

Dedicated Freight Corridor Corporation of India Limited

Draft Agreement between

Dedicated Freight Corridor Corporation of India Limited

And

[insert]
Licensee

for

**Allotment of Sole Rights for Operation of Roll On - Roll Off (RO-RO) Service
Between New Palanpur and New Rewari Section over WDFC**

(This document is in draft format)

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AGREEMENT

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DRAFT LICENSE AGREEMENT FOR RO-RO SERVICE

This Agreement bearing number **HQ/OPBD/BD(PROC)/2/2020/RO-RO/REJN-PNUN** for operation of RO-RO Service over New Palanpur to New Rewari section of WDFC on DFCCIL network (the "**Agreement**" made on this the *[insert]* day of *[insert month]*, *[insert year]*).

BY AND BETWEEN

1. Dedicated Freight Corridor Corporation of India Limited (hereafter referred to as '**DFCCIL**'), a Special Purpose Vehicle, wholly owned by the Ministry of Railways (MOR) and a company incorporated under the provisions of the Companies Act, Companies Act, 1956 as modified by The Companies Act, 2013 under the Companies Act, having its Corporate office at 5th Floor, Supreme Court Metro Station Building Complex, New Delhi – 110001, India, represented through its **Managing Director**, (hereinafter referred to as "**DFCCIL**" an expression which shall, unless repugnant to the context, be deemed to include its successors and assigns) of the one part;
and
2. *[insert Name of Licensee]*, a company incorporated under the Companies Act, 2013, having its registered office at *[insert Address of the Licensee]*/citizen of India] (hereinafter referred to as the "**Licensee**", which expression shall, unless repugnant to the context, be deemed to include its successors and permitted assigns) of the other part.
3. (Where a subsidiary Company is the Applicant), "A.B. & Co. Ltd." a company incorporated in India under the Companies Act, 2013 and having its registered office at *(insert address of subsidiary company)*" (in the case of a holding company incorporated elsewhere than in India add:) "and its principal office in India at *(insert address of subsidiary company in India)*" (hereinafter referred to as the "**Licensee**", which expression shall, unless repugnant to the context, be deemed to include its successors and permitted assigns) of the other part.
4. (Where the Applicant is a joint Venture), "A.B. (Insert full name) of *(Insert address and occupation)* and C.D. *(insert full name)* of *(Insert address and occupation)* and E.F.G.H. etc. *(insert full name)* of *(Insert address and occupation)* being the other members of the said joint venture (hereinafter referred to as the "**Licensee**", which expression shall, unless repugnant to the context, be deemed to include its successors and permitted assigns) of the other part.

WHEREAS

Licensee is desirous of having Sole Right License to operate Roll On Roll Off (RO-RO) Service Between New Palanpur station and New Rewari station of the DFCCIL as shown in the plan bearing drawing No. 01/WDFC/Palanpur-Rewari (Annexure - A) hereto annexed.

AND WHEREAS

The said License is subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the respective covenants and agreements set forth in this Agreement, the sufficiency and adequacy of which is hereby acknowledged and accepted as legally binding by the Parties (DFCCIL and Licensee as the case/ context may be), the Parties hereby, agree as follows:

Article 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires, the following words and expressions have the meaning and shall be interpreted as specified, namely –

“Agreement” means this License Agreement entered into between Dedicated Freight Corridor Corporation of India Ltd. and the Licensee along with its Annexures as amended from time to time;

“Act” means ‘The Railways Act 1989’.

“Applicable Law” means all Laws, Bye Laws, Statutes, Rules, regulations, Orders, ordinances, guidelines, Codes, Notices, directions, Judgments, decrees or other Requirements or Official directives and /or any Statutory or Legally constituted Authority, in the Republic of India;

"Applicable Permits" means all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the performance of this agreement;

"Break -down" means a system failure leading to temporary cessation of traffic operations for a period exceeding an hour ;

"Commercial and Operating rules" means the prevailing rules and their amendments issued from time to time as per the Commercial and Operating Manual, Tariffs, Schedule, Code and Instruction issued by DFCCIL or Railway Board.

"Change in Law" means the occurrence of any of the following after the date hereof

- (a) The enactment of any new Indian law enacted/passed by Union or State legislature;
- (b) Repeal, modification or re-enactment of any existing Indian law enacted/passed by Union or State legislature;
- (c) The commencement of any Indian law which has not entered into effect until the date of application; or
- (d) A change in the interpretation or application of any Indian law by a judgment of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of application.

For the avoidance of doubt, it is hereby expressly clarified that any change in any tax or tax related laws, including change in any tax rates, levy, cess shall not amount to a Change in Law for the purposes of this Agreement and the Licensee may, in its discretion, pass on the impact thereof to its customers.

"Change of Control" with respect to an Entity means any transaction or series of related transactions that result in (i) any other Entity acquiring or taking Control of that Entity; or (ii) the Entities(s) who were in Control of that Entity prior to such transaction or transactions no longer having such Control in that Entity following such transaction or transactions;

"Control" shall mean holding, directly or indirectly (whether in India or abroad) more than 50% of the voting stock or other voting interest of any Entity or the ability to control the

composition of a majority of its Board of Directors and the terms **"Controlling"** and **"Controlled"** shall be construed accordingly;

"DFCCIL" means **Dedicated Freight Corridor Corporation of India Limited**

"DFCR" means **Dedicated Freight Corridor Railway**

"Dispute Resolution" shall have the meaning ascribed to the term in Article 17 hereunder;

"Departmental charges" means the charges leviable by the Dedicated Freight Corridor Corporation of India Ltd.

"Emergency" means an emergency declared by the President of India under Article 352 and Article 360 of the Constitution of India or a direction by the GOI affecting the normal movement of traffic in case of declared or undeclared war, military exercise, drought, epidemic, earthquake, cyclone and any other disaster or situation of like nature;

"Encumbrance" means any mortgage, right of way, pledge, equitable interest, prior assignment, conditional sales contract, hypothecation, right of others, security interest, title retention agreement, voting trust agreement, interest, option, lien, charge, easement, or other similar condition, commitment, restriction or limitation of any nature whatsoever, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership. The word **"Encumber"** shall be construed accordingly;

"Entity" or "Person" means any person, body corporate, trust, partnership firm or other association of persons/individuals whether registered or not;

"Financing Documents" means the documents executed by the Licensee with the Lenders including all amendments or modifications thereto for meeting all or any part of the capital costs of establishing a User facilities (including Rest Room, terminal equipments/machineries, other facilitation infrastructure etc);

"Financing Event of Default" means occurrence of a material breach of the terms and conditions of the Financing Documents or a continuous default in Debt Service by the Licensee for a minimum period of 3 (three) months;

"Force Majeure" shall mean events as described in Article 14 of this agreement.

"Good Industry Practice" means the practices, methods, techniques, designs, standards skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the **Licensee** or DFCCIL, as the case may be, in accordance with this Agreement, Applicable Laws and Applicable Permits in a reliable, safe, economical and efficient manner;

"GOI" means the Government of India;

"Goods Tariff" means a Ministry of Railways notification containing rules and regulations and Tariff charged by Indian Railway (here by DFCCIL on behalf of Indian Railway) from the rail customers / Licensee for haulage of goods and containers;

"Governmental Instrumentality" or **"Government Authority"** means the GOI and any state or local government in India and any political subdivision thereof;

"Lenders" mean the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Licensee under any of the Financing Documents and who hold first charge on *pari passu* basis on the assets, rights,

title and interests of the Licensee;

"Lenders' Representative" means the Person or Entity duly authorised by the Lenders to act for and on behalf of the Lenders with regard to matters arising out of or in relation to this Agreement, and includes its successors, assigns and substitutes;

"Legal Representative" means any person who is competent to give the Dedicated Freight Corridor Corporation of India Ltd. a valid discharge in respect of any money or property which may be payable or deliverable to Licensee 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 the certificated guardian of a minor's property, the committee of a lunatic, the assignee or receiver of an insolvent estate, the liquidator of a Company, a receiver and any person legally appointed to represent the estate of Licensee.

"Logistics Service Provider" means a company engaged in business of providing any one or more services, which include rail/road/sea/air transportation, air cargo, cargo consolidation, warehousing, Inland Container depot, cold chain services, port terminal services, Third Party logistics or Fourth party logistics.

"Material Adverse Effect" means any act or event which materially affects the ability of either Party to perform any of their respective obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

"MOR" means Ministry of Railways.

"DFC Railway system" includes all land, railway lines, works buildings, engines, rolling stock and other movable or immovable property now or at any time hereafter forming part of or pertaining to the DFC Railway system as now or hereafter constituted and all engines and rolling stock (whether belonging to the DFC Railway system or not) passing over such system.

"Railway Administration" means the Dedicated Freight Corridor Corporation of India Ltd acting through the Managing Director for the time being of Dedicated Freight Corridor Corporation of India Ltd. and any officer of the DFCCIL authorized by any such Managing Director to deal with any matters with which these presents are concerned.

"Railway Receipt (RR)" means the receipt issued by DFCCIL on acceptance of goods and which entitles the consignee to take delivery of the goods at the Rail Terminal at which the train terminates;

"Rail Head" means a serving railway station of DFCCIL or any other zonal railway;

"Substitution Agreement" shall mean the agreement to be entered into between Dedicated Freight Corridor Corporation of India Limited, Licensee and the Lenders;

"WPI" means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month;

"Year" shall mean a period of 12 consecutive months;

Abbreviation's Description

COD	Commencement of Commercial Operation Date
DFC	Dedicated Freight Corridor
DFCCIL	Dedicated Freight Corridor Corporation of India Limited
DPR	Detailed Project Report
EMPLOYER	Implementing Agency that signs the Contract with the Licensee
ESP	Engineering Scale Plan
FOIS	Freight Operations Information System
FLAT RAKE	BRNA or other flat wagons suitably modified for RO-RO Rake operation
GOI	Government of India
IPA	In Principle Approval
IR	Indian Railways
JV	Joint Venture
LICENSEE	Legally established eligible entity which is awarded the Works and which signs the Contract with the DFCCIL
LOA	Letter of Award/ Letter of Acceptance
MONTH	Calendar Month
MOR	Ministry of Railways
NOC	No Objection Certificate
OHE	Overhead Equipment
RFP	Request for Proposal

RO-RO	Roll On Roll Off
S&T	Signalling and Telecommunication
SEZ	Special economic zone
SIP	Signalling & Interlocking Plan
SOD	Schedule of Dimension
TMS	Terminal Management System of FOIS
TRIP	Single trip in either direction (Either New Palanpur to New Rewari or New Rewari to New Palanpur)
WDFC	Western Dedicated Freight Corridor

1.2. Interpretations

In this Agreement, unless the context otherwise requires,

- (a) References to any legislation or any provision thereof, shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) Reference to a "person" and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (c) The table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (d) The words "include" and "including" are to be construed without limitation and shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases;
- (e) References to "construction" include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and "construct" shall be construed accordingly;
- (f) Any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (g) Any reference to day shall mean a reference to a calendar day as per the Gregorian Calendar;

- (h) References to a "business day" shall be construed as a reference to a day (other than a Sunday) on which banks in India are generally open for business;
- (i) Any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (j) Any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates: provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (k) The words importing singular shall include plural and vice versa;
- (l) References to any gender shall include the other and the neutral gender;
- (m) "lakh" means a hundred thousand (100,000) and "crore" means ten million (10,000,000);
- (n) References to the "winding-up", "dissolution", "insolvency", or "reorganisation" of a person or entity shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction applicable to such person or entity is incorporated or any jurisdiction in which such person or entity carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- (o) Any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub- parts shall not operate so as to increase liabilities or obligations of the DFCCIL hereunder or pursuant hereto in any manner whatsoever;
- (p) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party in this behalf and not otherwise;
- (q) Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (r) references to Recitals, Articles, Clauses, Sub-clauses or sub-parts in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and sub-parts of or to this Agreement;
- (s) The damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty; and
- (t) Any and all capitalised terms used but not defined, herein shall have the meaning ascribed to the term under the Railways Act, if any.

