भारत सरकार **GOVERNMENT OF INDIA**
रेल मंत्रालय **MINISTRY OF RAILWAYS**
(रेलवे बोर्ड **RAILWAY BOARD**)

No. 2010/TC(FM)/14/2 Rail Bhavan, New Delhi - 110 001, dated ***25.05.2012***

General Managers,
All Indian Railways.

Sub: Revised Private Freight Terminal (PFT) scheme. - Agreement
Ref: Freight Marketing Circular No. 05 of 2012 issued vide Board's letter No. 2011/TC(FM)/14/14 dated 23.04.2012.

1.0 Policy guidelines on **'Revised Private Freight Terminal (PFT) scheme'** was issued vide Freight Marketing Circular No. 05 of 2012 under Board's letter No. 2011/TC(FM)/14/14 dated 23.04.2012. Attention is invited to Para 21 of this Circular. As per provisions contained in this para, Terminal Management Company, shall sign an Agreement with the zonal railway before notification of the PFT.

2.0 In this connection, a specimen copy of Agreement to be executed between Terminal Management Company and Indian Railway under the "Revised Private Freight Terminal (PFT) scheme", has been uploaded in Indian Railway's website

http://indianrailways.gov.in/railwayboard/uploads/directorate/traffic_comm/Freight_MKTG_2K12/FM_12_2012.PDF

2.0 This issues with the concurrence of Finance, Mechanical and Legal Directorates of Ministry of Railways.

3.0 The receipt of this letter may please be acknowledged.

(Rita Raj)
Director Freight Marketing

No. 2010/TC(FM)/14/2 New Delhi, dated *25.05.2012*

Copy forwarded to :
1. DAI (Railways) with 36 spares.
2. FA&CAOs, All Indian Railways.

for Financial Commissioner/Railways

No. 2010/TC(FM)/14/24 New Delhi, dated *25.05.2012*

Copy to:

1. The Chief Operation Manager, All Indian Railways.
2. The Chief Commercial Manager, All Indian Railways.
3. The Chief Mechanical Engineers, All Indian Railways.
4. The Chief Commercial Manager (FM), All Indian Railways.
5. The Managing Director, Konkan Railway Corporation Ltd., Belapur Bhavan, Plot No.6, Sector 11, CBD Belapur, Navi Mumbai-400014.
6. Managing Director, Centre for Railway Information System (CRIS), Chanakyapuri, Near National Rail Museum, New Delhi.
7. Managing Director, DFCCIL, Pragati Maidan, New Delhi.
8. Director General, R.D.S.O., Manak Nagar, Lucknow.
9. Director General, Railway Staff College, Vadodara.
10. Indian Railways Institute of Transport Management, (IRITM), Manak Nagar, Lucknow.

(Rita Raj)
Director Freight Marketing

No. 2010/TC(FM)/14/2 New Delhi, dated *25.05.2012*

Copy for information to:

1. CRB, FC, MT, ME, MM, ML, Secretary, Railway Board, New Delhi.
2. AM(T), AM(C), AM(Mech), Adv.(R), Adv.(F), Adv.(Infra), Adv.(Vig), EDTT(M), EDTT(S), EDTT(F), ED(Plg.), EDT(PPP), EDF(C), EDV(T), DTT(Cord.), OSD(CRB), OSD(MT), DF(C), JDTC(R)/Railway Board, New Delhi.

(Rita Raj)
Director Freight Marketing

सत्यमेव जयते

Government of India

Agreement

between

Railway Administration, Government of India

and

[insert]

Terminal Management Company

CONTENTS

AGREEMENT

1. Definitions and Interpretation
2. Representations and Warranties of the Parties
3. Scope of Agreement
4. Agreement to Construct Private Freight Terminal
5. Payment by terminal management company against the total estimated cost
6. Cost of PFT
7. Maintenance and other charges such as special emergency repair works for the portion of the PFT
8. Weigh bridge facilities and level crossing etc.
9. Installation and maintenance of tipplers or any other bulk handling system designs in the PFT
10. Additional works including renewals, replacements and re-strengthening
11. Applicability of private siding policy
12. Traffic on PFT
13. Facilities to be developed
14. Revenue sharing
15. Freight payable to railways
16. Working of PFT
17. Obligations of the TMC
18. Obligations of railway administration
19. PFT not to be used by other person
20. TMC responsible for damage or injury to person of property
21. Railway administration's rights regarding use of the PFT
22. Assignment & transfer
23. Force majeure
24. General indemnity
25. Termination
26. Dispute resolution
27. Miscellaneous
28. Cost of execution of agreement
29. Agreement in force
30. Head notes

DRAFT AGREEMENT FOR PRIVATE FREIGHT TERMINAL (PFT)

This Agreement for operation of Private Freight Terminal on IR network (the "**Agreement**") made on this the [insert] day of [insert], [insert].

