

Dedicated Freight Corridor Corporation of India Limited

Draft Agreement between

Dedicated Freight Corridor Corporation of India Limited

And

**[insert]
Terminal Management Company**

**for
Development of Logistic Parks/ Freight Terminals/ Parcel Terminals and their
connectivity with DFC stations through private investment**

(This document is in draft format)

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DRAFT AGREEMENT FOR PRIVATE FREIGHT TERMINAL (PFT)

This Agreement for operation of Private Freight Terminal 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 (DFCCIL)**, acting through **Managing Director**, (hereinafter referred to as "**DFCCIL** " which expression shall, unless repugnant to the context, be deemed to include its successors and assigns) of the one part;
- and
2. [insert Name of Terminal Management Company], a company incorporated under the Companies Act, 2013, having its registered office at [insert Address of the TMC]/citizen of India] (hereinafter referred to as the "**Terminal Management Company**", 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 "**Terminal Management Company**", 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 "**Terminal Management Company**", which expression shall, unless repugnant to the context, be deemed to include its successors and permitted assigns) of the other part

WHEREAS

Terminal Management Company is desirous of having a Private Freight Terminal at from thestation yard of the DFCCIL taking off from Kilometre No.....betweenstation and station of theDFCCIL as shown in red and green on the plan bearing drawing No hereto annexed for the purpose of carrying on Terminal Management Company business in Terminal Management Company premises situated at District

AND WHEREAS

the said Freight Terminal 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 intending to be legally bound hereby, 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 Terminal Management Company along with its Annexures as amended from time to time;

“Applicant” means the person named as party hereto of the other part and includes the company registered in India under the Companies Act-2013.

“Act” means the Railways Act 1989.

“Applicable Law” means all laws, including rules, directions, guidelines, regulations and notifications made thereunder and having the force of law, and judgments, decrees, injunctions, writs and orders of any court of record and/or any statutory authority in the Republic of India, as may be in force and effect in India during the subsistence of this Agreement;

"Applicable Permits" means all clearances, licences, 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;

"Brownfield Terminal" means an existing terminal which has been or planned to be redeveloped/ expanded/restructured with new investment.

"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 TMC 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" shall have the meaning ascribed to the term in Article 28 hereunder;

"Departmental charges" means the charges leviable by the Dedicated Freight Corridor Corporation of India Ltd., when maintenance is undertaken by the "DFCCIL" for outside parties, in terms of the code of the Engineering Department (As revised from time to time) of DFCCIL .

"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 TMC with the Lenders including all amendments or modifications thereto for meeting all or any part of the capital costs of establishing a Rail Terminal (including warehouses, terminal equipments/machineries, other facilitation infrastructure etc), and/or procuring locos, Wagons and/or containers and other rolling stock, from time to time;

"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 TMC for a minimum period of 3 (three) months;

"Force Majeure" shall mean events as described in Article 25 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 TMC 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 / TMC 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;

"Greenfield" PFT means a new PFT commissioned on private land, under the provisions of PFT policy.

- "Interchange Point"** means the point at which the Trains booked for and from the PFT , will be transferred between the TMC and the DFCCIL;
- "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 TMC under any of the Financing Documents and who hold first charge on *pari passu* basis on the assets, rights, title and interests of the TMC;
- "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 Terminal Management Company 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's estate, the liquidator of a Company, a receiver and any person legally appointed to represent the estate of Terminal Management Company.
- "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 effects 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.
- "Other Terminal Management Company's"** means any other Person(s) or Entity/ies with whom a substantially similar License Agreement has been executed by any Rail Administration;
- "Overhead charges"** This, in the context of Private Freight Terminal construction includes General Charges, Departmental Charges and Contingency Charges as decided/ revised by the DFCCIL/IR from time to time.
- "Permanent Way Materials"** includes girders, rails, sleepers, fastenings, points and crossings, fencings, signalling, interlocking and telecommunication equipment and over-head structure and any other things connected therewith for electric traction and other machinery (except station machinery) and equipment's necessary for working the Private Freight Terminal.
- "Private Freight Terminal"** includes Terminal Management Company works with the DFC Railway system as hereinafter agreed to be constructed by Terminal Management Company and all branches and extensions thereof which may hereafter be constructed by him or by the Dedicated Freight Corridor Corporation of India Ltd. at Terminal Management Company request, and all sleepers, ballast, embankments, bridges, tunnels, signals interlocking and tele-communication equipment gates, buildings and other constructions, erections, works and movable property constructed/ erected/ made/ provided or used in connection with the said track and also all land whereon or on part whereof the said track and connected things aforesaid are constructed/ erected/ made/ provided or used including land acquired by Terminal Management Company for the purpose thereof as hereinafter provided.
- "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 Railway Administration 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, Terminal Management Company and the Lenders;

"TMC" means Terminal Management Company, who is the owner of PFT.

"Take Off Point" means a connection drawn from the existing DFCCIL line/network to provide rail access to a terminal for operation of trains;

"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;

"Works" means the premises belonging to or occupied or used by Terminal Management Company which are connected with the DFC Railway system by the freight terminal herein before mentioned.

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

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, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence 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 Railway Administration 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 Terminal Management Company to the Railway Administration shall be provided free of cost and in three copies, and if the Railway

Administration 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

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.

Article 2

REPRESENTATION AND WARRANTIES OF THE PARTIES

2.1. Representations and Warranties by the Terminal Management Company

2.1.1. The Terminal management company 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 (Terminal Management Company) is a 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 TMC under this Agreement constitute legally valid, binding and enforceable obligations against the TMC in accordance with the terms hereof;
- d) No proceedings against the TMC 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;
- 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 existing promoters/Consortium Members] maximum number of partners in the JV 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 of not less than 10% each. In case of JV with foreign member (s), the lead member has to be an Indian firm with a minimum share of 51%.
- l) Members of JV from a country may be excluded if as a matter of law or official regulations the Government of India (GOI) prohibits commercial relations with the country.
- m) [each Consortium Member] is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested DFCCIL to enter into this Agreement with the TMC pursuant to the Letter of Acceptance, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement and has advised the DFCCIL accordingly;
- n) It 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 TMC; and
- o) It satisfies and shall, throughout the term, continue to satisfy any and all of the entry requirements and eligibility criteria laid down by DFCCIL in this RFP and/or Private Freight Terminal Policy of DFCCIL.
- p) A copy of Memorandum of Understanding (MOU) duly executed by the JV members on a stamp paper duly notarized shall be submitted by the JV along with the Bid during the bidding process. The complete details of the members of the JV, their share and responsibility in the JV particularly with reference to financial, technical and other obligations shall be furnished in the MOU.
- q) On issue of LOA, the MOU/JV agreement among the members of the JV to whom the work has been awarded, with the same shareholding pattern as was declared in the MOU/JV Agreement submitted along with the Bid, shall be registered under relevant legal provisions of India. A separate PAN shall be obtained for this entity. (JV agreement is valid for the entire license period).
- r) While Bidding was open to persons from any country, the following provisions applied/ will apply:
 - (i) Where, on the due date of the Bid, not less than 25% (twenty five percent) of the aggregate issued, subscribed and paid up equity share capital/capital contribution/partnership contribution in the Lowest Bidder or its member is held by persons resident outside India or where a Bidder or its member is controlled by persons resident outside India, then the eligibility and award of the project to such Lowest Bidder shall be subject to approval of the competent authority from national security and public interest perspective as per the instructions of the Government of India applicable at such time. The decision of the authority in this behalf shall be final and conclusive and binding on the Bidder.
 - (ii) Further, where the LOA of a project has been issued to an agency, not covered under the category mentioned above, and it subsequently wishes to transfer its share capital in favour of another entity who is a resident outside India or where a selected Licensee or its member is controlled by persons resident outside India and thereby the equity capital of the transferee entity

exceeds 25% or above, any such transfer of equity capital shall be with the prior approval of the competent authority from national security and public interest perspective as per the instructions of the Government of India applicable at such point in time.

- (iii) The holding or acquisition of equity control, as above shall include direct or indirect holding, acquisition, including by transfer of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Authority shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 or any substitute thereof, as in force on the date of such acquisition.
- (iv) The Licensee shall promptly inform the authority of any change in the shareholding, as above, and failure to do so shall render the Licensee liable for penalty and initiation of suspension / termination of license.
- s) Composition of JV can be modified with no change in lead member. Replacement of any member in JV will only be allowed if the new member have equal or better qualification, experience, financial capability and turn-over than the existing member. The re-constituted firm/JV/Consortium should fulfil the selection criteria and terms & conditions given in regard to formation of JV/Consortium or for a single applicant in the RFP. All these criteria will be evaluated at the time of any request for changing composition of JV. Change of Lead member can be considered either in case of merger or acquisition of the company.
JV/Consortium members (other than lead member) who have not been considered in evaluation criteria for selection, may be allowed to exit JV/Consortium after completion of exclusivity period. Resolution and commitment of the JV/Consortium for re-allocating the role and liabilities of the exiting members within the JV/Consortium will be needed.
- t) The TMC is familiar with the business of terminal management on DFCCIL/Indian Railway network, its future prospects, the risks involved and has conducted its own diligence and analysis of the terminal management business in its present condition.

2.2. Representations and Warranties by DFCCIL / Railway Administration : DFCCIL hereby represents and warrants to and for the benefit of the TMC 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 TMC, any material information or material document, whose non-disclosure would have a material adverse effect;
- c) The obligations of Railway Administration under this Agreement will be legally valid, binding and enforceable obligations against Railway Administration 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 Railway Administration's ability to perform its obligations under this Agreement;
- f) It has complied with Applicable Laws in all material respects;
 - g) Upon the TMC paying the Fee and performing the covenants herein, it shall not at any time during the term hereof, interfere with peaceful enjoyment of the rights by the TMC, in accordance with the provisions of this Agreement.
 - h) Save and except the representations and warranties stated in this Agreement, the Railway Administration makes no other representation or warranties with regard to the business, financial viability of the business of terminal management on DFCCIL Network and no statutory or other warranties as to the business or financial viability of the operation of terminals 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 Railway Administration hereby grants to the TMC, throughout the duration of this agreement, a non-exclusive right to require the Railway Administration to permit operations of a rail terminal subject to the TMC rights and obligations contained in this agreement (hereinafter, the "**Agreement**") and the TMC 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. Non Exclusive Agreement

The Parties hereby expressly acknowledge and agree that the aforesaid Agreement is on a non-exclusive basis and that Railway Administration expressly reserves the right to give to any third party, on terms and conditions no more favourable than those offered to the TMC, a similar right by Railway Administration to permit operations of a Private Freight Terminal at any other station, than at which the TMC is authorised to operate as per present agreement or at the station which is subject of this agreement after the exclusive period, as defined in Clause 4.2.5 of Article 4 of this agreement subject to the TMC rights and obligations contained in this agreement.

