

CONCESSION AGREEMENT

BETWEEN

TANZANIA-ZAMBIA RAILWAY AUTHORITY (TAZARA)

AND

TAZARA REVITALIZATION TANZANIA LIMITED

RELATING TO

**PUBLIC PRIVATE PARTNERSHIP FOR THE REHABILITATION,
RENOVATION, OPERATION, MAINTENANCE, MANAGEMENT AND
FINANCING OF THE TANZANIA-ZAMBIA RAILWAY PROJECT**

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THIS CONCESSION AGREEMENT is dated 29th of September 2025.

BETWEEN:

1. **TANZANIA-ZAMBIA RAILWAY AUTHORITY**, a statutory body jointly owned by the Government of the United Republic of Tanzania and the Government of the Republic of Zambia and established pursuant to the Intergovernmental Agreement between Tanzania and Zambia of 1993, the Tanzania-Zambia Railway Act of 1975 which was repealed by TAZARA Act No.4 and No.10 of 1995 of the laws of Tanzania and Zambia respectively and having its principal place of business at Corner of Mandela and Nyerere Road, P.O.Box 2834, Dar es Salaam, Tanzania (hereinafter referred to as "**TAZARA**" or "**the Grantor**");and
2. **TAZARA REVITALIZATION TANZANIA LIMITED**, a company established under the laws of the United Republic of Tanzania, whose address is House No.5, Plot Nos. 1879 & 1880, Block 5, Zambia Road, Oysterbay, Msasani Ward, Kinondoni District, Dar es Salaam Region, 14111, Tanzania and with the incorporation number 186714938 (hereinafter referred to as "**the Concessionaire**"),
each as a "**Party**" and together as the "**Parties**".

PREAMBLE:

- (A) **WHEREAS** by an Intergovernmental Agreement dated 3rd October 1968, replaced by an Intergovernmental Agreement dated 17th December 1972, later substituted by an Intergovernmental Agreement dated 2nd May 1975, whereby the latter was subsequently replaced by an Intergovernmental Agreement dated 29th September 1993 ("**IGA**"), the Grantor restructured TAZARA and its organs;
- (B) **CONSIDERING** the Tanzania-Zambia Railway is a bi-national railway linking the Southern African regional transport network to Eastern Africa's seaport of Dar es Salaam, offering both freight and passenger transportation services between and within the Contracting States and is owned, operated and managed by **TAZARA**;
- (C) **WHEREAS** through the IGA, the Government of the United Republic of Tanzania and the Government of the Republic of Zambia enacted the Tanzania-Zambia Railway Authority Act No.4 and No.10 of 1995 respectively;
- (D) **WHEREAS** the Parties wish to contribute to the creation of an efficient and economical community transport program which encourages regional economic integration and the development of areas with high mining and industrial potential and agricultural areas in the region;
- (E) **RECOGNISING** the current conditions of the infrastructure and rolling stock of

the Tanzania-Zambia Railway and the difficulties TAZARA has been facing in operating and maintaining the Tanzania-Zambia Railway;

