

1500/1004

ASSISTED SIDING AGREEMENT

Collector/Mineral Siding

Original Form No.

ASSISTED SIDING AGREEMENT

MEMORANDUM OF AGREEMENT made this day of 19.....
BETWEEN THE PRESIDENT OF INDIA, acting through the South Eastern Railway Administration
(hereinafter called the "Railway Administration") of the one part; and M/S. Indian Iron & Steel Co. Ltd.
Wharf Building Regd. Office, 11 Sec. House, 50 Chatterjee Road, Cal. 71. and Assisted
Siding at Mancharpur Light Railway, Chakradharpur, Chakradharpur.
(hereinafter called the "Applicant") * of the other part;

WHEREAS the Applicant is desirous of having a siding laid by the Railway Administration at Mancharpur
Station yard of the South Eastern Railway as shown in Plan No. C.F.S. No. S. 21.98.
hereby annexed for the purpose of carrying on the Applicant's business in the
Applicant's premises there situated :—

AND WHEREAS the Railway Administration is willing to lay, the said siding for the said Applicant
upon and subject to the terms and conditions hereinafter set forth :

NOW, THEREFORE, this Agreement witnesseth as follows :—

1. Interpretation—In these presents unless the context otherwise requires, the following words and expressions have the meaning and shall be interpreted as specified, namely :—
 - (a) Words importing the singular number include the plural number and vice versa.
 - (b) "Person" includes a firm or other association or body of individuals and a company or other corporate body.
 - (c) "The Railway Administration" means the President of India, acting through the General Manager or the time being of South Eastern and any Officer of the South Eastern Railway authorised by any such General Manager to deal with any matters with which these presents are concerned.
 - (d) "The Applicant" means the person named as party hereto of the other part and includes in the case of a firm or other association or body of individuals, the individual person or persons for the time being and from time to time constituting the firm, association or body.
 - (e) "Works" means the premises belonging to or occupied or used by the Applicant and shall also mean and include any land which the Applicant is entitled to the mining rights as either owner and or lessee or otherwise.
 - (f) "Undertaking" includes all land, Railway lines, works, buildings, engines, rolling stock and other movable or immovable property now or at any time hereto forming part of or appertaining to the South Eastern Railway system as now or hereafter constituted and all engines and rolling stock (whether belonging to the South Eastern Railway system or not) passing over the system.
 - (g) "South Eastern Railway system" includes Private and Assisted sidings constructed by the Railway Administration for the use of other persons.

NOTE

FORMS OF DESCRIPTION OF THE APPLICANT

Where a single person is the Applicant, "and A.B. (insert full name) of (insert address and occupation)"
Where two or more persons are joint Applicants, "and A.B. (insert full name of (insert address and occupation) and C.D. (insert full name) of (insert address and occupation)"
Where a single person trading under a different name is the Applicant, "and A.B. (insert full name) of (insert address and occupation) carrying on business under the name of (insert name) at (if the business is carried on at a different address from the address already inserted, then insert such additional address)"
Where a partnership firm is the Applicant and the names of the partners are known, "and A.B. (full name) and C.D. (full name) trading on business in partnership under the name of (insert name or style of firm or style of the firm and name)"
Where a partnership firm is the Applicant and names of the partners are not known, "and A. & Co. (insert name or style of the firm)"
Where an incorporated Company is the Applicant, "and A.B. & Co. Ltd., a Company incorporated in (insert country of incorporation) India, England or elsewhere, having its registered office at (insert address)" (in the case of a Company incorporated elsewhere than in India, insert its principal office in India at (insert address))
Where the Applicant is a joint family governed by the Mitakshara School of Hindu Law, "A.P. (insert full name) of (insert address and occupation) carrying on business under the name of (insert name or style of firm or style of the firm and name)"
Where the Applicant is a joint family governed by the Dayabhaga School of Hindu Law, "A.P. (insert full name) of (insert address and occupation) carrying on business under the name of (insert name or style of firm or style of the firm and name)"
Where the Applicant is a firm or other association or body of individuals, "and A.B. (insert full name) of (insert address and occupation) carrying on business under the name of (insert name or style of firm or style of the firm and name)"

(2)

(h) "Siding" includes the railway track connecting the Applicant's Works with the ~~South~~ ^{Eastern} Railway system as hereinafter agreed to be constructed by the Railway Administration and its branches and extensions thereof which may hereafter be constructed by the Applicant or by the Railway Administration at the Applicant's request and all sleepers, ballast, embankments, bridges, tunnels, signals, gates, buildings and other constructions, erections, works and movable property constructed, erected, made, provided or used in connection with the said track and also all land which on or on part whereof the said track and connected things aforesaid are constructed, erected, made, provided or used including land required for the purpose thereof as hereinafter provided and land belonging to the Railway Administration and land belonging to or occupied or used by the Applicant.

(i) "Sub-grade Work" includes the construction of embankments, supply of ballast, the making of cuttings and the carrying out of other earthwork, the construction of bridges (exclusive of girder works), buildings, platforms, tunnels, culverts, drains and openings and the laying out of ballast, any protective works in mine working required for adequate vertical and lateral support and all other works necessary for the permit of the laying and construction of the railway track of the siding and generally, all works which have to be abandoned if the siding be closed.

(j) "Permanent Way Materials" includes girders, rails, sleepers, fastenings, points crossings, crossing signals and over-head structure and any other things connected therewith for electric traction and other machinery (except station machinery) and equipment necessary for working the siding.

(k) "Legal Representative" means any person who is competent to give the Railway Administration a valid discharge in respect of any money or property which may be payable or deliverable to the Applicant and shall include the executor and administrator of a deceased person, a succession certificate holder, the surviving or continuing partners or members in the case of a firm, association or body of individuals, a certificated guardian of a minor's property, the committee of a lunatic, the assignee or receiver of an insolvent's estate, the liquidator of a Company, a receiver and any person legally appointed to represent the estate of the Applicant.

2. Agreement to Construct Siding—Subject to the terms and conditions hereinafter contained, the Railway Administration agrees to construct a siding as shown on the Plan No. CR.S. No. 2498 hereto annexed connecting the Applicant's Works known as M/S. L. S. Co. Wharf situated at or near Manahampur in the District of Singhbum with the South Eastern Railway system at or near Manahampur.

