

JOINT VENTURE AGREEMENT

BETWEEN

GOVERNMENT OF ODISHA

AND

MINISTRY OF RAILWAYS

DATED JUNE 14, 2016







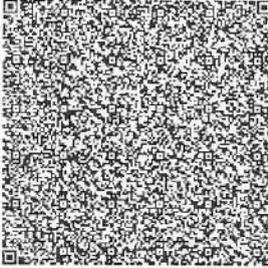
सत्यमेव जयते

## INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

### e-Stamp

Certificate No. : IN-DL594606188453420  
Certificate Issued Date : 14-Jun-2016 11:06 AM  
Account Reference : IMPACC (IV)/ dl903403/ DELHI/ DL-DLH  
Unique Doc. Reference : SUBIN-DL903403182636970550070  
Purchased by : MINISTRY OF RAILWAYS  
Description of Document : Article 5 General Agreement  
Property Description : Not Applicable  
Consideration Price (Rs.) : 0  
(Zero)  
First Party : MINISTRY OF RAILWAYS  
Second Party : GOVT OF ODISHA  
Stamp Duty Paid By : MINISTRY OF RAILWAYS  
Stamp Duty Amount(Rs.) : 500  
(Five Hundred only)



.....Please write or type below this line.....

This stamp paper forms an integral part of the Joint Venture Agreement dated June 14, 2016 between ministry of railways and the government of Odisha.

*[Signature]*

*[Signature]*

#### Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

## JOINT VENTURE AGREEMENT

This joint venture agreement ("**Agreement**") is made on this 14<sup>th</sup> day of June, 2016 ("**Effective Date**")

### BETWEEN:

(A) **THE PRESIDENT OF INDIA**, represented by Executive Director (Works), Ministry of Railways, Government of India, having its office at Rail Bhawan, New Delhi-110001, or a nominee/representative of Ministry of Railways (hereinafter referred to as the "**MOR**", which expression, unless repugnant to the context or otherwise, will include its successors and permitted assigns) of the **FIRST PART**;

AND

(B) **GOVERNOR OF THE STATE OF ODISHA**, acting through the Commissioner cum Secretary, Government of Odisha, or a nominee/representative of Government of Odisha (hereinafter referred to as the "**GOO**", which expression, unless repugnant to the context or otherwise, will include its successors and permitted assigns) of the **SECOND PART**.

MOR and GOO are collectively referred to as the "**Parties**" and individually as a "**Party**".

### WHEREAS:

- A. The Parties agree that there is a need for development of rail infrastructure for critical connectivity and capacity enhancement in the state of Odisha. Accordingly, the Parties wish to identify, develop and implement such projects that are important for critical connectivity and/or capacity enhancement.
- B. With the aforementioned objective, the Parties have executed a memorandum of understanding dated November 4, 2015 ("**MOU**"). In terms of the MOU, the Parties intend to incorporate a public limited company, with its headquarter/ registered office in Bhubaneswar ("**JVC**"/ "**Company**"). The JVC will undertake the development of Viable (*as defined below*) railway projects (by itself or through a subsidiary/ special purpose vehicles) including projects with viability gap funding.
- C. It is the understanding between the Parties that their rights and obligations in regard to their relationship with and in the JVC including the operation and management of the JVC will be governed in accordance with the terms and conditions of this Agreement.

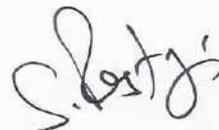
## 1. DEFINITIONS & INTERPRETATIONS

### 1.1 Definitions

In this Agreement, except to the extent that the subject or context otherwise requires, the following expressions shall have the following meanings:

"**Act**" means the (Indian) Companies Act, 1956 or the Indian Companies Act, 2013 with the rules made thereunder (to the extent applicable), or any statutory modification or re-enactment thereof.

"**Agreement**" means this Agreement as from time to time amended, supplemented or replaced or otherwise modified and includes any document, which amends, supplements, replaces or otherwise modifies this Agreement.



"**Apex Committee**" has the meaning ascribed to it in Article 5.7(c).

"**Applicable Laws**" mean all applicable laws, by-laws, rules, regulations, orders, ordinances, protocols, codes, guidelines, policies, notices, directions, judgments, decrees or other requirements or official directive of any Governmental Authority or Person acting under the authority of any Governmental Authority, whether in effect on the date of this Agreement or thereafter.

"**Arbitrator**" has the meaning ascribed to it in Article 14.

"**Board**" or "**Board of Directors**" means the Board Directors of the Company.

"**Business Day**" means any day other than a Saturday, a Sunday, or a day on which banks in Odisha are authorised or required by law to be closed.

"**Closing Date**" means the date on which MOR subscribes to the MOR Securities in accordance with the provisions of this Agreement.

"**Deed of Adherence**" means the deed of adherence, the format of which is set out in **Schedule I** (*Deed of Adherence*).

"**Dispute**" has the meaning ascribed to it in Article 14.

"**Encumbrance**" means any encumbrance including, without limitation, any claim, mortgage, pledge, charge (whether fixed or floating), hypothecation, lien, assignment, deposit by way of security, bill of sale, beneficial ownership (including usufruct and similar entitlements), deed of trust, title retention, security interest, public right, common right, any provisional or executory attachment and any other interest held by a third party or any consent, approval or filing requirement or any other interest or claim of any Governmental Authority or other encumbrance of any kind securing, or conferring any priority of payment in respect of, any obligation of any Person, including any right granted by a transaction which, in legal terms, is not the granting of security but which has an economic or financial effect similar to the granting of security under Applicable Law, or a contract to give or refrain from giving any of the foregoing, including any restriction imposed under Applicable Law on the Transferability of the Equity Shares; and any adverse claim as to title, possession or use.

