

**GOVERNMENT OF INDIA  
MINISTRY OF RAILWAYS (RAILWAY BOARD)**

**SUGGESTION**

**ON DRAFT CONCESSION AGREEMENT  
FOR PRIVATE FREIGHT TERMINAL (PFT)**

1. Ministry of Railways had issued policy guidelines on “Private Freight Terminal (PFT)” vide Freight Marketing Circular No. 14 of 2010 under Railway Board’s letter No. 2008/TC(FM)/14/2 dated 31.05.2010 and its amendment issued vide Freight Marketing Circular No. 06 of 2011 dated 21.06.2011.
2. In reference to the above, an agreement is required to be signed between Indian Railway and Terminal Management Company (TMC) as per para 9.19 of the PFT policy. Accordingly, draft concession agreement has been framed.
3. Ministry of Railways invites suggestions from the zonal railways, trade & industry and any other individual on the draft concession agreement to be signed between Indian Railway and Terminal Management Company (TMC).
4. The suggestion, if any may please be sent personally to Adv(FM), Room No. 471, Rail Bhavan, Ministry of Railways, New Delhi or e-mail at address [advfm@rb.railnet.gov.in](mailto:advfm@rb.railnet.gov.in) upto 16<sup>th</sup> August, 2011.

**INDIAN RAILWAYS**  
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**SERVING CUSTOMERS WITH A SMILE**

**DRAFT AGREEMENT FOR**  
**PRIVATE FREIGHT TERMINAL (PFT)**

AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_  
BETWEEN THE PRESIDENT OF INDIA acting through the \_\_\_\_\_ Railway  
Administration (hereinafter called “the Railway Administration”) of the one part and  
\_\_\_\_\_ (hereinafter called the Applicant)\* 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, this Agreement witnesseth as follows:

1. Interpretation: In this Agreement, unless the context otherwise requires, the following words and expressions have the meaning and shall be interpreted as specified, namely –
  - (i) Words importing the singular number include the plural number and vice versa.
  - (ii) “The 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.
  - (iii) “The 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.

- (iv) “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.
- (v) “\_\_\_\_\_ 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.
- (vi) (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)”.
- (vii) (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.
- (viii) “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.
- (ix) “Act” means the Railways Act 1989.
- (x) “Brownfield” means a terminal commissioned by the conversion of an existing siding/terminal etc. on private land, to PFT.

- (xi) "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.
- (xii) "Greenfield" means a new PFT commissioned on private land, under the provisions of this policy.
- (xiii) "IR" means Indian Railways.
- (viii) "MOR" means Ministry of Railways.
- (ix) "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.
- (x) "TMC" means Terminal Management Company, who is the owner of PFT.
- (xi) "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.
- (xii) "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.

(xiii) "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).

(xiv) "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.

2. **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.

3. **Preliminary Survey expenses** – (a) 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.

(b) 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 party shall be as follows:

- (i) Surveys :
  - (a) 1% of the assessed cost of the project at the stage proposal of the party for undertaking the survey as approved by the Railway.
  - (b) Balance amount to complete 2% of the estimated cost of the project while applying for the final approval of the complete works.
- (ii) Final Inspection : 2% of the cost of project while applying for final approval of the complete works.

4. **Payment by Terminal Management Company against the total estimated cost :**

a) 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.

- b) 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.
- c) **Capital Cost :**  
The capital cost of all traffic facilities at the serving station such 'Y' connection, additional lines at the serving station, crossing stations, patch doubling of the section etc. shall be fully borne by the railways. 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.
- d) **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. (a) **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.

**(b) 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.

**(c) 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.

(d) 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. 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 off take point and crossing in railway land.

**(E) 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.

6. **Maintenance and other charges such as special emergency repair works for the portion of the private freight terminal:**

- a) 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.
- b) 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.
- c) 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.
- d) Provided also that when the Railway Administration is also required to carry out any renewals of Permanent Way Materials or strengthening of track and special repairs to sub-grade works including recouplement of

ballast in respect of the said Private Freight Terminal (coloured green) Terminal Management Company shall pay in advance to the Railway Administration the cost which the Railway Administration or their Engineer may estimate for such renewals of permanent materials or strengthening of track including supply of materials and special repairs to sub-grade work together with supervision and other charges as fixed by the Railway Administration.

- e) 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.
  
- f) 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.
  
- g) 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 18 hereinafter.
  
- h) 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.

7. **Weigh Bridge facilities and Level Crossings, etc.:**

- (a) 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 at the entry point of the PFT 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.

- (b) 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 weigh-bridges. 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.
- (c) 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.

8. **Installation and maintenance of tippers or any other bulk handling system designs in the Private Freight Terminal**

- (a) At Private Freight Terminals using bulk handling system, tippers 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.
- (b) 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.