3. Preliminary Survey Expenses:—The Applicant shall bear and pay to the Railway Administration in advance the sum of Rs. 10,000/- for the first track kilometre or part of track kilometre of the siding required and the sum of Rs. 5,000/- for every half track kilometre or fraction thereof in excess of one track kilometre as cost of survey and preparation by the Railway Administration of the plans and estimates for the siding when the same will traverse in a flat terrain but in case of sidings through difficult terrain, of which the Railway Administration shall be the sole judge, the Applicant shall pay such sum as may be fixed by the Railway Administration. The amount of Rs. 10,000/- and Rs. 5,000/- respectively as stated above are subject to increase from time to time at the sole discretion of the Railway Administration on the circumstances of each case and the Applicant shall be bound to bear and pay such sum. Single copies of such plans and estimates will be sent to the Applicant on completion. If additional copies of such plans and estimates are required to be supplied, the Applicant shall have to pay such additional charges as may be levied by the Chief Engineer. If the Applicant shall desire any alterations to such plans involving further survey work the Applicant shall pay to the Railway Administration in advance the cost of such further survey and the preparation of amended plans and estimates at the rates and terms as stated above in addition to the cost before mentioned.

Provided, however, that where a subsidiary or auxiliary line requiring additional survey work is proposed to be constructed off the main siding but forming part of the same, the additional length of such divergent line will be reckoned in calculating the survey charges.

Provided further that the amount mentioned in this clause shall not be refundable under any circumstances when survey work has started but if the survey work is not started at all the amount may be refundable deducting such expenses as may be incurred.

4. Land—(a) The land required for the siding beyond the boundary of the Railway Administration may be acquired by the Railway Administration at the expense of the Applicant and the Railway

Administration will use its best endeavours to arrange for the acquisition under the provisions of the Land Acquisition Acts and land so acquired shall vest in and belong to the Railway Administration absolutely and the Applicant shall have no right, title or claim thereto. Only such land as is so acquired.

(b) Any structure or building constructed on the land acquired for the aforesaid siding at the cost of the applicant shall also vest in the Railway Administration absolutely and in case of abandonment or termination of the agreement the Railway Administration shall not be liable to pay any cost and/or compensation for the same to the applicant unless the same are required for Railway purposes; in the latter case the Railway Administration may pay to the applicant or to his legal representative such compensation as is specified under clause 26.

Sub-Grade work—The sub grade work for construction of the siding will be carried out by the Railway Administration at the cost and expense of the applicant. Departmental and other charges as may be fixed from time to time will in addition be charged on such works carried out by the Railway Administration. All sub-grade work shall be deemed to form part of the land and be the property of the Railway Administration accordingly.

The Railway Administration may, at their discretion, permit all or part of the Sub-grade work to be carried out by the Applicant but in such case the work shall be carried out under the supervision of the Engineering staff of the Railway Administration in accordance with the Railway Administration's plans and specifications and the applicant shall pay departmental and other charges as may be fixed from time to time on the Railway Administration's estimated cost of the work so delegated.

Deposits by Applicant—Upon receipt by the Applicant of written notice from the Railway Administration that the Railway Administration is in a position to commence the acquisition of the land required for the siding together with a statement of the total estimated amount required by the Railway Administration for the purposes of the construction of the siding or for such other purposes in connection therewith as the Railway Administration may consider necessary, including an estimate of the cost of acquisition of land aforesaid, the Applicant shall on or before the date to be fixed in such notice deposit with the Railway Administration the amount mentioned in such statement as being required for cost of acquisition of land and shall deposit the balance of the amount mentioned in the said statement forthwith upon receipt of notice that the Railway Administration is in a position to commence the construction of the siding. If the amount actually expended by the Railway Administration for the purposes mentioned in this said statement and the departmental & other charges payable by the Applicant to the Railway Administration prior or in connection with such acquisition/construction as herein provided shall exceed the total amount deposited by the Applicant as aforesaid the Applicant shall pay to the Railway Administration on demand the amount of the excess; such excess indicating variation upto 20% on the estimated cost will be borne by the Applicant straightway, and a revised estimate will be furnished only if the variation is more than 20%, and if the amount actually expended by the Railway Administration as aforesaid shall be less than the aforesaid total amount deposited by the Applicant the balance shall be refunded by the Railway Administration to the Applicant. The question of refunding the excess amount to the applicant shall be considered only after actual completion of the said siding work and certified in writing by the Railway Engineers to this effect. No interest shall be payable by the Railway Administration in respect of any such deposit as shall be made.

The siding holder/holders agree that even, if after finalisation of account with the Railway Administration any claim arises in connection therewith by way of decree/arbitration award and the Railway Administration is saddled with the responsibility of satisfying the same, the siding holder/holders will have the liability of reimbursing the same to the Rly. Administration within a period of 30 days from the date of such demands by the Rly. Administration failing which the Rly. Administration will have the liberty of enforcing such demands through the process of law in which event, the siding holder/holders will have to shoulder additional responsibility of paying damages as well for such failure to satisfy the demands of the Railway Administration.

Provided, however, that if the Railway Administration permits all or any part of the Sub-grade work to be carried out by the Applicant, the Applicant shall be required to deposit with the Railway Administration in respect of the Sub-grade work so permitted to be carried out by the Applicant departmental and other charges as may be fixed from time to time on the Railway Administration's estimated cost of the work so permitted.

7. (a) Permanent Way Materials—On completion to the satisfaction of the Railway Administration of the Sub-grade work, the permanent way materials will be provided and laid by the Railway Administration. The Railway Administration shall bear only the cost of such permanent way materials and all other equipments but all charges incurred in laying and fitting the permanent way materials and all other equipments, which may be provided including freight at Public Tariff Rates, material trains & handling charges shall entirely be borne by the Applicant. In addition the Applicant shall bear departmental and

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other charges as may be fixed by the Railway Administration from time to time on such cost borne by Applicant. The Railway Administration may also be required by the Applicant, provide any machinery required upon payment by the Applicant in advance of such cost and charges thereon thereof as shall be fixed by the Railway Administration.

7. (b) Electrification of siding—Should the Railway Administration at any time, or times hereafter require to electrify the siding, the cost of supporting structures and overhead traction equipment and other retrievable components and fittings, such as bonds shall be borne by the Railway Administration and shall remain property of the Railway Administration. Cost of non-retrievable items, such as foundations, and all charges incurred for laying and fittings of such equipment including freight at public rates, material, hauls, handling charges and temporary establishment charges shall be borne entirely by applicant. In addition, the applicant shall pay such departmental and other charges as may be fixed by the Railway Administration from time to time on such cost which is to be borne by the applicant.

