

**FREIGHT RAILROAD TRANSPORTATION RENDERING SERVICES AGREEMENT EXECUTED BY AND BETWEEN KANSAS CITY SOUTHERN DE MÉXICO, S.A. DE C.V. (HEREINAFTER, “KCSM”) AND, THE PERSON WHOSE INFORMATION IS ESTABLISHED IN THE SERVICE REQUEST AND THE SHIPMENT GUIDE (AS SUCH TERMS ARE DEFINED HEREIN BELOW) (HEREINAFTER, THE “USER” AND JOINTLY WITH KCSM, HEREINAFTER, THE “PARTIES”), PURSUANT TO THE FOLLOWING REPRESENTATIONS AND CLAUSES (HEREINAFTER, THE “AGREEMENT”, AND TOGETHER WITH THE SERVICE REQUEST AND THE SHIPMENT GUIDE, HEREINAFTER, THE “BILL OF LADING”).**

## **REPRESENTATIONS**

### **I. KCSM represents that:**

- a. It is a Mexican corporation incorporated and in good standing pursuant to the laws of the United Mexican States.
- b. The SCT (as such term is defined below) granted it a concession for the operation and exploitation of the Northeastern Railroad General Communication Track (*Vía General de Comunicación Ferroviaria del Noreste*) and to provide the Freight Railroad Transportation Public Service.
- c. Its Federal Taxpayer Registry issued by the Ministry of Finance and Public Credit is KCS-970506-DQ3.
- d. Its domicile for the purposes of notifications is located at Montes Urales No. 625, Colonia Lomas de Chapultepec, Delegación Miguel Hidalgo, C.P. 11000, México, D.F. telephone 9178-56-00.
- e. It is its will to provide the services requested by the User pursuant to the information contained in the Service Request as well as in the terms and conditions of this Agreement and the Shipment Guide.

### **II. The User represents that:**

- a. All the data and information included in the Service Request are true:
- b. It has all the sufficient authorizations to be bound in terms of the Bill of Lading.
- c. Its domicile and other contact data for the purposes of notifications, as well as its Federal Taxpayers Registry are those indicated in the Service Request.
- d. It is its will to receive from KCSM the services requested through the Service Request and documented through the Shipment Guide, subject to such effects to the terms and conditions of this Agreement and of the Bill of Lading which scope and characteristics it represents to be known and understood by it.
- e. It knows the current rate applicable for the services requested through the Service Request and documented through the Shipment Guide as well as other various or additional services and understands the content and scope of the Mexican legislation and rules applicable in the subject of railroad transportation services, among which are included, without limitation the Regulatory Law, the Tracks Law, the Railroad Regulation and the Commerce Code (as such terms are defined below) as well as all the provisions of this Agreement and the Bill of Lading.

- f. It accepts and recognizes that by filling and delivering to KCSM the Service Request through any means, including electronic, or by accepting in any form that KCSM provides the Services, it fully accredits its will to be bound in the terms of the Service Request, the Shipment Guide and this Agreement, as if signing such documents.

Based on the foregoing both Parties agree to be bound pursuant to the following:

### CLAUSES

**1. DEFINITIONS.** The Parties agree that for the purposes of the Bill of Lading, the following terms regardless of its use in the singular or plural form will have the meaning attributed to them in this Clause:

**1.1. Agreement:** Means this Freight Railroad Transportation Rendering Services Agreement executed by and between KCSM and the User, which is available for reading and printing in the internet page of KCSM, site [www.kcsouthern.com](http://www.kcsouthern.com).

**1.2. Bill of Lading:** Means this Freight Railroad Transportation Rendering Services Agreement, including the Shipment Guide, the Service Request and any Annex of same.

**1.3. Car – Hire:** Means the payment made to a railroad for the use of a Railroad Equipment, for an hour and/or per kilometer.

**1.4. Commerce Code:** Means the Commerce Code of the United Mexican States.

**1.5. Consignee:** Means the destination beneficiary of the freight stated by the User in the Service Request and documented by KCSM in the Shipment Guide.

**1.6. Freight:** Means all the products, objects, merchandise, articles, goods, containers, haulers and/or railroad equipment transported by virtue of the Bill of Lading, which are declared by the User in the Service Request, and documented by KCSM in the Shipment Guide.

**1.7. Law of Tracks:** Means the General Communication Tracks Law (*Ley de Vías Generales de Comunicación*).

**1.8. Point of Destination:** Means the point or location appointed by the User in the Service request and documented by KCSM in the Shipment Guide, finishing the rendering of the Service whether in public tracks, auxiliary tracks, spurs or installation of the Consignee or third parties or the Point of Exchange with another railroad in which KCSM must deliver the Freight, ceasing in this moment its liability regarding the Services.

**1.9. Point of Origin:** Means the point or location appointed by the User in the Service Request and documented by KCSM in the Shipment Guide, initiating the rendering of the Service whether in public tracks, auxiliary tracks, spurs or installation of the Shipper or third parties or the Point of Exchange with another railroad in which the User must deliver the Freight to KCSM.

**1.10. Railroad Equipment or Cars:** Means the hauling units destined to the rendering of the Service.

**1.11. Railroad Regulation:** Means the Railroad Service Regulation (*Reglamento del Servicio Ferroviario*).

**1.12. Rate of Service:** Means the consideration that the User must pay KCSM for the rendering of the Services.

**1.13. Rate of Various Services:** Means the rate that the User must pay to KCSM for the rendering of the Various Services contained in the Manual of Rules of Application of the Various Services, which is duly registered before the SCT.

**1.14. Regulatory Law:** Means the Railroad Service Regulatory Law (*Ley Reglamentaria del Servicio Ferroviario*).

**1.15. Request of Service:** Means the form previously established and authorized by KCSM, through which whether in document or electronic means, the User requests the Services and once delivered or sent to KCSM is considered an integral part of the Bill of Lading, binding the User in all its terms and conditions.

**1.16. Route:** Means the railroad tracks used for the rendering of the Service from the Point of Origin up to the Point of Destination.