3.3. Right to Encumber

3.3.1 The Parties hereby expressly acknowledge and agree that nothing in this Agreement shall prohibit or in any way preclude the ability or right of the TMC to Encumber its interest, in favour of its Lenders, any Rail Terminals owned by the TMC or held by it on lease or licence, this Agreement including but not limited to the Grant provided hereunder or any other asset owned by the TMC, provided that no property which has been leased/licensed by Railway Administration to the TMC shall be Encumbered by the TMC at any time during the term of this Agreement.

3.3.2 The Parties hereby agree that in the event of a Financing Event of Default as notified by the Lender's Representative, the Lenders shall have the right (subject to Financing Documents) to substitute the TMC under this Agreement (in accordance with the Substitution Agreement) with any Person or Entity (the-"Lenders' Nominee"), in accordance with the Substitution Agreement.

3.4. Substitution Agreement

The Substitution Agreement shall be executed by the Dedicated Freight Corridor Corporation of India Limited, TMC and the Lenders, substantially in the form set forth in at or around the time of execution of the Financing Documents.

3.5. Agreement Period

- 3.5.1. The term of this Agreement shall be for a period of 3 years as construction/gestation period from the date of LOA, and in addition for 30 years (as license period) starting from the Commercial Operations Date (the "**Agreement Period**") with provision for further extension on mutual agreement/ consent on the terms & conditions defined by the extant rules/policies of DFCCIL/IR at material time of extension, subject to satisfactory past performance of TMC.
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Article 4

SCOPE OF WORK

4.1 Background and General Information

- 4.1.1 The Indian Railways (IR) network spreads over 68000 route km and handles more than 1200 million tonnes of freight traffic annually. The volume of freight is growing over a period owing to rise in industrial production, agricultural produce and GDP. Railway freight service is delivered by Zonal Railways through its Divisions, which are the main functional units of Railways.
- 4.1.2 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 move 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 2013, 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). The DFC will offer upgraded freight services by running higher axle load freight trains with speed upto 100 kmph on an efficient system. The DFCs will provide a quantum jump in rail transport capacity in line with the rapidly growing demand and help increase the Railway’s modal share of Freight traffic.
- 4.1.3 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 and likely to be fully commissioned by 2022-23. Eastern Corridor is planned to be further extended upto Dankuni (538 kms) and the construction of the same will be undertaken through PPP mode.

4.2 Objective & proposed locations of New Terminals

- 4.2.1 Most of the traffic passing over the DFC network in future will be shifted from IR network and will continue to originate and/or terminate at stations located on the IR network (termed as DFC feeder routes). DFCCIL intends to boost this traffic as well as attract additional/incremental traffic through the proposed new Terminals on DFC Network, to be developed through private investment by the TMC through the RFP.
- These terminals are intended to serve as entry and exit points for carriage of various cargo and will act as front business interface of DFC with the freight market in its catchment area, besides for carrying the traffic to & from Indian Railway.
- 4.2.2. To achieve above objective, DFCCIL has envisaged to establish new Privately owned & managed Logistics Parks / Freight Terminals / Parcel Terminals along the DFC corridors with direct connectivity to DFC stations, which will provide state of the art infrastructure and facilities to attract & efficiently

handle various categories of cargo which can come to DFCs, in a customer friendly manner.

4.2.3 DFCCIL, through this Agreement, is awarding license to the TMC, selected through a transparent tender process, to develop Logistics Parks/ Freight Terminals/ Parcel Terminals (hereinafter called "Terminal") over land either owned by them or planned to be acquired by them in the vicinity of DFC station (name of station____) including providing connectivity with this DFC station. Target Dates of commissioning of different sections of DFC are as below:

- i) New Khurja to New Bhaupur- Commissioned
- ii) New Rewari to New Kishangarh – Commissioned
- iii) New Kishangarh to New Palanpur - March 2021
- iv) Entire DFC network - 2022-23

4.2.4 Minimum facilities to be developed at the Terminal by the selected Licensee (TMC) have been stipulated in the "Obligations of the Licensee (TMC)" in Article 19. TMC will provide the rail yard for holding/stabling trains, brake vans, sick wagons, cargo handling; and warehouses, cargo handling equipments with operators, In motion Weigh Bridge, wagon tippers/bottom discharge systems if required for the commodities to be handled, packaging/stitching/bagging instrumentalities, labourers, machine/ equipment/ trucks maintenance shops etc as per requirement. Besides, drainage system, road, circulating and paved areas for handling and movement etc will be developed by TMC. All facilities other than defined minimum rail yard, will be provided as per suitability and requirement of the commodities to be handled and as per related logistics facilitations contemplated by the TMC.

4.2.5 **Station Exclusivity**

(i) License for Connectivity with (name of the station) station of DFC, ~~will be~~ has been awarded to only one Private Freight Terminal for eight years from the Date of Award of Contract for development and operation of PFT. Gestation period is included in this Exclusivity period. This eight years duration shall not be extended due to the extension of gestation period. Early completion of Construction of PFT will authorize the TMC to start operation, but the overall period of the exclusivity will not go beyond eight years from LOA.

(ii) After the completion of this period, any additional license of PFT to any other person may be awarded for this particular DFC station following transparent procedure for selection.

(iii) DFCCIL can develop its Goods Shed/Freight Terminal at any station/location at any time based on requirements on its system.

(iv) TMC has declared that they do not want to handle ____, ____ and ____ cargo. PFT may be allowed to be developed for these cargo by any other applicants during the exclusivity period or they will handle all cargo except the ones prohibited. Further, if the PFT is not dealing with any particular type of cargo, a new PFT applicant may be allowed to deal with such cargo connecting with the same serving station during the exclusivity period.

v) Private sidings, Port Sidings, DFC sidings/terminals, Goods sheds of IR/DFC etc. (Other than PFT) can be connected and operated through this station at

which license has been awarded **through this contract**, even during exclusivity period.

- 4.2.6 **Conversion of Private Siding to PFT [Co-user not permitted]:** Any Private siding coming to connect with the serving station, after this PFT license being awarded exclusivity at the station by this tender is not permitted to have Co-user as per Private Siding Policy (para 11 of DFCCIL's Private Siding Policy) and they cannot convert to a PFT as per extant PFT policy (para 7 of DFCCIL's PFT Policy), during the exclusivity period.
- 4.2.7 Procuring/arranging the Land for the Terminal and its connectivity to DFC shall be the sole responsibility of the Licensee (TMC). However, wherever considered feasible by DFCCIL, the IR/DFCCIL's land falling in the alignment of linear connectivity of proposed PFT, may be licensed to the Licensee (TMC) as per extant Policy/Instructions, Terms & Conditions issued vide MoR's letter No. 2016/Infra/6/12 dated 05.10.2016 through a Licensing Agreement.
- 4.2.8. In addition to above, wherever feasible, the Land required for last mile connectivity (linear portion between DFC connection point and TMC entry point) may also be acquired by DFCCIL under Railways Act 1989 on behalf of TMC and at the cost of TMC as per terms and conditions of Railway Board Letter no.2020/Infra/6/5, dated 05/10/2020.
- Full cost of land acquisition & associated activities, laying of Railway systems thereon and related facilities for operationalizing such connectivity would be borne by the concerned developer/TMC authorised by DFCCIL for developing the PFT. The ownership of land so acquired shall vest with the Indian Railways and the same will be leased to Terminal Management Company through an authorised Railway official on long-term basis at token lease charges of Re.1 per annum with the permission to utilise it for providing Common User Facility (e.g. Track etc.). The land having been funded by the developer, the lease charges shall remain unchanged in the event of introduction of multi-operator regime in DFCCIL or after monetization/privatisation of DFCCIL assets. Upon the expiry of Lease Agreement or closure of the facility, the Railway land will revert back to IR. In case of any premature termination of the agreement between the DFCCIL and the TMC on account of TMC's default, the land rights will continue to be with the Railway/DFCCIL without any financial obligation on its part.
- 4.2.9. To the extent possible, level crossings shall be avoided in the connectivity portion (RUB requirement shall be mentioned in DPR). However, in exceptional cases, manned Level Crossings (LCs) may be permitted with approval of MD/DFCCIL. Manning will be done by the licensee.
- 4.2.10 Providing/Arranging proper Road Connectivity of Terminal up to nearest motorable existing road as well as arranging water/electricity/sewer/other connections including all associated costs, will be the sole responsibility of TMC. However, necessary assistance wherever required, may be provided by DFCCIL in this regard including liaising with the state government.

Article 5

AGREEMENT TO CONSTRUCT PRIVATE FREIGHT TERMINAL

Subject to the terms and conditions hereinafter contained, Terminal Management Company shall in all respects construct on his land and land acquired by DFCCIL, on payment by him, as special railway project, from(length of Private Freight Terminal) Kilometers on(name of section) Branch as shown in red and green on the tentative plan annexed hereto (bearing drawing No.) connecting Terminal Management Company's work known as situated at or near in the District of with theDFC System at or near on DFCCIL.

Article 6

SPECIAL CONDITIONS

6.1 a) The Contract shall be governed by the laws of India and Applicable laws shall mean all laws, bye-laws, statutes, rules, regulations, orders, ordinances, codes, guidelines, notices, directions, judgments, decrees or other requirements or official directives and/or of any statutory authority in the Republic of India.

b) This agreement and the relationship between the parties shall be governed, construed and interpreted in accordance with applicable laws 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:

Mr.Biplav Kumar
Group General Manager/Business Development
Room no.400A, 4th Floor,
Dedicated Freight Corridor Corporation of India Ltd.,
Supreme Court Metro Station Building Complex, New Delhi-110001 (India)

6.3.2 The addresses for communication with TMC:

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:

Mr.Biplav Kumar
Group General Manager/Business Development
Room no.400A, 4th Floor,
Dedicated Freight Corridor Corporation of India Ltd.,
Supreme Court Metro Station Building Complex, New Delhi-110001 (India)
Tel.011 23454960, Email: biplavkumar@dfcc.co.in

Authorized Representative of TMC is as below:

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

Date of issue of Letter of Award (LOA) will be considered as Date of effectuation of the contract. Commencement date of operation of the terminal will be the COD.