The Applicant shall be responsible to take such safety precautions as may be required. The Railway Administration shall not be responsible for any loss or injury to the Applicant for any accident out of the electrification of the siding and working the same with electric traction due to non observance of Safety Rules by the Applicant.

8. (i) Maintenance of sub-grade and Permanent Way Work —

(a) The ordinary day to day repairs and maintenance of the permanent way work shall be by the Railway Administration for which costs will be realized as laid down in clause 12 (a) (ii).

(b) Special repair works which may be necessary for the safety of the siding (The Railway Administration being the sole judge for this purpose) and recouplement of ballast will be by the Railway Administration at the cost of the Applicant. Applicant agrees to pay on demand any expenditure incurred by or through the Railway Administration on this account. The Applicant shall pay to the Railway Administration departmental and other charges as may be fixed by the Railway Administration from time to time.

(c) The Applicant shall be responsible to keep the track and cess clear for the day-to-day movement of Rolling Stock and Locomotives. In case this is not done, the Railways will have the stop the working of the siding or impose a charge at a penalty to be decided by the Railway Administration in its sole discretion to have the track and cess cleared for working of the siding.

8. (ii) Renewal of Siding—The renewal of the siding which may hereafter be required may be carried out by the Railway Administration and the incidence of the cost thereof shall follow that of the construction of the siding, unless such replacement or renewal is necessitated by the negligence of the Applicant (of which fact the Railway Administration shall be the sole judge) when the cost of top grade and super grade work including the departmental and other charges shall be borne by the Applicant.

(iii) Such emergent maintenance as may be required for the safety purposes may be done by the Railway Administration and the Applicant agrees to pay on demand any expenditure incurred by or through the Railway Administration on this account including departmental and other charges as may be fixed by the Railway Administration from time to time.

9. (a) Weigh Bridge Facilities, Level Crossings etc. — a) The Applicant shall provide and maintain at its own cost and expense a suitable weigh-bridge, weigh-bridge house and weigh-bridge siding and crossings, gates and gate-ledges, water columns and watering arrangements within the siding limits. The Railway Administration may require the Applicant to provide from time to time.

(b) Only the permanent way for the weigh-bridge siding will be provided by the Railway Administration under Clause 7, but the Applicant shall pay for all other extra expenses for the works mentioned in sub-clause (a) aforesaid as well as the expenses for the operation and maintenance thereof. The Applicant shall provide quarters of appropriate types for the weigh-bridge clerk(s), siding clerk(s), pointsmen and for level crossings to be employed and all labour necessary for proper performance of the operation of weighing which must be done within the free time allowed for the wagon. All the aforesaid work and maintenance shall be done according to Railway rules and regulations as in force from time to time.

(c) The staff referred to in Sub-clause (b) above will be Railway servants, to be appointed by the Railway Administration, but the Applicant shall pay to the Railway Administration the amount of salaries and allowances paid by the Railway Administration to all such staff so employed as well as all contributions or payments which the Railway Administration may make towards or on account of leave salary, provident fund, gratuity, contribution to Provident Fund, gratuity, house rent, cost of uniform, other contributions, payments or fringe benefits for the benefit of such staff in accordance with any rules or regulations of the Railway Administration for the time being and from time to time in force relating to the employment and emoluments of the Railway servants.

(d) A card will be kept by the Applicant showing the accuracy of the scale bridge and giving date tests as in the case of all Railway weigh bridges. The Applicant should also permit the Railway weigh bridge Inspector or such other staff as may be deputed by the Railway Administration at all times to check the accuracy of the weigh bridge and to supervise the maintenance, which shall be carried out to the Applicant to the satisfaction of the Railway Administration.

(e) The maintenance shall be done according to Railway rules and regulations as in force from time to time. Such emergent maintenance as may be required for safety may be done by the Railway Administration without prior notice to the Applicant and the Applicant will have to pay on demand any expenditure incurred by or through the Railway Administration on this account, including departmental and other charges as may be fixed by the Railway Administration from time to time in its sole discretion.

10. Additional Works including Renewals, Replacements, Strengthening etc.—In the event of it being necessary after the opening of the siding to make any alterations or additions or renewals or replacements strengthening of track or bridge thereto or to provide such items as fencing, signals, improved safety appliance or machinery of any kind or to provide quarters for signallers or staff for the working of the siding such additional work shall be provided subject to the general condition governing the construction of the siding in the first instance; that is, the cost and special repair of sub-grade work, the cost of land, and the charges incurred in laying & fitting Permanent Way Materials or of Permanent Way Materials other machinery (excluding station machinery) and such materials as would be removed by the Railway Administration shall be borne by the Applicant and the cost of expense incurred in working of the safety appliances such as salary and allowances of signallers or watchmen or any other staff as well as all contributions of payments which the Railway Administration may make towards or on account of leave salary, pension, Provident Fund, bonus, special contribution to Provident Fund, gratuity, house rent, cost of uniform or any other contributions, payments or fringe benefit for the benefits of such signallers or watchmen or any other staff in accordance with any rules of the Railway Administration for the time being and from time to time in force relating to the employment and emoluments of Railway servants, provisions of stores and repairs shall be paid by the Applicant.

Provided, that the question whether it is necessary to make any alterations or additions or renewals or replacements or strengthening of track or bridges will be decided by the Railway Administration, at its sole discretion, and such decision shall be final and binding on the parties,

No addition or alteration shall be made to the siding nor shall any temporary or permanent structure be erected without the sanction in writing of the Railway Administration.

All such structures must comply with the regulations from time to time in force upon the South Eastern Railway system regarding standard dimensions and other matters. The terms and conditions of this Agreement will also be applicable to any additions and alterations made to the siding, unless otherwise decided by the Railway Administration in its sole discretion.

11. Private extension of sidings should the Applicant desire to extend the siding as a private Siding such extension shall be carried out according to plans and estimates approved by the Railway Administration, at the entire cost of the Applicant including the cost of Permanent Way Materials and any extra appliances that may be necessary.

The entire cost of working and maintaining such extension shall be borne by the Applicant. If such Private Siding the Applicant will have to enter into a separate Agreement with the Railway Administration on such terms and conditions as may be decided by the Railway Administration.