1.3. Unless expressly provided otherwise in this Agreement, any documentation required to be provided or furnished by the Licensee to the DFCCIL shall be provided free of cost and in three copies and soft copies as necessitated, and if the DFCCIL is required to return any such documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

1.4. The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

1.5. Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

1.6. Measurements and Arithmetic Conventions

All measurements calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.

1.7. Priority of Agreements and Errors/Discrepancies

The parties unambiguously agreed to the following :

1.7.1. This Agreement, and all other Agreements and documents forming part of this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof shall, in the event of any conflict between them, be in the following order:

(a) this Agreement; and

(b) all other agreements and documents forming part hereof;

i.e. this agreement shall prevail over the agreements and documents forming part hereof .

1.7.2. In case of ambiguities or discrepancies within this Agreement, the following shall apply:

(a) between two or more Articles of this Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail over those in other Articles; and

(b) between any value written in numerals and that in words, the latter shall prevail.

1.7.3 In case of any discrepancy or ambiguity observed anywhere in this document, or related documents thereof, the relevant agreement provisions shall prevail.

Article 2

REPRESENTATION AND WARRANTIES OF THE PARTIES

2.1. Representations and Warranties by the Licensee

2.1.1. The Licensee hereby represents and warrants to, and for the benefit of Dedicated Freight Corridor Corporation of India Limited that as on the date hereof:

- a) It (Licensee) is an Indian company either Private Company or Public company limited by shares validly incorporated under the laws of India or a Co-operative Society under Society Act 1912 or a JV/Consortium of such companies/Society/Subsidiary thereof, effected through an agreement and that such company/society/subsidiary as single entity or as members of JV/Consortium have been properly constituted and is in continuous existence since incorporation;
- b) It has the power and authority and has taken all actions necessary to execute and deliver validly and to exercise its rights and perform its obligations validly under this Agreement;
- c) The obligations of the Licensee under this Agreement constitute legally valid, binding and enforceable obligations against the Licensee in accordance with the terms hereof;
- d) No proceedings against the Licensee are pending or threatened, and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- e) No sums in cash or kind, have been paid or promised to, or accepted by any person or will be paid to, or accepted by, any person or on its behalf by way of fees, commission or otherwise to induce Dedicated Freight Corridor Railway to enter into this Agreement, or to keep this Agreement in continuance, except as provided for in this Agreement;
- f) It is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising hereunder including any obligation, liability or responsibility hereunder;
- g) The information furnished in the application and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement. In case any of the information, furnished by the licensee, is adjudged to be false, it may lead to the cancellation of this agreement by the DFCCIL.
- h) The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association [or those of any member of the Consortium] or any Applicable Laws or any covenant, contract, agreement,

arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;

- i) It has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Authority which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceeding that would adversely affect the performance of its obligations under this Agreement;
- j) It has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- k) The maximum number of partners in the JV/Consortium/Association shall be limited to 5 (five). One of the members of the JV shall be its lead member who shall have not less than 26% share of interest in the JV. The other members shall have no less than 10% each. All the members of JV/Consortium/Association shall be jointly & severally liable for the execution of this Agreement.
- l) [each Consortium Member] is duly organised and validly existing under the Indian laws and has requested DFCCIL to enter into this Agreement with the Licensee pursuant to the Letter of Acceptance, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement.
- m) Licensee has not withheld from Dedicated Freight Corridor Corporation of India Limited, any material information or material document, whose non-disclosure would have a material adverse effect or would have adversely affected the evaluation or acceptance of the application submitted by the Licensee; and
- n) It satisfies and shall, throughout the term, continue to satisfy any and all requirements and eligibility criteria laid down by DFCCIL in the related RFP [RFP No-HQ/OPBD/BD(PROC)/2/2020/RO-RO/REJN-PNUN dated 16-02-2021] and would continue to satisfy the applicable / relevant DFCCIL Policies.
- o) The constitution of the JV/Consortium shall not be allowed to be modified after submission of the Bid by the JV/Consortium except when modification becomes inevitable due to succession laws etc., and the reconstituted JV should still fulfill the original eligibility criteria and selection criteria of the RFP and the terms and conditions for the members of the JV/Consortium therein, based on which selection is contemplated. However, the Lead Member shall continue to be the Lead Member of the JV. Failure to observe this requirement would render the offer invalid.

- p) The Licensee is familiar with the business of RO-RO operation on DFCCIL/Indian Railway network, its future prospects, the risks involved and has conducted its own diligence and analysis of the RO-RO operation business in its present condition.

2.2. Representations and Warranties by DFCCIL (DFCCIL as Railway Administration)

DFCCIL, hereby, represents and warrants to and for the benefit of the Licensee that on the date hereof:

- a) It has the right, power and authority and has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- b) It has not intentionally withheld from the Licensee, any material information or material document, whose non-disclosure would have a material adverse effect;
- c) The obligations of DFCCIL under this Agreement will be legally valid, binding and enforceable obligations against DFCCIL in accordance with the terms hereof;
- d) There are no actions, suits or proceedings pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the default or breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform its obligations under this Agreement;
- e) It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on DFCCIL's ability to perform its obligations under this Agreement;
- f) It has complied with Applicable Laws in all material respects;
- g) Upon the Licensee paying the Fee and performing the covenants herein, it shall not at any time during the term hereof, interfere with peaceful enjoyment of the sole rights by the Licensee, in accordance with the provisions of this Agreement.
- h) Save and except the representations and warranties stated in this Agreement, the DFCCIL makes no other representation or warranties with regard to the business, financial viability of the business of RO-RO service on DFCCIL Network and no statutory or other warranties as to the business or financial viability of the operation of RO-RO service on DFCCIL Network shall be implied.

2.3. Disclosure

2.3.1. If, at any time after the date hereof, any event or circumstance comes to the attention of either Party that renders any of its above mentioned representations or warranties untrue or incorrect, then such Party shall immediately notify the other Party of the same. Provided however, such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect or adversely affect or release any obligation of either Party under this Agreement or amount to a waiver of any rights or remedies that the other Party may enjoy in relation to such breach, whether under this Agreement or otherwise;

2.3.2. No provision contained in this Article, nor elsewhere in this Agreement, shall operate so as to exclude any liability of one of the parties in respect of a fraudulent misrepresentation made by that Party to the other, or to restrict or exclude any remedy which the other party may have in respect of such misrepresentation.

Article 3

SCOPE OF AGREEMENT

3.1. Agreement

Subject to the terms and conditions contained in this Agreement, the DFCCIL hereby grants to the Licensee, throughout the duration of this agreement, a sole right to operate the RO-RO service subject to the Licensee rights and obligations contained in this agreement (hereinafter, the "**Agreement**") and the Licensee hereby understands and accepts the Agreement and further undertakes to perform services and functions in relation thereto in accordance with the terms and conditions of this Agreement.

3.2. Exclusive Agreement

The Parties hereby expressly acknowledge and agree that the aforesaid Agreement is on an exclusive basis. The DFCCIL expressly reserves the right to give to any third party, on terms and conditions no more favourable than those offered to the Licensee, a similar right by DFCCIL to permit operations of RO-RO at any other section, than at which the Licensee is solely authorised to operate the RO-RO Service, as per present agreement or at the station which is subject of this agreement after the exclusive period, subject to the Licensee rights and obligations contained in this agreement.

3.3. Period of Contract

3.3.1. The Period of the License will be **one (01) year** starting from the date after seven days from issuance of Letter of Award (LOA) or start of first commercial operation of service, whichever is earlier. . The period of Contract can be extended for further one year on satisfactory performance and no pending dues from the licensee for continuation of RO-RO service.

The Period of Contract shall be comprising a 30 Days Trial period; beginning, just after, Commencement Date [as defined in Special Condition Sub Para 6.5 of RFP] During Trial Run, Rakes will be supplied as per Indent Placed by the Licensee. During Trial Run Period, no penal provision will be applicable except in case of willful default by the licensee. DFCCIL's decision, in this regard, shall be final and binding on the Licensee The remaining Contract obligations will continue to be in operation even during the Trial period.

Article 4

SCOPE OF WORK

4.1 Background and General Information

4.1.1 Railway lines connecting the four metropolitan cities of Delhi, Mumbai, Chennai and Kolkata are termed as “Golden Quadrilateral & its Diagonal” (GQD), which comprise only 16% of route length, but carries more than 58% of total freight traffic carried over IR. In 2006, Government of India (GOI) established the Dedicated Freight Corridor Corporation of India (DFCCIL) under the Companies Act of 1956, as a Special Purpose Vehicle, wholly owned by the Ministry of Railways (MOR), with mandate to build and operate Dedicated Freight Corridors (Eastern and Western Corridors).

4.1.2 Two dedicated freight corridors are presently under construction namely Eastern Corridor (EDFC) from Sahnewal to Sonnagar, and Western Corridor (WDFC) from Dadri to Jawaharlal Nehru Port Terminals (Mumbai) with route Kms of more than 2800 kms; are at advance stage of Construction and these corridors will be partially commissioned, shortly. Target Dates of commissioning of over New Palanpur to New Rewari section is March/April 2021. On EDFC the section of New Sahnewal- New Sonnagar is planned to be further extended upto New Dankuni through PPP mode. The DFCCIL corridors will be immensely enriched rail corridors on account of heavier axle load feature, larger moving dimensions, higher speed, higher throughput capabilities and enhanced safety elements inbuilt into the system.