- (F) **RECOGNISING** that, over the years, TAZARA's infrastructure and operational capacity has deteriorated due to a lack of investment, maintenance and modernization, leading to reduced efficiency in freight transport and negatively impacting regional trade;
- (G) **CONSIDERING** that the Tanzania-Zambia Railway needs to be revitalised through rehabilitation and constant maintenance of its facilities, enhancing its rolling stock, operations of passengers and freight trains so as to be utilised at its maximum operational capacity;
- (H) **RECOGNISING** the desire of the Contracting States and the Grantor to improve the performance and efficiency of TAZARA and to establish an integrated railway transportation network between the Contracting States;
- (I) **RECOGNISING** the Memorandum of Understanding entered into on 4th September 2024 in Beijing, the People's Republic of China between the Government of the United Republic of Tanzania and the Government of the Republic of Zambia, TAZARA, and CCECC on Revitalisation of Tanzania-Zambia Railway;
- (J) **RECOGNISING** that CCECC has extensive experience and expertise in railway construction across the world and it desires to work together with TAZARA to rehabilitate the Tanzania-Zambia Railway and that CCECC has the technical, financial, and legal capacity for the rehabilitation, renovation, operation, maintenance, management and financing of the Project;
- (K) **RECOGNISING** that for the purpose of executing the Project Activities, CCECC has established a local company known as TAZARA Revitalization Tanzania Limited to act as the Concessionaire;
- (L) **RECOGNISING**, the revitalisation of TAZARA is anticipated to increase significant economic benefits, including job creation, increased trade volumes, and enhanced connectivity, thus contributing to the socio-economic development of Tanzania, Zambia, and the broader region;
- (M) **RECOGNISING** the Public Private Partnership Acts of Tanzania and Zambia respectively, Investment Acts of Tanzania and Zambia, powers of the Council of Ministers as stipulated in Section 10 of TAZARA Act No. 4 of 1995 and TAZARA Act No. 10 of 1995, and the powers of TAZARA under Section 7(l) which mandate TAZARA to enter into concession with any person carrying on or engaged in, any business or transaction which TAZARA is duly authorized to carry on or engage in; and

(N) **ACKNOWLEDGING** the Project has been procured by the Grantor pursuant to Section 2(2) of the Public-Private Partnership Act, 2023 as amended by the Public Private Partnership (Amendment) Act, 2023.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree and witness as follows:



PART I. PRELIMINARY



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1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

"Additional Rehabilitation Works" means the additional works necessary to rehabilitate, replace and renovate the Project Infrastructure during the Operation and Maintenance Period in accordance with the Functional Requirements and Specifications and Standards;

"Affected Party" shall have the meaning set forth in Clause 18.1 (*Force Majeure*);

"Affiliate" means, in relation to any Party, a person who controls, is controlled by, or is under the common control with such Party (as used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than fifty percent (50%) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

"Agreement" or "Concession Agreement" means this Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

"Annual Achieved Volume" shall have the meaning ascribed to it in Clause 17.4.2 (*Railway Development Fund*);

"Annual Development Contribution" shall have the meaning ascribed to it in Clause 17.4.4 (*Railway Development Fund*);

"Annual Development shall have the meaning ascribed to it in Clause

Contribution Dispute Notice"	17.4.5 (<i>Railway Development Fund</i>);
"Annual Development Contribution Notice"	shall have the meaning ascribed to it in Clause 17.4.4(c) (<i>Railway Development Fund</i>);
"Applicable Laws"	means all applicable statutes, laws, regulations, standards (including safety standards), ordinances, local government by-laws, rules (including rules of court) and other subsidiary legislation, circulars, guidelines, practice notes, decisions, writs, orders, demands, decrees, injunctions, resolutions or judgments of any court, administrative or Governmental Authority or any other body having force of law in the Contracting States;
"Applicable Permits"	means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the Project Activities during the subsistence of this Agreement;
"Attached Staff"	shall have the meaning ascribed to it in Clause 6.2.4 (<i>Attachment of the Concessionaire's Employees</i>);
"Attachment Agreement"	means the attachment agreement entered or to be entered into between the Parties in respect of the attachment of the Concessionaire's employee to the Grantor substantially in the form set out in Part II of Schedule 9 (<i>Form of the Attachment Agreement</i>);
"Attachment List"	shall have the meaning ascribed to it in Clause 6.2.2 (<i>Attachment of the Concessionaire's Employees</i>);
"CCECC"	means China Civil Engineering Construction Corporation, a company established under the laws of the People's Republic of China, whose

address is No. 4 Beifengwo Road, Haidian district, Beijing, the People's Republic of China;

"Certificate of Completion"

means a certificate of completion issued by the Grantor substantially in the form set forth in Schedule 7 (*Form of Certificate of Completion*);