Gestation period: The selected Licensee (TMC) should develop the terminal and start commercial operations (COD) within three (03) years from the date of issue of LOA. In special circumstances/ exigencies, further extension of time for commissioning of PFT may be considered by Director/OP&BD/DFCCIL. Depending on the feasibility of starting operations, the terminal can start operation before the end of gestation period.

However, the exclusive period will not go beyond a total time period of 8 (eight) years (3 years for commissioning + 5 years as exclusive period) from the date of LOA.

- 6.6 DFCCIL's extant PFT policy shall generally be applicable in case of these freight terminals as revised from time to time. In case of conflict, the conditions laid in the RFP document for the present contract and in this agreement shall prevail.
- 6.7 Currency of License: The license period for the terminal operation by TMC will be initially valid for 30 (thirty) years from COD with provision for further extension on mutual agreement/consent on the terms & conditions defined by the rules, policies of DFC/ Indian Railways extant at material time of extension, subject to satisfactory past performance of TMC.
- 6.8 Revenue Source for TMC: TMC will be entitled to receive Terminal Charges for cargo handled (per tonne basis), as notified by DFC/IR from time to time for the freight trains loaded/unloaded at the PFT (Indian Railway rate circular no.24 of 2018) subject to revision of terminal charges by IR/DFC from time to time. There will be no Terminal charge for Container trains (Railway Board's Rates Circular No. 14 of 2019 dt. 14.06.2019). Other than above, TMC will get cargo handling charges and facilitation charges as fixed by the TMC from their customers loading /unloading in the PFT.
- 6.9 Post Termination rights of DFCCIL: --**
- (a) On termination of the Agreement, DFCCIL will be entitled to disconnect the Terminal from its station and to take possession of land licensed to TMC. It shall also be entitled to award license to any other TMC at that particular station through fresh RFP as decided by the DFCCIL.
- (b) Land for last mile connectivity (linear portion between DFC connection point and TMC entry point) if acquired by DFCCIL on behalf of TMC as per terms of the License agreement, will continue to vest with DFCCIL/Railway without any financial obligation on its part.
- 6.10 General obligations:**
- i) Communications to be in Writing: All notices, communications, reference and complaints made by the DFCCIL or Terminal Management Company inter-se concerning the works shall be in writing or e-mail on registered e-mail IDs. Notice, communication, reference or complaint not in writing or through e-mail, shall not be taken cognisance of.
- ii) Execution, Correlation and Intent of Contract Documents: The contract documents shall be signed in triplicate by DFC and the Contractor. 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.
- iv) Compliance to Regulations and Bye-Laws: The Contractor/ licensee shall conform to the provision of any statutory regulations and bye-laws of any local/State/Central Govt. authority relating to the works of development /operation of freight facilities / services to the customers /facilitation to the customers.
- 6.11 In general, Indian Railways circular, IRCA Commercial Manual Volume –II, IRCA Goods Tariff No. 48 Part I (Vol. II), Goods Tariff No. 48 Part II and rules related to freight will be followed and any specific order given by DFCCIL/Indian Railways will

be applicable in case of Indenting of wagon(s), Booking, Demurrage, Wharfage, Claims etc. matters.

- 6.12 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 Freight Operation Information System (FOIS) is mentioned in Rates Master Circular-RD/2019/0 dt. 11.11.2019 issued by Railway Board. Guidelines issued by Railway Board regarding E-Registration of Demand, E-Transmission of RR(eT-RR) and Electronic Payment of registration fee and freight in Terminal Management System module of FOIS and amendment/ corrigendum issued from time to time shall be adhered by the TMC.
- 6.13 Applicant TMC shall be solely responsible in respect of ownership of land or lease which private land is proposed to be used for development of a PFT. TMC undertakes that they are in possession of the land either as an owner or as a lease holder, for a period not less than 35 years from the date of this license agreement, which can be utilized for setting up a PFT and running the freight operation in a commercial manner.

Article-7

PAYMENT BY TERMINAL MANAGEMENT COMPANY AGAINST THE TOTAL ESTIMATED COST

- 7.1. If Terminal Management Company desires the Dedicated Freight Corridor Railway to execute the work on the PFT, and DFCCIL accepts such request, then Terminal Management Company will pay in advance to the Railway Administration the total estimated cost of the work to be done by the Railway Administration including all overhead/departmental charges for the connectivity as per the extant rules. The Overhead charges/ Departmental Charges payable by TMC seeking rail connectivity to PFT have been mentioned in para 11 of DFCCIL's PFT Policy and amendment thereon. After completion of the work and certification in writing by the DFCCIL Engineer, the completion cost of the work will be arrived at with the cost of materials and labour based on actual and overhead charges as per rates, fixed from time to time added to it. In case the completion cost is lower than the amount deposited, the difference will be paid back to Terminal Management Company and vice versa. No interest however, shall be payable by the Railway Administration on any such amount refundable to Terminal Management Company. If the amount actually expended by the Railway Administration for the construction of the Private Freight Terminal exceeds the amount paid in advance by the party, Terminal Management Company shall pay to the Railway Administration on demand the excess amount forthwith in case the excess amount is upto 25% above the estimated cost. If the excess amount is more than 25% of the estimated cost, a revised estimate will be supplied by the Railway Administration as and when such excess amount is known and Terminal Management Company will forthwith deposit the excess amount so involved.
- 7.2. The Railway Administration may execute the work by its own labour/ through contractor or other agencies. If the Railway Administration incurs any additional liability arising out of litigation or arbitration award or any other dispute etc. after sanction of the estimate/ Drawing physical progress of this work, Terminal Management Company will have to discharge the debt liability and he will be bound to pay the same within one month, from the date of the written demand in this regard.
- 7.3. Capital Cost :**
The capital cost of all traffic facilities at the serving station such as 'Y' connection, additional lines at the serving station and crossing stations patch doubling of the section etc. shall be as per the Private Freight Terminal Policy of Dedicated Freight Corridor Corporation of India Limited to be fully borne by TMC. The distance for charging of tariff, for each 'Y' connection shall, however, be inflated/increased by 5(five) kilometers (para 6.2 of Railway Board's Private Siding Policy dt. 22.08.2016). The capital cost for all the facilities, within the premises of Private Freight Terminal and on the connectivity land from the terminal to the take-off point of the serving station, including track, OHE and signalling system shall be borne by the TMC. Connectivity cost within the DFC land will also be borne by the TMC.

- 7.4.** When the work of survey and construction of private freight terminal is allowed to be carried out by the party through an approved consultant/ consulting Engineer, total charges (including all overhead* charges) to be recovered from the TMC shall be as per the para 11 of the Private Freight Terminal Policy of Dedicated Freight Corridor Corporation of India Ltd. as revised from time to time.

Article 8

COST OF PFT

- 8.1. **Cost of PFT:** The cost of designing, constructing, operating and maintaining PFT and the Rail facilities (both inside and outside the Applicant's premises/up till the take-off point) shall be borne by Terminal Management Company subject to the provisions of the Private Freight Terminal Policy notified by Railway Administration (DFCR) from time to time. Provided, however, no rail track shall be laid by Terminal Management Company unless the design for such rail track has been previously approved by Railway Administration or such other authority as designated by Railway Administration, which approval shall not be unreasonably withheld.
- 8.2. **Cost of electrification of Private Freight Terminal:** The capital cost of electrification of Private Freight Terminal shall be borne by the Private Freight Terminal owner.
- 8.3. **Land:** Terminal Management Company hereby agrees that procuring any land and or other related facilities required for establishing a Private Freight Terminal and/or for laying any track, in accordance with the provisions of laying of terminal shall be the responsibility and obligation of Terminal Management Company, at its own cost and expense. For the avoidance of doubt, it is hereby agreed that Railway Administration shall not be under any obligation to provide any land or other related facilities (other than the connection at the Take-off Point) to the PFT for setting up a Rail Terminal or for laying any rail track connecting a Rail Terminal to a Rail Head. Provided however, Railway Administration shall ensure connection of Railway Administration rail track to the rail siding if found technically feasible in accordance with Good Industry Practice.
- 8.4. Terminal Management Company shall pay the land license charges for the DFCR land provided for connectivity as per extant guidelines and as revised from time to time-
- 8.5. **Permanent way materials:** Terminal Management Company will provide & deliver at site the permanent way and other materials in accordance with Railway Administration's standards & specifications or if agreed, DFCCIL can also arrange p-way materials at site at owner's cost. On completion to the satisfaction of Railway Administration of sub-grade work, the permanent way materials shall be laid by Railway Administration on request of TMC, if agreed, or would be laid by Terminal Management Company under the supervision of DFCR. All charges incurred in laying and fitting the permanent way materials and all other equipments, which may be provided, including freight at public tariff rates, materials trains and handling charges shall entirely be borne by the Terminal Management Company. In addition, Terminal Management Company shall bear departmental and other charges as may be fixed by the Railway Administration from time to time on such cost borne by Terminal Management Company. The Railway Administration may also, if so required by Terminal Management Company, provide any machinery required upon payment by Terminal Management Company in advance of such cost and charges in respect thereof as shall be fixed by the Dedicated Freight Corridor Corporation of India Limited.