"**Financial Year**" means a period of twelve months commencing from 1<sup>st</sup> April of any calendar year and ending on the 31<sup>st</sup> March of the next calendar year.

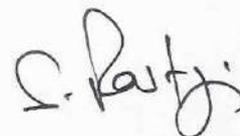
"**Fundamental Issues**" means such issues or matters in respect of which special voting rights are provided for under this Agreement in terms of Article 6 hereof.

"**GOO Securities**" means 5,10,00,000 (Five Crores Ten lakhs) Equity Shares of face value Rs. 10 (Rupees Ten) each, representing 51% (fifty one percent) of the issued and paid up equity share capital on the Closing Date.

"**GOO Subscription Consideration**" means an amount of Rs. 51,00,00,000 (Rupees Fifty One Crores) to be paid by GOO to the JVC towards subscription to the GOO Securities.

"**Governmental Authorities**" means any government authority, statutory authority, government department, agency, commission, board, tribunal or court or other law, rule or regulation making entity having or purporting to have jurisdiction on behalf of the Republic of India or under any other applicable jurisdiction.





"**Indian GAAP**" means generally accepted accounting principles consistently applied in India from time to time.

"**IPO**" means the initial public offering of the Shares either through a primary offering (i.e. an issue by the Company of additional Shares) or a secondary offering (i.e. a sale, by way of offer for sale of Shares held by one or more Shareholders) or both, which would (i) comply with all applicable laws, including without limitation, the rules and regulations of the Securities Exchange Board of India and the relevant stock exchange, (ii) result in the Company and/or its Shares being listed on one or more recognised stock exchanges.

"**MOR Securities**" means 4,90,00,000 (Four Crores Ninety Lakh) Equity Shares of face value of Rs. 10 (Rupees Ten) each to be subscribed by MOR in accordance with the provisions of this Agreement.

"**MOR Subscription Consideration**" means an amount of Rs. 49,00,00,000 (Rupees Forty Nine Crores) to be paid by MOR to the JVC towards subscription to the MOR Securities.

"**Person**" means any individual, corporation, partnership firm, limited liability company, joint venture, association or trust or any other entity or organisation and may include a Party hereto.

"**Project SPV**" has the meaning ascribed to it in Article 7.1.

"**Shares**" means the equity shares of the Company issued from time to time.

"**Shareholder**" means the holder of Shares for the time being and "**Shareholders**" means collectively all those who hold Shares.

"**Super Majority Resolution**" in relation to a Fundamental Issue means a special resolution as defined in the Act in the case of a general meeting of the Company, and in the case of a meeting of the Board, a resolution on which all Directors present and representing each of the parties to this Agreement and being entitled to vote on such matter, vote unanimously in favour of the resolution with respect to such Fundamental Issue.

"**Third Party**" means any Person other than the Parties.

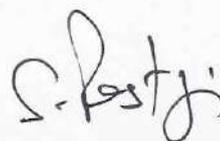
"**Transfer**" in relation to Shares and/or other securities of the Company, means the sale, assignment, transfer, alienation of, or the grant of any option or right to purchase or otherwise acquire Shares of the Company.

"**Viable**" means (a project) having an internal rate of return of not less than 12% (twelve percent), or as may be determined by the Board from time to time.

## 1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) 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, organisations or other entities (whether or not having a separate legal entity);



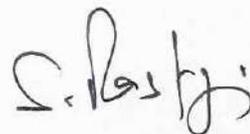
- (b) headings are inserted for convenience and identification only and are not intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof in any manner whatsoever;
- (c) the words "include" and "including" are to be construed without limitation;
- (d) any reference to day, month or year shall mean a reference to a calendar day, calendar month or calendar year respectively;
- (e) 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;
- (f) references to recitals, Articles, sub-articles or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-articles and Schedules of or to this Agreement;
- (g) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effectual only if it is in writing under the hands of duly authorised representative of such Party in his behalf and not otherwise;
- (h) any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall induce both such days or dates; and
- (i) this Agreement is a joint product of the Parties and any rule of statutory interpretation which involves interpreting agreements against a Party primarily responsible for drafting the Agreement, will not be applicable to this Agreement.

## 2. CAPITAL STRUCTURE, SHAREHOLDING AND SHARE SUBSCRIPTION

### 2.1 Scope of the JVC

Subject to the Applicable Law, the activities of the JVC will, amongst others, include the following:

- (a) development, financing and implementation of Viable railway projects and/or projects which may require viability gap funding that are important for critical connectivity/capacity enhancement, as agreed by the Parties;
- (b) undertaking surveys, preparation of Detailed Project Report (DPR) to examine the Viability of the railway projects;
- (c) processing for sanctioning of the railway projects (identified by the Board or the Parties);
- (d) incorporation and funding of subsidiaries/special purpose vehicles for undertaking railway projects; and
- (e) undertaking all such actions not specifically mentioned above, that may be required to give effect to the intent of the Parties, as set out in the Agreement.



(the activities set out in (a) and (e) above are collectively referred to as "Business").

The Board may alter the scope of the functions of the JVC.