12. Interest, Maintenance and all other Charges and Deposits towards Costs of Removal of siding—The Applicant shall pay annually in advance to the Railway Administration (a) (i) Interest charges at such rate which may be fixed from time to time, the present rate being 6 (4 to 31-2-29) percent, on the capital cost of the portion of the siding borne by the Railway Administration. The interest charges shall be levied from the date of opening of the siding. * 6.5 (beyond 31-3-29)

NOTE.—The Applicant will also be liable to pay in advance interest on the Railway's capital outlay as incurred from time from the date of commencement of construction to the date of opening of the siding as per Railway Rules.

(ii) Repairs and maintenance charges at such rates, which may be fixed from time to time by the Railway Administration, the present rate being 1/10 percent on the capital cost of the portion of the siding borne by the Railway, or its present day cost as determined by the Chief Engineer of the Railway, whichever is more. The revaluation of the capital cost of the siding borne by the Railway will be made by the Railway Administration from time and amount shall be final and binding on the parties. The repairs and maintenance charges shall be levied from the date on which the siding is opened for traffic.

(iii) The Applicant shall also deposit in advance at the time of construction of the siding a sum considered sufficient by the Railway Administration to cover the cost of removal of the siding and other charges in the event of termination of this Agreement on such ground on which the Applicant shall be liable to pay the cost of removal of the siding and other charges. No interest will be allowed on Railway on such deposit if made in cash.

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(c) The Applicant shall pay all rates, taxes, levies and assessments whatsoever payable or likely to be payable to any local body or State or Central Government in respect of structures, building, class, other works built or erected in connection with the siding.

(d) In the event of the Applicant failing to pay within due time the sum payable by him to the Railway Administration under the provisions of sub-clause (a) and/or (c) the Railway Administration shall be entitled to terminate this Agreement by giving one month's notice in writing to the Applicant.

(e) In the event of siding not in use and retained by the party, depreciation charges @ 1% each year on Capital cost of the portion of the siding borne by the Railway or its present pay cost, whichever is the lower, will be levied in addition to the levy of interest and maintenance charges normally leviable in respect of sidings in use as per extant rules.

(f) In the event of delayed payment of interest, maintenance and depreciation charges, the Railway Administration can levy interest thereon at the prevalent rate.

(g) The termination of this agreement under the provisions of this clause shall be without prejudice to any rights or remedies to which the Railway Administration will be entitled to in respect of any matters or things arising before such terminations.

13. Cost of Railway Staff Employed at the siding etc. — (a) The Applicant shall pay in advance to the Railway Administration such establishment cost of any Railway staff posted at the siding for the proper working of the said siding as may from time to time be decided by the Railway Administration and such establishment cost shall include the pay and allowances of any Railway staff as well as all contributions or payments which the Railway Administration may make towards or on account of leave salary, Provident Fund, bonus, special contribution to Provident Fund, Pension, Gratuity, House rent, cost of uniform or other contributions, payments or fringes benefits for the benefit of any Railway staff in accordance with the rules of the Railway Administration for the time being and from time to time in force and with retrospective effect relating to the employment and emoluments of the Railway servants.

(b) The Applicant shall provide or bear the cost of proper and suitable office accommodation and quarters for all Railway staff posted at the siding.

(c) Rent collected from Railway staff in occupation of Qrs. constructed at the cost of Applicant may be reimbursed to the Applicant in full provided they —

- i) Carry out the replacement of these quarters, as and when due at their cost.
- ii) Pay the maintenance charges for these quarters whose maintenance is carried out by the Railway.

14 Provision for Protection of the Siding and Existing Lines and Undertaking —

(a) The Applicant undertakes and agrees that he will not work or get or permit to be worked on any mines or minerals or other substances in or under the area of land coloured Pink on the Plan No. hereto annexed and more fully described in the Schedule 'A' given hereafter (in which or any part whereof the Applicant is now possessed or entitled to the mining rights as the owner or otherwise) in any manner likely to injure or endanger the safety of (i) Siding, (ii) the existing railway lines, (iii) the Undertaking (iv) any support which are required to be left for the safety of the Siding Lines and Undertaking within such area.

The particulars of the Applicant's Colliery for which siding is required are contained in the Schedule 'B' hereof and is shown and delineated in Plan No. hereto annexed.

The Applicant further agrees that the above provisions will also apply to any land to which he may hereafter be possessed or entitled to the mining rights as the owner or leasee or otherwise. The Applicant further undertakes to inform the Railway Administration within 30 (Thirty) days of his acquiring any right title or interest in any land as aforesaid in any area adjacent to the Applicant's Colliery as shown and delineated in Plan No. hereto annexed and to register any Supplemental Agreement as may be required by Railway Administration.

(b) The Applicant will at all times permit any person appointed by the Railway Administration to enter upon, inspect, make plans and surveys of all mines, workings, in or under the land and adjacent to the siding and as aforesaid and conduct such surveys to the satisfaction and in accordance with the rules of the Railway Administration considering the method of working any mines or minerals or other substances is likely to injure or endanger the siding or any existing line or lines or undertaking or any support which are required.

It for the clause, or here be left for the safety of the Siding, Lines and Undertaking within such area referred to in sub-clause (a) of this clause, the Railway Administration may apply to the Director General of Mines Safety to inspect such mines or working on the Director General of Mines Safety and either of his own accord and in the power conferred on him by any enactment, regulation or rules for the time being in force or on such application of the Railway Administration as aforesaid, inspect or cause the same to be inspected by any person nominated or appointed by him for such purpose and the Railway Administration in consultation with the Director General of Mines Safety or the Director General of Mines Safety may either prohibit the working of such mines or minerals or other substances entirely or permits the working thereof subject to such restrictions as the Director General of Mines Safety may consider necessary or expedient for the protection of the siding or such existing line or lines of the undertaking or any support which are required to be left for the safety of the Siding, Lines and Undertaking within such area as aforesaid and in such case, the Applicant shall forthwith either cease entirely to work the said mines or minerals or other substances or conform to the restrictions imposed by the Railway Administration or the Director General of Mines Safety for such working and in either case, the Applicant shall have no claim whatsoever against the Railway Administration in respect of such prohibition or restriction.