Article 9

MAINTENANCE AND OTHER CHARGES SUCH AS SPECIAL EMERGENCY REPAIR WORKS FOR THE PORTION OF THE PRIVATE FREIGHT TERMINAL

- 9.1. Terminal Management Company will at its own cost and expenses in all things and to the satisfaction of the Dedicated Freight Corridor Corporation of India Limited and if required by the Railway Administration under its supervision maintain in good order and repair the said portion of the Private Freight Terminal (on their own land, delineated and coloured green on the said plan). Charges as may be fixed by the DFCCIL for the supervision rendered shall be paid by Terminal Management Company.
- 9.2. Provided, however, that the TMC will have the option to entrust the maintenance task to DFCCIL if such maintenance work is undertaken by DFCCIL, the TMC will deposit a lumpsum amount which would be equal to the recurring cost towards maintenance (up to the take-off point of track or up to the place where wagons are handed over) for a period of 10 years as per extant rules issued by DFCCIL and revised from time to time. Such payment shall be made before commissioning of the PFT. Alternatively, the TMC will also have the option to deposit the maintenance cost on yearly basis. Such maintenance cost will be deposited in advance for every year based on provisional estimates. At the end of every year the payments will be reconciled and the difference from actual cost incurred on maintenance will be paid by TMC. In case of any damage to the DFC infrastructure, utilities etc. in the process of construction of PFT connectivity, the cost of the same will be borne by the TMC.
- 9.3. For arriving at equated track length of a Private Freight Terminal fraction upto half a kilometer shall be treated as half a kilometer and fraction above half a kilometer shall be rounded off to the next kilometer for the purpose of the taking track maintenance charges.
- 9.4. Provided also that when the Railway Administration is also required to carry out any renewals of Permanent Way Materials or strengthening of track and special repairs to sub-grade works including recouplement of ballast in respect of the said Private Freight Terminal (coloured green) Terminal Management Company shall pay in advance to the Railway Administration the cost which the Railway Administration or their Engineer may estimate for such renewals of permanent materials or strengthening of track including supply of materials and special repairs to sub-grade work together with supervision and other charges as fixed by the Railway Administration.
- 9.5. The difference between the cost, so estimated and the cost actually incurred will be paid to or re-paid by the Railway Administration, as the case may be, on the completion of the particular work being certified in writing by DFCCIL Engineer. No interest will be paid by the Railway Administration on any such advance.
- 9.6. Terminal Management Company agrees that any special emergency repair works which may be necessary for safety of the Private Freight Terminal (the Railway Administration being sole Judge for this purpose) will be done by the Railway Administration at the cost of Terminal Management Company and Terminal Management Company agrees to pay

on demand any expenditure incurred by or through the Railway Administration on this account. Terminal Management Company shall also pay to the Railway Administration departmental and other charges as may be fixed by the Railway Administration from time to time.

- 9.7. Railway Administration will arrange to carry out necessary inspection of the portion of the Private Freight Terminal outside the DFCCIL land boundary free of cost. However, wherever maintenance is being done by DFCCIL at the cost of Terminal Management Company, Terminal Management Company shall continue to bear this cost. Further the inspection by DFCCIL will not absolve the party from its responsibility or liability laid down in Article 22 of this agreement.
- 9.8. Terminal Management Company shall be responsible to keep the track and cess clear for day to day movement of Rolling Stock and locomotive. In case this is not done, the DFCCIL will have the right to stop the working on the Private Freight Terminal or impose a charge at a penal rate to be decided by the Railway Administration to have the track and cess cleared for the working of the Private Freight Terminal.

Article 10

WEIGH BRIDGE FACILITIES AND LEVEL CROSSINGS ETC.

- 10.1. Terminal Management Company shall provide and maintain at its own cost and expense a suitable electronic in motion weigh bridge or any suitable electronic weighment mechanism as approved by DFC/IR, weigh-bridge house as per extant rules of DFCCIL at a suitable location in such a manner so that all incoming and outgoing rakes can be weighed. Level crossing gate will not be allowed in general or siding track. RUB/ROB are preferred.
The electronic-in-motion weigh bridge should be maintained by the Private Freight Terminal owner at its own cost to the satisfaction of the DFCCIL and will be subject to periodical inspections by qualified staff at the cost of Private Freight Terminal owner, who will record a certificate to the effect that the weighbridge is showing correct weight and is in proper working order.
- 10.2. A card will be kept by the Terminal Management Company testifying the accuracy of the weigh-bridge and giving a date of tests as in the case of all DFCCIL/Railway weighbridges. Terminal Management Company should also permit the DFCCIL/Railway weigh-bridge Inspector or such other staff may be deputed by the Railway Administration at all times to check the accuracy of the weighbridge and to supervise the maintenance, which shall be carried out by Terminal Management Company to the satisfaction of the Railway Administration.
- 10.3. The maintenance shall be done according to DFCCIL rules and regulations as in force from time to time. Such emergent maintenance as may be required for safety may be done by the Railway Administration without prior notice to Terminal Management Company and Terminal Management Company will have to pay on demand any expenditure incurred by the or through the Railway Administration on this account, including departmental and other charges as may be fixed by the Railway Administration from time to time.
- 10.4. Other rules & regulations regarding installation, operation and maintenance of weigh bridges as laid down from time to time by Railway Administration would apply.

Article 11

INSTALLATION AND MAINTENANCE OF TIPPLERS OR ANY OTHER BULK HANDLING SYSTEM DESIGNS IN THE PRIVATE FREIGHT TERMINAL.

- 11.1. At Private Freight Terminals using bulk handling system, tipplers or any other bulk handling system designs shall be provided and commissioned as per Research Design and Standards Organisation (RDSO) approved specifications, only when a joint certificate is executed by Terminal Management Company and RDSO, that the system installed/ provided is as per RDSO approved design and commissioned to their satisfaction.

- 11.2. Private Freight Terminal owners shall always keep tippler and retarder or other bulk handling system in good condition, which will be jointly inspected with Dedicated Freight Corridor Corporation of India Limited every six months. Tippling operation will be suspended if tippler/ retarder is defective.

Article 12

ADDITIONAL WORKS INCLUDING RENEWALS, REPLACEMENTS AND RESTRENGTHENING

In the event of it being necessary after the opening of the Private Freight Terminal to make any alterations or additions or renewals or replacement of items as fencing, Signalling, interlocking and Tele-communication equipments, improved safety appliance or machinery of any kind for the working of the Private Freight Terminal, such additional work shall be done by TMC or on request provided at the cost of Terminal Management Company by DFCCIL as per the general condition governing the construction of the Private Freight Terminal.

Any addition or alteration that shall be made to the Private Freight Terminal or any temporary or permanent structure that shall be erected will be immediately informed by the TMC to the Railway Administration. Any modification affecting rail yard on PFT or which may infringe rail movement cannot be done without informing DFCCIL formally.

The terms and conditions of this Agreement will also be applicable to any additions and alterations made to the Private Freight Terminal unless otherwise decided by the Railway Administration.

Article 13

APPLICABILITY OF DFCCIL'S FREIGHT POLICIES

- 13.1. Construction of PFT will be as per provision of Private Freight Terminal policy and therefore all charges stipulated in the extant policy for construction of a private freight terminal siding would be applicable on PFT. PFT connectivity will be permitted only from the existing crossing stations of Dedicated Freight Corridor Corporation of India Limited which shall be nominated as the serving station. No PFT will be permitted from mid-section.

- 13.2. Cost of DFCCIL staff employed at the Private Freight Terminal: In all PFTs, DFCCIL /Indian Railways Commercial staff will be posted at the PFTs to carry out the commercial functions related to booking/delivery of freight carried in wagons. Terminal Management Company will pay the cost of commercial staff as specified in the PFT policy of DFCCIL as revised from time to time.

Article 14

TRAFFIC ON PRIVATE FREIGHT TERMINAL

- 14.1. Wagons will be hauled by the Railway Administration (subject to such rules and restrictions as may be enforced from time to time and from the point marked 'X' in the drawing No. (same number as in Article 5) hereinbefore referred to or such other points as may hereafter be fixed upon by mutual consent of Terminal Management Company and Railway Administration in writing at which point they shall be made over to Terminal Management Company and returned to the Railway Administration in such manner as shall be determined in each case by the Railway Administration.
- 14.2. Unless otherwise specified by Dedicated Freight Corridor Corporation of India Limited from time to time by suitable notification or any other means of communication/ PFT policy, TMC would be permitted to book and handle all traffic except that not permitted by DFCCIL/IR.
- 14.3. Unless otherwise specified by DFCCIL from time to time by suitable notification or any other means of communication, all types of wagons permitted to run on DFCCIL's network shall have access to the PFTs.
- 14.4. Depending upon demand and business plan, **as submitted by the TMC, PFT would provide various logistics related services.**

Article 15

FACILITIES TO BE DEVELOPED

15.1. Minimum layout in Terminal and Provisions/Facilities:

A minimum of one handling line of standard length 750 metres and another holding/handling line of standard length 750 metres with provision for shunting neck engine escape should be constructed as a rail yard with suitable signaling & OHE installations, the layout plan of which will be approved by DFCCIL finally at DPR stage. Provision of long handling/holding lines of 1500 mtrs length may also be considered (not mandatory) keeping in view requirement at present or in future.

At least two RCC concrete (VDC) wharfs, one of minimum 15 x 700 and second of minimum 20 mtrs x 700 mtrs, should be provided in the PFT. Wider wharf, than as prescribed, can be provided as required by the licensee. There can be suitable height platforms instead of rail level wharfs as per requirement based on commodities to be dealt.

The TMC will provide handling equipments/cranes (fixed and mobile) & related facilities for efficient operations/handling of cargo, concrete /paved handling areas, wharfs, warehouse, other facilitations like waiting room for customers, rest room for crew, Packaging yards/enclosures, FOIS hardwares/channels (as per DFC PFT policy), parking space, repair shop for handling equipments etc as per requirement. FOIS / Terminal Management System for goods booking, will be provided at the cost of TMC.

15.2. Plan/design of Terminal :

TMC shall plan and design the terminal for optimum cargo handling (volume/value) and efficient operations. The TMC will get prepared and submit the layout plan of the railway yard including facilities and connectivity lines through a Railway/DFC Empanelled Siding Design Consultant which will inter alia include track layouts, signaling/interlocking plans, OHE Plans, Weighing Machine arrangements, tippers arrangements (depending on cargo), warehouses, various functioning, facilitation areas, circulating/connecting roads etc and seek the approval of same from DFCCIL.

All constructions and installations of equipment/machines should conform to manual of DFC specifications. DFC SOD is available at https://indianrailways.gov.in/railwayboard/uploads/directorate/civil_engg/pdf/DFC-SOD/SSOD_Freight_Corridor_210113.pdf.