DFCCIL envisages to launch customized transportation products on these sections and further on new upcoming sections. One of such segments will be focused on non-conventional rail transportation products on the above new section of New Rewari- New Palanpur, which will be operated and managed by selected business partners of DFCCIL.

Pursuant to Mandate given by the Railway Board Vide Letter no- TCR/1078/2020/RO-RO/DFCCIL/3333602 dated 15-01-2021, DFCCIL proposes to operate RORO trains between New Palanpur and New Rewari. In this product segment, loaded and empty trucks can be carried on flat rail wagons provided by DFC, which will enable door to door service piggyback on fast and safe movement assured by DFC. These wagons will be modified for safe carriage of trucks in which trucks will be properly secured on the top of flat wagons. On WDFC, trucks with high payload of not more than the permissible carrying capacity of the wagon, can be easily carried on flats owing to higher and wider moving dimensions’ clearance available in the section.

4.2 Objectives for RO-RO Service :

4.2.1 The high speed Dedicated Freight Corridor enables Indian Railways to regain its market share of freight transport by creating additional capacity and guaranteeing efficient, reliable, safe and cheaper options for mobility to freight customers. Presently, the transportation cost of road transport is very high due to high cost of fuel, road tolls and wages of drivers. On the other hand DFCCIL will bring down the transportation cost of rail transport owing to higher axle load, speedier transport and long haul trains. DFCCIL can complement the road transport with its cheaper cost of transportation. With this objective, the concept of Roll On-Roll Off (RO-RO) is planned to be implemented over DFCCIL. RO-RO means carrying loaded/ empty trucks on Flat Railway Wagons. This concept will reduce the transportation time and cost for road trucks,

drastically. It will help DFCCIL to attract the new traffic of road truckers to rail. Advantage of RO-RO service will be as under :

- Providing Door to Door service to the rail customers for very long leads.
- Elimination of multiple handling
- Carriage of road trucks will reduce carbon footprints (air pollution) and noise pollution.
- Saving diesel fuel will save the country's import bill.
- Less congestion on roads, public safety, faster movement, reduction in inventory cost.
- Less wear and tear of the trucks and improved working life of the trucks.
- Proper rest to the driver and attendant and better quality time to them.

4.2.2. New Palanpur to New Rewari section of WDFC will be commissioned very shortly [Target Dates of commissioning of over New Palanpur to New Rewari section is March/April 2021]. New Palanpur will serve the traffic originated from the industrial hubs of Ahmedabad, Vadodara, Bhuj, Mundra, Kandla, Ghandhidham and Surat. On the other hand, New Rewari will serve the traffic originated from the industrial hubs of Delhi NCR, Agra, Ludhiana, Haridwar and Rudrapur.

4.2.3 **Accepted Charges for RO-RO Rake /single Trip** : DFCCIL, through this Agreement, is awarding license to the Licensee, selected through a transparent tender process, for the Sole Rights for marketing, securing (initially during transit), loading unloading of trucks on RO-RO rakes on the given circuit in which Accepted Charges for RO-RO Rake /single Trip [for the operation of one 45 Flat Wagon Rake, from New Palanpur Jn. [PNUN] to New Rewari Jn. [REJN] and New Rewari Jn. [REJN] to New Palanpur Jn. [PNUN] -WDFC Section of 636 Route Km each direction here after, also referred to as the 'Circuit'] is Rs. ----- . The Licensee's offer quoted in his aforesaid financial offer has been accepted by the DFCCIL and Licensee has been awarded the sole rights for operation of RO-RO service. No other RO-RO train will be run on the circuit by any other operator as the selected Licensee has the sole right to run RO-RO trains on the given circuit except as stipulated under Para 3.25 of the RFP. However, freight charges for the trips per rake (except on the days the rake is booked for periodic maintenance) has to be paid by the licensee once the rakes are made available. In case of non-loading, cancelling of indent or loading of Rake beyond 19(3hrs of free hrs of loading + 16 hrs) hours from the placement time at a stretch, an amount equivalent to one trip shall be paid by the licensee and the concerned indent shall be cancelled. Total freight will be taken for the actual trips.

4.3.1 **Infrastructure facilities at DFCCIL Station/ Terminal :**

The DFCCIL will complete the infrastructure development e.g. Facilities like Entry / Exit Ramps , connectivity from concerned Traffic Yard to a Motorable Road, Pedestrian Pathway along the Rail Track and Lighting in concerned Traffic Yard would be provided by the DFCCIL in addition to allocation of a dedicated Loop line for handling of RO-RO Rake.

4.3.2 **Availability of Rake :**

After placing Demand [E-Demand on 'Freight Operation Information System' (FOIS)], in terms of extant Rules & regulations, [by the Licensee] the '45 Flat wagon rake' will be made available, in terms of applicable Rules, by IR/ DFCCIL through Indian Railways. Necessary modification (in case of BRNA Wagon Rake), to make aforesaid Flat Wagon Rakes fit for

carrying trucks loaded on the wagons safely, will be done at DFC's cost. Maintenance of Rake will be carried out by IR/DFCCIL at its own cost.

Before the start of the operation of RO-RO service, the Licensee shall be under positive Obligation to place, in terms of applicable Rules & regulation, an 'E Demand' for 100 rakes (50 rakes in each direction) in the FOIS; within a period of seven days of being in receipt of the License by the DFCCIL and thereafter up to the 5th day of the each ensuing Calendar month. If indent is not placed as per the agreement, it will be considered that loading time has started and at the lapse of multiple of 16 hours or part thereof trip charge on prorata basis for the full rake of 45 flat wagons will be deducted till the time the indent is made. Since, indent is not there for supply of the rake therefore it is not required to supply the rake and the charges are punitive in nature. Non placement of demand and consequent less loading leading to lesser trips shall attract provision which would entitle the DFCCIL to make suitable deductions from the Performance Guarantee for the deficient loading of RO-RO rakes to recoup the loss of Freight Charges which would have normally accrued and paid to the DFCCIL. In this direction the number of lost rakes shall be assessed by the DFCCIL and an amount equivalent to Freight charges of the lost rake shall become due to the DFCCIL and DFCCIL after issuing a notice to the Licensee shall make deduction from the Performance Guarantee .

4.3.3 Electronic Demand Registration (e-RD) :

- i. Licensee should register, in terms of applicable Rules and Guidelines, himself for e-RD Facility for electronic demand registration (e-RD) on E-Demand module on the FOIS portal for wagon registration of rake by licensee.
- ii. Wagon Demand Registration Fees, shall be paid by licensee and same shall be forfeited by DFCCIL in event of withdrawal of indent or non-loading of rake as stipulated in Indian Railway Commercial Manual [IRCM] / Circulars issued by Railway Board.
- iii. Particulars of each consignment e.g. details of trucks, content therein, escorting driver & assistant and declaration about adherence of motor vehicle act w.r.t. trucks being transported and the conduct of drivers/ escorts, must be given in a declaration note (format as Annexure 'E') which should be presented to Sr. Executive/ Executive (OP&BD) at the station, before completion of loading.

4.3.4 Risk Rate : Traffic will be transported on owner's risk. Any liability arising due to Loss, Destruction, Damage, Deterioration and Non-Delivery of consignment will be dealt as per instructions mentioned in Indian Railway Commercial Manual [IRCM] for traffic booked on owner's risk. DFCCIL shall not be liable for any third Party Claim.

4.3.5 Freight : Freight will be charged on a prepaid basis at the rate accepted by the DFCCIL and so mentioned in the Letter of Acceptance (LOA) . Freight will be charged for actual numbers of wagons supplied. Party shall register himself for E-Payment for payment of freight through TMS module of FOIS and all terms and conditions for E-Payment shall be acceptable to him. Any kind of discount/ concession shall not be allowed to party for operation of RO-RO service.

4.3.6 Applicability of GST and other charges e.g. Insurance : All rules of Indian Railway regarding payment of GST on goods traffic shall be applicable on RO-RO tariff and GST and other charges e.g. Insurance will be payable by licensee in addition to freight over the tariff rate accepted by DFCCIL during the payment of freight.

4.3.7 Detail of Bank Account :

Freight for the RO-RO service will be booked on a prepaid basis and payment will be realised through the E-Payment System. Details of the bank account for any payment other than freight e.g. penalty for non-loading or detention to rake etc is mentioned as below.

Name of Bank -----

Bank Account Number-----

4.3.8 Stacking/ Parking in Station Premises :

At both end stations i.e. New Palanpur and New Rewari Jn., DFCCIL shall provide a functioning Ramps and related connectivity to facilitate the loading & unloading , from one end, of loaded / empty Trucks on the Flat Wagon Rake. A schematic sketch for each end Station showing the facility provided for the proposed operation of the RO-RO rakes is attached (Annexure - C & D). The information shown /provided in the aforesaid sketches is indicative only.

The stacking/Parking of Trucks in Station premises and wharfage shall be as per extant commercial rules. In case, the time limit to remove the trucks from station premises falls during the 'No Entry' period for trucks as notified by municipal authorities of adjoining towns, removal time will be extended upto two hours after completion of 'No Entry' period. Thereafter, wharfage charge will be levied on a per truck basis.

4.3.9 Loading / Unloading of Rakes by the Licensee

(i) The Licensee shall be given three hours for Loading and three hours. each, for unloading of the Trucks in/ from a 45 Flat Wagon Rake placed at end Stations REJN and PNUN.

(ii) Any delay on part of the Licensee in loading / unloading of the rake shall be logged on hourly basis and the delay shall be aggregable or carried forward in the same month. When the aggregated delay on part of the Licensee, reaches 16 hrs, the DFCCIL shall be entitled to a deduction of Freight Charges, as mentioned in the LOA, for One rake. The aggregated delay shall lapse in case the delay Magnitude does not add up to 16 hrs in a month.

The levying of demurrage charges shall be subject to net delay hours on part of the licensee and shall be worked out as under;

Each Hour of delay[Debit] in loading / Unloading on part of the licensee shall be offset by the each hour of expediting [Credit] the loading and unloading by the Licensee. An illustrative Annexure-B, may be referred , in this regard. the explanatory Notes-1,2,3 & 4, below the Annexure-B, shall be binding on the Parties”

Any delay in loading / unloading of Rake which is specifically attributable to factors which are beyond the reasonable control of a Licensee, i.e. not foreseeable, is unavoidable, and makes a Licensee's performance of its obligations impossible or so impractical as reasonably to be considered impossible under the circumstances, and such as war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, epidemic/Pandemic, as declared by Government of India, strikes, lockouts [other than the one caused by Licensee or Personnel thereof], lockouts or other industrial action confiscation or any other action by Government agencies and any untoward incident in Railway/DFCCIL operation which may cause delay in placement of rake shall not qualify as delay hours for aggregation for the levying of the aforesaid deduction.