## 2.2 Incorporation of the JVC

- (a) The GOO will incorporate the JVC as a public company under the Act for carrying on the Business. Upon the incorporation of the JVC, the JVC will forthwith execute the Deed of Adherence, agreeing to be bound by the terms of this Agreement. The initial authorized share capital of the JVC will be Rs. 100,00,00,000 (Rupees One Hundred Crore only), divided into 10,00,00,000 (Ten Crore) Equity Shares. The initial paid up share capital of the JVC will be Rs. 51,00,00,000 (Rupees Fifty One Crores only), divided into 5,10,00,000 (Five Crores Ten lakhs) Equity Shares. The initial subscribers to the memorandum of association of the JVC will be GOO and the nominees of GOO for holding Equity Shares in the JVC.
- (b) The JVC will be incorporated in Odisha, with its registered office at Bhubaneswar with the name Odisha Rail Infrastructure Development Company or such other name as the relevant Registrar of Companies may approve.
- (c) The Parties agree to act, and exercise their respective voting rights as Shareholders in the JVC and through their respective nominated Directors at meetings of the Board, so as to ensure the proper implementation of the terms and conditions set out in this Agreement.
- (d) The Parties agree that their mutual rights and obligations in this joint venture including operation, control and management of the JVC will be interpreted, acted upon and governed in accordance with the terms and conditions of this Agreement.

## 2.3 Territorial Scope

The JVC will carry on the Business within the territory of India.

- 2.4 The MOR hereby agrees to subscribe to, and the Company agrees, and the GOO agrees to cause the Company, to issue, allot and deliver to MOR, on the Closing Date, the MOR Securities, simultaneously with the receipt of the MOR Subscription Consideration, free and clear of all Encumbrances and together with all rights, title, interest and benefits appertaining thereto.
- 2.5 GOO hereby agrees to subscribe to, and the Company agrees to issue, allot and deliver to GOO, the GOO Securities, simultaneously with the receipt of the GOO Subscription Consideration, free and clear of all Encumbrances and together with all rights, title, interest and benefits appertaining thereto.
- 2.6 Upon subscription to equity shares by the Parties as aforementioned, the Company shall allot the Shares as soon as possible and in any case not later than 30 days after realisation of the subscription amount, and enter the name of each of the Parties in its register of members, as a holder of such Shares, and deliver to each of the Parties, or as each of them shall direct, the share certificates in respect thereof. The Company shall furnish to the Parties the satisfactory evidence, that all corporate action in connection with and necessary for the valid issue and allotment of the Shares including the passing of resolutions of the Shareholders

and the Board of Directors filing return of allotment with the Registrar of Companies and other formalities have been duly complied with. Pending allotment of Shares to the Parties, the Company shall retain and hold the subscription amount received from the Parties in a separate bank account in trust for the Parties.

- 2.7 Upon issuance of MOR Securities and GOO Securities on the Closing Date, the shareholding pattern of the Company will be as follows:

Name of the Shareholder	No. of Equity Shares of Face Value Rs.10/- each	Subscription Amount (in Rs.)	Post Subscription paid up equity capital (in Rs.)	Post Subscription Share-holding
MOR	4,90,00,000	49,00,00,000	49,00,00,000	49%
GOO	5,10,00,000	51,00,00,000	51,00,00,000	51%

2.8 **Parties Shares to Rank Pari Passu**

The Shares issued, subscribed and allotted to the Parties in accordance with Articles 2.4 and 2.5 above, will rank pari-passu in all aspects and be identical with all Shares previously issued, subscribed and allotted with reference to all rights and benefits including but not limited to voting rights, dividends, stock splits, bonus issuance and rights issuance.

3. **SHAREHOLDING RIGHTS**

3.1 **No Pledging of Shares**

The Parties shall not pledge, mortgage, hypothecate, charge or otherwise encumber or grant any security interests of any kind whatsoever on any of the Shares nor otherwise use such Shares as collateral security for any purpose whatsoever which could result in an involuntary Transfer of such Shares in favour of any Person, including but not limited to, any lenders of the Company.

3.2 **Pre-emption Rights**

After the issue and allotment of Shares pursuant to Articles 2.4 and 2.5 of this Agreement, except in accordance with the provisions of the Act, the Company shall issue and allot additional Shares, to the existing Shareholders in proportion to their shareholding as mentioned in Article 2.7. Such offer to the existing Shareholders shall be in accordance with the provisions of the Act.

3.3 **Lock-in Period**

None of the Parties shall Transfer any part of the Shares acquired by them pursuant to the provisions of this Agreement for a period of 5 (five) years from the Closing Date.

4. **SHAREHOLDER'S RIGHT TO SELL AND TRANSFER SHARES**

- 4.1 Subject to the provisions of this Agreement relating to the lock-in period:

- (a) In case MOR desires to dilute its shareholding in the Company, then GOO shall have the right of first refusal to acquire the Shares proposed to be sold by MOR and/or to

require MOR to sell or otherwise Transfer such Shares to a nominee of GOO as the Transferee;

- (b) In case GOO desires to dilute its shareholding in the Company, then MOR shall have the right of first refusal to acquire the Shares proposed to be sold by GOO and/or to require GOO, to sell or otherwise Transfer such Shares to a nominee of MOR as the Transferee;

4.2 The price at which the Shares shall be sold, transferred or acquired by any of the Parties shall be at a price as may be mutually agreed to by the transacting Persons.