9. **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.

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

All such structures must comply with the regulations from time to time in force upon \_\_\_\_\_ Railway system regarding standard dimensions and other matters. The terms and conditions of this Agreement will also be applicable to any additions and alterations made to the Private Freight Terminal unless otherwise decided by the Railway Administration.

10. (a) **Applicability of Private Siding Policy:**

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.

**(b) 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 maximum one commercial staff per shift. However, in case there are more than one handling area which cannot be supervised from one location, cost of additional commercial staff subject to maximum of one commercial staff per shift per handling area will also be borne by Terminal Management Company.

11. **Traffic on Private Freight Terminal:**

- (a) 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 2) 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.
- (b) 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 excluding outward programmed coal, coke and iron ore traffic. Outward loading of non-programmed coal for core & non-core sector is allowed. For booking & loading of non-programmed coal, conditions as laid down in Board's letter No. 2005/TT(V)/25/CIL dated 07.12.2005 and Board's letter No. 2007/TT(V)/25/CIL dated 24.10.2007 should be followed strictly.
- (c) For rail connectivity railway land can be offered as per extant rule.
- (d) 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.

- (e) Depending upon demand and business plan, PFTs would provide various logistics related services like warehousing facilities, value addition services like palletization, labeling , processing of goods with adequate inter modal facility and convenience centre etc.

12. **Facilities to be developed:**

- (a) The PFT shall function round the clock on all days including Sundays.
- (b) **Engine on Load (EOL) Policy:**

Train Operation in the PFT shall be on the Engine on Load (EOL) norm as per free time specified from time to time. The locomotive by which the train has arrived shall remain in the PFT during entire loading/unloading operation. Loco detention charges will be leviable beyond the prescribed free time for loading/unloading under EOL norms as per IR's extant policy on EOL and as per prescribed rates for All India Engine Hire Cost.
- (c) Depending upon cargo proposed for handling, adequate rail infrastructure capable for handling full rake in one hook with direct reception & dispatch facilities and equipped with appropriate handling arrangements, warehousing, stacking area circulating area will be provided.
- (d) The minimum facility will be one handling (loading/unloading) line, one escape line and one brake van reversal line. The number of handling lines will increase in proportion to the number of rakes proposed to be handled in a PFT. For example four rakes are to be handled per day there should be 2 handling lines.
- (e) Depending upon the traffic proposed, appropriate handling equipment shall be provided.
- (f) The terminal will be equipped with appropriate infrastructure and handling equipment to handle inter-modal transfers such as external and internal roads, parking space, circulating area, public convenience center etc.
- (g) Rest room, for crew and guard will be provided at PFT at the cost of TMC.
- (h) TMC will also permit the train crew to avail the facilities of staff canteen in their premises if available, on payment of charges as prescribed for their own staff.

- (i) FOIS and TMS with limited access as prescribed by IR shall be installed at the PFT and all costs related to FOIS/TMS will be borne by the TMC in accordance with the rules applicable for a private siding.
- (j) 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.

13. **Revenue Sharing:**

- (a) There will be revenue sharing between TMC and Railways for all commodities. For "Greenfield Projects", revenue sharing will start after 5 full years of commissioning of the PFT (excluding the financial year of commissioning). For 'Brownfield Projects', revenue sharing will start after two full year of commissioning of the PFT (excluding the financial year of commissioning).
- (b) After notification of the PFT scheme, revenue sharing up to the 5<sup>th</sup> years (from the year of issuance of the scheme) will be at 50% of the then prevailing rate of terminal charge leviable at railway goods sheds or Rs. 10/- per ton whichever is higher.
- (c) From the 6<sup>th</sup> year onwards, revenue sharing will be annually increased by indexing it to 90% in the WPI increase which is the inflation figure in %age as published by Government of India. The revised rate of revenue sharing will be notified annually by Railway Board. For example, if the inflation for the year 2008 – 09 has been 8%, then the rate of revenue sharing for the year 2010 – 11 will be increased by 7.2% over the rate prevailing in the year 2009 – 2010. however, in case there is a decrease in WPI, the prevailing rate of revenue sharing will continue.
- (d) 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. For example a TMC who starts business in the 1<sup>st</sup> year after issue of scheme and another TMC who starts business in the 10<sup>th</sup> year after issue of the scheme, shall have the same revenue sharing from the year when it is due for them.

- (e) In case existing siding is converted to PFT, revenue sharing will be done on traffic which pertains to customer other than the siding owner. If a container terminal is converted to PFT, revenue sharing will be for other than container traffic.