(c) In the event of the working of any mines or minerals or other substances in or under the project of any acquisitions of the Land Acquisition (Mines) Act, 1885 or any other Act for the time being in force, the Applicant hereby waives all claims to compensation which he might otherwise be entitled to make by reason of such prohibition or restriction and the Applicant undertakes and agrees to be liable for and to pay all such compensation as may be payable consequent upon such prohibition or restriction to any other person in respect of mines or minerals or other substances in or under any land forming part of the siding or of the said existing line or lines or of the Undertaking and in or under any land on either side thereof in which such prohibition or restriction may be required for the purpose of providing vertical or lateral support to the Siding or Line or Lines of the Undertaking or any support which are required to be left for the safety of the Siding, Lines and Undertaking as aforesaid and to keep the Railway Administration indemnified from and against the payment of any compensation money in such circumstances and against all suits, proceedings, loss, damages, costs (between attorney and client), expenses, claims and demands in relation thereto.

- (i) any land appertaining to or forming part of the siding and/or.
- (ii) any land underlying and existing line or lines or Undertaking referred to in sub-clause (a) of this clause and/or.
- (iii) any land on either side of the Siding or on either side of the said existing line or lines or the Undertaking which may be required for the vertical or lateral support of the Siding or such line or lines of the Undertaking, and/or.
- (iv) any support which are required to be left for the safety of the Siding, Lines and Undertaking, being prohibited or restricted.

(d) The Applicant undertakes and agrees to be responsible for any loss, damage or injury to any person or property which may be caused either directly or indirectly by reason of the working or getting of any mines or minerals or other substances contrary to the obligations on the part of the Applicant specified in sub-clause (a) and (b) of this clause.

(e) The Applicant undertakes and agrees to give to the Railway Administration, not less than 60 days notice in writing of his intention to work any mines or minerals or other substances in or under any land forming part of or adjoining or within 45 metres of the land coloured Pink and shown on the said Plan No. referred to in sub-clause (a) of this clause and also to give like notice of his intention to extract pillars therein or thereunder. Such notice shall be given independently of any other notice of such intention which the Applicant may be required to give to the Railway Administration under any statutory enactment, rule or regulation and shall be sent to the General Manager of the Railway by post registered for acknowledgement. If the operations in respect of which any such notice as aforesaid has been given are not commenced within 12 months from the expiry of the period of 60 days referred to above, a fresh notice shall, in all cases, be given as hereinbefore provided.

(f) The Applicant undertakes to carry out and complete at his cost to the satisfaction of the Railway Administration such works for the safety and protection of the Siding, existing Lines, Undertakings, and/or any support left for Siding, Lines and Undertaking and which is and/or is being or is/are likely to be damaged either directly or indirectly by reason of the working or getting any mines or minerals or any other substances as aforesaid or by fire or by premature collapse as may from time to time be suggested by the Railway Administration or the Director General of Mines Safety and if at any time be suggested by the Railway Administration or the Director General of Mines Safety and if at any time it will appear to the

Railway Administration that the Applicant has not acted according to the undertaking herein contained then it shall be lawful for the Railway Administration to give notice to the Applicant requiring him to carry out and complete such works or any part thereof at such cost as aforesaid PROVIDED, ALVA that if the Applicant shall fail, refuse or neglect to comply with the notice within the period stipulated the Railway Administration then the Railway Administration shall be competent to carry out and complete such works at their costs and recover the same from the Applicant and if not paid or demand thereon with interest at..... per cent per annum from the date of demand until payment and realisation in full by suit or otherwise PROVIDED FURTHER that in the event and for all purposes connected therewith the Applicant shall permit and allow the Railway Administration and such person or persons as may be necessary to make use of all machinery, pits and other conveniences in use in the mines of the Applicant and shall render all facilities for going down the mine or otherwise however and carrying out and completing such works or any part thereof.

15. Traffic on siding-Wagons will be hauled by the shunting train engine/pilot provided by the Railway Administration (subject to such rules and restrictions as may be enforced from time to time) to and from the point marked 'X' in the said Plan No. 2198. Same number as in clause 2, herein before referred to or such other points as may hereafter be fixed upon by mutual consent of the Applicant and the Railway Administration in writing at which point they shall be made over to the Applicant and returned to the Railway Administration in such manner as shall be determined in each case by the Railway Administration. The Applicant undertakes to shunt the wagons from such point to his premises and back.

Provided that the Railway Administration may at the request of the Applicant under the shunting by locomotives of wagons inside the premises of the Applicant beyond the portion of the siding marked X in the said plan and demand such additional charges as may be determined from time to time by the Rly. Administration but this facility may be withdrawn at any time at the discretion of the

16. Siding not to be used by other persons—No traffic other than that of the Applicant's works shall at any time be sent over the siding by the Applicant except with the prior written permission of the Railway Administration and the Applicant undertakes not to permit any other person whomsoever to use the siding and not to take or receive or permit any other person to take or receive from any other person whomsoever any consideration or remuneration of any sort or in respect of the carriage of any commodity over or for any purpose whatsoever in connection with the siding except with the prior written permission of the Railway Administration and in all cases of disputes or differences with regard to any matters mentioned in this clause the decision of the Chief Operating Superintendent/Chief Commercial Superintendent of the South Eastern Railway shall be final and binding on the Applicant.

17. Freight etc. on Traffic—(a) The Applicant shall pay freight and also all other charges (including siding, placement and withdrawal charges, where leviable) on traffic to and from the siding, from the date of opening of the siding in accordance with the Railway Administration's Tariffs, Circulars, Advices in force at or given effect to from the time the traffic is carried or at such rates as may be fixed by the Railway Administration from time to time. Such traffic will be subject to all the rules, conditions and charges as contained in such Tariffs, Circulars and Advices.

(b) The free time allowed to the Applicant for loading and unloading wagons and the demurrage charges leviable for detention in excess of such free time will be governed by the rates and rules in force from time to time in the Tariffs, Circulars and Advices of the Railway Administration and in force at the time the traffic is carried.

(c) "When wagons cannot be placed at the point of interchange on account of the siding being blocked by wagons that have not been returned by the applicant or on account of the applicant's inability to accept wagons in the siding and such wagons are detained in the serving station yard, the Railway Administration serves the right to levy demurrage, detention or other charges on such wagons from the time such wagons are ready to be made over to the Applicant, the usual free time being allowed only once."