15.3. After construction, Dedicated Freight Corridor Railway will inspect all safety aspects in the PFT. The date of opening of the Private Freight Terminal will be reckoned from the date of notification issued by the concerned Department of DFCCIL, as the case may be, stating that the said Private Freight Terminal is opened to DFCCIL traffic and is fit for movement of the same.

Article 16

REVENUE SHARING

- 16.1. No revenue will be shared between TMC and DFCCIL except that TMC shall get Terminal Charge from IR, on a per tonne basis, as fixed by Indian Railways from time to time on the eligible traffic handled by the TMC. DFCCIL will get additional traffic from PFT (Indian Railway Circular no.24 of 2018).
 - 16.2. TMC will not be entitled for the apportioned earnings for the siding length of PFT siding/ yard as per para 23.4 of DFCCIL's PFT policy.
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Article 17

FREIGHT PAYABLE TO DEDICATED FREIGHT CORRIDOR CORPORATION OF INDIA LTD./ INDIAN RAILWAY

- 17.1. Freight charges or haulage charges as the case may be, shall be paid by the consignor as per the prescribed rate, in accordance with the IR/Railway Administration's tariffs, circulars and advices in force at or given effect to from the time the traffic is carried or such rates as may be fixed by the IR/Railway Administration from time to time. Such traffic will be subject to all the rules, conditions and charges as contained in such Tariffs, Circulars and Advices.
- 17.2. All freight/haulage charge will be paid by the consignor/consignee to Railways at the time of preparation of RR through E-payment system. Under charges, if any, shall also be borne by the consignor/consignee.
- 17.3. Consignment booked from and to PFT will be prepaid.
- 17.4. Freight on traffic booked from and to PFT shall be charged on through distance basis as per Public Tariff.
- 17.5. Demurrage charges for the general purposes wagons shall be levied as per the extant rules and will be payable by Terminal Management Company or user of the PFT to the Railway. Free time allowed to Terminal Management Company and other users of the Private Freight Terminal for loading and unloading will be governed by the rates and rules published from time to time in the Tariffs, Circulars and Advices of the Railway Administration/Indian Railways and in force at the time the traffic is carried.
- 17.6. Terminal Management Company will not be required to pay Wharfage charges to the Dedicated Freight Corridor Corporation of India Limited within the premises of the PFT for activities within it.
- 17.7. The Railway Administration will not be responsible for loss, damage, destruction, deterioration of the contents of wagons booked at either owner's risk rate or railway risk rate, hauled over the Private Freight Terminal during the time such wagons are in transit or remain on any part of extension of the Private Freight Terminal at or beyond the point of interchange.
- 17.8. An Executive/Business Development or any other official representing the Railway Administration employed at the Private Freight Terminal will be empowered to conduct all commercial activities related to Dedicated Freight Corridor Corporation of India Limited.
- 17.9. Terminal Management Company shall at all times permit any person appointed by the Railway Administration to inspect the loading and unloading of Wagons of the said Private Freight Terminal.
- 17.10. All goods dispatched from and to the said Private Freight Terminal shall be loaded and unloaded by Terminal Management Company and other users of the Private Freight Terminal at their own cost, utilizing their own labour for which Dedicated Freight Corridor Railway would not be responsible for any aspect of the employment and working.
- 17.11. In case of detention of rake short of the PFT for want of acceptance or for the reason attributed to Terminal Management Company, Dedicated Freight Corridor Railway

will levy stabling charges on privately owned wagons provided they are stabled within a radius of distance as specified in Indian Railways PFT Policy / DFCCIL PFT policy. The stabling charges shall be payable at the rate as prescribed from time to time and such charges will be leviable on Terminal Management Company. In case of general purpose wagon restriction rules as existing for private siding and goods shed should be applicable.

- 17.12. Terminal Management Company shall pay all rates, taxes, cesses and assessments whatsoever payable, or hereafter to be payable, to any local body or State or Central Government in respect of all structures, buildings and other works built or erected in connection with the Private Freight Terminal.

Article 18

WORKING OF PRIVATE FREIGHT TERMINAL

- 18.1. Terminal Management Company shall provide labour for and bear the cost of all operations on the Private Freight Terminal. Terminal Management Company shall be responsible for the strict compliance by its employees and agents of all rules, regulations and standing orders made by the Railway Administration from time to time for the working of Private Freight Terminals and for all accidents, loss or damage that may be caused by reasons of negligence or non-observance of such rules, regulations and orders. It shall be the duty of the Terminal Management Company to obtain from the Railway Administration authentic copies of all such rules, regulations and orders aforesaid and to ensure that its employees and agents working in connection with the Private Freight Terminal are fully acquainted with the same.
- 18.2. All "Commercial and Operating rules" of Indian Railways (and as specifically prescribed by DFCCIL) and as applicable in a Goods shed for indenting, supply & removal of wagons and booking & delivery of goods shall be applicable at the PFT.
- 18.3. Dedicated Freight Corridor Railway's liability as a bailee for the claims for loss, destruction, damage, deterioration or non-delivery of any consignment will not extend beyond the handing over of the rake to Terminal Management Company at the nominated Interchange point or line inside PFT after which the entire liability would rest with Terminal Management Company. Similarly, for the outward traffic, DFCR 's liability would begin only after the goods are loaded into wagon and handed over to DFCR. Terminal Management Company shall indemnify DFCR from claim, if any, preferred by the consignors/consignees on the DFCR for any loss, destruction, damage, deterioration or non-delivery of any consignment in full or part during the period such liability rests with it.
- 18.4. Terminal Management Company shall indemnify DFCR for any damage to DFCR/Indian Railway property including rolling stock and injury or loss of life arising out of any negligent act or omission or breach of any of its obligations under this Agreement by Terminal Management Company. Similarly, subject to the provisions of Railway Act and rules made there under, Railway Administration will indemnify Terminal Management Company against any negligent act or omission or breach of any of its obligations under the provision of this Agreement.
- 18.5. Terminal Management Company would be responsible to get all statutory and non-statutory clearances that may be required from other government departments and statutory bodies for setting up and to operationalize such PFT. Terminal Management Company will be responsible for payment of all statutory charges, taxes, duties, cess etc as per prevalent Government rules as notified from time to time related to PFT working.

Article 19

OBLIGATIONS OF THE TERMINAL MANAGEMENT COMPANY

- 19.1. Without prejudice to any other covenants and obligations as set out in this Agreement, the TMC further undertakes and agrees, at its own cost and expense and in addition to, and not in derogation of, its obligations contained elsewhere in this Agreement, to:
- 19.1.1. a) Obtain and keep valid all such Applicable Permits (including renewals as may be required from time to time) required for the performance of its obligations under this Agreement, shall do nothing to vitiate the conditions of the Applicable Permits and their renewals and comply with all Applicable Laws and Applicable Permits;
 - b) TMC shall ensure compliance of 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.
 - 19.1.2. Discharge all its obligations contained in this Agreement in accordance with Good Industry Practice;
 - 19.1.3. Undertake loading and unloading operations.
 - 19.1.4. Perform and fulfil its obligations under the Financing Documents;
 - 19.1.5. Ensure and procure that its Contractors/subcontractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the TMC obligations under this Agreement;
 - 19.1.6. Support, cooperate with and facilitate Railway Administration in the effective and timely implementation and operation of the provisions of this Agreement;
 - 19.1.7. Provide all relevant data and information to FOIS through an online system, in accordance with the requirements of this Agreement;
 - 19.1.8. Draw and maintain adequate insurance cover throughout the term of this Agreement for the Rail Terminal from an insurance company licenced by the Insurance Regulatory and Development Authority. Without prejudice to the generality of the foregoing, the TMC shall procure adequate insurance to cover against: (i) any loss, damage or destruction of the Rail Terminal; (ii) TMC general liability arising out of this Agreement to the extent it is commercially insurable; (iii) any other insurance that may be necessary to protect against any Force Majeure Events that are commercially insurable; and (iv) such other insurance as may be customary in accordance with Good Industry Practice. In this regard, the TMC shall, from time to time, provide to Railway Administration copies of all insurance policies obtained by the TMC in accordance with the terms of this Agreement;

- 19.1.9. Make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in order to ensure performance of its obligations under this Agreement;
 - 19.1.10. Neither do nor permit to be done any act (or commission or omission), deed or thing, which may in any manner be violative of any of the provisions of this Agreement or in any manner prejudice the performance by the TMC of any its covenants or obligations contained herein;
 - 19.1.11. Bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the TMC under this Agreement;
 - 19.1.12. Maintain accurate, up-to-date and complete records relating to Terminal Management Company's Terminal operations.
 - 19.1.13. Upon receipt of a request in this regard, allow, at any time and from time to time, representatives of Railway Administration to enter upon its premises (whether at a Rail Terminal or other office premises including registered office) to inspect any and all documents pertaining to any terminal related operations and to provide all necessary support and assistance as may be required by Railway Administration in this regard.
 - 19.1.14. The Terminal Management Company shall promptly inform Railway Administration of any Material Adverse Effect in its financial conditions and of any litigation threatened or initiated.
 - 19.1.15. To do all such other acts, deeds and things as are necessary or incidental to the performance of Licensee's obligations under the Agreement.
- 19.2 All Railway lines/track works/OHE/signaling including connectivity lines will be constructed as per the Manual of DFC specifications available in DFCCIL office (with GGM/BD, 4th floor) and Schedule of Dimensions (SoD) of DFCCIL available at website [link
https://indianrailways.gov.in/railwayboard/uploads/directorate/civil_engg/pdf/DFC-SOD/SSOD_Freight_Corridor_210113.pdf](https://indianrailways.gov.in/railwayboard/uploads/directorate/civil_engg/pdf/DFC-SOD/SSOD_Freight_Corridor_210113.pdf)
- 19.3 TMC will provide quality service to the customer in active association with the logistics service providers, if required. Provision of 24x7 working, adequate lighting, watering, rest rooms, labour shelters etc. shall be provided.
- 19.4 The alignment for the connectivity line should be at an adequate distance from the DFC lines so that it does not infringe any DFC installation.
- 19.5 Statutory requirements: The selected operator will obtain all necessary/statutory clearances such as from pollution control authorities, for Electrical installations, labour authorities etc as applicable for related terminals type, Environmental clearance if required etc.
- 19.6 In case of concurrent construction of DFC near or parallel to the site of the terminal, Terminal Management Company shall ensure unhindered access to the DFC contractor(s). For smooth execution of DFC project, precedence will be given to the DFC traffic for movement of construction machines, material special trains etc. on DFC track.