BY AND BETWEEN

1. **THE PRESIDENT OF INDIA** acting through _____Railway Administration, (hereinafter referred to as "**Railway Administration**" which expression shall, unless repugnant to the context, be deemed to include its successors and assigns) of the one part; and
2. [*insert*] , a company incorporated under the Companies Act, 1956, having its registered office at [*insert*]/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, 1956 and having its registered office at (insert address)" (in the case of a holding company incorporated elsewhere than in India add:) "and its principal office in India at (insert address)" (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 the _____ station yard of the _____ Railway taking off from Kilometer No._____ between _____ station and _____ station of the _____ Railway as shown in red and green on the plan bearing CE's 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

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 Concession Agreement entered into between Railway Administration 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 the India under the Companies Act-1956.

"**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, 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**" means a terminal commissioned by the conversion of an existing siding/terminal etc. on private land, to PFT.

"**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 Railways 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;

(b) Repeal, modification or re-enactment of any existing Indian law;

(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;

"**Dispute**" shall have the meaning ascribed to the term in Article 26 hereunder;

"**Departmental charges**" means the charges leviable by the Railway Administration, when maintenance is undertaken by the "Railway" for outside parties, in terms of the code of the Engineering Department (As revised from time to time)

"**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, and/or procuring 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 23 hereunder

"**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 Railway Administration, 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 Railway Administration from the 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**" means a new PFT commissioned on private land, under the provisions of this policy.

"Interchange Point" means the point at which the Concessionaire's Trains will be transferred between the TMC and the Railway Administration;

"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 Railway Administration 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, ware housing, 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 companys" means any other Person(s) or Entity/ies with whom a substantially similar Concession 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 Railway from time to time

"**Permanent Way Materials**" includes girders, rails, sleepers, fastenings, points and crossings, fencings, signaling, interlocking and telecommunication equipment and over-head structure and any other things connected therewith for electric traction and other machinery (except station machinery) and equipments necessary for working the Private Freight Terminal.

"**Private Freight Terminal**" includes Terminal Management Company works with the _____ 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 Railway Administration 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.

"_____ 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 _____ Railway system as now or hereafter constituted and all engines and rolling stock (whether belonging to the _____ Railway system or not) passing over such system

"**Railway Administration**" means the President of India, acting through the General Manager for the time being of _____ Railway and any officer of the _____ Railway authorized by any such General Manager 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;

"**Substitution Agreement**" shall mean the agreement to be entered into between Railway Administration, Terminal Management Company and the Lenders, substantially similar in the form set forth in **Annexure I;**

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

"**Take off Point**" means a connection drawn from the existing railway 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 _____ 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 and 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, Railway Administration 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 and has 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 Railway Administration 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 proceedings 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] together with their Associates hold not less than 51% (fifty-one percent) of its issued and paid up Equity of the TMC as on the

date of this Agreement and shall continue to hold not less than 51%of such equity till completion of 1(one) year of commercial operation and the respective holding of each consortium member conforms to the representation made by the Consortium and accepted by the Ministry of Railways as part of the application and that no member of the consortium shall hold less than 10% (ten percent) of such equity till completion of one year of commercial rail operation by the TMC except as provided in Article 22.1 and has advised the Railway Administration accordingly;

(l) [each Consortium Member] is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested Railway Administration 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 Railway Administration accordingly;

(m)It has not withheld from Ministry of Railways/Railway Administration, 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

(n) It satisfies and shall, throughout the Term, continue to satisfy any and all of the entry requirements and eligibility criteria laid down by Railway Administration in its letter no 2008/TC(FM)/14/2 dated 31.05.2010 and 21.06.2011 or Freight Marketing Circular No.5 of 2012 dated 23.4.12.