**1.17. SCT:** Means the Ministry of Communications and Transportation (*Secretaría de Comunicaciones y Transportes*).

**1.18. Service:** Means the freight railroad transportation public service provided by KCSM in terms of the provisions of the Regulatory Law, the Railroad Regulation, the Mexican Official Norms and other applicable provisions.

**1.19. Shipment Guide:** Means the form issued by KCSM electronically by which KCSM documents the rendering of the Service and in which KCSM includes the information provided by the User through the Service Request, which is considered an integral part of the Bill of Lading, binding the User to all its terms and conditions.

**1.20. Shipper:** Means the person from whom KCSM receives the Freight for transportation.

**1.21. Specifications:** Means the expressions and descriptions in regards to quality, nature, value, conditions, state of conservation, weight, volume, marks, external signs of the packages and other characteristics of the Freight, declared by the User in the Service Request and documented by KCSM in the Shipment Guide.

**1.22. TUCE:** Means the Sole Rate of Freight and Express that KCSM has registered before the SCT.

**1.23. User:** Means the individual or legal entity contracting the rendering of the Service including without limitation, the Shipper, Consignee, owner of the freight, custom agent and in general any person other than KCSM, that sends, loads, unloads or receives the Freight or has any liability regarding the Freight or that is responsible of performing any obligation derived from the Bill of Lading including the payment of the Rate.

**1.24. Various Services:** Means the services related to the Service provided by KCSM in terms of the Bill of Lading and this Agreement, which may be derived from a request by the User or generated by virtue of the breach of its part in the reception or delivery of the Freight or the Railroad Equipment, indicating without limitation the following: (i) Hauling; (ii) Rights of Floor; (iii) Lease of Locomotives; (iv) Change of Destination and/or Consignee; (v) Loading and Unloading; (vi) Comparison, Inspection and Verification of Freight; (vii) Transfer; (viii) Applicable Charges to Equipment in Multimodal Service; (ix) Charges per Delay and Semihaulings per Day and per Unit; and (x) Delays.

**2. PURPOSE.** Subject to the terms and conditions of the Bill of Lading and in compliance with the regulations in effect, KCSM will provide the User through payment of the relevant Service Rates, the Services from the Point of Origin up to Point of Destination regarding the Freight requested by the User and the Route specified in the Service Request.

**3. QUOTE; SERVICE REQUEST; SHIPMENT GUIDE.**

**3.1. QUOTE.-** The User must request KCSM a quote of the Rate of Service and, if any, of the Various Services Rate to which effect it must indicate at least the specifications of the Freight, the Points of Origin and Destination, the Volume of the Freight, the Various Services required as well as the type of Railroad Equipment the User deems necessary for the rendering of the Service. The User may request that quote referred in this Section through (i) request through e-mail to the sales area of KCSM or through the Client Service Centre; or (ii) request through telephone or fax to the Client Service Centre of KCSM telephone number 01-800-8496145.

Once KCSM receives the quote request, it will confirm to the User the availability of the Railroad Equipment and, if any, assign the Service Rate and/or Various Services Rate in question and will send it to the User for acceptance, together with the User code and password, by which the User may access the site [www.kcsouthern.com](http://www.kcsouthern.com) in order to fill and send the relevant Service Request.

KCSM will consider accepted the Service Rate and/or Various Services Rate at the time the User fills and sends the Service Request to KCSM through Internet or fax or e-mail to the Client Service Centre of KCSM, in which the User must make an express reference to the Service Rate and/or the Various Services Rate assigned previously by KCSM. At any time KCSM may change the Service Rate and/or Various Services Rate prior written notification made in such terms by KCSM to the User.

**3.2. Filling the Service Request.-** In the Service Request the User must present and record at least: (i) its name or company name; (ii) its domicile, telephone number, fax number and e-mail for effects of notification; (iii) its Federal Taxpayers Registry; (iv) the name or corporate name, domicile, telephone number, fax number, e-mail and Taxpayers Federal Registry of the Shipper and the Consignee and, if any, other Users; (v) the Point of Origin; (vi) the Point of Destination; (vii) the Specifications of the Freight; (viii) the date requested to begin the Services; and, (ix) if any, the appointment of the Users responsible for the payment of the Services Rate, the Various Services Rate or any other charges.

The User recognizes and accepts that the reception by KCSM of the Service Request is considered for all legal purposes as the expressed consent of the User to be bound by the terms and conditions established in the Bill of Lading, including the payment of the relevant Service Rate and Various Services Rate. The use of optical or electronic telecommunication means including fax, e-mail and the Internet site of KCSM for the filling, sending and reception of the Service Request, constitute the means of perfection of the rights and obligations contained in the Bill of Lading pursuant to the provisions established in Article 80 of the Commerce Code and therefore, will produce all legal effects as provided by Article 1803, 1811 and other applicable of the Federal Civil Code.

In case that due to negligence or fault of the User the transportation cannot be performed, the Parties agree that the User must pay KCSM half the Services Rate and Various Services, as the case may be, agreed upon by the Parties, pursuant to Article 591 Section I of the Commerce Code. Similarly, in case of negligence or fault of the User the transportation cannot be performed and KCSM had destined a Railroad Equipment for the exclusive purpose of providing the Service and/or the Various Services, the User must pay KCSM the total Service Rate and/or Various Service Rate, as the case may be, agreed upon by the Parties, pursuant to the provisions established in Section II of Article 591 of the previously mentioned Commerce Code.

**3.3. Representations Included in the Service Request.-** The User will be responsible of the exactness of the representations included in the Service Request and must deliver KCSM the documentation and information necessary for the transportation of the Freight, informing KCSM the special movements required such as over dimension freights, excess weight freights or speed restriction freights in their movement. In case the information and/or documentation provided by the User is incorrect or incomplete and as a consequence KCSM incurs in accidents or in additional operational or administrative works, the User and/or its representative must pay KCSM the charges, costs and expenses generated by such accidents, administrative or operational works not attributable to KCSM, including the charges per Various Services without prejudice of KCSM's right to claim to the User the payment of damages and losses incurred, if any.