- 19.7 The connectivity line (between PFT & DFC Station), its maintenance & subsequent dismantling would be at the cost of the Terminal Management Company. Proper drainage to the DFC track will be provided by Terminal Management Company at their cost (including opening, operation, its maintenance and subsequent dismantling/removing/linking), by constructing the longitudinal drainage between DFC and PFT Terminal/connecting line (private) wherever required.
- 19.8 The cost of connectivity & any modification/dismantling in the DFC yard due to providing connectivity with DFC station/cabin has to be borne by the Terminal Management Company as per the provisions of DFCCIL Rail Connectivity Policy for PFT. The DFCCIL on its part shall provide connectivity to PFT line with DFC yard at the cost of TMC, with minimum alterations in the DFC yard to keep the cost minimum.
- 19.9 All the safety certificates and clearances, as required, from organizations other than the DFCCIL will have to be obtained by the Terminal Management Company on their own.
- 19.10 For the rail connectivity of proposed Terminal, subject to availability and wherever feasible, use of land in possession of DFCCIL may be permitted on license basis to Terminal Management Company on the basis of terms & conditions prescribed by DFC/Indian Railways from time to time.
- 19.11 Any construction for DFC rail connectivity on the land controlled by DFCCIL shall be done only after approval of Detailed Project Report (DPR)/ Engineering Scale Plan (ESP) and land licensing agreement.
- 19.12 Terminal Management Company shall provide and maintain at its own cost and expense a suitable electronic in motion weighbridge, weigh-bridge house as per extant rules of DFC/Railways at a suitable location in such a manner so that all incoming and outgoing rakes can be weighed.
The electronic-in-motion weighbridge should be maintained by the Freight Terminal owner at its own cost to the satisfaction of the DFCCIL and will be subject to periodical inspections by qualified staff at the cost of Freight Terminal owner, who will record a certificate to the effect that the weighbridge is showing correct weight and is in proper working order.
- 19.13 The maintenance of terminal assets shall be done by TMC according to DFC/Railway rules and regulations as in force from time to time. Such emergent maintenance as may be required for safety may be done by the DFCCIL Administration without prior notice to Terminal Management Company and Terminal Management Company will have to pay on demand any expenditure incurred by the or through the DFCCIL Administration on this account, including departmental and other charges as may be fixed by the DFCCIL/Railway Administration from time to time.
Other rules & regulations regarding installation, operation and maintenance of weigh bridges as laid down from time to time by DFCCIL/Railway Administration would apply.
- 19.14 The Terminal Management Company (TMC) will follow the indicative guideline mentioned in Railway Board letter no.2007/PL/25/1, Dated 05/06/2007 for development of freight terminals in connection with track laying, wharf strength, wharf surface type , construction materials used therein etc. However, minimum number and length of lines and number of wharf will be as laid down in RFP and Clause 15.1 of Article 15 to this agreement.

19.15 The TMC will follow rules of local/civil authority related to fire safety and hazards material. TMC will take care of Railway Red Tariff Rules given in IRCA Red Tariff no.20 for rail transportation of goods. Link of IRCA Red Tariff no.20 is - <https://www.indianrailways.gov.in/railwayboard/uploads/Download%20File.pdf>.

19.16 Demurrage:

Demurrage 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 Terminal Management Company for the extra time taken for loading/unloading beyond permissible free time.

19.18 **EMPLOYMENT OF FOREIGN NATIONALS**

The Terminal Management Company acknowledges, agrees and undertakes that employment of foreign personnel by the Terminal Management Company and/or its contractors and their sub-contractors shall be subject to permission of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and obligation to apply for and obtain the same shall and will always be of the Terminal Management Company and notwithstanding to the contrary contained in this agreement, refusal of or inability to obtain any such permits and approvals by the Terminal Management Company or any of its contractors or sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Terminal Management Company from the performance and discharge of its obligations and liabilities under this Agreement.

Article 20

OBLIGATIONS OF DEDICATED FREIGHT CORRIDOR CORPORATION OF INDIA LTD.

- 20.1. The Parties expressly acknowledge and agree that Railway Administration shall be responsible for planning and coordinating the movement of train services from & to the terminals connected with rail in India. Railway Administration shall, on receiving a request from the Terminal Management Company provide connectivity to the Terminal Management Company, a FOIS terminal to enable the Terminal Management Company to book and deliver consignments through this system and to access information on movement and operation of rolling stock (wagons) loaded by or to be unloaded by Terminal Management Company. Provided, however, the cost of establishing, operating and maintaining such FOIS terminal including but not limited to the connectivity charges shall be borne by the Terminal Management Company.
- 20.2. Without prejudice to any other obligations and covenants of Railway Administration contained in this Agreement, Railway Administration also agrees and undertakes to provide all reasonable assistance to the Terminal Management Company in operating, in accordance with the terms of this Agreement, the TMC's Terminals and, agrees to:
- 20.2.1. Maintain a level playing field for all TMC's who undertake private freight terminal operations on Railway Administration's rail network and implement a transparent and non-discriminatory system for dispatch and movement of locomotives and Trains on its network;
- 20.2.2. Upon receiving a request from the Terminal Management Company, make available, from time to time, all relevant circulars, notifications and like documents to the Terminal Management Company pertaining to the performance of this Agreement or the rights and obligations of the Parties hereto;
- 20.2.3. Railway Administration shall depute its personnel to issue Railway Receipt (RR) and for other documentation on TMC's cost as mentioned in clause 13.2 of Article 13 to this Agreement.
- 20.3. On award of license, the Licensee (TMC) will submit the preliminary feasibility study/report along with layout plan of the proposed terminal and connectivity within 45 days from the date of award of contract (LOA). DFCCIL will provide In Principle Approval to the project within 15 days of submission. Further, DPR for the project will be submitted along with yard plan within two (02) months from the date of In-Principal Approval (IPA). DFC will clear the DPR within 45 days from the submission date of the DPR.

- 20.4. DFCCIL will provide IR/DFCCIL policies related to the project (PFT policy, Land License Policy etc) to the Licensee as required in development of terminals. Other policies applicable for tariff, incentives etc will also be provided as per requirement.
 - 20.5. Wherever feasible, acquisition of land for last mile connectivity (linear portion between DFC station connection point and TMC entry point) may be facilitated/done by DFC on behalf of TMC as per terms and conditions of Railway Board Letter no.2020/Infra/6/5, dated 05/10/2020.
 - 20.6. DFCCIL will provide all feasible technical support for rail connectivity with DFCs serving stations for timely completion of the project as per terms of the license and as per DFCCIL's PFT policy.
 - 20.7. DFCCIL will help in getting required assistance from Zonal Railway and State Authorities wherever required.
 - 20.8. Availability of Rake/Indents: Indents will be placed online using the Terminal Management System module of FOIS. Rake will be allocated to the customer as per IR/DFCCIL rules in force.
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Article 21

PFT to offer common user access

- 21.1 The PFT under the provisions of this agreement will be a common user facility and cargo (Dry/Bulk/Break Bulk), containerized or non-containerized will be dealt without discrimination of customer/operator.
- 21.2 The handling charges and facilitation charges fixed by the TMC will be non discriminatory. For a particular type of consignment , these charges will not vary from customer to customer.

In all cases of disputes or differences with regard to any matters mentioned in this clause, the decision of the Director (OP&BD)/DFCCIL shall be final and binding on Terminal Management Company.

Article 22

TERMINAL MANAGEMENT COMPANY RESPONSIBLE FOR DAMAGE OR INJURY TO PERSON OR PROPERTY

- 22.1. Terminal Management Company shall be entirely responsible for all moving assets of the Railway Administration (DFCCIL) during the time the same shall remain on any part or extension of the Private Freight Terminal at or beyond the point of interchange and shall make good on demand all loss of or damage to the engines, damages and deficiencies of rolling stock (railway wagons) or other property of the Railway Administration from any cause whatsoever except sole negligence on the part of the staff of the Railway Administration or act of God or war or other acts or circumstances for which Terminal Management Company is not responsible. Further, in case of a derailment, DFCR 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 Private Freight Terminal owner or an act of negligence on their part. Terminal Management Company, however, would bear the cost for repairs to the Private Freight Terminal necessitated by such derailment.
 - 22.2. However the TMC, would bear the cost of re-railing of engines and rolling stock when the maintenance of the track is being undertaken by the TMC itself.
 - 22.3. Terminal Management Company shall also indemnify the Railway Administration against any loss due to damage, injury or death caused to any DFCR servant while working in connection with the Private Freight Terminal.
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Article 23

RAILWAY ADMINISTRATION'S RIGHTS REGARDING USE OF THE PRIVATE FREIGHT TERMINAL

- 23.1 In addition to any other rights, powers and liberties herein provided for, the Railway Administration shall have the following rights, powers and liberties, over and in connection with the Private Freight Terminal or any extension or part thereof, namely:
- To use the Private Freight Terminal or any extension or part thereof for any purposes of the Railway Administration free of charge in respect of such use.
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Article 24