Similarly DFCCIL shall, also, not be liable for any claims for non placement of any rake or placement of lesser number of Wagons due to unforeseeable Factors like Traffic bottlenecks, non availability of Track, Wagon requiring exigent maintenance attributable to above cited factors and Factors cited above.

4.3.10 Applicability of Commercial Rules of Indian Railways : All commercial rules/ guidelines issued by MoR/ will be applicable on DFCCIL, as pertained however, DFCCIL may supplement the rules & guidelines issued by MoR for transportation of RO-RO service. Licensee shall compulsorily opt for E-RD (Electronic Registration of Demand), E-Payment (Electronic Payment), E-TRR (Electronic Transmission of Railway Receipt) and follow the guidelines issued by Railway Board/DFCCIL in this regard.

Article 5

AGREEMENT TO CONSTRUCT INFRASTRUCTURE FACILITIES BY LICENSEE

Subject to the terms and conditions hereinafter contained, The Parties, hereby, agree that the following facilities are user amenities hence no land license fee will be charged by licensor however, water, electricity or other charges will be paid by licensee on actual consumption basis;

5.1 Licensee will provide and maintain sufficient facilities regarding toilets and washrooms for drivers and attendants at New Palanpur and New Rewari and at any other place as required and mutually agreed, at his own cost with facilitation from DFCCIL.

5.2 Licensee will be allowed to make facilities of road weighbridge, tool rooms, Storehouse, Basic Truck Repair facilities etc in the DFC's premise.

5.3 Licensee will have to tie up with a service provider for the provision of road crane, on a 30 minutes call to the station premises at New Palanpur and New Rewari.

5.4 Licensee will have to hire a truck mechanic on round the clock basis at New Palanpur and New Rewari alongwith required tools and equipment to tackle any exigency related to truck movement.

5.5 Licensee will have to develop Air filling stations at New Palanpur and New Rewari.

5.6 Under no circumstances storage of fuel or any inflammable material will be permitted in DFCCIL's premises.

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Article 6

SPECIAL CONDITIONS

6.1 The Contract shall be governed by the Indian laws and shall be subject to exclusive jurisdiction of Delhi Courts of appropriate competence.. The Agreement and the relationship between the Parties shall be governed, construed and interpreted in accordance with the Applicable Laws of India . The Applicable Laws, as defined in the RFP and in this Agreement, above, shall mean all Laws, bye Laws, Statutes, rules, regulations, orders, ordinances, codes, guidelines, notices, directions, Judgements, decrees or other requirements or Official directives and / or directives by any Statutory Authority in the Republic of India.

6.2 The language:

This Contract has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

6.3.1 The addresses for communication with DFCCIL:

General Manager (Operations),
Dedicated Freight Corridor Corporation of India Limited.
Room No. 506, 5th floor, Supreme Court Metro Station Building
Complex, New Delhi – 110 001.

6.3.2 The addresses for communication with Licensee

6.4 Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the Client will be taken or executed by the Authorized Representative of DFCCIL as under:

General Manager (Operations),
Dedicated Freight Corridor Corporation of India Limited,
Room no.506, 5th Floor, *Supreme Court* Metro Station Complex, New Delhi - 110 001 India
Phone: +91-11-23454880 Fax +91-11-23454701,
Email: vedprakash@dfcc.co.in

Authorized Representative of Licensee is as below:

6.5 Commencement of contract and commencement of commercial operations date (COD)

This agreement is signed as per clause 6.5 of RFP which stipulates as under:

- Period of contract shall be started after the lapse of seven days from issuance of Letter of Award (LOA) or start of first operation of commercial service, whichever is earlier. It will be considered as the commencement date of contract with DFCCIL w.r.t. operation of service, and

the Licensee shall submit, in terms of Article 9, the performance guarantee within 15 Days of the receipt of the LOA.

- DFCCIL will arrange BRNA or other flat wagons suitably modified for RO-RO Rake operation.

6.6 Instructions issued by IR/DFCCIL from time to time shall be applicable in case of RO-RO Service. In case of conflict/ambiguity, the provisions / conditions laid in the RFP document for the present contract shall prevail.

6.7 Currency of License:

The Period of the License will be **one (01) year** starting from the date after seven days from issuance of Letter of Award (LOA) or start of first commercial operation of service, whichever is earlier. The period of Contract can be extended for further one year on satisfactory performance and no pending dues from the licensee for continuation of RO-RO service.

The Period of Contract shall be comprising of a 30 Days Trial period; beginning, just after, Commencement Date [as defined in Special Condition Sub Para 6.5 of RFP] During Trial Run, Rakes will be supplied as per Indent Placed by the Licensee. During Trial Run Period, no penal provision will be applicable except in case of willful default by the licensee. DFCCIL's decision, in this regard, shall be final and binding on the Licensee. The remaining Contract obligations will continue to be in operation even during the Trial period.

6.8 Post Termination rights of DFCCIL: --

- (a) On termination of the Agreement, DFCCIL will be entitled to offer the rights of operating RORO on the same circuit to other operators.
- (b) In case of termination before expiry of contract, whatsoever reasons, the Performance guarantee submitted by licensee shall be forfeited in accordance with the provisions of Article 9 of this document. Infrastructure created by the Licensee at the Stations will be taken over by DFCCIL without any compensation to the licensee on termination of the agreement due to defaults on the part of the licensee.

6.9 General Obligations:

i) Communications to be in Writing: All notices, communications, reference and complaints made by the DFCCIL or Licensee inter-se concerning the works shall be in writing or through and to registered e-mail IDs only. No notice, communication, reference or complaint not in writing or through pre registered (with DFCCIL) mail, shall be recognized.

ii) Execution Correlation and Intent of Contract Documents: The contract documents shall be signed in triplicate by DFCCIL and the Licensee. The contract documents are complementary and what is called for by anyone shall be as binding as if called for by all. The intention of the documents is to include all labour and materials, equipment and transportation necessary for proper execution of work.

iii) Law Governing the Contract: The contract shall be governed by the law for the time being in force in the Republic of India which shall mean all Laws, bye Laws, Statutes, rules, regulations, orders, ordinances, codes, guidelines, notices, directions, Judgements, decrees or other requirements or Official directives and / or directives by any Statutory Authority in the Republic of India..

iv) Compliance to Regulations and Bye-Laws: The licensee shall conform to the provision of any statute relating to the works of road and rail transportation, road traffic rules/regulations, related govt taxations etc.

6.10 In general, IR circulars will be applicable in case of Indenting of wagon(s), Booking, claim, etc. Specific rules issued by IR/DFCCIL on RO-RO shall apply. Rules related to indenting of wagon(s) is given in IRCA Commercial Manual Volume –II under chapter XIV and registration of demand for wagons electronically (e-RD) through FOIS is mentioned in Rates Master Circular-RD/2019/0. Circulars issued by Railway Board regarding wagon registration, preparation of RR and electronic payment of registration fee and freight in TMS module of FOIS under the subject – “E-Registration of Demand”, “Electronic Payment” and “E-Transmission of RR” shall be applicable.

Article 7

APPLICABILITY OF DFCCIL/ IR POLICIES

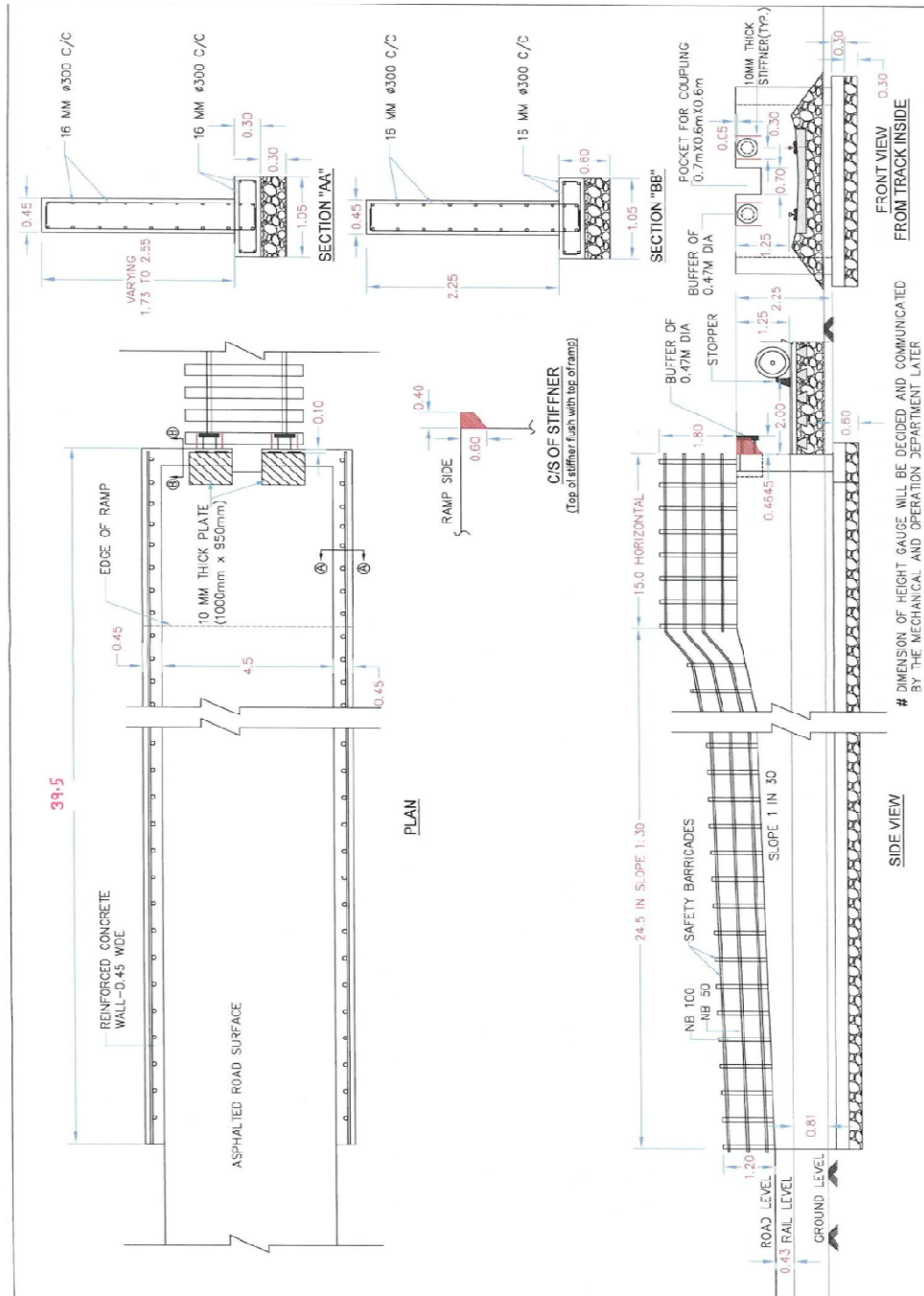
7.1 Applicability of Commercial Rules of Indian Railways : All commercial rules/ guidelines issued by MoR/ will be applicable on DFCCIL, as perttainable however, DFCCIL may supplement the rules & guidelines issued by MoR for transportation of RO-RO service. Licensee shall compulsorily opt for E-RD (Electronic Registration of Demand), E-Payment (Electronic Payment), E-TRR (Electronic Transmission of Railway Receipt) and follow the guidelines issued by Railway Board/DFCCIL in this regard.