4.3 Subject to the provisions of this Agreement, no Transfer of any Shares shall be made to any Third Party unless such Third Party shall have agreed in writing to be bound by the provisions of this Agreement by executing the Deed of Adherence.

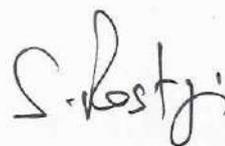
## 5. BOARD OF DIRECTORS

### 5.1 Constitution, Appointment and Nomination

- (a) Subject to the terms of this Agreement and the Memorandum and Articles of Association, the Board will be responsible for the overall direction and management of the Company, its Business, operations and affairs and the scope of each of them.
- (b) There will be a maximum of 12 Directors to the Board. Unless otherwise agreed by and amongst the Parties to this Agreement, the number of Directors of each Party will be in proportion to its investments in equity share capital and subordinated debt.
- (c) The Board will consist of a maximum of 10 (ten) Directors. On the Closing Date, the Board will be constituted as follows:
- (i) one Chairman of the Board;
  - (ii) one managing director (a whole-time director of the JVC) who will be selected by a committee comprising of the representatives of MOR and GOO in equal numbers;
  - (iii) 2 (two) whole time directors with each of GOO and MOR having the right to appoint one whole time director;
  - (iv) 6 (six) non-whole time directors: (A) 2 (two) non-whole time directors being nominated by each of GOO and MOR; and (B) 2 (two) independent directors drawn from private or public sector or educational institutions who will be experts in their respective fields.
- (d) The Directors will not be required to hold any qualification shares in the Company.

### 5.2 Appointment/Removal of Directors

The Shareholders who have the right to nominate and appoint the Directors to the Board shall also have the right to remove and replace such Directors.



### 5.3 Term of the Directors

Subject to the provisions of the Act, the Directors of the Company shall unless otherwise provided herein, be appointed for a term of 3 (three) years or till the annual general meeting of the Company held after the lapse of the said period of 3 (three) years. Each Director shall be eligible to serve consecutive terms if re-appointed. Any vacancy created by the retirement or removal of any Director being a nominee of any of the Shareholders shall be filled by a nominee of such Shareholders unless otherwise agreed in this Agreement. The Shareholders shall exercise their voting rights and to cause their Directors on the Board to exercise their voting rights to carry out and effect the intent of the provisions of this Agreement.

### 5.4 Chairman

The Company shall have a non-executive Chairman, who shall be a nominee of GOO. The term of Chairman shall be co-terminus with that of his term as the Director of the Company. In case the Chairman is unavailable for a meeting, any one of the Directors present at that meeting may be elected by the Board as the Chairman for that particular meeting. The Chairman will not be entitled to any emoluments and fees.

### 5.5 Meetings of the Board

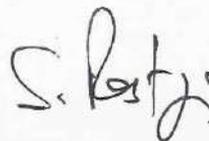
- (a) The Board shall meet at least once in every quarter, at such times and circumstances as may be required and in accordance with the provisions of the Act, for the purpose of taking decisions on all policy matters and on for determination of issues regarding the business of the Company.
- (b) The Directors may, in accordance with Applicable Law, participate in the board meetings through video-conferencing or any other audio-visual means as may be set out in the notice of the meeting.
- (c) The quorum for the meetings of the Board or any adjournment thereof shall require the presence of one third (1/3) of the Directors in office or at least 2 Directors, whichever is higher, for the time being. No such quorum shall be deemed to be complete unless at least one Director representing each of MOR and GOO is present at such meeting. In case the quorum is not present, the meeting shall be adjourned to the same day in the following week or if such day is a holiday the next Business Day thereafter. At any meeting of the Board, each Director shall have one vote.

### 5.6 Resolutions at Board Level and General Meeting

Subject to the provisions of Article 6 of this Agreement, all resolutions of the Board of Directors shall be adopted by simple majority and in case of equality of votes, the Chairman shall have a second or casting vote.

### 5.7 Committees of the Board

- (a) If the Board finds it necessary to constitute a committee or committees, the powers of such committee or committees shall be determined by the Board. The committee shall be subject to and be under the supervision of the Board.
- (b) Unless otherwise agreed to by each of the Parties of this Agreement, no quorum of the meeting of any such committees shall be deemed to be complete unless at least



1 (one) nominee each for the MOR and GOO is present at such meeting of the committee.

- (c) A committee will be formed for expediting the railway projects that will be implemented by the JVC (by itself or through a Project SPV) ("**Apex Committee**"). The Apex Committee will be constituted of the representatives of the GOO and MOR in equal proportion. The members of the Apex Committee will meet once in every two months, or such other interval to ensure that the Viable railway projects, as identified by the Board (or the Parties) are implemented in an efficient manner.

#### 5.8 **Notices of Board Meetings**

- (a) Subject to the Provisions of the Act, the Company shall furnish to each Director not less than 7 days' notice (unless a written consent is obtained for a shorter notice), of the calling of any meetings of the Board or of any meetings of any Committee constituted by the Board, which notice shall indicate the agenda and shall promptly thereafter furnish to such Director copies of all proposals, resolutions, communications and reports prepared by the Company in connection with such meetings.
- (b) An emergency meeting of the Board may be called by giving the Directors not less than 3 days' notice in writing, unless such notice is waived by all the Directors for the time being.