(d) The Railway Administration will not be responsible for the loss, destruction, damage or deterioration of the contents of wagons booked at either owner's risk rate, hauled over the siding during the time such wagons are in transit or remain on any part of extension of the siding at or beyond the point of interchange.

(e) Unless a Goods Clerk representing the Administration is employed at the siding empowered to effect delivery there, wagons will not be placed at the siding until delivery is effected at the serving station. In the event of the Applicant failing to effect delivery within the free time after the arrival of the wagons, the free time being allowed only once.

(f) The Applicant shall at all times permit any persons appointed by the Railway Administration to inspect the loading and unloading of wagons in the said siding (coloured red and green).

(2) All goods despatched from and to the said siding should be loaded and unloaded by the Applicant at his own cost.

18. Working of Siding: The applicant shall provide labour for and bear the cost of all operations on the siding. The Applicant shall be responsible for the strict compliance by himself and his employees and agents of all rules, regulations and standing orders made by the Railway Administration from time to time for the working of sidings and for all accidents, loss or damage that may ensue or be caused by reasons of negligence or non-observance of such rules, regulations and orders. It shall be the duty of the Applicant to obtain from the Railway Administration authentic copies of all such rules, regulations and orders aforesaid and to see that his employees and agents working in connection with the siding are made and kept acquainted with the same.

19. Applicant responsible for damage or injury to person or property. The applicant shall be entirely responsible for all property of the Railway Administration during the time the same shall remain on any part or extension of the siding at or beyond the point of inter-change and shall make good on demand all loss of or damage to the engines, damages and deficiencies of rolling stock (Railway wagons) or other property of the Railway Administration from any cause whatsoever except sole negligence on the part of the staff of the Railway Administration or act of God or war or other acts or circumstances to which the Applicant is not responsible. The Applicant shall also be liable to bear the cost of derailing engines and rolling stock derailed and for repairs to the siding necessitated by such derailments.

The Applicant shall also indemnify the Railway Administration against any loss due to damage, injury or death caused to any Railway servant while working in connection with the Siding.

20. Railway Administration's right regarding use of the Siding—In addition to any other rights, powers and liberties herein provided for the Railway Administration shall have the following rights, powers and liberties, to over and in connection with the siding or any extension or part thereof, namely.

(a) To use the siding or any extension or part thereof for any purpose of the Railway Administration free of charge or any remuneration to the Applicant in respect of such use.

(b) To connect or allow to be connected with the siding or any extension or part thereof any other siding or sidings branching or extending there from which may have been constructed or which may hereafter be constructed by or under the authority of the Railway Administration for any other person or persons who may soever or for the purpose of the Railway Administration and to or allow such alterations as may be necessary to effect such connection.

(c) (i) To use or to permit the use of the siding or any extension of part thereof for the traffic of any person or persons other than the Applicant and to work traffic over the siding or any extension or part thereof to and from any other siding or sidings or branches or extensions there from which be constructed as aforesaid jointly with the traffic of the Applicant upon payment by such person or persons to the Applicant of either such portion of the cost originally paid by the Applicant to the Railway Administration in respect of the land & sub grade work or such tollage for such use as aforesaid as shall be decided by the General Manager for the time being of the Railway Administration or such other Officer as may be nominated by him whose decision shall be final, conclusive and binding on the Applicant as to whether a portion of the aforesaid cost shall be payable and if so, the amount thereof or whether a tollage shall be payable and if so, the amount or rate thereof.

The Railway Administration shall collect such proportionate cost on behalf of the Applicant but shall not be responsible for the collection of tollage for and on behalf of the Applicant, but the Applicant may enter into agreement with the person or persons who has/have been permitted the use of siding or part thereof by the Railway Administration on the payment by the latter of tollage.

(c) (ii) The use of the siding or any extension or part thereof by the Railway Administration or by other persons shall be so conducted in such manner and such extent as to interfere as little as possible with the free use of the siding by the Applicant whose traffic shall have precedence.

(d) To refuse supplies of wagons or other rolling stock for the use of the siding or any extension or part thereof over which the Applicant may be allowed to work traffic jointly with such other person or otherwise in the event of non-payment by the Applicant of any sum of tollage which the Railway Administration may decide shall be payable by the Applicant in the event of non-compliance by the Applicant with any directions or requirements of the Railway Administration with regards to the use or working of the siding or any branch or extension thereof or any other siding or extension or part thereof which may interfere with or inconvenience the Railway Administration in the proper working thereof.

21. **Applicant not to Transfer Rights**—The Applicant shall not be entitled to assign or transfer sublet or permit to be used or enjoyed by any other person in any manner whatsoever any of the rights or benefits conferred upon the Applicant by these presents and any purported assignment, transfer, or subletting or permission shall be void and of no effect. Provided that in the event of any other person permitted by the Railway Administration to use the siding on the Applicant's request or otherwise, the Applicant shall remain responsible to the Railway Administration for all the charges and obligations in this Agreement.

Provided, however, that if the Applicant shall desire to transfer the Applicant's Works to a person or if the Applicant being a Company shall go into liquidation and such intended transferee or liquidator of the Company shall desire the use and benefit of the siding then subject to the undermentioned condition being complied with, the Railway Administration may at its discretion on the written request of the Applicant and of the intended transferee or liquidator made within one month after the commencement of the liquidation as the case may be, and after production by the transferee of the registered Deed of Transfer of the Applicant's works or after proof by the liquidator of the intention to carry on the Company's business for the purpose of the liquidation proceedings, allow the transferee or liquidator the use and benefit of the siding. The conditions abovementioned are the following:—

(i) That the liquidator shall be approved by the Railway Administration but such approval will be unreasonably withheld.

(ii) That the liquidator shall duly sign and register an Assisted Siding Agreement in the same form as these presents so far as then applicable or in such other form as the Railway Administration may require.

(iii) That the Applicant, Railway Administration and transferee shall duly execute an Agreement of assignment as may be prescribed by the Railway Administration.

22. (i) **Power to Terminate Agreement if Traffic Insufficient**:—(a) Notwithstanding anything contained in this Agreement the Railway Administration shall be entitled, in the event of the Railway Administration being of the opinion that the Applicant's traffic over the siding is insufficient to justify the retention of the siding by the Applicant, of which event the Chief Operating Superintendent/Chief Commercial Superintendent of the Railway Administration will be the sole judge, to terminate this Agreement by giving to the Applicant not less than six (six) months' previous notice in writing of the Railway Administration's intention to terminate this Agreement and on the expiry of such notice, this Agreement shall stand terminated.