(o) The TMC is familiar with the business of terminal management on 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 Railway Administration

2.2.1 Railway Administration 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 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 Indian Railways Network and no statutory or other warranties as to the business or financial viability of the operation of terminals on Indian Railway 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 abovementioned 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 rail terminal 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 Railway Administration, 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 30 years starting from the Commercial Operations Date (the "**Agreement Period**")

Article 4

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, from _____ (length of Private Freight Terminal) Kilometers on _____ (name of section) Branch as shown in red and green on the plan annexed hereto (bearing CE's No. _____) connecting Terminal Management Company's work known as_____ situated at or near _____ in the District of _____ with the _____ system at or near _____ on _____ Railway.

Article 5

PAYMENT BY TERMINAL MANAGEMENT COMPANY AGAINST THE TOTAL ESTIMATED COST

5.1 If Terminal Management Company desires the Railways to execute the work on the PFT, 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 charges as per the extant rules. After completion of the work and certification in writing by the Railway 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.

5.2 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 or even after sanction of Commissioner of Railway Safety, 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.

5.3 Capital Cost :

The capital cost of all traffic facilities at the serving station as such 'Y' connection, additional lines at the serving station, crossing stations, patch doubling of the section etc. shall be as per the Liberlised Siding Policy of Indian Railway fully borne by railway. The distance for charging of tariff, for each 'Y' connection shall, however, be inflated/increased by 5(five) kilometers. However, the capital cost for augmenting the facilities, within the premises of Private Freight Terminal owner shall be borne by the Private Freight Terminal owner.

5.4 Capital cost of new Private Freight Terminal: The private freight terminal owner shall bear the capital cost of the new private freight terminal from the take-off point at the serving station including OHE.

5.5 Preliminary Survey expenses –

In case the TMC does not to get the work done through Railways, Terminal Management Company shall bear and pay to the Railway Administration in advance a sum of Rs._____ (Rupees _____) for the first track kilometer or part of a track kilometer of the Private Freight Terminal required and a sum of Rs. _____ (Rupees _____) for every half track kilometer or fraction thereof in excess of one track kilometer as cost of survey and preparation by the Railway Administration of the plans and estimates for the Private Freight Terminal when the same will traverse in a flat terrain but in case of Private Freight Terminal through difficult terrain of which the Railway Administration shall be the sole judge, Terminal Management Company shall pay such sum as may be fixed by the Railway Administration. The amount of Rs. _____ (Rupees _____) and Rs. _____ (Rupees _____) respectively as stated above are subject to increase from time to time at the sole discretion of the Railway Administration on the circumstances of each case and Terminal Management Company shall be bound to bear and pay such sum. Single copies of such plans and estimates will be sent to Terminal Management Company on completion. If additional copies of such plans and estimates are required to be supplied, Terminal Management Company shall have to pay such additional charges as may be levied by the Chief Engineer of the Railway. If Terminal Management Company shall desire any alterations to such plans involving further survey work Terminal Management Company shall pay to the Railway Administration in advance the cost of such further survey and the preparation of amended plans and estimates at the rates and terms as stated above in addition to the cost before mentioned.

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

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

5.6 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 3 of the Liberalization of Siding Rules (FM Circular 1 of 2012) as revised from time to time.

Article 6

COST OF PFT

6.1 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 siding rules notified by Railway Administration 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.

6.2 Cost of electrification of Private Freight Terminal: For a Private Freight Terminal in the electrified territory or the territory approved for electrification, the capital cost of electrification of Private Freight Terminal shall be borne by the Private Freight Terminal owner.

6.3 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 sole 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 Railways Administration rail track to the rail siding if found technically feasible in accordance with Good Industry Practice.

6.4 Terminal Management Company shall pay the land license charges for the railway land provided for connectivity as per extant guidelines and as revised from time to time. For the purpose of connectivity, the width of railway land shall be 6.0 meter and shall be considered from the throw of switch of last take off point and crossing in railway land.

6.5 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, owner of the Private Freight Terminal 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 or would be laid by Terminal Management Company under the supervision of Railway Administration. 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 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 Railway Administration.