#### 5.9 **Remuneration and Key Managerial Personnel and Secondment**

Subject to the provisions of the Act, the salary and perks of the Directors of the JVC will be at par with the salary and perks of the officers of the Schedule 'A' public sector companies of Central Government. The key managerial personnel will be appointed by the Board. As per the requirements of the JVC, a Party may second its employees to the JVC after the Closing Date.

#### 5.10 **Employees of the JVC**

The Parties agree and confirm that the employees of the JVC will not have the employer-employee relationship with the GOO (including any of its establishments, undertakings, etc.) or the MOR (including the railway administration or any of its establishments, undertakings, etc.), and, accordingly, have no right to employment in any of the foregoing by virtue of their employment with the JVC. The aforementioned understanding will be appropriately incorporated in the appointment letters/ employment agreements executed by the JVC with its employees.

It is clarified that the aforementioned will not apply to the employees of the GOO (including any of its establishments, undertakings, etc.) or the MOR (including the railway administration or any of its establishments, undertakings, etc.) who are seconded to the JVC in terms of Article 5.9, and they will continue to be associated with their principal employer (being GOO or MOR, as the case may be), as earlier.

### 6. **FUNDAMENTAL ISSUES**

#### 6.1 **Super Majority Resolution at Board Level and General Meetings**

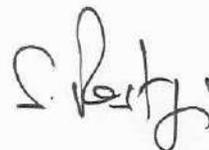


Notwithstanding the provisions of this Agreement and subject to such additional approvals as may be required by Applicable Law, any action with respect to the issues set out below (hereinafter called "Fundamental Issues") shall require a Super Majority Resolution of the Board of Directors or at General Meeting of Shareholders, where applicable, in favour of such resolutions:

- (i) Merger with or acquisition of any company by the Company;
- (ii) Any change in the capital structure of the Company including any fresh issue of capital (other than already envisaged herein);
- (iii) Declaration of any dividend or the distribution of any other form and return to the Shareholders of the Company;
- (iv) Any decision to take up the identified railway infrastructure project for development and/or investment, including the setting up of a new company/entity for this purpose, the terms on which the said project would be implemented and the various project contracts;
- (v) Finalisation of the terms of any debt, including subordinated debt raised from GOO and/or MOR, by the Company;
- (vi) Any proposal for the renewal or appointment of Statutory Auditors and Internal Auditors of the Company;
- (vii) Establishment of the subsidiaries and/or entering into any partnerships or joint ventures;
- (viii) Any increase or decrease in the size of the Board of Directors;
- (ix) Diversification or proposed entry into new business of activity, which falls outside the scope of its current areas of operation;
- (x) Amendment of the Memorandum and Articles of Association of the Company; and
- (xi) Any resolution to dissolve, liquidate or reorganize the Company.

## 7. ROLE OF SUBSIDIARIES

- 7.1 Subject to Applicable Law and consent of the Parties, the JVC may, from time to time, incorporate project specific subsidiaries ("Project SPVs"), if necessary, to undertake Viable railway projects identified by the Parties in consultation with each other, or the Board.
- 7.2 The Project SPVs will be incorporated as limited liability company(ies) under the Act.
- 7.3 The initial equity in the Project SPVs will be contributed by the JVC. Accordingly, the MoR and GOO will infuse equity in Project SPVs only through the JVC (and not directly), and hence, subject to Article 8 (*Participation by Other Stakeholders*), the Project SPVs will remain a subsidiary of the JVC unless otherwise mutually agreed between MOR and GOO.
- 7.4 All the rights of the Parties interse contained in this Agreement with respect to the governance of the JVC, will be *mutatis mutandis* available in the Project SPVs, subject to mutual agreement between the Parties. The memorandum and articles of association of the Project SPVs (as and to the extent applicable), will incorporate the provisions of the Agreement and the Memorandum and Articles of Association of the JVC. Without prejudice to the generality of the foregoing, all provisions of this Agreement relating to the Board and its meetings will *mutatis mutandis* be applicable to the proceedings, decision and action of the board of directors of the Project SPVs and the committees of the board of directors of Project SPVs.
- 7.5 However, notwithstanding the foregoing, in the event a Project SPV no longer remains a wholly owned subsidiary of the JVC (due to change in shareholding in accordance with Article 8 below), then the Project SPV will, at all times, have a nominee of the JVC on its board.

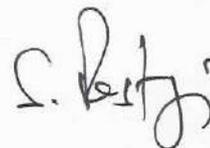


8. **PARTICIPATION BY OTHER STAKEHOLDERS**

- 8.1 Subject to the consent of the Parties, the Project SPVs may, on a need basis, and to cater to specific projects, permit equity participation by other stakeholders such as banks, public sector undertakings, ports, mines, etc. Notwithstanding the foregoing, the equity holding of the JVC in the Project SPVs will, at all times, be at least 26% (twenty six percent.) of the equity share capital of the Project SPVs.

