*. A survey team comprising representatives of Railways, KRC and a reputed consultancy firm will be appointed to scrutinize the record of actual stores used by various Departments for maintenance of the Project Area. The direct and indirect supervision charges and other miscellaneous expenses (e.g. RPF non-staff cost) not covered in the manpower cost will also be estimated by the survey team. The results of the cost survey will be used for 5 years by indexing it suitably to one of the relevant published indices (WPI, RBI indices etc) and inflating it suitably. The monthly WPI/RBI indices will be averaged at the end of the year and the average index will be applied for inflating the cost. A fresh survey will be conducted after every 5 years.

2.0 Variable Cost

The following variable costs can be identified and estimated for charging the SPV:

2.1 Cost of Fuel

The cost of fuel will be estimated as per Specific Fuel Consumption for 1000 GTKM (Freight), as assessed by Western Railway every year. GTKMs on the SPV line may be worked out by taking the average trailing load of various freight trains as applicable for each conceivable pair of O- Ds on the

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SPV e.g. BOXNs, BCNs, etc. both in loaded and empty direction separately. The ratio of such GTKMs to the total of Western Railway GTKMs can be used to arrive at the fuel consumption in quantitative terms on which the cost of diesel per litre will be applied.

Item	Account Head	Unit to be used for allocation of Cost
Fuel	H-200	SFC
Lube Oil	F-241	GTKM
Other stores	F-242	GTKM
Direct supervision-Abs.H	%age	
Director supervision- Abs. F	%age	

Calculation of cost of fuel (H-200):

Specific Fuel Consumption	A	
Cost of Fuel per litre in Rs.	B	
GTKMs of the section, in Thousands	C	
Cost of fuel per 1000 GTKMs in Rs.	D	A * B
Cost of fuel for the section	E	D * C

2.2 Cost of Crew

The crew cost will be recovered on a per GTKM basis.

Item	Account Head	Unit to be used for allocation of Cost
Running Staff loco crew	F-212	GTKM
Running Staff - Guard	G-510	GTKM
Other operating staff accompanying the trains	G-520	
Contingent expenses	F-243	GTKM
Misc. expenses	F-291 to 294	GTKM
Other unclassified expenses	F-295	GTKM
Direct supervision-Abs. G	%age	GTKM
Direct supervision - Abs. H	%age	GTKM

2.3 Cost of loco usage and wagon usage

Loco/wagon hire charges circulated by Railway Board from time to time will be applied to the SPV excluding the element of interest. Records of loco and wagon hours in use in the SPV area will be kept at all interchange points between SPV and Western Railway. Free time at terminals on the SPV and detention due to sickness will be excluded in case of wagon hours. Hours on account of loco failures will be excluded in case of locos.

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2.4. Running Repairs of Wagons (not included in Wagon Hire Charges).

Item	Account Head	Unit to be used for allocation of Cost
Running Repairs in sick lines	D-310	Wagon Days
Running Repairs in workshops for sick lines	D-320	Wagon Days
Periodical Overhaul	D-330	Wagon Days
Special Repairs	D-340	Wagon days
Other Repairs	D-360	Wagon Days
Misc. Expenses including Adjustments	D-370	Wagon Days
Credits for released material for revenue works	D-911 & 912	Wagon Days
Misc. Expenses – Mechanical Department	D-611 to 614	Wagon Days
Direct Supervision – Rolling Stock	A-600	Wagon Days
Direct Supervision – Furniture & Office Equipment and Service Motor Cars	E-361 and 362	Wagon Days
Plant & Equipment – Repairs & Maintenance	E-330, 340, 354, 366 to 369	Wagon Days
C&W Optg. Expenses – Optg. Staff : Rolling Stock & Equipment	F-521, 522, 531, 532, 541, 542 to 545	Wagon Days
C&W Optg. Expenses – Supervisory & office staff	F-510 & 515	Wagon Days
Hire of Vehicles	F-914	Wagon Days