Article 7

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

7.1 Terminal Management Company will at its own cost and expenses in all things and to the satisfaction of the Railway Administration 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). Such charges as may be fixed by the Railway for the supervision rendered shall be paid by Terminal Management Company.

7.2 Provided, however, that the Railway Administration may at the request of Terminal Management Company undertake at any time the ordinary maintenance of the said portion of Private Freight Terminal (coloured green) on Terminal Management Company paying annually to the Railway Administration in advance maintenance charges at such rates as may be fixed by the Railway Administration from time to time.

7.3 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.

7.4 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 recoupment 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.

7.5 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 Railway Engineer. No interest will be paid by the Railway Administration on any such advance.

7.6 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.

7.7 Railway Administration will arrange to carry out necessary inspection of the portion of the Private Freight Terminal outside the Railway land boundary free of cost. However, wherever maintenance is being done by Railways at the cost of Terminal Management Company, Terminal Management Company shall continue to bear this cost. Further the inspection by Railway will not absolve the party from its responsibility or liability laid down in clause 20 hereinafter.

7.8 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 Railways 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 8

WEIGH BRIDGE FACILITIES AND LEVEL CROSSINGS, ETC.

8.1 Terminal Management Company shall provide and maintain at its own cost and expense a suitable electronic in motion weigh bridge, weigh-bridge house as per extant rules of Railways at a suitable location in such a manner so that all incoming and outgoing rakes can be weighed. It shall also provide such level crossings, gates and gate-lodges, within the Private Freight Terminal limits as the Railway Administration may require Terminal Management Company to provide from time to time.

The electronic-in-motion weigh bridge should be maintained by the Private Freight Terminal owner at its own cost to the satisfaction of the Railway 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 weigh bridge is showing correct weight and is in proper working order.

8.2 A card will be kept by Terminal Management Company testifying the accuracy of the weigh-bridge and giving date of tests as in the case of all Railway weighbridges. Terminal Management Company should also permit the Railway weigh-bridge Inspector or such other staff may be deputed by the Railway Administration at all times to check the accuracy of the weigh bridge and to supervise the maintenance, which shall be carried out by Terminal Management Company to the satisfaction of the Railway Administration.

8.3 The maintenance shall be done according to Railway rules and regulations as in force from time to time. Such emergent maintenance as may be required for safety may be done by the Railway Administration without prior notice to 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.

Other rules & regulations regarding installation, operation and maintenance of weigh bridges as laid down from time to time by Railway Administration would apply.

Article 9

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

9.1 At Private Freight Terminals using bulk handling system, tipplers or any other bulk handling system designs shall be provided and commissioned as per 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.

9.2 Private Freight Terminal owners shall always keep tippler and retarder or other bulk handling system in good condition, which will be jointly inspected with railways every six months. Tippling operation will be suspended if tippler/ retarder is defective.

Article 10

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 items as fencing, signaling, 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 provided at the cost of Terminal Management Company 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 immediately will be informed by the TMC to the Railway Administration.

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 11

APPLICABILITY OF PRIVATE SIDING POLICY

11.1 Construction of PFT will be as per provision of private siding policy and therefore all charges stipulated in the extant policy for construction of a private siding would be applicable on PFT. PFT connectivity will be permitted only from one of the existing crossing stations of IR which shall be nominated as the serving station. No PFT will be permitted from mid-section, however, in case a take off is essential from mid section, the same can be permitted by the Zonal Railway in accordance with the extant policy guidelines.

11.2 Cost of Railway staff Employed at the Private Freight Terminal: In all PFT Railway 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 cost of commercial staff as specified in the PFT policy.

Article 12

TRAFFIC ON PRIVATE FREIGHT TERMINAL

12.1 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 said plan No. (same number as in Clause 4) 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.

12.2 Unless otherwise specified by IR from time to time by suitable notification or any other means of communication, a PFT policy would be permitted to book and handle all traffic excepting that not permitted by IR.

12.3 For rail connectivity railway land can be offered as per extant rule.

12.4 Unless otherwise specified by IR from time to time by suitable notification or any other means of communication, all types of wagons permitted to run on IR network shall have access to the PFTs.