**3.4 Customs Documentation.-** The User must accompany and deliver KCSM together with the Service Request all the customs documentation required for the import, export and transit of the Freight, specifying the destination, weight, numbers of seals placed in the units and contained in the Freight subject to transportation and, if any, the special instructions for handling, in the understanding that the User will be responsible at all times of paying KCSM all the damages and losses caused as well as the costs and expenses incurred as a consequence of the imposing of fiscal or custom penalties derived from the breach of the User, its representatives or third parties acting under its orders (for example custom agents), of the fiscal and customs provisions in relation, among others, to the requirements of importation and exportation of the Freight. Likewise, in case the customs authorities order KCSM the detention of the Railroad Equipment of the User per causes not attributable to KCSM, said circumstance will generate a charge of the User of the payment of the relevant Various Services, for all the time in which the Railroad Equipment is detained and until its total release. In such sense it will be the liability of the User to perform the relevant proceedings before the custom authorities in order to obtain the release of the Railroad Equipment and KCSM shall help the User in anything it requires for such purpose.

**3.5. Shipment Guide.-** Once the Service Request has been received from the User, in the terms of the foregoing Sections, KCSM will proceed to electronically generate the Shipment Guide through which KCSM documents the rendering of the Service in question, which will include the information provided by the User through the Service Request. The Shipment Guide will be available to the User for consultation in the Internet page [www.kcsouthern.com](http://www.kcsouthern.com).

**3.6. Rate Discount Reduction System.-** The discount that regarding the TUCE is included in the Service Rate, will be monthly modified depending on the variation of the diesel price. In such sense the reduction of discount regarding TUCE, will be reflected proportionally as a percentage of increase over the Service Rate in effect, pursuant to the guidelines of KCSM.

**3.7. Other Agreements.-** KCSM and the User may agree in separate contracts or agreements duly executed by their legal representatives, special conditions or other conditions for the rendering of the Services including the Service Rates in which case the terms and conditions of this Agreement will only apply in a supplementary manner for all that not provided for in such contract or agreement.

**4. FREIGHT.** The Freight of the User to be transported by KCSM will be that described in the Service Request. The User undertakes to deliver KCSM the Freight pursuant to the Specifications declared in the Service Request, in the understanding that the User will responsible for the truthfulness and accuracy of the specifications, as well as any other information declared in the Service Request.

Except as otherwise agreed upon, the following goods can not be subject of Freight and KCSM will be under no liability for the loss, damage or theft of same:

- Coins, currencies, valuable documents of any type, metals or precious stones or articles manufactured over same.

- Rare or precious articles of an extraordinary value.
- Articles that may cause damages to the Railroad Equipment.
- Goods which possession, marketing or transportation is prohibited by the current legislation or are of an uncertain origin.
- Acids in glass bottles usually surrounded by a protecting cover ("Damajuana" or "Cántaro").
- Live animals.
- Articles that require some type of protection (for example cloth tops, special shelves, ties, packages, covers, security guards).
- Damaged food.
- Explosives without the express permit from the competent authorities.
- Explosive mixtures or devices containing a chlorate and ammonium salts, including substituted ammonium salts or quaternary or an acid substance including weak base salts and strong acid.
- Damaged containers or containers spilling their content when containing explosives.
- Unstable, deteriorated or spoiled propulsion material.
- Nitroglicerine.
- Fulminants, that are not made of mercury in capsules.
- Damaged explosives.
- Wet dynamite.
- Explosive substances with such reactivity that may spontaneously react.
- Diethyl glycol dinitrate, or any other liquid explosive not specifically approved by the competent authorities.
- Explosives specifically prohibited by the Mexican regulations for the transportation of materials and hazardous residues.
- Explosives not performing the criteria of acceptance specified by the Mexican legislation for the transportation of materials and hazardous residues.
- Explosive articles with independent means of initiation or ignition installed unless approved by the National Defense Ministry.
- Fresh Meat.
- Perishable products such as, without limitation, fresh fruit and vegetables.
- Loaded fire arms.
- Firework articles combining a detonator and explosive.
- Firework articles containing yellow or white phosphor.
- Miniature torpedoes with an exterior dimension exceeding maximum 23 mm (0.906 inches), or containing a mixture of potassium chlorate, black antimony (antimony sulphur) and sulphur, if the weight of the explosive material exceeds 0.26 g (0.01 ounce).
- Radioactive Materials.
- Infectious-biological residues.
- Hazardous Materials and residues that fail to comply with the special conditions specified in Clause 12 of this Agreement.
- Polychlorinated Biphenyl (Transformer Oils).
- Equipment or machinery with oil.
- Chemical precursors and essential chemicals without the express permit from the competent authorities.
- Organochlorides, DDT, chlorofluorocarbons, dioxins, terephthalates, asbestos, PCCB's y PCNB's.

**5. POINTS OF ORIGIN, POINTS OF DESTINATION AND ROUTES.** KCSM will transport the Freight from the Points of Origin to the Points of Destination indicated in the Service Request through the Routes equally indicated in such Request.

KCSM may accept requests of change of Points of Destination with the relevant change of Consignee only at the express written request from the User, when the relevant request is timely delivered to KCSM, in relation with the physical location of the Railroad Equipment at the time of making the request of change of the relevant Points of Destination.

The foregoing as long as such change does not affect the rendering of the Services and the User accepts in writing to pay the Various Services Rate generated by such change.

Likewise, in case of affecting the continuity of the Service or the general tracks communication, KCSM in no case will be bound to provide the Services by other Routes than those requested by the User. In this case KCSM undertakes no commitment whatsoever over the times of delivery of the Freight.

## **6. RAILROAD EQUIPMENT.**

**6.1. Conditions of the Railroad Equipment.-** The Railroad Equipment will be provided by KCSM, unless the Service Request establishes it will be provided by the User. The Railroad Equipment must comply with the physical and mechanical conditions established by the Mexican legislation.

When KCSM fails to use for the rendering of the Service its own Railroad Equipment, including foreign Railroad Equipment, the User will pay KCSM the *Car Hire* charges indicated to that effect in the Service Request. Similarly KCSM will not be bound to condition the Railroad Equipment to provide the mechanical protection service against heat or cold weather or any other type of protection unless provided otherwise in the Bill of Lading, and therefore unless otherwise agreed upon, KCSM will not undertake any liability whatsoever for loss or damage suffered by the Freight derived from the lack of such protection services.