"Change in Law"

means the occurrence of any of the following after the Execution Date as a result of which the Concessionaire may suffer an increase in costs or reduction in net after-tax return or may be required to incur additional capital expenditure:

- (a) the enactment of any new Applicable Laws in the Contracting States;
- (b) the repeal, amendment of any existing Applicable Laws;
- (c) the commencement of any Applicable Laws which has entered into effect after the Execution Date;
- (d) a change in the interpretation or any application of any Applicable Laws by a judgement of a court of record which has become final, conclusive and binding or by the competent Governmental Authority, as compared to such interpretation or application by the court of record prior to the Execution Date; or
- (e) any change in the rates of any of the Taxes that have a direct effect on the Project.

"Change in Ownership"

means a change in the direct and/or indirect legal or beneficial ownership of any shares or equity interest in the Concessionaire which results in CCECC, together with its Affiliates, directly or indirectly, ceasing to be the largest shareholder in the Concessionaire;

"Commercial"

means the EPC Contracts, Operation and

Contracts"	Maintenance Contracts (if any), Open Access Agreements, Interchange Agreement, Non-Exclusive Offtake Agreements and any other agreements relating to, arising out of or incidental to the Project and so designated by the Parties;
"Concession"	shall have the meaning ascribed to it in Clause 2.3 (<i>Grant of the Concession</i>);
"Concession Fees"	means the fees payable by the Project Concessionaires to the Grantor in consideration of the grant of the concessions to the Project Concessionaires in accordance with clause 2.2.1 (<i>Concession Fees</i>) of each Project Concession Agreement;
"Concession Period"	shall have the meaning ascribed to it in Clause 2.4 (<i>Concession Period and Review Mechanism</i>);
"Concession Year"	means each consecutive calendar year commencing after the Service Commencement Date, provided that: <ul style="list-style-type: none"> (a) the first Concession Year shall commence on (and include) the Service Commencement Date and end on (and include) December 31 of the same calendar year; and (b) the final Concession Year shall commence on (and include) January 1 of the calendar year in which the Expiry Date falls and end on (and include) the Expiry Date;
"Concession Quarter"	means each consecutive calendar quarter commencing after the Service Commencement Date, provided that: <ul style="list-style-type: none"> (a) the first Concession Quarter shall commence on (and include) the Service

Commencement Date and end on (and include) the first quarterly period end date following the Service Commencement Date (being 31 March, 30 June, 30 September, or 31 December, as applicable); and

- (b) the final Concession Quarter shall commence on (and exclude) the quarterly period end date (being 31 March, 30 June, 30 September, or 31 December, as applicable) immediately preceding the Expiry Date and end on (and include) the Expiry Date;

"Concessionaire"	shall have the meaning attributed thereto in the array of Parties;
"Concessionaire Conditions Precedent"	means the Conditions Precedents as ascribed in Clause 2.6.3 (<i>Concessionaire Conditions Precedents</i>);
"Concessionaire Event of Default"	shall have the meaning ascribed to it in Clause 21.2 (<i>Termination for Concessionaire Default</i>);
"Conditions Precedent"	means, individually or collectively, as the context may require, the Concessionaire Conditions Precedent, the Grantor Conditions Precedent and/or the Joint Conditions Precedent;
"Construction Period"	means the period beginning from the Effective Date and ending on the earlier of the issuance of the Certificate of Completion or Provisional Certificate of Completion;
"Contracting State"	means, individually or collectively, as the context may require, the United Republic of Tanzania or the Republic of Zambia and "this Contracting State" means the United Republic of Tanzania;
"Contractor"	means the person with whom a Project Concessionaire has entered into any of a EPC

Contract, an Operation and Maintenance Contract (if any), or any other material agreement or contract for construction, operation and/or maintenance of the Project with an annual contractual value of at least \$500,000 in the aggregate or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Project Concessionaire;