12.5 Depending upon demand and business plan, **as submitted by the TMC PFT would provide various logistics related services.**

Article 13

FACILITIES TO BE DEVELOPED

13.1 The facilities in PFT will be developed as specified in the PFT policy.

13.2 After construction, Railway will inspect all safety in the PFT. The date of opening of the Private Freight Terminal will be reckoned from the date of notification issued by Commissioner of Railway Safety or by the Civil Engg. Department, as the case may be, stating that the said Private Freight Terminal is opened to Railway traffic and is fit for movement of the same.

Article 14

REVENUE SHARING

14.1 There will be revenue sharing between TMC and Railways for all commodities as specified in the PFT policy.

14.2 The period of revenue sharing will start as specified in the policy.

14.3 The extent of revenue sharing as stipulated above shall be the same for all PFTs irrespective of when the TMC came in or when the siding/terminal was converted to a PFT.

Article 15

FREIGHT PAYABLE TO RAILWAYS

15.1 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 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 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.

15.2 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.

15.3 Consignment booked from and to PFT will be pre paid.

15.4 Freight on traffic booked from and to PFT shall be charged on through distance basis as per Public Tariff.

15.5 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. The 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 and in force at the time the traffic is carried.

15.6 Terminal Management Company will not be required to pay Wharfage charges to the Railways within the premises of the PFT.

15.7 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.

15.8 A Goods Clerk representing the Railway Administration employed at the Private Freight Terminal will be empowered to conduct all commercial activities related to Railways.

15.9 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 (coloured red & green).

15.10 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 Railway would not be responsible for any aspect of the employment and working.

15.11 In case of detention of rake short of the PFT for want of acceptance or for the reason attributed to Terminal Management Company, Railways will levy stabling charges on privately owned wagons provided they are stabled within a radius of distance as specified in the policy of PFT. 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.

15.12 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.

15.13 All other charges as per extant policy for private sidings.

Article 16
WORKING OF PRIVATE FREIGHT TERMINAL

16.1 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 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.

16.2 All "Commercial and Operating rules" as applicable in a Goods shed for booking, supply and delivery of goods shall be applicable at the PFT.

16.3 Railways 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 line inside PFT after which the entire liability would rest with Terminal Management Company. Similarly for the outward traffic, Railway's liability would begin only after the goods are loaded into wagon and handed over to Railways. Terminal Management Company shall indemnify Railways from claim, if any, preferred by the consignors/consignees on the Railways for any loss, destruction, damage, deterioration or non-delivery of any consignment in full or part during the period such liability rests with it.

16.4 Terminal Management Company shall indemnify railway for any damage to 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.

16.5 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 taxes etc related to PFT working.

Article 17

OBLIGATIONS OF THE TERMINAL MANAGEMENT COMPANY

17.1 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:

17.1.1 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 shall comply with all Applicable Laws and Applicable Permits;

17.1.2 Discharge all its obligations contained in this Agreement in accordance with Good Industry Practice;

17.1.3 Undertake loading and unloading operations.

17.1.4 Perform and fulfill its obligations under the Financing Documents;

17.1.5 Ensure and procure that its Contractors/sub-contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the TMC obligations under this Agreement;

17.1.6 Support, cooperate with and facilitate Railway Administration in the effective and timely implementation and operation of the provisions of this Agreement;

17.1.7 Provide all relevant data and information to FOIS through an on line system, in accordance with the requirements of this Agreement;

17.1.8 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;

17.1.9 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;

17.1.10 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 of its covenants or obligations contained herein;

17.1.11 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;

17.1.12 Maintain accurate, up-to-date and complete records relating to Terminal Management Company's Terminal operations.

17.1.13 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.

17.1.14 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.

17.1.15 To do all such other acts, deeds and things as are necessary or incidental to the performance of Concessionaire's obligations under the Agreement.

17.2 EMPLOYMENT OF FOREIGN NATIONALS

17.2.1 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 18

OBLIGATIONS OF RAILWAY ADMINISTRATION

18.1 The Parties expressly acknowledge and agree that Railway Administration shall be responsible for planning and coordinating the movement of train services from to the terminal 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 access information on movement and operation of rolling stock owned 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.