Article 8

FACILITIES TO BE DEVELOPED BY DFCCIL

8.1 Drawing showing Ramp Design

Drawing showing the design of ramp to be constructed by DFCCIL is as under :



Article 9

PERFORMANCE GUARANTEE

9.1 Performance Guarantee :

Within fifteen days from the receipt of the LOA, the successful Bidder shall deposit **Performance Guarantee** of an amount equivalent to accepted Freight charges [as stated in the LOA] for 50 trips before starting the first RO-RO train in the form of electronic transfer/ Demand Draft/ E-BG/BG of equivalent amount, issued by any scheduled bank of India.

In Case of performance Guarantee being furnished by the Successful Bidder being unconditional Bank Guarantee 'BG',

(a).The aforesaid BG shall be in the name of the Bidder [i.e. in the name of the JV/Consortium/Association, submitting the Bid, as the case may be] in the form of a, for an equivalent amount as stated in the succeeding sub Para , issued by an Indian Scheduled Bank. The beneficiary of the Performance Guarantee BG shall be **Dedicated Freight Corridor Corporation of India Limited**.

(b) The Successful bidder shall submit the Performance Guarantee [PBG] as under;

(i) Performance Guarantee equivalent to accepted Freight Charge for one BG equivalent to 10 single trip freight [to be replenished, within seven days of DFCCIL encashing the BG for the lost trip , in terms & conditions of the Contract]

(ii) Performance Guarantee equivalent to accepted Freight Charges for 40 Trips.

The Performance Guarantee , prepared in a Format [**Form-8**] given in the RFP, shall be valid for a period of 30 days more than the Project Completion period/ total License Period.

If any case arises requiring forfeiture of Performance Guarantee like any outstanding due lying against the licensee e.g. against lost trips, Demurrage/ Wharfage etc. and Termination by DFCCIL, PBG shall be encashed. In such cases, requests pending for waiver of any pending charges shall also stand closed.

In case of successful completion of contract, the amount of performance guarantee shall be refunded within 30 days after withholding any amount due from licensee on account of Demurrage/ Wharfage etc. Amount so withheld will be released only after clearance of outstanding against the licensee either by way of waiver of payment/ adjustment. If no outstanding is lying at either station against the licensee, performance guarantee will be refunded after obtaining 'No Due Certificate' from both stations.

Article 10

GENERAL CONDITIONS OF CONTRACT

10.1 Period of Contract :

The Period of the License will be **one (01) year** starting from the date after seven days from issuance of Letter of Award (LOA) or start of first commercial operation of service, whichever is earlier. The period of Contract can be extended for further one year on satisfactory performance and no pending dues from the licensee for continuation of RO-RO service.

The Period of Contract shall be comprising of a 30 Days Trial period; beginning, just after, Commencement Date [as defined in Special Condition Sub Para 6.5 of RFP] During Trial Run, Rakes will be supplied as per Indent Placed by the Licensee. During Trial Run Period, no penal provision will be applicable except in case of willful default by the licensee. DFCCIL's decision, in this regard, shall be final and binding on the Licensee. The remaining Contract obligations will continue to be in operation even during the Trial period.

10.2 Number of Rakes to operate :

Two rakes consisting of 45 Flat wagons each [e.g. BRNA or other wagons suitably modified for RO-RO Rake operation] suitable for loading the trucks onboard i.e. for RO-RO operation. DFCCIL may offer additional rake(s) to the licensee (successful bidder) during the period of contract and licensee may choose to operate the service on accepted rate, terms & conditions. If the licensee doesn't agree to operate the service for additional rakes on the same terms and conditions, DFCCIL may have the right to offer the additional rakes to another party through a tendering process or DFCCIL will reserve the right to run the additional services on its own.

10.3 Minimum trips offered :

The activities of examination/ maintenance of the rake will also be required to be performed during the license period. Keeping in view the examination/ maintenance of the rake and transportation time taken, minimum trips are offered as 900 trips (450 trips for each rake).

10.4 Performance of the Contract

Performance of licensee w.r.t. guaranteed traffic

- a) will be evaluated on a monthly basis. Transit Time delay will not be taken into consideration in evaluation. The cumulative monthly excess hours of rake detention beyond free time for loading/ unloading if exceed 16 hours, then charges equivalent to one single trip will be charged. The charges for every single trip missed by licensee (ie detention of rakes on licensee's account more than 16 hrs over and above free hours} below 10 failed trips (less 160 Hrs detention of rakes on licensee's account over and above free hours) has to be cleared on or before the 5th of the next month. Licensee can deposit the money on or before 5th of the next month. If missed trips number reaches 10, and amount is not deposited by licensee then performance guarantee will be encashed and license will be terminated after following due process.

- b) Acceptance of DFCCIL's offer of additional rake(s) by the licensee to operate the service on accepted rate, terms & conditions during the period of contract and licensee may choose to operate the service on accepted rate, terms & conditions.
- c) Work related compliance of instructions and order issued from time to time.
- d) Licensee shall adopt Good Industry Practice in the performance of its obligations, as the case may be, in accordance with this Agreement, Applicable Laws and Applicable Permits in a reliable, safe, economical and efficient manner;

10.5 Availability of Rakes :

After placing Demand [E-Demand on 'Freight Operation Information System' (FOIS)], in terms of extant Rules & regulations, [by the Licensee] the '45 Flat wagon rake' will be made available, in terms of applicable Rules, by IR/ DFCCIL through Indian Railways. Necessary modification (in case of BRNA Wagon Rake), to make aforesaid Flat Wagon Rakes fit for carrying trucks loaded on the wagons safely, will be done at DFC's cost. Maintenance of Rake will be carried out by IR/DFCCIL at its own cost.

Before the start of the operation of RO-RO service, the Licensee shall be under positive Obligation to place, in terms of applicable Rules & regulation, an 'E Demand' for 100 rakes (50 rakes in each direction) in the FOIS; within a period of seven days of being in receipt of the License by the DFCCIL and thereafter up to the 5th day of the each ensuing Calendar month. If indent is not placed as per the agreement, penalty will start and at the lapse of multiple of 16 hours or part thereof trip charge on prorata basis for the full rake of 45 flat wagons till the time the indent is made and loading commenced. These punitive charges will be deducted from PG, if the party is not paying.

10.6 Electronic Demand Registration (e-RD) :

- i. Licensee should register, in terms of applicable Rules and Guidelines, himself for e-RD Facility for electronic demand registration (e-RD) on E-Demand module on the FOIS portal for wagon registration of rake by licensee.
- ii. Wagon Demand Registration Fees, shall be paid by licensee and same shall be forfeited by DFCCIL in event of withdrawal of indent or non-loading of rake as stipulated in Indian Railway Commercial Manual [IRCM] / Circulars issued by Railway Board.
- iii. Particulars of each consignment e.g. details of trucks, content therein, escorting driver & assistant and declaration about adherence of motor vehicle act w.r.t. trucks being transported and the conduct of drivers/ escorts, must be given in a declaration note (format as Annexure 'E') which should be presented to Sr. Executive/ Executive (OP&BD) at the station, before completion of loading.

10.7 Risk Rate : Traffic will be transported on owner's risk. Any liability arising due to Loss, Destruction, Damage, Deterioration and Non-Delivery of consignment will be dealt as per instructions mentioned in Indian Railway Commercial Manual [IRCM] for traffic booked on owner's risk.

10.8 Freight : Freight will be charged on a prepaid basis at the rate accepted by the DFCCIL and so mentioned in the Letter of Acceptance (LOA) . Freight will be charged for actual numbers of wagons supplied. Licensee shall register himself for E-Payment for payment of freight through TMS module of FOIS and all terms and conditions for E-Payment shall be acceptable to him. Any kind of discount/ concession shall not be allowed to Licensee for operation of RO-RO service.

10.9 Applicability of GST and other charges e.g. Insurance : All rules of Indian Railway regarding payment of GST on goods traffic shall be applicable on RO-RO tariff and GST and other charges e.g. Insurance will be payable by licensee in addition to freight over the tariff rate accepted by DFCCIL during the payment of freight.

10.10 Detail of Bank Account : Freight for the RO-RO service will be booked on prepaid basis and payment will be collected through the E-Payment System. Detail of bank account will be informed in contract agreement for any payment other than freight e.g. penalty for non-loading or detention to rake et.

10.11 Stacking/ Parking in Station Premises : At both end stations i.e. New Palanpur and New Rewari Jn., DFCCIL shall provide a functioning Ramps and related connectivity to facilitate the loading & unloading , from one end, of loaded / empty Trucks on the Flat Wagon Rake. A schematic sketch for each end Station showing the facility provided for the proposed operation of the RO-RO rakes is attached as Annexure 'C' & 'D' for the intimation of the Prospective Bidders. The information shown /provided in the aforesaid sketches is indicative only.

The Stacking / Parking of trucks in Station premises and Wharfage shall be as per extant Commercial Rules. In case, the time limit to remove the trucks from station premises falls during the 'No Entry' period for trucks as notified by municipal authorities of adjoining towns, removal time will be extended upto two hours after completion of 'No Entry' period. Thereafter, wharfage charge will be levied on a per truck basis.

10.12 Loading / Unloading of Rakes by the Licensee

(i) The licensee shall be given three hours for Loading and three hours for unloading of the Trucks in/ from a 45 Flat Wagon Rake placed at end Stations REJN and PNUN.