- "Contribution
Commencement Date"** shall have the meaning ascribed to it in Clause 17.4.3 (*Railway Development Fund*);
- "Cross Border Freight Services"** means the Freight Services undertaken by the Project Concessionaires in relation to cargos transported or to be transported across the territories of the Contracting States;
- "Debt Due"** means the aggregate amount of indebtedness (including principal, interest, fees, costs, expenses and indemnities) outstanding and payable by the Concessionaire as at the Termination Date under the Financing Agreements including any financing cost of Early Termination in respect thereof;
- "Default Rate"** means, as of any time of determination:
- (a) in respect of any unpaid amount in Shilling or Kwacha, the rate which is three percent (3%) above the base rate of the Central Bank of the relevant Contracting State as at such time of determination; and
 - (b) in respect of any unpaid amount in US Dollars, the rate which is SOFR plus two percent (SOFR + 2%) as at such time of determination;
- "Direct Agreements"** means the agreements between the Grantor and the Lenders (or a representative of the Lenders) and the Project Concessionaires in relation to the

	Lenders' step-in rights under the Project Concession Agreements;
"Dispute Resolution Procedure"	means the procedure for resolution of Disputes set forth in Clause 25 (<i>Dispute Resolution</i>);
"Divestment Requirements"	means the obligations of the Concessionaire and the Grantor for and in respect of their obligations after termination as set forth in Clause 21.9 (<i>Divestment Requirements</i>);
"Document"	means any document in the form of printed, written, tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;
"Early Termination"	means termination of the Agreement prior to the Expiry Date;
"Effective Date"	means the date agreed by the Parties in their certificates delivered under Clause 2.6.6 (<i>Conditions Precedent</i>) wherein it is confirmed that all Conditions Precedent have been fulfilled by the Parties or otherwise waived;
"Employees List"	shall have the meaning ascribed to it in Clause 6.1.2 (<i>Transfer of Existing Grantor's Employees</i>);
"Employment Contract"	means the employment contract entered or to be entered into between the Concessionaire and the Transferred Employees substantially in the form set out in Part 1 of Schedule 9 (<i>Form of the Employment Contract</i>);
"Encroachments"	means any unauthorized occupation of the Project Site or part thereof, and includes any unauthorized: <ul style="list-style-type: none"> (a) erection of a building or any other structure, balconies, porches, projections on or over or overhanging the Project

Site or part thereof;

- (b) occupation of the Project Site or part thereof beyond the prescribed period, if any, for stacking building materials or goods of any other description, for exhibiting articles for sale, for erecting poles, awning, tents, pandals, hoardings and other similar erections or for parking vehicles or stabling animals, plantation, farming or for any other purpose; and
- (c) excavations or dumps of any sort made or extended on the Project Site or part thereof, or underneath the Project Site or part thereof;

"Encumbrances"

means any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project;

"EPC Contract"

means the contract entered into by a Project Concessionaire with one or more Contractors for the design, engineering, procurement of materials and equipment, construction, and completion of the Project Activities in accordance with the provisions of the Project Concession Agreements;

"Equity Financing"

means financing which is provided by the Project Investors and/or their Affiliates whether through contributions in cash or otherwise to the share capital of the Concessionaire;

"Escrow Bank"

shall have the meaning ascribed to it in Clause 17.4 (*Railway Development Fund*);