Likewise, KCSM will not be bound to use special Railroad Equipment, unless requested by the User and the User pays the relevant cost of the use of such special Railroad Equipment.

Prior to the rendering of the Services, the User must inspect the characteristics of the Railroad Equipment assigned for the rendering of the Service. In the event that pursuant to the industry standards such Railroad Equipment fails to perform the characteristics required for the transportation of the Freight, the User may reject the Railroad Equipment assigned without any cost. In case KCSM does not receive a written notification of the rejection in a period of 24 (twenty four) hours as of the time of receiving the Railroad Equipment of KCSM, the Railroad Equipment will be considered accepted by the User and adequate for the Freight. Likewise, the User will be responsible for handling and caring of the Railroad Equipment when it is within its facilities, in the understanding that the User must return KCSM such Railroad Equipment clean, and in the same physical and mechanical conditions in which it was received.

**6.2. Railroad Equipment provided by the User.-** In case the User delivers KCSM the Freight in Railroad Equipments of the own User, such Railroad Equipments will be subject to the policies and regulations KCSM and must comply with the conditions, characteristics and physical and mechanical specifications that are adequate for their hauling, pursuant to the provisions established by the Mexican legislation and other applicable provisions.

The maintenance and repair of the Railroad Equipment provided by the User will be to the account and charge of the User and therefore the User will be responsible for the mechanical conditions of the Equipment as well as of the damages that may be caused by such reason, and will be responsible of the damages that may be caused to the Freight, to KCSM or third parties caused by undue conditions of the Railroad Equipment provided by the User. KCSM may at any time reject the transportation of the Freight in the Railroad Equipment provided by the User if at the consideration of KCSM such equipment fails to perform the legal and operational applicable provisions both national and foreign.

When the Railroad Equipment is provided by the User, KCSM will be released of any liability or payment obligation of Car Hire.

**6.3. Weight of the Railroad Equipment.-** The weight of Freight of each Railroad Equipment will be described in the Service Request, which must be subject to the minimum and maximum weight of Freight established by KCSM for each type of Equipment, which the User represents to know and shall respect at all times. In the event the User loads the Railroad Equipment with a weight higher than indicated to KCSM in the Service Request, it must pay to KCSM the difference between the weight agreed upon and the weight actually transported, multiplying for such purposes such difference by the unit price of the Service Rate per ton, which is obtained by prorate of the Service Rate between the weight of the Car indicated in the Service Request. The foregoing without prejudice of the right of KCSM to reject the transportation of the Freight if it exceeds the maximum weight permitted for such Railroad Equipment, as well as the obligation of the User to indemnify KCSM for the damages and losses caused by reason of the over Freight of the Railroad Equipment as well as the obligation of the User to pay KCSM the administrative and operational costs generated, if any (for example, cut of car, delays).

## **7. PACKAGES, PACKINGS, LOADING AND UNLOADING**

### **7.1. Packages and Packing.**

7.1.1. Loading, unloading, packaging, blocking, bracing, all material handling and all load securement systems involving the freight will be for the account of and at the risk of the User or the parties designated by the User and will not be a part of any of the Services and therefore KCSM is released from any liability or obligation derived from such operations. The User may perform the loading and unloading of the Freight within the Free Period referred to in Clause 9.2 of this Agreement.

7.1.2. All loading, blocking, bracing and packaging must comply with the applicable Mexican Railway Service Regulations, Mexican Commerce Code, Association of American Railroads Open Top, Enclosed Car Loading Rules, Pamphlets or General Information Series Publications, Mexican Official Norms, as well as any other KCSM specifications as may be applicable from time to time. Any modification to those rules must have the written approval of KCSM Damage Prevention Services prior to shipment.

7.1.3. When hazardous material, hazardous waste or dangerous material is shipped, the loading, blocking and bracing must comply with all Mexico Regulatory Laws and United States Bureau of Explosives pamphlet SC and any other Mexican or US federal agency regulations governing shipments of such materials. Packaging for shipments of such materials must comply with United States Bureau of Explosives 6000 series Provisions.

7.1.4. In the event of a load shift when it is determined by KCSM that there was insufficient or improper blocking and bracing, the shipper shall be responsible for all expenses resulting from such load shift including but not limited to repair or replacement of damaged equipment, expenses incurred in adjusting or transferring cargo, loss of or damage to cargo, charges, administrative fees, civil fines, storage and demurrage. All such expenses identified are due and payable before subject railcars will be released by rail KCSM.

7.1.5. The shipper agrees to indemnify KCSM against any and all claims, lawsuits or other demands made against KCSM as a result of a load shift when it is determined by KCSM that there was insufficient or improper blocking and bracing.

7.1.6. It is the sole responsibility of the shipper to apply appropriate and adequate tamper indicative, barrier seal security devices necessary to protect the cargo while in transit. KCSM does not apply seals or security devices except in the case of a breach of shipment integrity while in transit. KCSM does not in all cases inspect shipments for seal integrity nor the adequacy of seals or security devices. In the event that a seal or security device is broken or missing, the absence or breach of a seal will not create a presumption of contamination or theft without actual physical evidence. As a condition precedent to recovery for loss of, or damage to goods caused by a breach of shipment integrity while

in transit, the shipper is responsible for the documentation of the application of tamper indicative barrier seal type and identification numbers at origin and seal number(s) and type must be included on any claim presented for such losses. KCSM is not responsible for loss or shortages of any kind without proof that shipper applied appropriate and adequate seal security devices.

**7.2. Repairs in Transit.** In case that due to security reasons of the Freight or the Railroad Equipment, the packages and the packings require transit repairs, KCSM may perform such repairs directly or through third parties without the need to notify previously the User. The expenses incurred due to such repairs will at all times be borne by the User.

**7.3. Bulk Freight.** Under the exclusive liability of the User, KCSM may receive Freight which by its nature may be transported in bulk as long as the User is liable for the operations of loading and unloading of the Railroad Equipment.