(ii) Any delay on part of the Licensee in loading / unloading of the rake shall be logged on hourly basis and the delay shall be aggregable or carried forward in the same month. When the aggregated delay on part of the Licensee, reaches 16 hrs, the DFCCIL shall be entitled to a deduction of Freight Charges, as mentioned in the LOA, for One rake. The aggregated delay shall lapse in case the delay Magnitude does not add up to 16 hrs in a month.

The levying of demurrage charges shall be subject to net delay hours on part of the licensee and shall be worked out as under;

Each Hour of delay[Debit] in loading / Unloading on part of the licensee shall be offset by the each hour of expediting [Credit] the loading and unloading by the Licensee. An illustrative Annexure-B, may be referred , in this regard. the explanatory Notes-1,2,3 & 4, below the Annexure-B, shall be binding on the Parties”

Any delay in loading / unloading of Rake which is specifically attributable to factors which are beyond the reasonable control of a Licensee, i.e. not foreseeable, is unavoidable, and makes a Licensee's performance of its obligations impossible or so impractical as reasonably to be considered impossible under the circumstances, and such as war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, epidemic/Pandemic, as declared by Government of India, strikes, lockouts [other than the one caused by Licensee or Personnel thereof], lockouts or other industrial action confiscation or any other action by Government agencies and any untoward incident in Railway/DFCCILoperation which may cause delay in placement of rake shall not qualify as delay hours for aggregation for the levying of the aforesaid deduction.

Similarly DFCCIL shall, also, not be liable for any claims for non placement of any rake or placement of lesser number of Wagons due to unforeseeable Factors like Traffic bottlenecks, non availability of Track, Signals and track defects, operational reasons, Wagon requiring exigent maintenance attributable to above cited factors and Factors cited above.

Article 11

OBLIGATIONS OF THE LICENSEE

11.1 Licensee will make intense marketing efforts to attract road traffic for movement through RO-RO service. On award of license, the Licensee will complete the infrastructure development, as mentioned below, at Originating/ Terminating station within one month from the date of award of contract (LOA).

11.2 Licensee shall strictly follow the Maximum Moving Dimensions of the section as available in Standard Schedule of Dimensions (SSoD) of DFCCIL available at website link - https://indianrailways.gov.in/railwayboard/uploads/directorate/civil_engg/pdf/DFC-SOD/SSOD_Freight_Corridor_210113.pdf

11.3 Party/Licensee will have to submit an indemnity bond, in the format, subsequently given by the DFCCIL, that he will bear the cost of any damage arising to wagons during the loading/unloading operation.

11.4 A maximum of 2 persons per truck, accompanying trucks, travel as escort from originating to termination station on payment of 2nd class fare plus insurance for the same distance over IR. This payment of fare is for the escort but it will not entitle them to travel as passengers. Necessary food arrangement will be done by the licensee.

11.5 Statutory requirements: The selected operator will obtain all necessary/statutory clearances from concerned authorities, if required.

11.6 All the safety certificates and clearances, as required, from organizations other than the DFCCIL will have to be obtained by the Licensee on their own.

11.7 In no case, gross weight of the truck (Tare weight of truck + Commodity weight) shall exceed the permissible carrying capacity of the wagon or maximum weight of the road vehicle notified by Govt. of India whichever is lesser. Licensee shall present a list of (i) vehicles [with copies of registration certificates and Insurance] being transported (ii) name of drivers/ assistant to be allowed to travel as escort and (iii) declaration about weight of loaded trucks (weighment certificate from surrounding weighbridge approved by local authorities) before completion of loading. This detail can be checked and verified by the DFCCIL authority at any time. Deviation to the list will be treated as default by the Licensee.

11.8 Demurrage:

No demurrage will be charged however the cumulative monthly excess hours of rake detention beyond free time for loading/ unloading if reaches to 16 hours, then charges equivalent to one single trip will be charged.

11.9 Wharfage:

Wharfage charges at the terminal will be calculated in accordance with the rates prescribed by DFCCIL/Railway and revised from time to time and shall be paid by the Licensee for the extra time taken for removal of trucks beyond permissible free time.

11.10 Licensee shall ensure the lashing and chaining of the trucks with wagon for safe movements of trains. Licensee will engage authorised agencies for rectifying the defects related to fixing of lashing and chaining.

11.11 Licensee will provide and maintain sufficient facilities regarding toilets and washrooms for drivers and attendants at New Palanpur and New Rewari and at any other place as required and mutually agreed, at his own cost with facilitation from DFCCIL.

11.12 Licensee will be allowed to make user facilities of road weighbridge, tool rooms, Storehouse, Basic Truck Repair facilities etc for this no land charge will be levied, however will have to pay Electricity and Water charges as incurred, if any.

11.13 Licensee will have to tie up with a service provider for the provision of road crane , on a 30 minutes call to the premises at New Palanpur and New Rewari.

11.14 Licensee will have to hire a truck mechanic round the clock at New Palanpur and New Rewari alongwith required tools and equipment to tackle any exigency related to truck movement.

11.15 Licensee will have to develop Air filling stations at New Palanpur and New Rewari.

11.16 Under no circumstances storage of fuel or any inflammable material will be permitted in DFCCIL's premises.

Article 12

OBLIGATIONS OF DEDICATED FREIGHT CORRIDOR CORPORATION OF INDIA LTD.

12.1 The DFCCIL will complete the infrastructure development e.g. Facilities like Entry / Exit Ramps , connectivity from concerned Traffic Yard to a Motorable Road, Pedestrian Pathway along the Rail Track and Lighting in concerned Traffic Yard would be provided by the DFCCIL in addition to allocation of a dedicated Loop line for handling of RO-RO Rake.

12.2 DFCCIL will facilitate the Licensee in getting required assistance from Zonal Railway and State Authorities wherever required.

12.3 Availability of Rake/Indents: Indents will be placed online using the TMS module. Rake will be allocated to the customer as per IR/DFCCIL rules in force. If DFCCIL is not able to provide a rake, no freight charges will be levied for missed trips.

Article 13

LICENSEE RESPONSIBLE FOR DAMAGE OR INJURY TO PERSON OR PROPERTY

13.1. Licensee shall be entirely responsible for all moving assets of the DFCCIL and Indian Railways during the time the same shall remain on any part during supply of rakes, loading, unloading and Movement of rakes 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 DFCCIL and Indian Railways from any cause whatsoever except sole negligence on the part of the staff of the DFCCIL and Indian Railways or act of God or war or other acts or circumstances for which Licensee is not responsible. Further, in case of a derailment, DFCCIL shall bear the cost of re-railing of engines and rolling stock except when the derailment has been caused by any obstruction caused by the Licensee owner or an act of negligence on their part and would bear the cost for repairs and damage necessitated by such derailment.

13.2. Licensee shall also indemnify the DFCCIL against any loss due to damage, injury or death caused to any DFCCIL servant while working in connection with the RO-RO service.

Article 14

FORCE MAJEURE

As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall mean an event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible under the circumstances, and subject to those requirements, includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action confiscation or any other action by Government agencies in India of any or all of Non-Political Event, Indirect Political Event and Political Event.

Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder., to the extent it affects the performance by the Party claiming the benefit of such Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party and not brought about at the instance of, the Party claiming to be affected by such events; and (ii) has Material Adverse Effect on the Affected Party, except for the payment of monies due under this Agreement or any applicable Law.

14.1. Non-Political Event

A Non-Political Event shall mean one or more of the following acts or events:

14.1.1. Act of God, epidemic or plague, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion;

14.1.2. Strikes or boycotts other than those involving the Railway Administration and the Licensee, leading to disruption of rail transit services;

14.1.3. Strikes or boycotts involving the Railway Administration if such strikes interrupt train services;

14.1.4. Train accidents/collisions for whatsoever reason so caused, leading to disruption in the movement of rail traffic;

14.1.5. Any judgment or order of any court of competent jurisdiction made against the Licensee Concessionaire in any proceedings for reasons other than (i) failure of the Licensee to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement or (iv) exercise of any of its rights under this Agreement by the Railway Administration;

14.1.6. The discovery of geological conditions, toxic contamination or archaeological remains on the site that could not reasonably have been expected to be discovered through a site inspection; or

14.1.7. Any event or circumstances of a nature analogous to any of the foregoing.

14.2. Indirect Political Event

An indirect Political Event shall mean one or more of the following acts or events:

14.2.1. An act of war or act of enemy (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;

14.2.2. Industry-wide or state-wide strikes or industrial action (other than any strikes or boycotts mentioned in Article 14.1 above);

14.2.3. Any civil commotion, boycott or political agitation, which prevents running of train services; or

14.2.4. Any event or circumstances of a nature analogous to any of the foregoing.

14.3. Political Event

A political event shall mean one or more of the following acts or events by or on account of any Government Authority pertaining to only Central Government in India:

14.3.1. Change in Law resulting in the Licensee being unable to exercise its rights under this Agreement or materially impairing the ability of the Licensee to utilize the Project Assets in the manner or for the purpose contemplated under this Agreement;

14.3.2. Expropriation or compulsory acquisition of any Project Assets or rights of the Licensee;

14.3.3. Unlawful or unauthorized or without jurisdiction, revocation of or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the Licensee to perform its respective obligations under this Agreement and the Project Agreements, provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's inability or failure to comply with any or more conditions relating to concession, maintenance or renewal of such clearance, license, authorization, no objection certificate, exemption, consent, approval or permit; or

14.3.4. Any event or circumstance of a nature analogous to any of the foregoing.

For avoidance of doubt it is hereby expressly agreed that any change in taxes, levy, cess or increase in other costs, including operating costs, shall not amount to a Force Majeure Event for the purposes of this Agreement.

14.4. Duty to Report Force Majeure Event

Upon occurrence of a Force Majeure Event, the Affected Party shall by written notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of the:

14.4.1. Nature and extent of each Force Majeure Event which is the subject of any claim for relief with evidence in support thereof;

14.4.2. Estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;

14.4.3. Measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and

14.4.4. Any other information relevant to the Affected Party's claim.

The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event not later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information and such other information as the other Party may reasonably request the Affected Party to provide.

14.5. Effect of Force Majeure Event on the License

At any time after the Commercial Operations Date, if any Force Majeure Event occurs:

14.5.1. Before the expiry of this Agreement, the Agreement Period and the dates set forth in the Agreement shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists;

14.5.2. the Parties shall bear their respective costs, losses and/or damages during the subsistence of the Force Majeure Event and neither Party shall be required to pay to the other Party any costs, losses and/or damages thereof;

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

14.6. Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a written termination notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of its intention to do so and grant at least 15 (fifteen) days time to the other Party to make a representation, and may after the expiry of 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

14.7. Exemptions from Performance of Obligations

If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be exempted from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

14.7.1 The suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;

14.7.2 The Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and

14.7.3 When the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

14.8. Change in Law

The Parties expressly agree that in the event of Change in Law, the only relief available to the parties under this Agreement shall be as set forth in this Article 14.