(b) The termination of this Agreement under the provisions of this clause shall be without prejudice to any rights or remedies to which the Railway Administration may be entitled in respect of accounts matters or things arising before such termination.

(ii) The Railway Administration may retain the siding—The Railway Administration may retain the siding if the Applicant gives to the Railway Administration within 3 (three) months of the receipt of Notice under Clause 22(i):—

(a) from the Railway Administration notice of the Applicant's desire to continue the Agreement and shall have undertaken in such notice to pay yearly in advance with effect from the date of expiry of the Railway Administration's said notice such sum by way of interest, maintenance and depreciation charges in respect of the siding as shall be determined by the Railway Administration in its discretion.

(iii) **Partial Lifting up of the Siding Declared Unremunerative**—If at any time the siding remains unused for a period exceeding three months for any reasons whatsoever, the Railway Administration if it decides may remove a portion of the siding after giving 14 (fourteen) days' notice to the Applicant on condition that the same may be relaid at the Applicant's cost at any time when the traffic will justify the same.

23. **Power to Close Siding or Work it for Public Traffic**—In the event of the Railway Administration deciding in the public interest to close the siding or any part or extension thereof or to work the siding or any part or extension thereof for public traffic as part of the Railway system (the decision of the Railway Administration being final in this case and the service of the notice as herein after stated shall be conclusive evidence of the same) the Railway Administration may terminate this Agreement by giving to the Applicant not less than six (six) months' previous notice in writing of such decision and on the expiration of such notice the Agreement shall terminate.

Provided that the Applicant shall be entitled to the use of the siding or any part or extension thereof for the use of the Applicant at the cost of the Railway Administration as a suitable siding in lieu of the siding or the portion or extensions thereof so closed or worked for public traffic or furnish the Applicant with facilities for his traffic equivalent to those supplied to him by the siding or such portion or extension.

(a) In the event of the Applicant failing to deposit within the times fixed for the purpose any sum or sums required to be deposited under the provisions of these presents or according to any direction of the Railway Administration.

(b) In the event of the Applicant failing to deposit within the times fixed for the purpose any sum or sums required to be deposited under the provisions of these presents or according to any direction of the Railway Administration.

(c) In the event of the Applicant failing strictly to comply with his obligations under Clause 14 hereof

(c) In the event of the Applicant ceasing for a consecutive period of 3 (three) months to use the siding or any part of extension thereof for the Applicant's own traffic in connection with the Applicants Works.

(f) In the event of Applicant ceasing for a consecutive period of 3 (three) months to use the siding or any part of extension thereof for the Applicant's own traffic in connection with the Applicants Works.

(g) In the event of the Applicant failing to observe or perform any other obligation on his part herein contained.

(h) In the event of the Applicant failing to observe or perform any other obligation on his part herein contained.

(i) In the event any branch line, siding or part or extension thereof connecting the siding or any part of extension thereof with the South Eastern ... Railway system becoming dangerous, defective or lacking in proper support for any reason whatsoever and whether such branch line, siding, part or extension shall belong to the Applicant or to any third person

The Applicant shall have no claim whatsoever against the Railway Administration in respect of any refusal by the Railway Administration to allow their rolling stock to go on or be used upon the siding or any connected siding or branch line in any of the aforesaid events.

No notice shall be required to be given in the event of termination of Agreement on Default Insolvency Administration and the Applicant has failed to comply with the terms specified in such notice.

(a) In the event of the death of the insured, the policy may be terminated by the happening of any of the following events:-

(b) In the event of the death of an individual, the property of the deceased shall be divided equally among the surviving members of the family, including the spouse, children, and other dependents, as determined by the Mitakshara School of Hindu Law. The joint family property is jointly owned by all the members of the family.

(c) In the event of dissolution of partnership either by act of parties or by order of Court, if the Applicant is a firm or other association or body or individuals.

(d) In the event of Applicant becoming insolvent or going into liquidation either voluntarily or under an order of a competent Court.

(e) In the event of the Applicant's interest in the works becoming wholly or partially vested in some other person.

(f) In the event of the Applicant contravening the provisions of clause 14 or Clause 21 hereof.

26. Consequences of Termination under Clause 22, 23, 24, 25 and 27 — Or termination of this Agreement under the provisions of Clauses 22, 23, 24, 25 and 27 hereof the Railway Administration shall be entitled to deal with the siding as about owner and in this Agreement shall be terminated under or by virtue of the provisions of Clause 22, Clause 24, (except sub-clause (i) in cases where the danger to or defect or want or proper support has not been of use by any breach of any of the obligations of the Applicant under this Agreement and Sub-Clause (j) thereof) or Clause 25 (except Sub-Clause (a) thereof) or Clause 27 (i) the Railway Administration shall also be entitled to recover from the Applicant the cost of removal of the permanent way materials supplied by the Railway Administration. If the actual cost of removal shall exceed the total amount deposited by the Applicant under Clause 12 the Applicant shall pay to the Railway Administration on demand the amount of the excess and if the amount actually expended by the Railway Administration as aforesaid shall be less than the aforesaid amount deposited by the Applicant the balance shall be refunded by the Railway Administration to the Applicant. Provided that if the Railway Administration uses the siding when the Agreement is terminated under the provisions of Clause 22, without removing the siding, the Applicant shall not be liable to pay the cost of removal of the permanent way materials.

Provided, however, that if this Agreement shall be terminated under or by virtue of the provisions of Clause 23 hereof, the Railway Administration may at their option either relinquish the land acquired for the siding under the provisions of Clause 4 hereof in such manner as may be prescribed in any rules, which may then be in force under the Land Acquisition Act, 1894 or any modification thereof or if the land is not relinquished pay to the Applicant or to his legal representative such compensation as is specified below: —

(i) Estimated or actual cost of requisition of the land or the market value of the land at the date of termination of this Agreement whichever amount shall be the less, and

(ii) The cost of the sub-grade work originally paid by the Applicant less depreciation at the rate of 5 (five) per cent per year up to 20 (twenty) years after the date of the completion of the sub-grade work.

After the expiration of such 20 (twenty) years no return of any part of the sub-grade work shall be payable.