2.5 Documentation charges

Item	Account Head	Unit to be used for allocation of Cost
Forms and stationery	G-294	Number of wagons loaded
Direct supervision	%age	-do-

2.6 Compensation Claims

Item	Account Head	Unit to be used for allocation of Cost
Claims settlement and Prevention organisation	K-210	NTKMs
Compensation claims and Misc. expenses	K-230 & 240	NTKMs
Compensation Goods settled through book adjustment	K-260	NTKMs

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3.0 INDIRECT COST

3.1 Cost of overheads


This may be charged as per the rate applicable for the relevant year. These overheads take care of all costs which cannot be allocated to any known head, such as medical, pension etc.

3.2 Miscellaneous

- Special Repair Breaches E-460-to be recovered by billing the actuals as and when they occur.
- Special Repair Accidents-B-700-to be calculated on a prorata GTKM basis and made part of the fixed costs.

4.0 Costing of Container Trains

The variable cost for container traffic will be computed in terms of the above principles excluding wagon hire charge and documentation, The variable cost to be worked out per TEU Km.


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Schedule 2**Codal lives of Railway Assets****CIVIL ENGINEERING ASSETS**

Sl.No.	Class of Assets	Average life in Years GMT
1.	Bridge Work-Steel work	60 Years
2.	Bridge Work-Masonry	100 Years
3.	Structures-Steel	60 Years
4.	Structures-Masonry and Cement Concrete	65 Years
5.	Points and Crossings	5-8 Years
6.	Wooden Sleepers	8-10 Years
7.	R.C.C. Bridge Works	60 Years
8.	Pre-stressed Concrete-Bridge Work	60 Years
9.	Track fittings and Fastenings	8 Years
10.	PRC Sleeper	40 Years
11.	SEJ/Turnouts	250/200 GMT
12.	Rails 52 kg. 90 UTS	525 GMT

SIGNAL AND TELE-COMMUNICATION ASSETS

Sl.No.	Class of Assets	Average life in Years
1.	Underground Cables	30
2.	Contact Wires	40
3.	Block Token Instruments	25
4.	Telephone & Tele-communication equipment including wires	15
5.	Signalling Apparatus, both Mechanical and power	Details attached
6.	Overhead Telecomm. Line	15
7.	Multi-channel Radio Relay system	25
8.	Other wireless equipment	15

ELECTRICAL ASSETS

Sl.No.	Class of Assets	Average life in Years
1.	Electric Power Plant excluding oil engine driven	25
2.	Electric Plant above 25 H.P.	25
3.	Electric Power Plant oil engine driven	15
4.	Electric Machinery others	30
5.	Electric sub-station building	25
6.	Water Cooler, Refrigerators, Air-Conditioner Hospital & domestic appliances	5
7.	Internal wiring of buildings	10
8.	Switch Gear	25
9.	Instruments	25
10.	Electric Pumps	20
11.	Electric Lifts & Hoist	20
12.	Ceiling fans	20
13.	Electric Battery charging Set	15
14.	Flood light projection	10
15.	Battery Lead Acid	4
16.	Air Conditioner Central Unit - Above 3 tons	10

Source: Indian Railways Financial Code Volume - I as revised from time to time.

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Manpower to be employed by WR on Project Railway (PNU – GIM Section)
(As decided by WR and KRC)

- ♦ **ENGINEERING (Proposed Cadre for Fully Mechanised Maintenance)**
(Sr. DEN/NW/ADI's letter vide No. W/121/8-ADI dated 18.8.2006)