Article 15

Indemnity

15.1 General indemnity

15.1.1 The Licensee will indemnify, defend, save and hold harmless DFCCIL, Indian Railways and its officers, servants, agents, Government Authority and Government owned and/or controlled entities/enterprises, ("Railway Administration Indemnified Persons") against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by or on behalf of the Licensee of any of its obligations under this Agreement or any related agreement, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach of this Agreement on the part of Railway Administration Indemnified Persons.

15.1.2 Subject to the provisions of Railways Act and rules made there under, Railway Administration will indemnify, defend, save and hold harmless the Licensee against any and all suits, proceedings, actions, demands and third party claims-on account of any injury or death arising out of breach by Railway Administration of any of its obligations under this Agreement or any related agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Licensee, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Licensee and the Railway Administration shall not be liable to indemnify the Licensee for any such claims.

15.2 Indemnity by the Licensee

15.2.1 Without limiting the generality of Article 15.1.1 above, the Licensee shall fully indemnify, hold harmless and defend Railway Administration and Railway Administration Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- (a) Failure of the Licensee to comply with Applicable Laws and Applicable Permits;
- (b) Payment of taxes required to be made by the Licensee in respect of the income or other taxes of the Concessionaire's contractors, suppliers and representatives; or
- (c) Non-payment of amounts due as a result of materials or services furnished to the Licensee or any of its contractors which are payable by the Licensee or any of its contractors.

15.2.2 Without limiting the generality of the provisions of this Article 14.1.1, the Licensee shall fully indemnify, hold harmless and defend Railway Administration Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which Railway Administration Indemnified Persons may hereafter suffer, or pay by reason of

any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or

confidentiality rights with respect to any materials, information, design or process used by the Licensee or by the Concessionaire's Contractors in performing the Concessionaire's obligations hereunder. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Licensee shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the materials, information, design or process, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Licensee shall promptly make every reasonable effort to secure for Railway Administration a license, at no cost to Railway Administration, authorising continued use of the infringing work. If the Licensee is unable to secure such license within a reasonable time, the Licensee shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

15.2.3 Licensee shall ensure compliance with all relevant Central/State laws and rules as applicable such as Tax Laws, Labour Laws and Insurance etc with regard to the contract and shall be solely responsible for the same and shall keep the DFCCIL fully indemnified against the liability of any Taxes, interest, penalty etc if any arising out of any connection with the contract.

15.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article (the "**Indemnified Party**"), it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

15.4 Defense of claims

15.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 15, the Indemnifying Party shall be entitled, at its option, to assume and control in the defense of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defense.

15.4.2 The Indemnified Party shall not settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnifying Party unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

15.4.3 If the Indemnified Party has exercised its rights under this Article 15.4.1, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

15.4.4 For the avoidance of doubt, it is hereby expressly clarified that in the event the Indemnifying Party exercises its rights under Article 15.4.1, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the reasonable fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
- (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defense of such action; or
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defense of such action and shall have been so notified by the Indemnified Party; or
- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - (i) that there may be specific defenses available to it which are different from or additional to those available to the Indemnifying Party; or
 - (ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-parts (b), (c) or (d) of this Article 15.4.4 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defense of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

15.5 No consequential claims

Notwithstanding anything to the contrary contained in this Agreement, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of any special, indirect, incidental or consequential nature, including loss of profit or business arising out of or in connection with this agreement, except as expressly provided herein.

15.6 Survival on Termination

The provisions of this Article 15 shall survive termination or expiry of this Agreement.

Article 16

TERMINATION

16.1 Termination of the Agreement:

16.1.1 For non-compliance/defaults related to operation, a penalty of Rs. 25,000 per occasion will be imposed on the RORO licensee by competent authority (GM/ GGM, Operations or & GGM/GM BD).

16.1.2 Subject to the provisions in the agreement between DFCCIL and the firm, DFCCIL may terminate the Agreement with the Licensee for repetitive/major breach of the terms and conditions of the agreement, repetitive violations of the provisions of the Railways Act, 1989, commitment of unlawful act or in the event of default as regards the Contractual obligations, by giving a written Notice of Termination of 15 days to the firm to make good their default(s)/breach.

Before issuing the Termination Notice, DFCCIL will inform the firm of its intention to do so through a written “Show Cause notice”. The firm can make a representation within 15 days of receiving such a notice. After expiry of 15 days, the termination notice of 15 days will be issued in writing if no representation is received from the firm. If a representation is received as response to the “show cause notice”, the DFCCIL will decide the further course of action regarding termination notice taking all facts into consideration. Termination conditions about notice period mentioned in Article 9 regarding performance guarantee will also apply.

The firm will also have the right to terminate the agreement by giving a notice of 60 days to the DFCCIL. Any dispute arising out of the same will be resolved through the Dispute Resolution Mechanism.

Article 17

DISPUTE RESOLUTION

17.1. Amicable Settlement: The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or the interpretation thereof. Any Dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between DFCCIL and the Licensee, and so notified in writing by either Party to the other Party (the "Dispute") shall in the first instance, be attempted to be resolved amicably.

17.2. Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Contract (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 17.3.

The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Contract promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non- privileged records, information and data pertaining to any Dispute.

Railway Administration and the Licensee agree to use their best efforts for resolving all disputes arising under or in respect of this Agreement promptly equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

In case of any dispute in interpretation of the policy, the decision of DFCCIL will be final and binding.

17.3. Conciliation

In the event of any Dispute between the Parties, either Party may require such Dispute to be referred to the DFCCIL and the Chairman of the Board of Directors of the Licensee Company for an amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Article 17.2 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 17.4

17.4. Arbitration

17.4.1 Any Dispute which is not resolved through aforesaid Amicable settlement, as provided in Clause 7.3, shall be finally decided by reference to arbitration by an Arbitral tribunal appointed in accordance with Clause 7.4.2. Such arbitration shall be held in accordance with the New Delhi International Center Act 2019, or such other rules as may be mutually agreed by the Parties. The governing Law shall be Arbitration and Conciliation Act

1996[ACA] as amended vide ACA-2019 [34 of 2019]. The venue of such arbitration shall be Delhi, and the language of arbitration proceedings shall be English.

17.4.2 There shall be a Arbitral Tribunal comprised of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected and in the event of disagreement between the two arbitrators, the appointment shall be made by the Authority designated [to Appoint the Arbitrator] under New Delhi International Center Act 2019.

17.4.3 The arbitrators shall make a reasoned award (the “Award”). Any Award made in any arbitration held pursuant to this Clause shall be final and binding on the Parties as from the date it is made, and the firm and the client (DFCCIL) agree and undertake to carry out such Award without delay.

17.4.4 The Licensee and the client (DFCCIL) agree that an Award may be enforced against the firm and/or the client (DFCCIL), as the case may be, and their respective assets wherever situated.

17.4.5 Subject to above, The Parties [Employer and Licensee] agree to the Jurisdiction of appropriate Delhi Courts for the purpose all matters of dispute , arising out of this Contract and the appropriate Delhi Courts, in such Matters, shall have the exclusive jurisdiction.

17.4.6 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder

17.4.7. The place (seat) of Arbitration/court shall be New Delhi.

Article 18

MISCELLANEOUS

18.1. Governing law and jurisdiction

a) This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and applicable laws as defined in Article 6.1, subject to provisions contained in Article 17, the courts shall have jurisdiction over matters arising out of or relating to this Agreement. The Licensee shall hereby submit to the jurisdiction of the courts situated at Delhi (name of the court location) of appropriate level for the purpose of actions and proceedings arising out of the contract and the courts at ____ (Name of the court),

b) This agreement and the relationship between the party shall be governed, construed and interoperated in accordance with the applicable laws in India. Applicable laws shall mean all laws, by-laws, statutes, rules, regulations, orders, ordinances, codes, guidelines, notices, directions, judgements, decrees or other requirements or official directives and/or of statutory authority in the republic of India.

18.2. Waiver of immunity

Subject to as may otherwise be provided under the Railway Act, each party:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (other than provided by Railway Act as amended from time to time) from such proceedings shall be claimed by or on behalf of the party with respect to assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction, except present or future premises of the mission as defined in the Vienna Convention on Diplomatic Relations, Consular premises, military property or assets, premises and offices of the constitutional authorities and national heritages;
- (d) consents generally in respect of the enforcement of any judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

18.3. Waiver

18.3.1. Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:-

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

18.3.2. Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation there under nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

18.4. Exclusion of implied warranties etc.

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

18.5. Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn.

18.6. Severability

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this agreement, but this agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein.

18.7. No partnership

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, nor to impose any partnership obligation nor liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

18.8. Third Parties

This Agreement is intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

18.9. Successors and Assigns

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

18.10. Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Licensee, be given by facsimile and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Licensee may from time to time designate by notice to the DFCCIL :
[insert]
- (b) In the case of the DFCCIL, be given by facsimile and by letter delivered by hand and be addressed to the General Manager (Operations) of the Dedicated Freight Corridor Corporation of India Limited with a copy delivered to the DFCCIL's Representative or such other person as the DFCCIL may from time to time designate by notice to the Licensee;
- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered.

18.11. Agreement to Override other Agreements; Conflicts

18.11.1 This Agreement supersedes all previous agreements or arrangements between the Parties, including any memoranda of understanding entered into in respect of the contents hereof and represents the entire understanding between the Parties in relation thereto.

18.12. Consequential or Special Loss

18.12.1. The Parties hereby expressly undertake and agree that neither Party shall be liable for any incidental, indirect, special or consequential damages (including loss of profits, business or revenue) that the other Party may suffer pursuant to or under this Agreement regardless of whether such liability arises in tort, contract, breach of warranty, indemnification or otherwise.

18.13. Review of Agreement

18.13.1. The Parties hereby acknowledge that there may be infrastructural, technological and procedural changes on the DFCCIL's rail system, from time to time, resulting in changes in the DFCCIL's operational framework for movement of Licensee's Trains, which may require appropriate review of this Agreement.

18.13.2. The Parties hereby agree that in the event any such infrastructural, technological and/or procedural changes are envisaged on the DFCCIL's rail system, both the Licensee and the DFCCIL shall meet, in good faith, to review the terms and conditions of this Agreement and to agree on such changes as may be required to this Agreement so as to give effect to any such proposed infrastructural, technological and procedural changes on the DFCCIL's rail system.