9. **BROAD PRINCIPLES OF FUNCTIONING**

- 9.1 It is agreed between the Parties that in view of the limited availability of the resources (including the funds), the JVC will only undertake the implementation of such railway projects which are considered economically feasible and financially Viable by the Board and/or projects with viability gap funding. The feasibility of a railway project will be determined by the Board, after undertaking an analysis and pre-feasibility/ feasibility study of the potential projects.
- 9.2 Once a project has been sanctioned, a concession agreement will be signed between the MOR and the Project SPV. The concession period will be up to 30 (thirty) years (beginning from the date of execution of the respective concession agreement for the project).
- 9.3 The land acquisition will be undertaken by the GOO on a timely basis to ensure that the Viability of the project is not adversely affected. However, other options may also be considered by the Board and the Project SPV for the acquisition of land (as required for the implementation of the project).
- 9.4 The implementation (including operations and maintenance) of the projects will be undertaken by concerned Zonal Railway or any other agency as decided by the Project SPV in consultation with MOR. The cost of such implementation (including operations and maintenance) of the projects will be chargeable by MOR to the Project SPV. Further the MOR will ensure that the Indian Railways provides last mile connectivity to the projects (which have a close interface with the existing network of Indian Railways) and the costs for such last mile connectivity will be borne by Project SPVs, through an appropriate mechanism as mutually agreed between the Parties and the Project SPV.
- 9.5 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 projects for which Viability may be a concern, apart from equity contribution, GOO will endeavor to provide the land at no cost to the Project SPV, so that the project may be implemented by the Project SPV without any delays.
- 9.6 At the end of the term of the concession agreement (i.e. of 30 years), or at termination of the Agreement, MOR will have the option to acquire the assets of the relevant project (excluding the land), at a nominal price of Rs. 1 (Rupee One only). The land would be transferred by the relevant Project SPV to MOR at the original acquisition cost of such parcel of land, as incurred by the Project SPV, if any. However, in the event the MOR does not exercise the option of taking over the assets of a project, such assets (including the land) will continue to vest with the Project SPV under the (then) existing terms and conditions of the concession agreement.
- 9.7 Apart from the equity contribution by the JVC, the Project SPVs may undertake to arrange financial support and resources from stakeholders of the projects other than the Parties and



the JVC. In this regard, the Project SPVs may raise funds in the form of debt from banks/multi-lateral agencies/ financial institutions on a non-recourse/recourse basis.

9.8 The entire debt for a project is to be serviced by the Project SPV during the concession period (in terms of the concession agreement), primarily out of internal earnings generated by it, including through apportioned earnings transferred to the Project SPV by the Railways based on the principles specified in the Indian Railways Financial Adjustment (IRFA) Rules.

9.9 It is clarified that in the event of a Project SPV making financial losses, the losses will be borne by the shareholders of such Project SPV in proportion of their (then) shareholding. In the event MOR exercises the option of acquiring the assets from the Project SPV, then MOR, by itself, will not be liable to bear the accumulated losses.

9.10 In the event any state governments other than the GOO is interested in participating in a project, the Project SPV may be formed with equity investment by the JVC, as well as direct equity investment from such other interested state governments. Shareholding of such Project SPV will be mutually agreed between the JVC and other state governments, and the inter-se rights in such Project SPV will be governed by the respective shareholders' agreement.

#### 10. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

Each of the Parties do hereby severally represent and warrant to the other Party that: (a) it has the necessary or requisite corporate power and authority to enter into this Agreement; (b) this Agreement constitutes a valid, legal and binding obligation enforceable according to the terms hereof; (c) this Agreement does not violate any court order, judgment, injunction, award, decree or writ of any court or other Governmental Authority against it; and (d) violate any Law or regulation of India.

#### 11. PARTIES OBLIGATION AND COOPERATION

11.1 MOR and GOO do hereby irrevocably undertake to grant or assist the Company in obtaining all necessary approvals and permits required to achieve its objects and to issue or cause to be issued such government orders, notifications and the like to enable the Company to perform its obligation under this Agreement.

11.2 MOR and GOO do hereby agree to arrange the funds required for the projects taken up by the Company for implementation. Such funds shall be arranged for the Company or the projects directly, in such form as may be mutually agreed to by the Parties. These contributions, will, however, be subject to the budgetary allocation by the Parliament/State Legislature as the case may be based on advanced planning and firmed up proposals.

11.3 To the extent MOR and GOO have already incurred any direct expenditure in connection with the Company, the same may be reimbursed or capitalized as equity or in such manner as the Parties may mutually agree.

11.4 Where MOR and GOO have already incurred expenditure with regard to any of the projects taken up for investment or development by the Company and choose to route/reckon such investment through the Company, GOO and/or MOR shall at their option, but subject to the provisions of this Agreement as regards shareholding by the Parties, require such expenditure to be reimbursed or capitalized by the Company/projects in such form as may be mutually agreed by the Parties and the Company. In the event of such capitalization of expenses the Company shall ensure issue of appropriate instruments/securities by itself

and/or the projects in consideration therefore. However, such reimbursements/capitalization can be done only after acceptance of the expenditure by the other parties.

11.5 MOR and GOO agree to provide all necessary support and assistance required in implementation of the projects promoted by the Company.

11.6 Without prejudice to any other provision of this Agreement, the Parties and the Company agree to share with each other, such information which shall not be subject to any confidentiality agreement and which would not affect in any way the interests of the respective Parties, for the purpose of furthering the business of the Company in general, and in particular the accomplishment of its objectives.

11.7 **Amendment to Articles of Association**

The Company and the Parties do hereby irrevocably undertake that as soon as possible and in any event not later than a period of six months from the Effective Date they shall take all necessary steps to amend the Memorandum and Articles of Association of the Company to reflect the terms of this Agreement and other consequential amendments and to amend any provisions inconsistent with this Agreement.