Sr.No.	Designation	PNU – SIO	SIO – GIM	Total
1.	Sr. DEN	1	-	1
2.	AEN (RDHP/GIM)	2	-	2
3.	SSE (PW)	3	1	4
4.	SE (MU)	3	1	4
5.	SSE (Bridge)	1	-	1
6.	SE / JE (PW)	8	2	10
7.	Track Men	235	44	279
8.	Key Men	48	9	57
9.	PWS	22	4	26
10.	Multi Utility Men for MMU	27	9	36
11.	Trolley Men	42	12	54
12.	Bridge Fitter	7	-	7
13.	Watch Men	8	2	10
14.	Gate Men	119	21	140
15.	Office Staff	10	2	12
16.	SE (DRG)	2	-	2
17.	PS	1	-	1
18.	Vehicle Driver	9	2	11
19.	Office Peon/ Messenger	5	1	6
20.	USFD Team			
	a). SSE	1	-	1
	b). JE / SE	1	-	1
	c). Trolley Men	9	-	9
Sub-total (a)		564	110	674

WORKS :

1.	SSE (W)	1	1	2	√
2.	Building Mistry	1	1	2	} 20
3.	Multi Skilled Men	3	3	6	
4.	Helper / Khalasi	3	3	6	
5.	Office Staff	1	1	2	
6.	Watch Men	2	2	4	
7.	Chain Men	2	2	4	
8.	Valve Men	6	-	6	
9.	Office Peon/Messenger	1	1	2	
Sub-total (b)		20	14	34	22
TOTAL (a+b)		584	124	696	

W.Rly. has further agreed to reduce Works Staff to 22 (2+20) instead of 34.

- ♦ **S&T** (Sr. DSTE/W.Rly/ADI letter vide No. SG-185/6/1 dated 18.9.06)

Sr.No.	Designation	Signaling	Telecom	Total
1.	ADSTE/RDHP	1	-	1
2.	SSEs	3	1	4
3.	SEs	9	2	11
4.	Technician	45	4	49
5.	B/Smith, Painter, Carpenter Mason, Tinmen & Welder	10+2	-	12
6.	Clerk (with computer printer & fax etc.)	5	-	5
7.	Sr. Khalasi	20	4	24
8.	Motor Trolley Driver	1	-	1
9.	Vehicle Driver	8	-	8
10.	Cable Jointer	2	-	2
11.	Office Staff	3	-	3
Total		109	11	120

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♦ **OPERATING** (Joint Note of Sr. DOM/W.Rly/ADI & MD/KRC)

Sr.No.	Designation	PNU SIO	-	SIO – GIM	GIM Control Office	
1.	TI	2		-	-	
2.	SS Supervisory	4		3	-	
3.	SS/Dy.SS/SM/ASM	115		29	-	
4.	Clerks	2		-	-	
5.	P.Man/PP	153		45	-	
6.	G.Man/SG Man	103		22	-	
7.	Khalasi/Peon	02		1	1	
8.	Controllers	-		-	11	
9.	TNCs	-		-	5	
10.	JAG Officer/GIM	-		-	1	
	Total	381		100	18	Total = 449

Note: The Cost of Staff to be deployed on GIM – SIO section will be shared on 50%:50% basis (i.e. cost of 50 staff only to KRC) between KRC & Western Railway.

♦ **ELECTRICAL**

Sr.No.	Designation	Station name	No. of Staff
1.	Fitter	Bhachau	1
2.	Khalasi	Bhachau	1
3.	ELGR	Bhildi	1
4.	Khalasi	Radhanpur	1
5.	Khalasi	Bhildi	1
6.	Khalasi	Radhanpur	1
7.	Fitter	Radhanpur	1
8.	Fitter	Bhildi	1
9.	Elect. Pump driver	Bhildi	1
10.	Fitter	Bhildi	1
11.	ELFP	Radhanpur	1

♦ **COMMERCIAL** (Sr. DCM/W.Rly/ADI letter No. C358/Staff/Requirement/PNU-GIM dated 2.3.06)

Goods Clerk/Asst. Goods Clerk - **6 nos.**

♦ **PERSONNEL**

Sr. Clerk - 2 nos.
1 Khalasi - 1 no.
Total **3 nos.**

TOTAL RAILWAY STAFF = 1285 (Engg. + S&T + Optg. + Elect. + Personnel + Comm)

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