18.14. Language

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

18.15. Counterparts

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.

18.16 Modification/alteration

This agreement shall not be varied, altered, modified, cancelled, changed, or in any way amended except by mutual agreement of the parties in a written instrument executed by the parties hereto, their legal representatives or their respective successors or assignees.

Article 19
COST OF EXECUTION OF AGREEMENT

All expenses in drawing up the Agreement and the cost of Stamping and registration shall be borne by Licensee.

"Money receipt obtained from the Registration Office shall be handed over to the Dedicated Freight Corridor Railway for collection of registered Agreement which shall remain in the custody of DFCR. Any charges, if levied for collection of registered Agreement, shall also be borne by Licensee".

Article 20
AGREEMENT IN FORCE FROM

The Agreement shall be deemed to have come into force on and from__

Article 21

HEAD NOTES

The head notes herein are for the convenience of reference only and shall not affect the construction of these present.

IN WITNESS WHEREOF the parties to these presents have set and subscribed their respective hands and seals hereunto on the day and year first above written Signed sealed and delivered for and on behalf of

Managing Director by _____

The _____

of the _____ DFCCIL Administration in the presence of

_____ Signed and delivered by

(1) Signature _____

_____ Name _____

_____ Occupation _____

_____ Address _____

WITNESS

(2) Signature _____

_____ Name _____

_____ Occupation _____

_____ Address _____

_____ Dated the _____ 20 _____

BETWEEN THE

Managing Director, DFCCIL AND

LICENSEE AGREEMENT

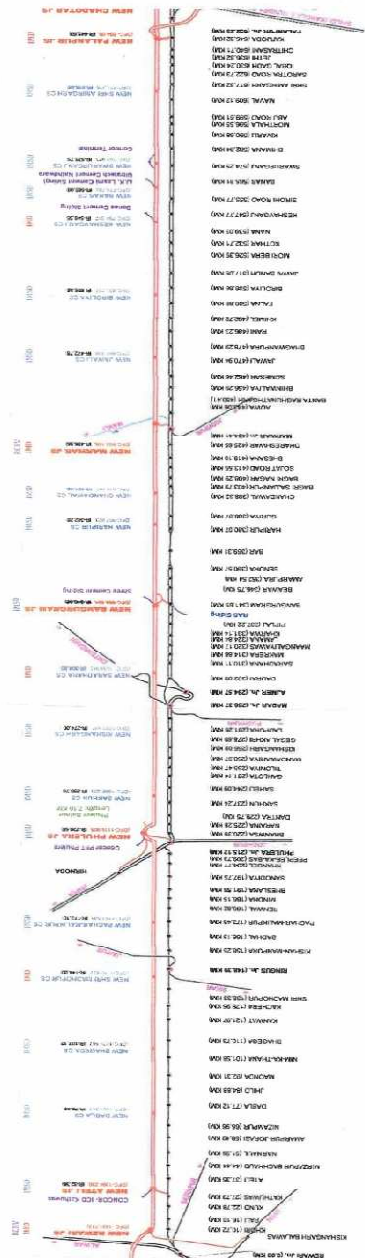
REG:

Drawing No. 01/WDFC/Palanpur-Rewari

LINE DIAGRAM OF NEW DADRI-NEW JNPT SECTION OF WESTERN
(SHOWING DETOUR, JUNCTION STATION, CROSSING ST.)

CGM AJMER
CTPO, MAJOR QUADRANT, 24/06/01

CGM JAIPUR
CTPO, NEW PRADESH, 25/06/01

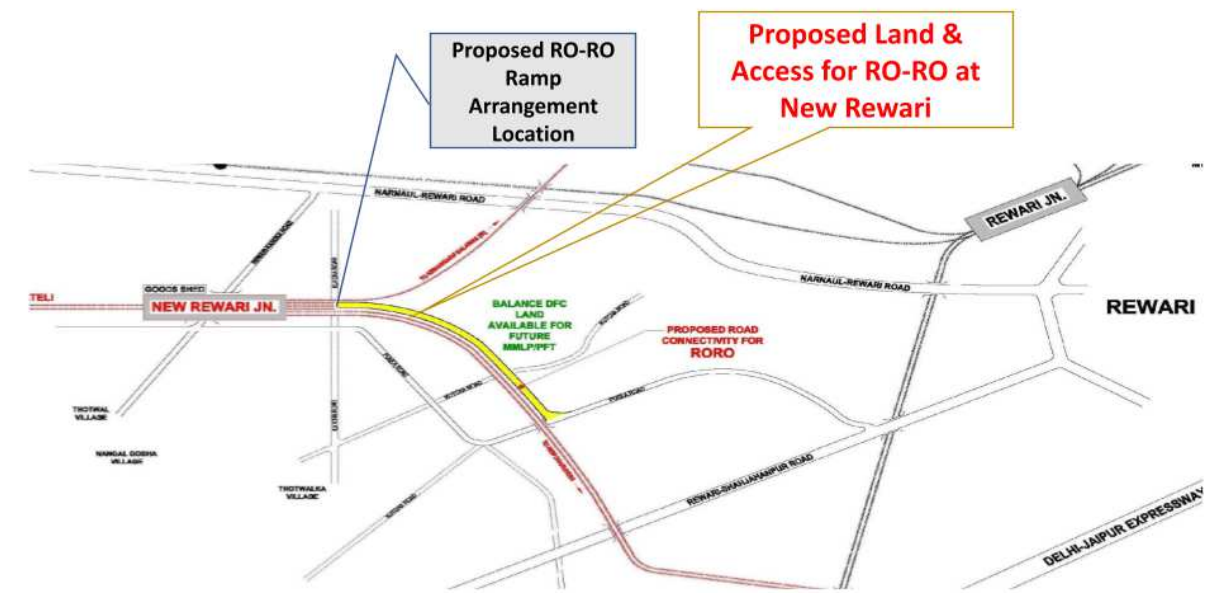


CALCULATION SHEET FOR A MONTH (FOR ILLUSTRATION PURPOSE ONLY)								
Rake 1	Loading Time	As Per Loading Time		Unloading Time	As Per Un-loading Time		Total Credit/ Debit	Progressive
		Debit	Credit		Debit	Credit		
TRIP 1	8	5	0	9	6	0	11	11
TRIP 2	9	6	0	10	7	0	13	24
TRIP 3	10	7	0	11	8	0	15	39
TRIP 4	11	8	0	12	9	0	17	56
TRIP 5	12	9	0	13	10	0	19	75
TRIP 6	10	7	0	21	18	0	25	100
TRIP 7	12	9	0	18	15	0	24	124
TRIP 8	13	10	0	15	12	0	22	146
TRIP 9	8	5	0	12	9	0	14	160
TRIP 10	9	6	0	9	6	0	12	172
TRIP 11	8	5	0	6	3	0	8	180
TRIP 12	1	0	2	3	0	0	-2	178
TRIP 13	12	9	0	1	0	2	7	185
							185	

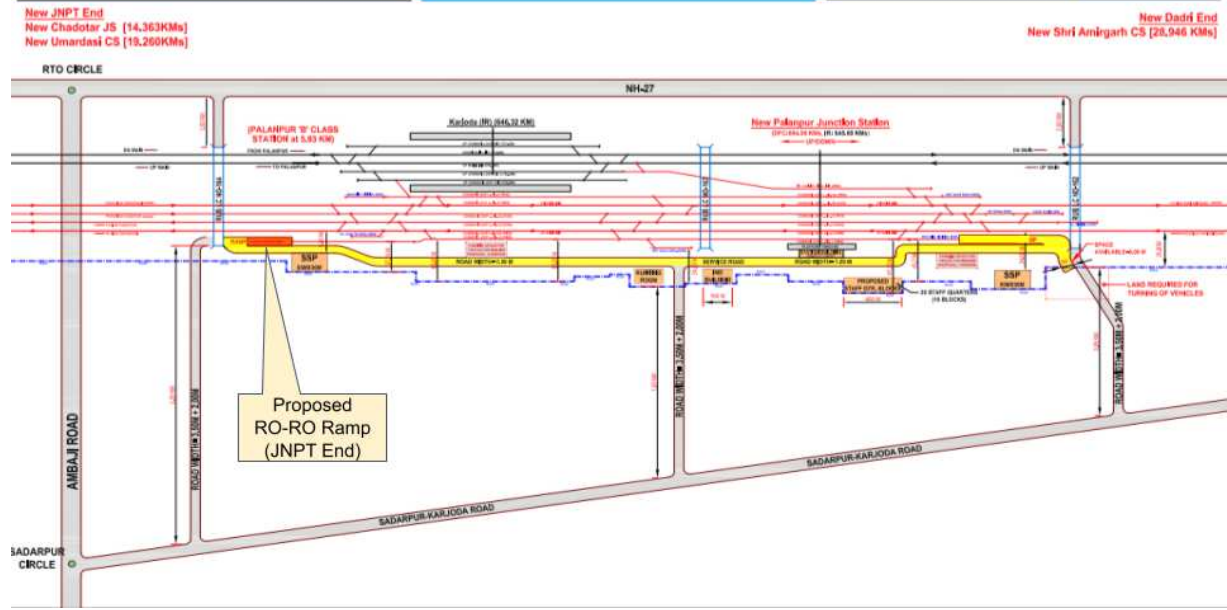
NOTE :

1. On the Day of Progressive Due reaches 160 hours : Party has to pay a cost of 10 rakes on the same day.
2. Party can pay progressive due early also than paid due hours shall be deducted from the progressive due & 160 progressive hour due shall be calculated from the last payment done.
3. All the progressive dues has to be paid on before on the last day of respective month of first banking day of next month.
4. The fraction delay of less than 16 hours will not be carried forward to the next month and will be considered as waived off.

Facilities like Entry / Exit Ramps and Road at New Rewari



Road Connectivity and Ramp at New PalanPur



Annexure - E**DECLARATION NOTE BY LICENSEE FOR RO-RO RAKE'S TRIP**

S. No.	Wagon Number	Truck Number	Loaded (commodity)/ Empty	Gross weight	Name of 1st Escorts	Name of 2nd Escort
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						
11.						
12.						
13.						
14.						
15.						
16.						
17.						
18.						
19.						
20.						
21.						
22.						
23.						
24.						
25.						
26.						
27.						
28.						
29.						
30.						
41.						
42.						
43.						
44.						
45.						

Note : I hereby declare that the above information is correct, All trucks have height of less than 5.5 mtr, all trucks have complied the prevailing motor vehicle act and the conduct of escorts will be proper during the entire period of transportation (from entering to leaving the DFCCIL's premises).

Signature of authorised representative/ staff of licensee