**7.4. Inspection of the Freight.-** KCSM reserves the right to verify the truthfulness and accuracy of the Specifications declared by the User, through inspections to the Freight as deemed convenient, pursuant to the provisions of Article 591, Section V of the Commerce Code reserving equally the right to deny transportation of the Freight which inspection was not allowed or not corresponding to the specifications declared by the own User and to collect from the User the Service Rate relevant to the Freight actually transported, which Specifications were not those indicated by the User in the Service Request.

Likewise, in case KCSM deems the Freight does not correspond to the Specifications or considers that the transportation is jeopardized, it may refuse to provide the Services without any liability. In case the User rejects the inspection of the Freight, KCSM will be free from any liability and not bound to provide the Service.

The foregoing obligation is regardless of the authorizations of the competent authorities to inspect the Freight at any time during the transportation in any point of the Route, including the Points of Origin and Destination.

Likewise, the User may pursuant to the Rules of Application of the Various Service Rate request KCSM the revision of the Freight in which case the User will be liable for the relevant costs pursuant to the Various Service Rate in effect of KCSM.

**7.5. Falseness or inaccuracy of Representations.-** Pursuant to Article 187 of the Railroad Regulation, the damages and losses caused by omission, inaccuracy or falseness in the Representations regarding the Specifications of the Freight, will be the exclusive liability of the User, including without limitation any damages and losses caused to the Freight whether by self or third parties, to the environment, the Railroad Equipment and the Freight of KCSM or third parties.

**7.6. Unloading of Merchandise.-** The Consignee must unload the Freight at the Point of Destination. Upon concluding the unloading, the User must withdraw from the Railroad Equipment all the material of packaging, packing or binding, as well as any remainings or residues of the Freight. Likewise, it must verify that all the doors, caps, hatches and mechanisms of unloading doors of such Equipments are duly closed and secured and that the Railroad Equipments are delivered clean. Failure to do so, KCSM may charge the User all the costs and expenses derived from the foregoing. Once the unloading has been concluded, the Consignee undertakes to send KCSM through fax or e-mail a notice of release of Railroad Equipment and such notice will serve to determine the time used by the Consignee in unloading the Freight.

## **8. DELIVERY AND RECEPTION.**

**8.1. Delivery.-** The User must deliver KCSM the Freight in terms of Article 588 of the Commerce Code, in the understanding that KCSM will be bound to care and keep the Freight under its liability, pursuant to the provisions of the Law and the Regulations when the Freight is delivered to KCSM in the Point of Origin and on the date indicated pursuant to the Service Request. For the purposes of this Agreement, KCSM considers the Freight received when physically located in its power on board of the Railroad Equipment and having been documented with the relevant Bill of Lading.

**8.2. Reception.-** Once the User receives the Railroad Equipment in the Point of Destination all liability of KCSM will cease per losses, missing parts, damages or harm to the Freight as well as any other liability. For the purpose of this Agreement, Freight shall be deemed delivered by KCSM to the User and received by same at the time KCSM positions the Railroad Equipment on the destination tracks established in the Service Request. KCSM must deliver the Freight to the Consignee in the same conditions in which it received it, except normal wear and tear by passage of time, the transportation of the normal handling of the Freight or any other damage to the Freight in terms of the provisions of this Agreement.

### **8.3. Comparison of the Freight.**

8.3.1. KCSM has the right to inspect, weigh or reject shipments at origin or anywhere enroute including destination for non-compliance with the provisions contained in any applicable rule herein.

8.3.2. The User must notify KCSM of any loss or damage within one (1) business day of the shipments being actually placed at destination and allow KCSM or its agent the opportunity to observe the unloading and to inspect the cargo. KCSM reserves the right to inspect damaged cargo and to accept or waive requests for confronta.

8.3.3. Failure of KCSM to inspect damaged cargo or in the event that KCSM waives its right to confronta for whatever reason, will not relieve the burden of the claiming party to establish that cargo was received in a damaged condition or lesser quantity nor will such failure constitute an admission of liability by KCSM. KCSM's waiver of its right to inspection / confronta will not diminish or harm User's ability to assert its claim against KCSM.

8.3.4. In the case that the comparison or inspection of freight is requested by the User with the only intention of verifying the physical state of the Freight transported without there being any exterior damage in the Railroad Equipment or in the seals place on same, the User will be obligated to pay KCSM for all costs and expenses generated by such comparison or inspection of the Freight.

**8.4. Rejection of the Freight.-** Shipper and/or consignee must mitigate damages by receiving the damaged cargo unless it is totally worthless and is without salvage value. Shipper and / or consignee may not abandon damaged or partially damaged shipments to the rail KCSM when the damaged shipment retains any value.

**8.5. Sale of Freight.-** After 5 (five) calendar days as of the date of arrival of the Freight to the Point of Destination, KCSM may place the unclaimed Freight at the availability of the competent authorities for its sale in terms of the provisions of Articles 603 of the Commerce Code. Regarding the foregoing, a minute will be prepared evidencing the authorization of the competent authority of the product of the sale and other relevant facts related thereto. In case once the sale is performed the owner of the Freight or its representative appear, the provisions of Articles 604 of the Commerce Code will apply.

**8.6. Sale of Perishable Products.-** Regarding perishable products, KCSM may sell the Freight directly without the need of any authorization, once 5 (five) calendar days have passed from the date of arrival of the Freight to the Point of Destination and the Freight has not been claimed. Through the

execution of the Bill of Lading, the User expressly authorizes KCSM to perform the sale of perishable products in terms of this Clause expressly waiving any claim, suit or indemnification against KCSM and releasing KCSM from any liability derived from such sale. From such sale, a minute will be prepared evidencing the product of the sale and the relevant facts related thereto.

**8.7. Product of the Sale.-** In the cases referred in Items 8.5 y 8.6 above, the product of the sale of the Freight will be applied to the payment of the Services and other Various Services as well as for the payment of any other liability derived from the Bill of Lading. The remaining, if any, will be at the availability of the owner of the merchandise prior evidence of such circumstance.

When the product of the sale of the Freight is not sufficient to cover the Service Rate, the Various Service Rate and other considerations in favor of KCSM, the User responsible of payment as mentioned in the Service Request will be bound to pay KCSM within the 3 (three) following business days to the date when the relevant payment request is received, any difference in favor of KCSM that was not covered with the product of the sale of the Freight.