"Essential Goods"	<p>mean grains, fertilizers and medical products and supplies which are essential for supporting and sustaining human life and agricultural productivity.</p> <p>For purposes of this definition, (a) "grains" shall mean cereal crops or seeds harvested for consumption or processing, such as wheat, barley, corn, oats, rye, rice, sorghum, millet, and similar crops or seeds, (b) "fertilizers" shall mean any substances or mixtures, whether organic or inorganic, natural or synthetic, used to supply nutrients to plants to enhance their growth and productivity and (c) "medical products" shall mean any substances or combinations of substances intended for use in the diagnosis, treatment, mitigation, or prevention of disease in humans or animals, including pharmaceuticals, biologics, vaccines, medical devices and diagnostic agents;</p>
"Execution Date"	means the date on which this Agreement is signed by the Parties;
"Existing Agreements"	means all Existing Open Access Agreements and other existing agreements between the Grantor and any third party relating to the Project Site, Project Infrastructure and the Existing Facilities;
"Existing Facilities"	means the facilities and assets of the Grantor as specified in Schedule 3 (<i>List of existing facilities</i> and assets), including stations, work areas, locomotive depots, sleeper production factories and quarries at Kongolo and Mununga, products of the sleeper production factories, rolling stocks and other facilities and assets as needed for the Project Activities;
"Existing Open Access Agreements"	means: (a) the Open Access Agreement dated April 29, 2019 and entered into between the Grantor and Calabash Freight Ltd, (b) the Open

	Access Agreement dated September 08, 2021 and entered into between the Grantor and African Inland Container Depot Limited and (c) the Open Access Agreement dated March 20, 2024 and entered into between the Grantor and BRAVO Logistics Tanzania Limited;
"Existing Open Access Operators"	means the private train operators under the Existing Open Access Agreements;
"Expiry Date"	means the last day of the Concession Period;
"Factory Acceptance Test (FAT)"	means the factory acceptance test of the Rolling Stock as agreed between the Parties and the Inspector of Railways in accordance with the Applicable Law;
"Financial Close"	means the date on which all the conditions precedent to the first utilisation under the Financing Agreements have been satisfied or otherwise waived;
"Financial Model"	means a model based case setting forth the capital, assets, liabilities and operating costs of the Project and revenues therefrom on the basis of which financial viability of the Project is determined by the Concessionaire, and includes a description of the assumptions and parameters used for making calculations and projections therein, as may be updated from time to time in accordance with this Agreement;
"Financial Year"	means the period of twelve (12) months from the first day of January of a calendar year to the thirty first day of December of the same calendar year;
"Financing Agreements"	means all financing agreements entered or to be entered into between the Concessionaire and/or its Affiliate and the Lenders in respect of the financing of the Project;

"First Attachment List"	shall have the meaning ascribed to it in Clause 6.2.2 (<i>Attachment of the Concessionaire's Employees</i>);
"Fixed Concession Fee"	shall have the meaning ascribed to it in Clause 2.2.1(a) (<i>Concession Fees</i>);
"Force Majeure"	shall have the meaning as ascribed in Clause 18 (<i>Force Majeure</i>);
"Force Majeure Cost"	shall have the meaning as ascribed in Clause 18.6.1 (<i>Allocation of costs arising out of Force Majeure</i>);
"Foreign Staff"	means an employee in the service of the Concessionaire or its Contractors and not a national of this Contracting State, whether resident or not subject to the Applicable Laws;
"Freight Customers"	means any person who makes use of the Freight Services of the Concessionaire;
"Freight Services"	means any freight services and other associated services on the Railway including the transportation of cargos and the storage, loading, off-loading, import and export of the cargos transported or to be transported on the Railway;
"Freight Services Standards"	shall have the meaning as ascribed in Clause 10.1.2 (<i>Provision of Freight Services</i>);
"Functional Requirements and Specifications and Standards"	means the functional requirements and specifications and standards of the Project as set out in Schedule 2 (<i>Functional Requirements and Specifications and Standards</i>);
"Good Industry Practice"	means the practices, methods, standards, procedures and recommendations conforming to the Applicable Laws and generally followed with respect to the design, engineering, procurement, construction, rehabilitation, renovation, operation and maintenance of facilities of the

nature of the Project, the compliance of which can be reasonably expected from a skilled and experienced operator, concessionaire, contractor or engineer, as the case may be, under the same or similar circumstances;

"Government Support" the support and specific and preferential policies, treatment and arrangement agreed to be provided by the relevant Governmental Parties in respect of the Project under the Host Government Agreements;