12. **TERM AND TERMINATION**

12.1 This Agreement shall become effective on the date hereof and shall continue to remain in force until terminated in accordance with the provisions of Article 12.2 hereof.

12.2 This Agreement may be terminated;

- (i) by mutual agreement of Parties in writing,
- (ii) upon the listing of the Shares on one or more recognised stock exchanges as a consequence of an IPO, as and when made,
- (iii) upon occurrence of any other event which, under law, has the effect of terminating this Agreement.

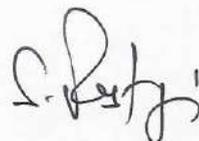
13 **ACCOUNTS, RECORDS AND REPORTS**

13.1 **Audited Accounts**

The Company shall furnish to the shareholders as soon as they are available, but in any event not later than 120 days after the end of each Financial Year to which they are related (i) certified copies of its financial statements prepared in accordance with Indian GAAP and where applicable, internationally accepted accounting principles; consistently applied; (ii) the opinion of the Company's auditors concerning the Company's financial statements, in English language.

13.2 **Records**

Each of the Shareholders shall be provided with reasonable access to all accounting records kept by the Company during business hours.



13.3 **Information to Shareholders**

The Company shall furnish or cause to be furnished promptly to a Shareholder all such reports and information as it shall reasonable request concerning (i) the financial statements and audit referred to in this Article 13 (Accounts, Records and Reports); and (ii) any other matters relating to their respective investments in the Company. The Company shall, upon request by the Shareholders, consult with the Shareholder on any of these matters.

14. **DISPUTE RESOLUTUION**

In the event of any dispute or difference arising between the Parties in connection with the Agreement or in connection with interpretation and application of the provisions of the Agreement, such disputes or difference shall be referred by either Party for arbitration to the sole arbitrator ("**Arbitrator**") in the Department of Public Enterprises. The Arbitration and Conciliation Act, 1996 shall not be applicable to arbitration under this Article. The award of the Arbitrator shall be binding upon the Parties to the dispute, provided, however any Party aggrieved by such award may make a further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law & Justice, Government of India. Upon such reference, the dispute shall be decided by the Law Secretary or the Special Secretary / Additional Secretary when so authorized by the Law Secretary, whose decision shall bind the Parties finally and conclusively.

15. **INTENT AND EFFECT**

Each of the Parties hereto, undertakes to fully and promptly observe and comply with the provisions of this Agreement and the Company's Articles of Association to the intent and effect that each and every provision shall be enforceable by the Parties hereto *inter se* and in whatever capacity. If, during the continuance of this Agreement, there shall be any conflict between the terms of this Agreement and the provisions of the Articles of Association of the Company, the Parties shall cause the Company to, and the Company shall, subject to applicable laws, amend the Articles of Association of the Company, to incorporate the relevant provisions of this Agreement and to give effect to the matters contemplated by this Agreement.

16. **EXERCISE OF VOTING RIGHTS**

Each of the parties hereto, hereby agrees to exercise his voting rights in favour of each other to procure the fulfilment of the terms of this Agreement.

17. **NON-WAIVER**

No omission or delay on the part of any Party in requiring a due and punctual fulfilment by any other Party of its obligations hereunder shall constitute, or be deemed to constitute, a waiver of any of such Party's rights to require such due and punctual fulfilment and in any event shall not constitute or be construed as a continuing waiver and/or as a waiver of other or subsequent breaches of the same or other (similar or otherwise) obligations of such other Party hereunder or as a waiver of any remedy.

18. **BINDING EFFECT**

Subject to the terms and conditions hereof, this Agreement is binding upon and will ensure to the benefit of the Parties and their respective successors and permitted assigns.



19. **NO ASSIGNMENT**

Neither this Agreement (in part or in whole) nor any right or obligation hereunder or part hereof shall be assigned by any Party hereto without the prior written consent of the other Parties hereto (any attempt to do so will be void), except as otherwise specifically provided herein.

20. **INVALID PROVISIONS**

If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any present or future Law, and if the rights or obligations under this Agreement of the Company or any or all of the Shareholders will not be materially and adversely affected thereby (a) such provision will be fully severable; (b) this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision has never comprised a part hereof; (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance herefrom.

21. **ADDITIONAL DOCUMENT**

Each Party hereto shall promptly execute and deliver such additional documents and Agreements as are envisaged in this Agreement and any other Agreement or document as may be reasonably required for the purpose of implementing this Agreement, provide that no such document or Agreement shall be inconsistent with the spirit and intent of this Agreement.

22. **AMENDMENT**

This Agreement may be modified or amended only by writing, duly executed by or on behalf of the Parties.

23. **COUNTERPARTS**

This Agreement shall be executed simultaneously in two counterparts, each of which will be deemed an original, but all of which will together constitute one and the same instrument.