The User accepts and recognizes that KCSM will not incur in any liability by not selling or delaying the sale of the Freight in the hypothesis indicated in items 8.5 y 8.6 above. In such cases the User will continue being liable for all the charges of storage, delay, right of floor and other Various Services rendered.

## **9 VARIOUS SERVICES.**

**9.1. Charges per Various Services.-** KCSM reserves at all times the right to collect additional considerations to the Service Rate per concept of Various Services, applying the Various Services Rate in effect, which the User, if any, represents to know and commits to pay the amounts for such Various Services in terms of Section 10 of this Agreement.

Any other service not included in the Service Rate or in the Various Services Rate must be governed by the provisions established in the regulations, policies and provisions of KCSM and the User will be bound to pay the additional rate pursuant to the policies and guidelines of KCSM.

**9.2. Charges per delays.-** The User will have an ordinary free period to perform the maneuvers of loading or unloading of the Freight, 24 (twenty four) hours (hereinafter, the "Free Period"). The Free Period for loading or unloading will begin as of 12:00 hours of the same day if they are located at that time or previously or as of 24:00 hours if they have been placed after 12:00 hours. The User will notify KCSM when concluding the maneuvers of loading of the Freight and ready for transportation or when upon concluding the unloading maneuvers from the Railroad Equipment and ready to be released to KCSM. If the loading or unloading of certain Railroad Equipment is not concluded within the Free Period and/or the User omits to send KCSM the "Car Release Format" available in the internet page of KCSM, the User must pay KCSM the relevant delay which will be collected per each period of 24:00 hours or fraction, computed as of the conclusion of the Free Period pursuant to the rates established for this concept in the Various Service Rate.

**9.3. Mediation.-** The considerations generated for the rendering of the Various Services in which KCSM acts as mediator (for example, changes of destination, etcetera) must be liquidated immediately in the Point of Origin or, if any, in the new Point of Destination.

## **10. PAYMENTS, INVOICING AND DELINQUENT INTEREST.**

**10.1. Form of Payment.-** Except if a commercial credit or other payment conditions have been agreed upon in writing with the User, the User must pay the Service Rate previously and in advance of the date when the Service is performed, through deposit or transfer to the bank accounts KCSM indicated as follows or to any others indicated for such purposes by KCSM and notify to the User in writing.

Payments in Mexican Currency:

Bank: BBVA Bancomer  
Beneficiary: Kansas City Southern de México, S. de R.L. de C.V.  
Currency: Mexican Pesos  
CLABE: 012180004491347781  
Account: 0449134778  
Location: México D.F

Payments in American Dollars:

Bank: Bank of America  
Beneficiary: Kansas City Southern de México, S. de R.L. de C.V.  
Currency: United States Dollars  
Account: 62908 26870  
ABA: 121 000 358  
Location: Concorde California, USA

**10.2. Invoicing.-** Once the Service has started, KCSM will send the User through electronic means (for example, Internet or email) for acceptance and payment the relevant electronic invoice (digitalized fiscal document) of the Service, containing a description of the rates applicable to such Service.

The clarifications or complaints of the User for the invoicing of the Service must be presented to KCSM in a term of 3 (three) calendar days computed as of the date when the User has received from KCSM the relevant invoice, in the understanding that in case of failure to do so such invoice will be deemed accepted.

Under no circumstance or reason, the User may without the prior and written consent of KCSM discount from the relevant payment for the rendering of the Service, those charges that for any reason or cause KCSM has in favor of the User. The lack of payment of the Service by the User as well as of the additional Various Services will give rise to the immediate suspension of the Service by KCSM without prejudice to its right to claim outstanding payments before the relevant legal courts.

**10.3. Delinquent Interests.-** The lack of timely payment of the Services or the Various Services will cause delinquent interest over unpaid balances for all the time of the delay which will be calculated as established:

Rates and Mexican Pesos: Regarding rates agreed upon in Mexican Pesos the delinquent interest will be calculated resulting of multiplying the amount due considering the number of past days according to each customer's credit days times a daily rate of 0.066% (24% annual) this will apply until the full payment is received.

Rates in US Dollars: Regarding rates agreed upon in Dollars, Legal Currency of the United States of America, the delinquent interest will be calculated resulting of multiplying the amount due considering the number of past days according to each customer's credit days times a daily rate of 0.05% (18% annual) this will apply until the full payment is received.

In case of partial payments by the User, the amounts delivered to the account of the debt will be applied first over the delinquent interest and after over the principal.

**10.4. Taxes. -** All the fiscal contributions (federal, states or municipal) caused or generated by or due to the rendering of the Service and the additional Various Services will be paid by each one of the Parties as corresponds them pursuant to the applicable Fiscal Laws.

## **11. LIABILITY PER LOSSES, EMBEZZELMENTS, REDUCTIONS AND AVERAGES.**

**11.1. General Liabilities.-** KCSM will be liable for the losses, damages and harm caused to the Freight as of the time of receiving the Freight in the Point of Origin until delivered to the Consignee in the Point of Destination, in the terms established in the Service Request, the Shipment Guide, this Agreement, the Regulatory Law and the Railroad Regulation. The liability for KCSM will be limited and, if any, extinguished pursuant to the Regulatory Law, the Railroad Regulation or the Commerce Code.

Regarding the foregoing, KCSM represents to have the necessary insurance to guarantee the risks attributable to KCSM derived from the rendering of the Service in terms of the provisions of Article 53 of the Regulatory Law and 188 of the Railroad Regulation.

**11.2. Limits of Liability.-** Under no circumstance will KCSM liability exceed the actual amount of physical loss or damage sustained to the cargo plus any costs incurred through efforts to mitigate such loss or damage. KCSM will be released from all liability for loss, damage or delay without limitation when the loss or damage is the consequence of any of the following causes:

- (i) An Act of God or *Force Majeure* event.
- (ii) An Act of the Public Authority.
- (iii) An act of a public enemy.
- (iv) Acts of civil disobedience including but not limited to armed assaults, riots, civil disorder and strikes.
- (v) The inherent quality or characteristics of the product shipped.
- (vi) Natural shrinkage.
- (vii) An act or default of the shipper, owner or receiver.
- (viii) Shipments stopped and held in transit at the request of the shipper, owner or receiver of the goods.
- (ix) Improper loading or packaging.
- (x) Use of inadequate or improper rail equipment; equipment that is not suitable for the product shipped.
- (xi) Causes not attributable directly or indirectly to KCSM.
- (xii) All claims filed will be subject to a deductible of 5% of the amount filed in the case of claims for shortage of material and / or 1% of the amount filed in the case of claims for damages to the goods. In any event the minimum deductible will be \$250.00 USD.
- (xiii) Any of the causes indicated in Article 51 of Mexican Railroad Service Regulations.