"Governmental Authority" means a Contracting State, a Host Government, any local government, parliament or any legislative organ (either national, regional, municipal, district or of any part of such Contracting State), any minister or other official vested with the power to promulgate regulations or any other subsidiary legislation under any law, any court or tribunal, any ministry (department or division thereof), parastatals, public corporations, any authority or division thereof (including any regional, municipal, district and local authorities of such Contracting State) and any agency or entity or other body owned or controlled by such Host Government or any local government, including for the avoidance of doubt the Grantor, and **"Governmental Authorities"** shall be construed accordingly;

"Governmental Parties" means the Grantor, Host Governments, Contracting States and Governmental Authorities;

"Grantor Conditions Precedent" means the Conditions Precedents as ascribed in Clause 2.6.4 (*Grantor Conditions Precedent*);

"Grantor's Liabilities" means any, interest, indemnity, compensation and other amount payable by the Grantor to the Project Concessionaires under or in connection with the Project Concession Agreements;

Handover Condition Survey	shall have the meaning ascribed to it in Clause 5.2 (<i>Handover Condition Survey</i>);
"Host Government"	means, individually or collectively, as the context may require, the Government of the Republic of Zambia and/or the Government of the United Republic of Tanzania;
"Host Government Agreements"	means the agreements entered into or to be entered into between the Host Governments, the Project Concessionaires and the Project Investors setting forth, among others, the responsibilities of the Host Governments towards the Project;
"Human Rights Standards"	means <ul style="list-style-type: none"> (a) national legislation and rules of human rights standards in the relevant Contracting State; and (b) international recognised, ratified and enforceable human rights standards in the relevant Contracting State;
"Improvement Plan"	shall have the meaning ascribed to it in Clause 12.1.6 (<i>Improvement Work</i>);
"Improvement Proposal"	shall have the meaning ascribed to it in Clause 12.1.3 (<i>Improvement Work</i>);
"Improvement Work"	shall have the meaning ascribed to it in Clause 12.1.2 (<i>Improvement Work</i>);
"Independent Expert"	has the meaning ascribed to it in Clause 25.3.1(a) (<i>Fast Track Resolution Procedure</i>);
"Insolvency Event"	means, in respect of any Person, the bankruptcy, insolvency, liquidations or winding-up of such Person whether compulsory or voluntary;
"Inspector of Railways"	means the inspector of the railways appointed by the relevant Contracting State pursuant to Part IX of the TAZARA Act.

"Insurance Cover"	has the meaning ascribed to it in Clause 17.7.1 (<i>Insurance Coverage</i>);
"Interchange Agreement"	means an agreement between the Project Concessionaires, Zambia Railways Limited (ZRL) and Société Nationale des Chemins de Fer du Congo (SNCC) aimed at accessing the Railway network between Tanzania, Zambia and the Democratic Republic of Congo;
"Joint Conditions Precedent"	means the conditions precedent set forth in Clause 2.6.5 (<i>Joint Conditions Precedent</i>);
"Labour Standards"	means the rules protecting and promoting human rights from: <ul style="list-style-type: none"> (a) the Applicable Laws; and (b) the following international recognised, ratified and enforceable labour rights agreements and standards of which the relevant Contracting State is a party: <ul style="list-style-type: none"> (i) Freedom of Association and Protection of Rights to Organise Convention, 1948 (No. 87); (ii) Right to Organise and Collective Bargaining Convention, 1949 (No. 98); (iii) Forced Labour Convention, 1930(No. 29); (iv) Abolition of Forced Labour Convention, 1957 (No. 105); (v) Equal Remuneration Convection, 1951 (No.100); (vi) Minimum Age Convection, 1973 (No. 138); (vii) Worst Form of Child Labour Convention, 1999 (No. 182); (viii) Discrimination (Employment and Occupation) Convection of 1958 (No.