24. **NOTICES**

All notices, requests, demands and other communications made or given under the terms of this Agreement or in connection herewith shall be in writing and shall be either personally delivered, transmitted by postage prepaid registered mail (air mail if international), or by telex or cable (confirmed and writing by postage prepaid registered mail – air mail if international), and shall be addressed to the appropriate party at the following address or to such other address or place as such party may from time to time designate:

**To MOR at:**

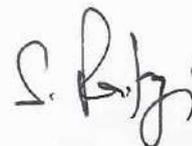
**Addressee:** Executive Director (Works), Ministry of Railways, Railway Board

**Address:** Rail Bhavan, Raisina Road, New Delhi - 110001

**Phone:**+91 11 23382102

**Fax:**+91 11 23382102

**Email:** edw@rb.railnet.gov.in



To GOO at:

**Addressee:** Chief Secretary to Government of Odisha,

**Address:** Secretariat, Government of Odisha, Sachivalaya Marg, Bhubhaneshwar – 751001

**Phone:**+91 674 2534300

**Fax:**+91 674 2536660

**Email:** cs-ori@nic.in

Unless another address has been specified by a party hereto by written notice thereof to the other party, any notice, request, demand or other communication given or made pursuant to this Agreement shall be deemed to have been received (i) in the case of personal delivery, on the date of delivery, (ii) in the case of mail delivery, on the date which is fifteen (15) days after the mailing thereof and (iii) in the case of a telex or cable, the date of dispatch thereof.



**SCHEDULE I  
DEED OF ADHERENCE**

This **DEED OF ADHERENCE** ("Deed") is executed this [•] day of [•], by [•], having its registered office/ principal place of business at [•] (the "**Intended Transferee**").

**WHEREAS:**

- A. By a joint venture agreement dated [•] (the "**JVA**") amongst MOR and the GOO (collectively the "**Existing Shareholders**"), MOR and GOO agreed to a mutual distribution/ regulation of their rights and liabilities as Shareholders.
- B. <sup>1</sup>Article [•] of the JVC requires, *inter alia*, that, concurrently with the Transfer of Shares by any Shareholder to any third party purchaser, such third party purchaser will, as a condition of such Transfer of Shares to it execute this Deed and be bound by the JVA.

The third party purchaser is hereinafter referred to as the Intended Transferee.

**NOW THIS DEED WITNESSETH AS FOLLOWS:**

**1 Definitions and Interpretation**

Capitalized terms used but not defined in this Deed will, unless the context otherwise requires, have the respective meanings ascribed thereto in the JVA.

**2 Undertakings**

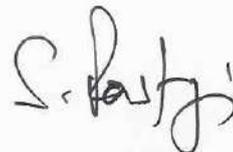
- 2.1 The Intended Transferee hereby acknowledges that it has received a copy of, and has read and understands, the JVA and the charter documents and covenants, and agrees and confirms that it will be bound by all provisions of the JVA and the Charter Documents as if it was an original party thereto, including with respect to the rights and obligations of the Existing Shareholders contained therein, and the JVA will have full force and effect on it, and will be read and construed to be binding on it.
- 2.2 The Intended Transferee agrees and acknowledges that the rights and obligations which accrue to the Intended Transferee pursuant to any acquisition of Shares, will be equivalent to and will not be in excess of the rights which the transferor would have had in relation to such Shares.

**3 Representations and Warranties**

- 3.1 The Intended Transferee hereby represents and warrants to the other parties hereto that:
  - (a) It is duly incorporated and validly existing as a corporation under the laws of its place of incorporation and has full power, capacity and authority to execute, deliver and perform this Deed and has taken all necessary actions (corporate, statutory or otherwise) to execute and authorise the execution, delivery and performance of this Deed<sup>2</sup>.
  - (b) This Deed upon execution and delivery by it will constitute a legal and binding obligation on it enforceable against it in accordance with its terms.

<sup>1</sup> in case of execution by the Company, this provision can be deleted.

<sup>2</sup> To be modified appropriately if the Intended Transferee is an individual.



- (c) The discharge by it of the obligations and liabilities under the Agreement and the performance by it of the acts and transactions contemplated hereby do not and will not (whether with or without the giving of notice or lapse of time or both), violate, conflict with, require any consent under or result in a breach of or default under: (i) any Applicable Law to which it is subject; or (ii) any term, condition, covenant, undertaking, agreement or other instrument to which it is a party or by which it is bound;
- (d) To the best of its information and knowledge, there are no legal, quasi-legal, administrative, arbitration, mediation, conciliation or other proceedings, claims, actions, governmental investigations, orders, judgments or decrees of any nature made, existing, threatened, anticipated or pending against it which may prejudicially affect its holding of the Shares of the JVC or the due performance or enforceability of the Agreement or this Deed or any obligation, act, omission or transaction contemplated thereunder or hereunder.

4. **Enforceability**

Each of the parties to the JVA and the JVC will be entitled to enforce the JVA against the Intended Transferee as if the Intended Transferee had been an original party to the JVA since the date thereof.

5. **Governing Law**

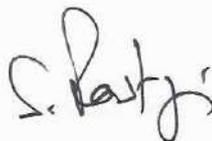
This Deed will be governed by and construed in accordance with the laws of India. The terms and conditions of the JVA in relation to the provisions regarding arbitration and other terms and conditions will be deemed to have been incorporated in this Deed.

**SIGNED BY:**

By [•]

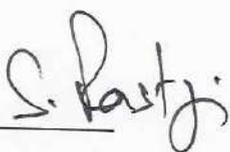
Name:

Title:



**IN WITNESS WHEREOF** the parties hereto have signed, sealed and delivered this Agreement on the day, month and year first above written in presence of:

**For and on behalf of Government of Odisha**

  
\_\_\_\_\_

Name: Shri Sanjay Rastogi

Designation: Commissioner cum Secretary, Government of Odisha

**For and on behalf of President of India**

  
\_\_\_\_\_

Name: Shri Ved Parkash Dudeja

Designation: Executive Director (Works), Ministry of Railways