If the land is not relinquished, the Railway Administration may pay to the Applicant or to his legal representative such compensation as may be decided by the Railway Administration.

Except as provided in this present clause the Applicant shall have no claim whatsoever against the Railway Administration in respect of the termination of this Agreement whether under any of the provisions of these presents or in any manner not provided for by these presents.

27. Agreement to Bind Applicant Until Terminated by the Railway Administration — Until Terminated by the Railway Administration or unless and until the person or persons in whom the entire rights and interests of the Applicant in the mines, minerals or substances have vested and with whom the Railway Administration has agreed to enter into an Assisted Siding Agreement has executed and registered such Agreement in the same form as these presents or in such other form as the Railway Administration may require as provided in Clause 21 hereof, this Agreement shall be binding upon the Applicant and the successors in title or interest of the Applicant in the Applicant's Works and in the lands, mines, minerals or other substances referred to in clause 14 hereof.

Provided that the Applicant may, by giving six months' notice to the Railway Administration, discontinue the use of the siding. In such event, the Applicant shall not be liable for the payment of maintenance and other charges under the Agreement for the period subsequent to the date of expiry of the said notice, but nevertheless all other obligations under the Agreement shall be binding on him.

Provided further that the Railway Administration has the right without assigning any reason to terminate this Agreement on six months' notice.

26. Right to charge interest on money due hereunder to the Railway Administration—Notwithstanding anything contained in the foregoing Clauses of this Agreement the Railway Administration shall have the right to charge and recover from the Applicant interest on such money as may be fixed by the Railway Administration from time to time on any or all sums payable by the Applicant under the terms hereof such sums are not paid within one month from the due date and if no such date is fixed, within one month from the date on which a written demand is made by the Railway Administration.

29. Right of Deduction of Money due to the Railway Administration—The Railway Administration shall have the right to deduct from any amount which may become payable by the Railway Administration to the Applicant or to the legal representative of the Applicant any money due from the Applicant to the Railway Administration under these presents or for freight, haulage or other charges or otherwise in connection with the construction, maintenance or working of the siding.

30. Service of Notices on Applicant—The Applicant shall maintain a proper office to which all letters, notices, demands and other communications intended for the Applicant may be sent, and every letter, notice or demand or other communication which shall be delivered at or sent by registered post to such office shall for all purposes whatsoever be deemed to have been validly and effectively delivered to the Applicant.

31. Exercise of Powers—Subject as otherwise provided in this Agreement, all notices to be given on behalf of the President of India and all other actions to be taken on his behalf may be given or taken on his behalf by Deputy General Manager or Deputy Chief Operating Superintendent or Deputy Chief Commercial Superintendent or Divisional Railway Manager of the.....*South Eastern*.....

32. Alteration/Variation of the Agreement—Except as hereby provided any verbal or written arrangement, abandonment, varying or supplementing this Agreement or any of the terms hereof shall be deemed conditional and shall not be binding on the Railway Administration unless and until the same is endorsed on this Agreement or incorporated in a formal instrument and signed by the parties hereto and till then the Railway Administration shall have the right to repudiate such arrangement.

33. Arbitration—(a) In the event of any question, dispute or difference arising under or in connection with this Agreement (except as to matters the decision of which is specially provided for by this Agreement) the same shall be referred to the sole arbitration of a person appointed to be the arbitrator, by the General Manager of the Railway. It will be no objection if the arbitrator is a Government servant, that he had to deal with matters to which the agreement relates or that in the course of his duties as a Government servant he has expressed views on all or any of the matters in dispute or difference. The award of the arbitrator shall be final and binding on the parties to this Agreement.

Provided always that the decision of the General Manager of the Railway as to the disputes which fall within the "Excepted matters" referred to above shall be final and binding on the parties hereto and such decision of the General Manager shall not be called in question before the arbitrator by either of the parties hereto.

(b) In the event of the arbitrator dying, neglecting or refusing to act, or resigning or being unable to act for any reason, or his award being set aside by the Court for any reason, it shall be lawful for the authority appointing the arbitrator to appoint another arbitrator in place of the outgoing arbitrator in the manner aforesaid.

(c) It is further a term of this agreement that no person other than the person appointed by the authority as aforesaid should act as arbitrator and that if any reason that is not possible, the matter is not to be referred to arbitration at all.

(d) The arbitrator may from time to time with the consent of all the parties to the Agreement enlarge the time for making the award.

(e) Upon every and any such reference, the assessment of the cost incidental to the reference and award respectively shall be in the discretion of the arbitrator.

(f) Subject as aforesaid, the Arbitration Act, 1940 and the rules thereunder and any statutory modifications thereof for the time being in force shall be deemed to apply to the arbitration proceedings under this Agreement.

(g) Work under the Agreement shall, if reasonably possible continue during the arbitration proceedings and no payment due to or payable by the parties shall be withheld on account of such proceedings.

(h) The venue of arbitration shall be the place from which the acceptance note is issued or such other place as the arbitrator may determine.

(i) In this clause the authority to appoint the arbitrator includes, if there be no such authority, the officer who is for the time being discharging the functions of that authority, whether in addition to other function or otherwise.

34. Cost of Execution of Agreement—All expenses in drawing up the Agreement and the cost of the stamping and registration shall be borne by the Applicant. Registered Agreement shall remain with the Railway.

35. Agreement in Force From—The Agreement shall be deemed to have come into force on and from *the date of opening of the Sidings*.

36. Head Notes—The head notes herein are for convenience of reference only and shall not affect the construction of these presents.

The Schedule 'A' and 'B' referred to.

Particulars of the different lands referred to in Clause 14 (a)

IN WITNESS WHEREOF the parties to these presents have set & subscribed their respective hands and seals hereunto on the day and year first above written.

Signed, sealed and delivered
for and on behalf of the President of India

by
the
of the
Administration in the presence of

Signed and delivered by

in the presence of

[Signature]
P. C. T. BREWAL
DY. GENERAL MANAGER
MANOHARPUR ORE MINES
CHITVA

[Signature]

Witness

(1) T. K. ROY

Address Manoharpur Ore Mines, Pt. 2 P.P. Chivra,
Dt. West Singhbhum, Jharkhand.

Date 10.2.01

(2) T. K. ROY

Address Manoharpur Ore Mines, Pt. 2 P.P. Chivra,
Dt. West Singhbhum, Jharkhand.

Date 12.2.01