111); and

- (ix) Article 7 of the International Covenant on Economic Social and Cultural Rights of 1966,

provided that in case of conflict between the Applicable Law and the Labour Standards set out above, for the purpose of defining Labour Standards, the standard most protective of the worker shall prevail, and "**Labour Standard**" means any one of them;

"Land Lease"

means the leasehold and the right of exclusive occupation and use of the land within or near the Kurasini Station and the Dar es Salaam workshop as set forth in Schedule 4 (*Land Lease*) granted by the Grantor to Concessionaire for the duration of the Concession Period for the purpose of implementing the Project as evidenced by the Lease Agreement;

"Lease Agreements"

means the lease agreements entered or to be entered into between the Parties in respect of the Land Lease substantially in the form set forth in Schedule 5 (*Form of Land Agreement*);

"Lenders"

means the financial institutions, banks, export credit agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, which have agreed to provide finance, guarantee, political risk insurances or hedging to the Concessionaire or its Affiliates under any of the Financing Agreements for meeting all or any part of the cost of the Project Activities;

"Letters of Support"

means the letter of support, letter of contingent liability or comfort letter issued or to be issued by the Contracting States in favour of the Concessionaire and Lenders in support the Grantor's obligations under the Project

	Concession Agreements, including any payment obligations thereunder, in form and substance satisfactory to the Project Concessionaires and the Lenders;
"Linkfuture Investment"	means Linkfuture Investment Ltd, a company established under the laws of the Dubai International Financial Centre, whose address is Unit IH-00-01-02-OF-01, Level 2, Innovation Hub, Dubai International Financial Centre, Dubai, UAE and with the registration number 10831;
"List of Foreign Staff Positions"	means the list of Foreign Staff positions agreed or to be agreed between the Project Concessionaires and the Host Governments under the Host Government Agreements as updated from time to time;
"Local Freight Services"	means the Freight Services undertaken by the Project Concessionaires in relation to cargos transported or to be transported within the territory of a Contracting State;
"Maintenance Manual"	shall have the meaning ascribed to it in Clause 13.2.4 (<i>Reserved Services Standard</i>);
"Material Adverse Effect"	means, in respect of a Party, a material adverse effect of any act or event on the ability of such Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to such other Party;
"Material Adverse Government Action"	shall have the meaning ascribed to it in Clause 18.4 (<i>Material Adverse Government Action</i>);
"no better no worse"	shall mean, in respect of any Party, it is left in an economic position no better and no worse than had the relevant event not occurred (and in the case of the Concessionaire, in relation to its

equity internal rate of return calculated by reference to the Financial Model) and its ability to perform its obligations under this Agreement and any Commercial Contract to which it is a party is not adversely affected or improved as a consequence of the relevant event;

"Non-Exclusive Offtake Agreements"

means the commercial agreements entered or to be entered into by the Concessionaire with Freight Customers, including for the purposes of granting reserved capacity for such Freight Customers on a long-term basis in order to ensure stable revenues for the Concessionaire (such arrangements involving as the case may be "take-or-pay" long-term capacity reservation arrangements or such other arrangement as agreed between the Concessionaire and the Freight Customers) provided that no Freight Customer shall have the exclusive right to the entire Freight Service;

"Non-Political Event"

shall have the meaning as ascribed in Clause 18.2 (*Non-Political Event*);

"O&M"

means the operation and maintenance of the Freight Services, Traffic Management and Rolling Stocks owned by the Concessionaire, including all matters connected with or incidental to such operation and maintenance in accordance with the provisions of this Agreement;

"Open Access"

means the arrangement whereby an independent train operator uses the Project Infrastructure for the purpose of providing railway freight services by paying an agreed access fees;

"Open Access Agreements"

means any contract between an independent train operator and the Grantor (prior to the Service Commencement Date) or a Project Concessionaire (on or after the Service