18.2 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:

18.2.1 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;

18.2.2 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;

18.2.3 Railway Administration shall depute its personnel to issue Railway Receipt (RR) and for other documentation.

Article 19

PRIVATE FREIGHT TERMINAL NOT TO BE USED BY OTHER PERSON

19.1 No inward traffic other than that of Terminal Management Company or consignees to whom the consent to handle the traffic in PFT has been given by Terminal Management Company will be handled at the PFT.

19.2 No outward traffic other than that of Terminal Management Company or the consignors who had entered into an agreement with Terminal Management Company will be booked from PFT.

19.3 In all cases of disputes or differences with regard to any matters mentioned in this clause, the decision of the Chief Commercial Manager of _____ Railway shall be final and binding on Terminal Management Company.

Article 20

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

20.1 Terminal Management Company shall be entirely responsible for all moving assets of the Railway Administration 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, Railways 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.

20.2 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.

20.3 Terminal Management Company shall also indemnify the Railway Administration against any loss due to damage, injury or death caused to any railway servant while working in connection with the Private Freight Terminal.

Article 21

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

21.1 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 or any remuneration to Terminal Management Company in respect of such use.

Article 22

ASSIGNMENT & TRANSFER

22.1 Notwithstanding anything to the contrary contained in this Agreement, the Terminal Management Company shall not transfer and/or assign this Agreement, before the completion of 1 (one) year from the Commercial Operation Date, 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 1956) 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.

22.2 The Terminal Management Company may transfer and/or assign the Terminal to any third party after one (1) year after the commencement of commercial operations of the Concessionaire's Terminal, however subject to the condition that such transfer shall be effected only pursuant to an approval from the Railway Administration, which may only reject the transfer or assignment if it believes that such transfer would be prejudicial to national security or public interest.

22.3 CHANGE OF CONTROL

22.3.1 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 before the completion of one (1) year from the commencement of commercial operations of the Concessionaire's Terminals pursuant to this Agreement, whereafter there may be a Change of Control, subject however to the condition 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.

22.3.2 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 15% 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.

For the purposes of this Article 22.3:

(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.

Article 23

FORCE MAJEURE

As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, other than non-availability of funds or on account thereof, 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.

23.1 Non-Political Event

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

23.1.1 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;

23.1.2 Strikes or boycotts other than those involving the Railway Administration and the Terminal Management Company, leading to disruption of rail transit services;

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

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

23.1.5 Any judgment or order of any court of competent jurisdiction made against the C Terminal Management Company oncessionaire 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;

23.1.6 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

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

23.2 Indirect Political Event

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

23.2.1 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;

23.2.2 Industry-wide or state-wide strikes or industrial action (other than any strikes or boycotts mentioned in Article 23.1 above);

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

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

23.3 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 :

23.3.1 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;

23.3.2 Expropriation or compulsory acquisition of any Project Assets or rights of the Terminal Management Company;

23.3.3 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

23.3.4 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.

23.4 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 :

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

23.4.2 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;

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

23.4.4 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.

23.5 Effect of Force Majeure Event on the Concession

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

23.5.1 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;

23.5.2 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;

23.5.3 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.

23.6 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.

23.7 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:

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

23.7.2 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

23.7.3 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.

23.8 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 24.

Article 24
Indemnity

24.1 General indemnity

24.1.1 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.

24.1.2 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.

24.2 Indemnity by the Terminal Management Company

24.2.1 Without limiting the generality of Article 24.1.1 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.

24.2.2 Without limiting the generality of the provisions of this Article 24.1.1, 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.

24.3 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.

24.4 Defense of claims

24.4.1 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.

24.4.2 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.

24.4.3 If the Indemnified Party has exercised its rights under this Article 24.4.1 , 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).

24.4.4 For the avoidance of doubt, it is hereby expressly clarified that in the event the Indemnifying Party exercises its rights under Article 24.4.1, 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 24.4.4 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.

24.5 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.

24.6 Survival on Termination

The provisions of this Article 24 shall survive termination or expiry of this Agreement.

Article 25

TERMINATION

25.1 Termination for TMC Default

25.1.1 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 25.3 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 25.5.

25.1.2 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.

25.1.3 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.