11.2.1. KCSM is only responsible for loss of or damages to freight that occurs while the freight is in the specific care and custody of KCSM. Where the freight is transported on carriers other than KCSM on through billing and the specific location of loss or damage to the freight cannot be determined, KCSM will only be liable for its kilometric pro-rata portion of any amounts lawfully due on claims for loss or damage to freight.

11.2.2. KCSM will not be responsible for special or consequential damages, indirect or punitive damages arising from loss, damage, suspected contamination or delay to cargo. KCSM will not be responsible for attorney fees or interest.

11.2.3. KCSM will not be responsible for any damages, direct or indirect that result from an interruption of rail service or other delay nor does KCSM guarantee rail service on any scheduled time frame.

11.2.4. KCSM will not be responsible for any losses attributable to fluctuation in the market value of the cargo.

11.2.5. In the event that an act or omission of any party involved in the transportation process (shipper, KCSM, and receiver) is not the sole cause of the claimed loss or damage but contributes to such loss or damage, each party will be liable for only that portion of the loss or damage caused by its negligence.

11.2.6. Shipper shall bear the responsibility to inspect and accept or reject any equipment provided for loading. In the event the shipper elects to load any equipment KCSM will not be liable for loss or damage caused by defective equipment.

11.2.7. KCSM is not responsible for temperature, corrosion or humidity related loss or damage.

11.2.8. KCSM will not be responsible for losses or shortages of any kind without proof that shipper applied seal security devices approved by KCSM. The absence or breach of a seal or security device will not create a presumption of contamination or theft without actual physical evidence.

**11.3. Freight Involved in Accidents.-** In case the Freight is involved in accidents the Consignee is bound to receive the merchandise or objects that are in good state, leaving with KCSM only those which damage is justifiably subject of claim. The reception by the Consignee of merchandise and damaged goods without prior agreement with KCSM will release KCSM of all liability.

**11.4. Value Declared.-** Except if other provisions have been agreed upon in writing by the Parties, when the Shipper fails to declare the value of the Freight and does not pay the additional premium established in the third paragraph of this Section 11.4, the liability of KCSM for loss of or damage to the Freight will be limited by the terms of Article 52 of Mexican Regulatory Railroad Service Law to the current 15 (fifteen) days minimum general salary in the Federal District per metric ton or the proportional amount pertaining to the specific weight of the loss or damage to the Freight.

When the Shipper declares the value of the Freight and pays the additional premium established in the third paragraph of this Section 11.4, the liability of KCSM for loss of or damage to the Freight will be limited to the value declared by the Shipper and applying the relevant deductible pursuant to Article 52 of Mexican Regulatory Railroad Service Law.

The additional premium for declaring a higher value will be three tenths of one percent (0.3%) of the amount of value declared. This additional premium shall be invoiced as a separate charge and is not included as a part of any freight charges.

**11.5. Own insurance.-** When the customer insures the freight itself, by its own means or through an insurance company, KCSM will only be liable to the subrogated party for any loss or damage in accordance with the terms and limitations of Article 52 of the Railroad Service Regulatory Law.

## **11.6. Claim Filing Requirements and Procedures.**

11.6.1. Under the terms of Article 186 of the Railroad Service Regulation, in the case of the total or partial loss of the freight, the claim must be filed in writing, via telefax or by electronic mail within a maximum of 180 calendar days from the date the corresponding consignee is notified of the loss. All such written or electronic communication of claims shall comply with the minimum requirements contained herein. Claims may only be submitted by the beneficial owner of the cargo or a party to the transportation contract covering the subject shipment.

11.6.2. All claims must provide the following information:

- (i) A demand for payment in a specific amount.
- (ii) Information identifying the KCSM shipment including the railcar initials and number, shipper and receiver identification, shipping date and commodity.
- (iii) Origin records as to the condition and quantity of the cargo at the time the shipment was given to the origin rail KCSM. If shortage is involved proof of origin seals applied must be furnished.
- (iv) Destination records as to the condition and quantity of the cargo at the time it was received from KCSM. If shortage is involved the destination record of seals must be furnished.
- (v) Explanation and Verification (proof of the value) of the amount claimed.
- (vi) Evidence of the disposition of the cargo.
- (vii) Proof that the shipment was loaded in compliance with Section 7.1 of this agreement.
- (viii) The customer must present the proof of payment for hauling in order to commence the claims process.
- (ix) KCSM will pay the customer the amount of the damages or shortages after the customer has confirmed the acceptance of the figure that KCSM presents as the Settlement Offer and issued the corresponding invoice. The invoice issued to KCSM to confirm acceptance of the amount offered and to cover the indemnification will not itemize the VAT (*IVA*), in accordance with the terms of Article 1 of the Value Added Tax Law.

11.6.3. KCSM reserves the right to summarily deny any and all claims submitted that do not contain all or part of the aforementioned documentation.

11.6.4. All loss and Damage Claims filed against KCSM must be filed with:

Freight Claims  
Kansas City Southern de Mexico  
Manual L. Barragan Nte. #4850  
64620 Monterrey, Nuevo Leon  
Mexico

Telefax Number: 8305-7831  
Toll Free Telefax Number 1-812-9512-7831

Email address: freightclaim@kcsouthern.com.mx

**11.7. Traffics with Railroad Exchange.-** For the traffics that are exchanged with other national railroads or other means of national transportation as well as for the traffics originated in Mexico with a destination in the United States of America or Canada and vice versa when documented through one or more Bill of Ladings in which are included local traffic in Mexico or international traffic in the United States of America and/or Canada as the case may be, KCSM will only be liable for damages or losses of the Freight a long as: (i) the damage or loss occurs in Mexico and under the possession of KCSM; (ii) the damage or loss is duly evidenced without existing any fact or circumstance pursuant to the Mexican legislation or the Bill of Lading that entails a cause of release or exclusion of liability of KCSM.