14. **Freight Payable to Railways:**

- (a) 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.
- (b) 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.
- (c) Consignment booked from and to PFT will be pre paid. The consignment booked to PFT will be consigned to the consignee, for which Terminal Management Company shall give consent to handle the traffic of the said consignee so that traffic booked for the terminal is unloaded with out any detention to rolling stock. To prevent incidence of non acceptance of trains at the PFT, for inward traffic to PFT, the consignor shall have consent of concerned Terminal Management Company and a copy of the consent letter should be made available at the booking station while booking the rake. Rake booked to PFT will be unloaded by Terminal Management Company without any liability of IR.
- (d) Freight on traffic booked from and to PFT shall be charged on through distance basis as per Public Tariff.
- (e) 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.



- (f) Terminal Management Company will not be required to pay Wharfage charges to the Railways within the premises of the PFT.
- (g) 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.
- (h) A Goods Clerk representing the Railway Administration employed at the Private Freight Terminal will be empowered to conduct all commercial activities related to Railways.
- (i) 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).
- (j) 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.
- (k) In case of detention of rake short of the PFT for want of room 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 100 kms from the 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.
- (l) 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.
- (m) All other charges as per extant policy for private sidings.

15. **Working of Private Freight Terminal:**

- (a) 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.
- (b) For the outward booking from the PFT, Terminal Management Company will enter into an agreement with the consignor and submit a copy of the agreement with the Railway Commercial staff posted at the PFT.
- (c) All "Commercial and Operating rules" as applicable in a Goods shed for booking, supply and delivery of goods shall be applicable at the PFT.
- (d) 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.
- (e) 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.

(f) 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.

16. **Private Freight Terminal not to be used by other Person:** (a) 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. The copy of the consent should be made available at the booking station while booking the rake. Terminal Management Company shall give a written undertaking that \_\_\_\_\_ (Name of the party) has been allowed to use \_\_\_\_\_ (Name of the Private Freight Terminal) owned by it with its consent and that the party will be responsible for the payment of all railway dues that may be payable as a result of granting of such facility.

(b) 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 and a copy of the agreement with consignor should be submitted with Railway Commercial staff posted at the PFT. Terminal Management Company shall give a written undertaking that \_\_\_\_\_ (Name of the party) has been allowed to use \_\_\_\_\_ (Name of the Private Freight Terminal) owned by it with its consent and that the party will be responsible for the payment of all railway dues that may be payable as a result of granting of such facility.

(c) 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.

17. **Terminal Management Company responsible for damage or injury to person or property:** 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. 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 himself.

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.

18. **Railway Administration's Rights regarding use of the Private Freight Terminal:** 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.
  
19. **Terminal Management Company not to transfer rights:** Terminal Management Company shall not be entitled to assign or transfer or sublet or enjoyed by any other person in any manner whatsoever any of the rights or benefits conferred upon Terminal Management Company by these presents and any purported assignment, transfer or subletting or permission shall be void and of no effect. Provided also that in the event of any other person being permitted by the Railway Administration to use the Private Freight Terminal on Terminal Management Company request or otherwise, Terminal Management Company shall remain responsible to the Railway Administration for all the charges and obligations under this Agreement.

Provided, however, that if Terminal Management Company shall desire to transfer Terminal Management Company works to any person or if Terminal Management Company being a company shall go into liquidation and such intended transferee or the liquidator of the Company shall desire the use and benefit of the Private Freight Terminal, then subject to the under mentioned conditions being complied with, the Railway Administration may at its discretion on the written request of

Terminal Management Company and of the intended transferee or liquidator made prior to the transfer or within one month after the commencement of the liquidation as the case may be, and after production by the transferee of the registered Deed of Transfer of Terminal Management Company Works or after proof by the liquidator of his intention to carry on the Company's business for the purpose of the liquidation proceedings, allow the transferee or liquidator the use and benefit of the Private Freight Terminal. The conditions above mentioned are the following:

- i) That the liquidator shall be approved by the Railway Administration but such approval will not be unreasonably withheld.
- ii) That the liquidator shall duly sign and register a Private Freight Terminal Agreement in the same form as these presents so far as then applicable or in such other form as the Railway Administration may then require.
- iii) That Terminal Management Company, Railway Administration and transferee shall duly execute an Agreement of assignment as may be prescribed by the Railway Administration.

20. **Termination of Agreement:**

- (a) This Agreement can be terminated by the Railways by giving a Notice of Termination of 180 days to Terminal Management Company for any breach of terms and conditions of this Agreement, violations of the provisions of the Indian Railway Act or in the event of default as defined in this Agreement. Before issuing the Termination Notice, Railway Administration shall by a written notice inform Terminal Management Company to make a representation and may after expiry of 30 days, whether or not, it is in receipt of such representation, issue the Termination Notice in writing subject to the provisions of this Agreement. Terminal Management Company will also have the right to terminate the agreement by giving a notice of 180 days to the Railway Administration. Any dispute arising out of the same will be resolved through the Dispute Resolution Mechanism made clause 31 of this Agreement.
- (b) 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.