25.2 Power to close the portion of the Private Freight Terminal within Railway land or work it for public traffic

In the event of the Railway Administration deciding in the public interest to close the Private Freight Terminal or any part or extension thereof or to work the Private Freight Terminal or any part or extension thereof for public traffic as part of the Railway system (the decision of the Railway being final in this case and the service of the notice as hereinafter stated shall be conclusive evidence of the same) the Railway Administration may terminate this Agreement by giving to Terminal Management Company 180 (one hundred and eighty) days previous notice in writing of such decision and on the expiration of such notice this Agreement shall terminate.

25.3 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:

25.3.1 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.

25.3.2 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.

25.3.3 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.

25.3.4 In the event of Terminal Management Company failing to observe or perform any other obligation on its part herein contained.

25.3.1 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.

25.3.5 In the event of TMC becoming insolvent or going into liquidation either voluntarily or under an order of a competent Court.

25.3.6 In the event of Terminal Management Company interest in the works becoming wholly or partially vested in some other person.

25.3.7 The TMC abandons or manifests intention to abandon its obligations without the prior written consent of Railway Administration;

25.3.8 The TMC fails to complete the construction of its terminals in accordance with the requirements of this Agreement within three (3) years 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;

25.3.9 The TMC repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;

25.3.10 the TMC has transferred its rights in breach of the provisions of this Agreement;

25.3.11 an execution levied on any of the assets of the TMC has caused a Material Adverse Effect;

25.3.12 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;

25.3.13 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 under this Agreement and ;

(ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and has a credit worthiness at least as good as that of the TMC as at the date hereof; and

25.3.14 The TMC commits a material default in complying with any provision of this Agreement. 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.

25.4 Termination for Railway Administration Default

25.4.1 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.

25.5 Railway Administration shall, if there be Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Article 25.1.1 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 Concession, 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.

25.6 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 railway 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 railway 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.

25.7 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.

25.8 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 Railway Administration 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.

25.9 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.

25.10 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.

Article 26

DISPUTE RESOLUTION

26.1 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.

26.2 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 MOR will be final and binding.

26.3 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 26.1 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 Article 26.4

26.4 Arbitration

26.4.1 Any Dispute, which is not resolved amicably as provided in Article s 26.1, 26.2 and 26.3 shall be finally decided by reference to arbitration by a Board of Arbitrators, appointed pursuant to this Article 26.4. Such arbitration shall beheld in accordance with the Rules of Arbitration as mentioned in the PFT policy or such other rules as may be mutually agreed by the Parties and shall be subject to the provisions of The Arbitration and Conciliation Act, 1996. 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.

26.4.2 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.

26.4.3 The arbitrators shall make a reasoned award (the "**Award**"). Any Award made in any arbitration held pursuant to this Article 26.4 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.

26.4.4 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.

26.4.5 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.

Article 27

MISCELLANEOUS

27.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and subject to provisions contained in Article 26, the courts shall have jurisdiction over matters arising out of or relating to this Agreement.

27.2 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).

27.3 Waiver

27.3.1 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.

27.3.2 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.

27.4 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.

27.5 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.

27.6 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.

27.7 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.

27.8 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.

27.9 Successors and Assigns

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

27.10 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 General Manager of the Railway Administration 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.

27.11 Agreement to Override other Agreements; Conflicts

27.11.1 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.

27.11.2 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.

27.12 Consequential or Special Loss

27.12.1 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.

27.13 Stamp Duty and Registration Charges

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

27.14 Review of Agreement

27.14.1 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.

27.14.2 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.

27.15 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.

27.16 Counterparts

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

Article 28

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 Railways for collection of registered Agreement which shall remain in the custody of Railways. Any charges, if levied for collection of registered Agreement, shall also be borne by Terminal Management Company".

Article 29

AGREEMENT IN FORCE FROM

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

Article 30

HEAD NOTES

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

****

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

Signed sealed and delivered for and on behalf of
President of India by _____
The _____
Of the _____ Railway
Administration in the presence of _____
Signed and delivered by _____ _____
In the presence of _____
(1) Signature _____
Name _____
Occupation _____
Address _____
_____
WITNESS
(2) Signature _____
Name _____
Occupation _____
Address _____
_____
Dated the _____ 20____
BETWEEN THE
PRESIDENT OF INDIA AND
_____
_____
PRIVATE FREIGHT TERMINAL AGREEMENT
REG:

_____ PRIVATE FREIGHT TERMINAL
At Kilometer _____
Off _____

****