**12. SHIPMENT OF MATERIAL AND HAZARDOUS RESIDUES SUBJECT TO SPONTANEOUS COMBUSTION, EXPLOSIVES, FLAMMABLE MATERIALS AND CORROSIVES.-** Under the exclusive liability of the User regarding the risks of damages or loss of the Freight, damages caused to the Freight or the Freight of third parties, including KCSM and damages to the environment, KCSM will receive all types of merchandise only when complying with the provisions of the Regulation for the Land Transportation of Hazardous Materials and Residues and other provisions and Mexican Official Norms applicable as long as the Freight performs the standards of identification that are indicated as follows:

**12.1. Identification.-** The identification of the merchandise in which the Freight is evidenced must adjust to the classification referred to in Chapter 1 of the Regulation for the Land Transportation of Hazardous Materials and Residues, as well as the norms containing the lists of these substances and hazardous residues more commonly transported pursuant to its classification, division of risk, secondary risk, the number assigned by United Nations, as well as the special provisions to which the transfer and method of sealing and packaging must be subject, pursuant to the provisions established in Article 17 of such Regulation.

**12.2. Obligations Prior to the Services.-** Prior to the rendering of the Services, the User must perform the obligations referred in Article 114 of the Regulation for the Land Transportation of Hazardous Materials and Residues which it expressly represents to know. KCSM may refuse to provide the Services without any liability in case of breach of the User of such provisions.

**12.3. Unloading.-** In the operation of unloading the Consignee must perform the provision of Article 115 of the Regulation for Land Transportation of Hazardous Material and Residues which it represents it knows.

**12.4. Indemnification. -** Any contingency or accident derived from the transportation of hazardous materials and/or residues not attributable to KCSM must be attended directly by the User within the 24 (twenty four) hours following the notification of the event by KCSM, in the understanding that in case of failure to do so such contingency or accident may be attended by personnel contracted by KCSM and the User must pay all the costs originated including the payment of fines that are imposed by any authority against KCSM, or the User for theses contingencies or damages. Similarly, the User must keep KCSM safe and harmless from damages and losses that such contingency or accidents caused and shall indemnify it in a maximum period of 30 (thirty) calendar days counted as of the date of requirement of payment of the indemnification in question without the need of such requirement being of a judicial nature.

The delay in performing the payment of the indemnification by the User will generate a delinquent interest to its charge over the amount of the indemnification claimed equal to the delinquent interest established in item 10.3 of this Agreement.

### **13. GENERAL PROVISIONS.**

**13.1. Termination.** - In case of breach of any of the obligations of the User derived from the Bill of Lading, including any payment obligation, KCSM may choose either to demand the strict performance or its termination, without the need of any judicial decree whatsoever, by simply notifying the User in writing.

In case of termination of the Bill of Lading, the User entitles KCSM without prejudice of any other right or action that may correspond it, to unload the Freight where located and without any authority intervention and as of now releases KCSM of any liability of a mercantile, civil, criminal nature or any other that may proceed against KCSM for the exercise of the authority referred in this point.

**13.2. Acts of God or Force Majeure.**- KCSM will not be liable for losses, damages, missing parts or harm suffered by the Freight or any other breach of the obligations to its charge included in the Bill of Lading, due to an act of God or Force Majeure, which include without limitation lightning, hurricanes, earthquakes, land sliding, violence, war, insurrections, derailing, obstructions to tracks, acts of authority, fires, floods, acts of terrorism, strikes, demonstrations or any other circumstance beyond its control and not attributable to KCSM. Likewise, KCSM will be released of all liability in case the User fails to inspect the Railroad Equipment assigned prior to be loaded, and in such case no claim or lawsuit filed for such concepts shall proceed.

**13.3. Assignment and Subcontracting.**- This Agreement is not negotiable and therefore the rights and obligations derived from same may not be assigned to any person without the prior and written consent of KCSM. Notwithstanding the foregoing, KCSM may subcontract the Services and Various Services without the need to notify the User.

**13.4. Confidentiality.**- The Parties recognize that the Bill of Lading, as well as the correspondence and communications arising from same constitute commercial information of a strictly confidential nature (hereinafter, the "Confidential Information"). The User and KCSM expressly are bound to keep in the strictest confidentiality each and every term and condition established in the Confidential Information and may not disclose such Confidential Information in their own benefit or the benefit of third Parties without the written authorization of the other Party.

**13.5. Severability.**- If any provision of this Agreement is invalid or non executable it will be deemed not contained herein but without altering the validity of the other provisions which will be interpreted in such form to obtain the scope that most resembles the original intention of the Parties when executing this document.

**13.6. Waiver.**- No delay in the exercise of the rights contained in this Agreement, or the omission to enforce them must be interpreted as a waiver of such right. The implicit or tacit waiver of a right or action in a particular situation will not operate as a waiver of such right or action in any other circumstance.

**13.7. Language.**- This Agreement is available in English and Spanish Language. Notwithstanding the foregoing, should there be any conflicts between the two versions; the Spanish version shall prevail over the English version.

**13.8. Clause Titles.**- The titles of the Clauses that appear in this Agreement are exclusively to facilitate their reading and handling and are not deemed to define, limit or describe their content, and therefore they do not transcend their content nor must be taken into consideration for interpretation purposes.

**13.9. Applicable Legislation and Jurisdiction.**- The Parties expressly submit to the Mexican Federal Laws including the Regulatory Law, the Railroad Regulation, Title X of the Commerce Code and other applicable provisions for anything not provided in the Bill of Lading.

In case of any dispute arising in relation with the rendering of the Services or derived from the interpretation of the Bill of Lading, the Parties expressly submit to the jurisdiction of the competent federal courts based in Mexico City, Federal District, waiving any other jurisdiction that may correspond to them whether by virtue of the Points of Origin or Destination, whether in the national territory or abroad, their current or future domiciles or any other cause.