ASSIGNMENT & TRANSFER

- 24.1. Notwithstanding anything to the contrary contained in this Agreement, the Terminal Management Company shall not transfer and/or assign this Agreement, to any third party except if the same is done in favour of a direct/indirect subsidiary or holding company (as defined in the Companies Act 2013) or any assignment/transfer of this Agreement by the Terminal Management Company to any Lender's Nominee for substitution of the Terminal Management Company pursuant to a Financing Event of Default under any Financing Document through the Substitution Agreement ("Transferee"), subject to such Transferee being found acceptable by the Railway Administration from a national security and public interest perspective. No member of the Joint Venture shall have the right to assign or transfer the interest right or liability in the contract without the written consent of the other members and that of the employer (DFCCIL) in respect of the said contract.
- 24.2. The constitution of the JV shall not be allowed to be modified by the JV except when modification becomes inevitable due to succession laws etc., provided further that there is no change in qualification of minimum eligibility and qualification criteria by JV after change of composition. However, the Lead Member shall continue to be the Lead Member of the JV. Failure to observe this requirement would render the offer invalid. If any modification is required in the role, responsibility and function of the members of JV permission of the DFCCIL authority is required.
- 24.3. Similarly, after the License is awarded, the constitution of JV shall not be allowed to be altered during the currency of License except when modification becomes inevitable due to succession laws etc. and minimum eligibility and qualification criteria should not get vitiated. Failure to observe this stipulation shall be deemed to be breach of contract with all consequential penal action as per agreement conditions. JV/Consortium members (other than lead member) who have not been considered in evaluation criteria for selection, may be allowed to exit JV/Consortium after completion of exclusivity period. Resolution and commitment of the JV/ Consortium for re-allocating the role and liabilities of the exiting members within the JV/Consortium will be needed.
- 24.4 CHANGE OF CONTROL
- 24.4.1 There shall be no Change of Control of the Terminal Management Company through transfer of the direct or indirect legal or beneficial ownership or control of any equity or other contractual arrangement except subject to the conditions that such Change of Control shall be effected only after an approval from the Railway Administration, which may reject such Change of Control from a national security or public interest perspective.
- 24.4.2 Notwithstanding anything to the contrary contained in this Agreement, the Terminal Management Company agrees and acknowledges that:
- (i) all acquisitions of equity by an acquirer either by himself or with any person acting in concert, directly or indirectly by transfer of the direct or indirect legal or beneficial ownership or control of any equity, in aggregate of not less than 25 % of the total equity of the Terminal Management Company, or
 - (ii) acquisition of any control directly or indirectly of the Board of Directors of the Terminal Management Company by any person either by himself

or together with any person or persons acting in concert with him shall be subject to prior approval of the Railway Administration from a national security and public interest perspective and the decision of the Railway administration in this behalf shall be final, conclusive and binding on the Terminal Management Company and undertakes that it shall not give effect to any such acquisition of equity or control of the Board of Directors of the Terminal Management Company without such prior approval of the Railway Administration. For the avoidance of doubt, it is expressly agreed that approval of the Railway Administration hereunder shall be limited to national security and public interest perspective, and the Railway Administration shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Railway Administration shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Terminal Management Company from any liability or obligation under this Agreement.

- (iii) Reconstitution in the Company/JV/ Consortium in any case will be subject to fulfilling by the reconstituted company /JV/Consortium of all selection criteria and terms and conditions based on which the original TMC was selected.

Interpretations for the purposes of Clause 24.4:

- (a) the expression "acquirer", "control" and "person acting in concert" shall have the meaning ascribed thereto in the Security and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997 or any statutory re-enactment thereof as in force as on the date of acquisition of equity, or the control of the Board of Directors, as the case may be, of the Terminal Management Company;
 - (b) the indirect transfer or control of legal or beneficial ownership of equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Terminal Management Company; and
 - (c) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situated in India or abroad) the equity of the Terminal Management Company, not less than half of the directors on the Board of Directors of the Terminal Management Company or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of not less than 15% (fifteen per cent) of the equity of the Terminal Management Company shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Terminal Management Company.
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Article 25

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.

25.1. Non-Political Event

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

- 25.1.1. 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;
- 25.1.2. Strikes or boycotts other than those involving the Railway Administration and the Terminal Management Company, leading to disruption of rail transit services;
- 25.1.3. Strikes or boycotts involving the Railway Administration if such strikes interrupt train services;
- 25.1.4. Train accidents/collisions for whatsoever reason so caused, leading to disruption in the movement of rail traffic;
- 25.1.5. Any judgment or order of any court of competent jurisdiction made against the Terminal Management Company Concessionaire in any proceedings for reasons other than (i) failure of the Terminal Management Company 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;

- 25.1.6. 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
- 25.1.7. Any event or circumstances of a nature analogous to any of the foregoing.

25.2. Indirect Political Event

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

- 25.2.1. 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;
- 25.2.2. Industry-wide or state-wide strikes or industrial action (other than any strikes or boycotts mentioned in Article 23.1 above);
- 25.2.3. Any civil commotion, boycott or political agitation, which prevents running of train services; or
- 25.2.4. Any event or circumstances of a nature analogous to any of the foregoing.

25.3. 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:

- 25.3.1. Change in Law resulting in the Terminal Management Company being unable to exercise its rights under this Agreement or materially impairing the ability of the Terminal Management Company to utilize the Project Assets in the manner or for the purpose contemplated under this Agreement;
- 25.3.2. Expropriation or compulsory acquisition of any Project Assets or rights of the Terminal Management Company;
- 25.3.3. Unlawful or unauthorized or without jurisdiction, revocation of or refusal to renew or grant without valid cause, any clearance, licence, permit, authorization, no objection certificate, consent, approval or exemption required by the Terminal Management Company 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, licence, authorization, no objection certificate, exemption, consent, approval or permit; or
- 25.3.4. 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.

25.4. 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:

- 25.4.1. Nature and extent of each Force Majeure Event which is the subject of any claim for relief with evidence in support thereof;
- 25.4.2. 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;
- 25.4.3. Measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- 25.4.4. 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.

25.5. Effect of Force Majeure Event on the License

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

- 25.5.1. 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;
- 25.5.2. 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;
- 25.5.3. 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.

25.6. 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.

25.7. 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:

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

25.7.2 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

25.7.3 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.

25.8. 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 25.

Article 26

Indemnity

26.1 General indemnity

- 26.1.1 The Terminal Management Company will indemnify, defend, save and hold harmless Railway Administration 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 TMC 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.
- 26.1.2 Subject to the provisions of Railways Act and rules made there under, Railway Administration will indemnify, defend, save and hold harmless the TMC 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 TMC, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the TMC and the Railway Administration shall not be liable to indemnify the TMC for any such claims.

26.2 Indemnity by the Terminal Management Company

- 26.2.1 Without limiting the generality of Article 26.1.1 above, the TMC 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 TMC to comply with Applicable Laws and Applicable Permits;
 - (b) Payment of taxes required to be made by the TMC 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 TMC or any of its contractors which are payable by the TMC or any of its contractors.
- 26.2.2 Without limiting the generality of the provisions of this Article 26.1.1, the TMC 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 TMC 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 TMC 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 TMC shall promptly make every reasonable effort to secure for Railway Administration a licence, at no cost to Railway Administration, authorising continued use of the infringing work. If the TMC is unable to secure such licence within a reasonable time, the TMC 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.

26.3 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.

26.4 Defense of claims

- 26.4.1 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 24, 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.
- 26.4.2 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.
- 26.4.3 If the Indemnified Party has exercised its rights under this Article 26.4.1, 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).
- 26.4.4 For the avoidance of doubt, it is hereby expressly clarified that in the event the Indemnifying Party exercises its rights under Article 26.4.1, 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 26.4.4 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.

26.5 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.

26.6 Survival on Termination

The provisions of this Article 26 shall survive termination or expiry of this Agreement.

Article 27

TERMINATION

27.1 Termination for TMC Default

27.1.1 Without prejudice to any other rights or remedies which Railway Administration may have under this Agreement or otherwise, upon occurrence of a TMC Default as mentioned in para 27.3 of the agreement or non-compliance of any other provisions of the agreement, Railway Administration shall be entitled to terminate this Agreement by issuing a Termination Notice to the TMC (“Railway Administration Notice of Termination”); provided that before issuing the Termination Notice, Railway Administration shall by a written notice inform the TMC of its intention to issue such Termination Notice and grant 30 (thirty) days to the TMC to make a representation (“Railway Administration Notice of Intent to Terminate”) , and may after the expiry of such 30 (thirty) days, whether or not it is in receipt of such representation, issue the Termination Notice in writing, subject to the provisions of Article 27.5.

27.1.2 Without prejudice to any other right or remedy which the TMC may have under this Agreement, upon occurrence of Railway Administration Default, the TMC shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to Railway Administration (“TMC Notice of Termination”); provided that before issuing the Termination Notice, the TMC shall by a written notice inform Railway Administration of its intention to issue the Termination Notice and grant 30 (thirty) days to Railway Administration to make a representation, and may after the expiry of such 30 (thirty) days of whether or not it is in receipt of such representation, issue the Termination Notice.

27.1.3 The termination of this Agreement under the provisions of this clause shall be without prejudice to any rights of remedies to which the Railway Administration will be entitled to in respect of any acts, matter or things arising before such termination.

27.2 For non-compliance/default(s) related to construction/operation, a penalty of Rs. 25,000 per occasion will be imposed on the TMC by competent authority (GM/GGM-BD). Subject to the provisions in the agreement between DFCCIL and the firm, DFCCIL may terminate the Agreement with TMC and forfeit, partially or fully, the Performance Security, 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 defined in the agreement, by giving a written Notice of Termination of 180 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 should make a representation within 30 days of receiving such a notice. After expiry of 30 days, the termination notice of 180 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.