21. **Power to close the portion of the Private Freight Terminal within Railway land coloured red in the annexed plan 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 6(six) month's previous notice in writing of such decision and on the expiration of such notice this Agreement shall terminate.

The cost of the Private Freight Terminal (both sub-grade and super grade works) originally paid by Terminal Management Company less depreciation @ 5% (five) per year upto 20 (twenty) years after the date of completion of the work. After expiration of 20 (twenty) years no refund of cost of any part of the work shall be payable.

22. **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:

- (a) 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.
- (b) 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.
- (c) 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.

- (d) In the event of Terminal Management Company failing to observe or perform any other obligation on its part herein contained.
- (e) 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.

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.

Provided always that on the happening of any of the events mentioned in Sub-Clauses (a), (b), (d) and (e) the Railway Administration shall not exercise the power conferred upon it by this Clause unless 180 (One Eighty) days' previous notice has been given in writing requiring Terminal Management Company to comply with the demand or requisition, as the case may be, of the Railway Administration and Terminal Management Company has failed to comply with the same within the time specified in such notice.

No notice shall be required to be given in the cases specified in the other sub-clauses of this clause.

23. **Termination of Agreement on Insolvency etc.:** This agreement may be terminated by the Railway Administration without prior notice at any time after the happening of any of the following events:

- (i) In the event of TMC becoming insolvent or going into liquidation either voluntarily or under an order of a competent Court.
- (ii) In the event of Terminal Management Company interest in the works becoming wholly or partially vested in some other person.

24. **Consequence of termination under Clauses 20, 21, 22, 23 & 25:**

On termination of this Agreement under provisions of clauses 20, 21, 22, 23 and 25 thereof 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. **Agreement to bind Terminal Management Company until terminated by the Railway Administration:** Until terminated by the Railway Administration or unless and until the person or persons in whom the entire rights and interest of Terminal Management Company have vested and with whom the Railway Administration has agreed to enter into a Private Freight terminal Agreement has executed and registered such Agreement in the same form as these presents or in such other form as the Railway Administration may require as provided in clause 21 hereof, this Agreement shall be binding upon Terminal Management Company and the successors in title or interest of Terminal Management Company in Terminal Management Company works.
26. **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.



27. **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.
28. **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.
29. **Service of notices on Terminal Management Company:** Terminal Management Company shall maintain a proper office to which all letters, notices, demands and other communications intended for Terminal Management Company may be sent and every notice, demand or other communication which shall be delivered at or sent by Registered Post to such office shall for all purposes whatsoever be deemed to have been validly and effectively delivered to the App Terminal Management Company licant.
30. **Exercise of powers:** Subject as otherwise provided in this Agreement, all notices to be given on behalf of the President of India and all other actions to be taken on his behalf may be given or taken on his behalf by the Railway Administration; the Agreement signing authority or his authorized representative.
31. **Alteration/variation of the Agreement:** Except as hereby provided any verbal or written arrangement abandoning, varying or supplementing this Agreement or any of the terms hereof shall be deemed conditional and shall not be binding on the Railway Administration unless and until the same is endorsed on this Agreement or incorporated in a formal instrument and signed by the parties hereto and till then the Railway Administration shall have the right to repudiate such arrangement.
32. **DISPUTE RESOLUTION**

- (a) 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 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.
- (b) Railway Administration and 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.
- (c) **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 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 Clause 32 (a) 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 this Clause.
- (d) In case of any dispute in interpretation of the policy, the decision of MOR will be final and binding.
- (e) **Arbitration**
  - (i). Any Dispute in implementation of this Agreement, which is not resolved amicably as provided in Clauses 32 (a), 32 (b), 32 (c) and 32 (d) shall be finally decided by reference to arbitration by a Board of Arbitrators, appointed pursuant to this Clause 32 (e). Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternate Dispute Resolution, New Delhi (the “**Rules**”) and shall be subject to the provisions of The Arbitration and Conciliation Act, 1996. The venue of such arbitration shall be decided by General Manager.
  - (ii). 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.

(iii). The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Clause 32 (e) shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Railway Administration agree and undertake to carry out such Award without delay.

(iv). 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.

33. **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”.

34. **Agreement in force from:** The Agreement shall be deemed to have come into force on and from \_\_\_\_\_.

35. **Head Notes:** The head notes herein are for the convenience of reference only and shall not affect the construction of these present.

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**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 \_\_\_\_\_