27.3 Power to stop traffic and to terminate Agreement in certain events: The Railway Administration shall have the absolute right to refuse at any time to allow their rolling stock to go on or be used upon the Private Freight Terminal or any part or extension

thereof and shall also be entitled to terminate this Agreement at any time on the happening of any of the following events:

- 27.3.1 In the event of Terminal Management Company failing to deposit within the time fixed for the purpose any sum or sums required to be deposited under the provisions of these presents or according to any direction of the Railway Administration.
- 27.3.2 In the event of Terminal Management Company failing to pay any other sums payable to the Railway Administration under this Agreement or any other charges payable to the Railway Administration in respect of the Private Freight Terminal or the use thereof within one month after the due date of payment or in the event of a due date not being specified then within one month after service of a written demand for payment.
- 27.3.3 In the event of Terminal Management Company failing to comply with any requisition of the Railway Administration to remove or repair any defect which, in the opinion of the Railway Administration, may endanger the working and safety of the Private Freight Terminal within such time as shall be fixed by the Railway Administration for the purpose.
- 27.3.4 In the event of Terminal Management Company failing to observe or perform any other obligation on its part herein contained.
- 27.3.5 In the event of the Private Freight Terminal becoming dangerous or defective by reason of any act of God or other act or circumstances for which the Railway Administration is not responsible.
- 27.3.6 In the event of TMC becoming insolvent or going into liquidation either voluntarily or under an order of a competent Court.
- 27.3.7 In the event of Terminal Management Company interest in the works becoming wholly or partially vested in some other person.
- 27.3.8 The TMC abandons or manifests intention to abandon its obligations without the prior written consent of Railway Administration;
- 27.3.9 The TMC fails to complete the construction of its terminals in accordance with the requirements of this Agreement within three (3) years(one year for brownfield terminal) or within extended time, as permitted by the DFCCIL , on the merit of exigencies due to which the TMC has failed to construct /develop the PFT in time , from the date of award of the final approval in case of a Greenfield terminal, and one (1) year from the date of award of the final approval in case of a Brownfield terminal;
- 27.3.10 The TMC repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- 27.3.11 The TMC has transferred its rights in breach of the provisions of this Agreement;
- 27.3.12 An execution levied on any of the assets of the TMC has caused a Material Adverse Effect;
- 27.3.13 The TMC has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of Railway Administration, a Material Adverse Effect;
- 27.3.14 Resolution for winding up of the TMC is passed, or any petition for winding up of the TMC is admitted by a court of competent jurisdiction and/or a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the TMC is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the TMC are transferred to the amalgamated or reconstructed entity and that the amalgamated or

reconstructed entity has unconditionally assumed the obligations of the TMC under this Agreement; and provided that:

- (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations as required in the RFP for the contract under this Agreement and:
- (ii) the amalgamated or reconstructed entity has the financial standing to Perform its obligations as required in the RFP for the contract under this Agreement and has a credit worthiness at least as good as that of the TMC as at the date hereof; and
- (iii) the amalgamated or reconstituted entity fulfils the terms and conditions of RFP regarding applicant Firm/ JV/Consortium.

27.3.15 If the TMC commits a material default in complying with any provision of this Agreement the Terminal Management Company shall have no claim whatsoever against the Railway Administration in respect of any refusal by the Railway Administration to allow their rolling stock to go on or be used upon the Private Freight Terminal or branch line in any of the aforesaid events.

27.4 Termination for Railway Administration Default

27.4.1 In the event that any of the defaults related to non-compliance with any of the material provision of this agreement or takes any action not to be bound by this agreement, and Railway Administration fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, **Railway Administration** shall be deemed to be in default of this Agreement (the "Railway **Administration Default**") unless the default has occurred as a result of any breach of this Agreement by the TMC or due to Force Majeure.

27.5 Railway Administration shall, if there be Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Article 27.1.1 to the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Lenders stating the intention to substitute the TMC in accordance with the Substitution Agreement. In the event Railway Administration receives such representation on behalf of Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or suspend the License, as the case may be, for enabling the Lenders' Representative to exercise the Lenders' right of substitution in accordance with the Substitution Agreement:

Provided that the Lenders' Representative may, instead of exercising the Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, Railway Administration shall withdraw its notice or the suspension referred to above, as the case may be, and restore all the rights of the TMC:

Provided further that upon written request from the Lenders' Representative and the TMC, Railway Administration shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as Railway Administration may deem appropriate.

27.6 Consequence of termination

On termination of this Agreement, the Railway Administration shall be entitled to disconnect from their railway the portion of the said Private Freight Terminal within the DFCR land (coloured red on the said plan) at the cost of Terminal Management Company and take up and remove the same and the appliance, connected therewith and dispose of the materials thereof as they may think fit rendering to Terminal Management Company surplus (if any) to arise from such disposal after first defraying and reimbursing there at all costs and expenses on and incidental to such taking up, removal and disposal and all sums owing to them by Terminal Management Company under the terms of this Agreement or for freight or carriage. Provided always that the Railway Administration shall at all times have lien on the portion of the said Private Freight Terminal within the DFCR land (coloured red in the said plan) and appliances connected therewith and materials thereof for all sums owing to them from Terminal Management Company under the terms of this Agreement or for freight or carriage. Terminal Management Company shall have no claim whatsoever against the Railway Administration in respect of termination of this Agreement whether under any of the provisions of those presents or in any manner not provided for by those presents.

27.7 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, any termination of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money, damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

27.8 Terminal Management Company to give vacant possession of land within a month of termination:

On termination of this Agreement Terminal Management Company shall remove its materials if any from the land of the Railway Administration if given for connectivity and give vacant possession of the same to the Railway Administration within one month. Provided that if Terminal Management Company fails to remove its materials from the land of the DFCR within the time specified by the Railway Administration, the same shall be removed by the Railway Administration and the cost of such removal shall be realized from Terminal Management Company either from its deposits or by sale of Terminal Management Company own property within such land of Railway Administration or by any other means.

27.9 Right to charge interest on money due hereunder to the Railway Administration:

Notwithstanding anything contained in the foregoing clauses of this Agreement the Railway Administration shall have the right to charge and recover from Terminal Management Company interest at such rates as may be fixed by the Railway Administration from time to time on any or all sums payable by Terminal Management Company under the terms thereof if such sums are not paid within one month from the due date and if no such date is fixed, within one month from the date of which a written demand is made by the Railway Administration.

27.10 Right to deduction of money due to the Railway Administration:

The Railway Administration shall have the right to deduct from any amount which may become payable by the Railway Administration to Terminal Management Company or to the legal representative of Terminal Management Company any money due from Terminal Management Company to the Railway Administration under these presents or for freight, haulage or other charges or otherwise in connection with the construction, maintenance or working of the Private Freight Terminal.

27.11 Any dispute arising out of the same will be resolved through the Dispute Resolution Mechanism.

Article 28

DISPUTE RESOLUTION

28.1. 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 Railway Administration and the Terminal Management Company, 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.

28.2. 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 28.3.

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 Terminal Management Company 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.

28.3. Conciliation

In the event of any Dispute between the Parties, either Party may require such Dispute to be referred to the Railway Administration and the Chairman of the Board of Directors of the Terminal Management 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 28.2 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 28.4

28.4. Arbitration

28.4.1. Any Dispute, which is not resolved amicably as provided in Clauses 28.1. 28.2 and 28.3 shall be finally decided by reference to arbitration by a Board of Arbitrators, appointed pursuant to this clause 28.4. Such arbitration shall be held in accordance with the Rules of Arbitration as mentioned in the DFCCIL PFT policy or such other rules as may be mutually agreed by the Parties and such arbitration shall be held under the provision of Arbitration and Conciliation Act, 1996 and amendments thereof. The venue of such arbitration shall be New Delhi,

or any other place as may be decided by the Arbitrator India and the language of the arbitration proceedings shall be English.

- 28.4.2.** There shall be a Board of three arbitrators of whom each party shall select one and the third arbitrator shall be selected by the two arbitrators so selected, and in the event of a disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.
- 28.4.3.** The arbitrators shall make a reasoned award (the "**Award**"). Any Award made in any arbitration held pursuant to this Article 28.4 shall be final and binding on the Parties as from the date it is made, and the Terminal Management Company and the Railway Administration agree and undertake to carry out such Award without delay.
- 28.4.4.** The Terminal Management Company and the Railway Administration agree that an Award may be enforced against the Terminal Management Company and/or Railway Administration, as the case may be and their respective assets wherever situated.
- 28.4.5.** 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.
- 28.4.6.** The place (seat) of Arbitration/court shall be New Delhi.
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Article 29

MISCELLANEOUS

29.1. 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 Article 6.1, subject to provisions contained in Article 28, the courts shall have jurisdiction over matters arising out of or relating to this Agreement.
- 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, statues, 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.
- c) The TMC shall hereby submit to the jurisdiction of the courts situated at _____(name of the court location) for the purpose of actions and proceedings arising out of the contract and the courts at _____(Name of the court),

29.2. 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).

29.3. Waiver

- 29.3.1. 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.

29.3.2. 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.

29.4. 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.

29.5. 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.

29.6. Severability

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

29.7. 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.

29.8. 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.

29.9. Successors and Assigns

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

29.10. 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 TMC, 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 TMC may from time to time designate by notice to the Railway Administration: [insert]
- (b) In the case of the Railway Administration, be given by facsimile and by letter delivered by hand and be addressed to the Group General Manager/General Manager (Business Development) of the Dedicated Freight Corridor Corporation of India Limited with a copy delivered to the Railway Administration Representative or such other person as the Railway Administration may from time to time designate by notice to the TMC;
- (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.

29.11. Agreement to Override other Agreements; Conflicts

29.11.1. 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.

29.11.2. In the event of a conflict between the terms of this Agreement and those contained in the IPA, the terms of this Agreement shall prevail.

29.12. Consequential or Special Loss

29.12.1. 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.

29.13. Stamp Duty and Registration Charges

29.13.1. Any stamp duty and registration charges if any payable in respect of this Agreement shall be borne by the TMC.

29.14. Review of Agreement

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

29.14.2. The Parties hereby agree that in the event any such infrastructural, technological and/or procedural changes are envisaged on the Railway Administration's rail system, both the TMC and the Railway Administration's 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 Railway Administrator's rail system.

29.15. 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.

29.16. Counterparts

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

29.17 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.

29.18 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.

Article 30

COST OF EXECUTION OF AGREEMENT

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

"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 Terminal Management Company".

Article 31

AGREEMENT IN FORCE FROM

The Agreement shall be deemed to have come into force on and from _____.

Article 32

HEAD NOTES

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

Article 33

PERFORMANCE SECURITY

- 33.1. Performance security will be retained for the license period i.e. 30 years or extension on mutual agreement/consent on the same terms & conditions subject to satisfactory past performance of TMC.
- 33.2. Performance Security Amount of Rs 25,00,000/- (Rupee Twenty Five Lakh Only) in the form of Demand Draft shall be drawn in favour of Dedicated Freight Corridor Corporation of India Ltd and payable at New Delhi or electronic cash transfer.
- 33.3. Bid security of successful bidder will be replaced with Performance security. Non receipt of Performance security may be cause of rejection award of contract.
- 33.4. DFCCIL shall not be liable to pay any interest on Performance Security deposits.
- 33.5. In case of non-submission of penalty, DFCCIL may deduct the amount of penalty as mentioned in Article 27.2 imposed by DFCCIL from Performance Security amount.

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

PRIVATE FREIGHT TERMINAL AGREEMENT

REG:

_____ PRIVATE FREIGHT TERMINAL

At Kilometer _____

Off _____