	Commencement Date) in relation to the Open Access;
"Open Access Fees"	means the fees charged by the Concessionaire to the Open Access Operators under the Open Access Agreements;
"Open Access Operator"	means any train operator who has entered into an Open Access Agreement with a Project Concessionaire;
"Operation and Maintenance Contract"	means the operation and maintenance contract(s) that may be entered into between a Project Concessionaire and a contractor for the performance of all or any of its O&M obligations under the Project Concession Agreements, including the maintenance of any Rolling Stock;
"Operation and Maintenance Period"	means the period commencing from the date the Concessionaire is handed with a Certificate of Completion or Provisional Certificate of Completion and ending on the Transfer Date;
"Paid Annual Development Contribution"	shall have the meaning ascribed to it in Clause 17.4.8 (<i>Railway Development Fund</i>);
"Payable Annual Development Contribution"	shall have the meaning ascribed to it in Clause 17.4.8 (<i>Railway Development Fund</i>);
"Passenger Locomotives and Carriages Maintenance Report"	shall have the meaning ascribed to it in Clause 13.7.2 (<i>Obligations of the Concessionaire in respect of Reserved Services (Passenger Train Maintenance)</i>);
"Passenger Service Procurement Amount"	shall have the meaning ascribed to it in Clause 13.6.3 (<i>Obligations of the Concessionaire in respect of Reserved Services (Passenger Rolling Stock Procurement and Station Refurbishment)</i>);
"Passenger Train"	means the operation, management and



Services"	maintenance of the passenger train on the Railway and the associated services including the maintenance and servicing of the passenger trains owned by the Grantor;
"Periodic Review"	shall have the meaning ascribed to it in Clause 2.4.2 (<i>Concession Period and Review Mechanism</i>);
"Planned Capacity Volume"	shall have the meaning ascribed to it in Clause 17.4.2 (<i>Railway Development Fund</i>);
"Political Event"	shall have the meaning as ascribed to it in Clause 18.3 (<i>Political Event</i>);
"Procurement Date"	shall have the meaning ascribed to it in Clause 13.6.2 (<i>Railway Development Fund</i>);
"Project"	means the revitalisation of the Railway and the associated infrastructures in accordance with the terms of the Project Concession Agreements and other Project Agreements;
"Project Activities"	means the activities which are required to be carried out by the Concessionaire (or other parties on its behalf) to implement the Project pursuant to the Scope of the Concession;
"Project Agreements"	means the Project Concession Agreements, the Host Government Agreements, the Letters of Support and any other related agreement, contract or document entered or to be entered into between, on the one hand, a Governmental Party and, on the other hand, a Project Participant;
"Project Completion Schedule"	means the project completion schedule prepared and submitted by the Concessionaire to the Grantor in accordance with Clause 9.2 (<i>Project Completion Schedule</i>) setting forth the progressive project milestones for completion of the Rehabilitation Work and Additional

	Rehabilitation Work;
"Project Concessionaires"	means the Concessionaire and The Other Concessionaire;
"Project Concession Agreements"	means this Agreement and The Other Concession Agreement;
"Project Documents"	means the Project Agreements, the Commercial Contracts and the commercial contracts as defined in The Other Concession Agreement;
"Project Improvement Work"	means the Improvement Work and the "Improvement Work" under The Other Concession Agreement;
"Project Infrastructure"	means the Railway, including permanent way, bridges, tunnels, structures, electrical system, signalling and telecommunication systems and any other system for facilitating train operations;
"Project Infrastructure Material"	means the materials to be procured and utilised by the Concessionaire for purposes of the rehabilitation of the Project Infrastructure;
"Project Investors"	means CCECC, Linkfuture Investment and any other direct or indirect shareholders or equity investors of the Concessionaire;
"Project Milestones"	means the project milestones set forth in the Project Completion Schedule;
"Project Participants"	means the Project Concessionaires, the Contractors, the Project Investors and the Lenders and any other person so designated by the Parties;
"Project Site"	shall have the meaning ascribed to it in Clause 5.1 (<i>Project Site</i>);
"Proposing Party"	shall have the meaning ascribed to it in Clause 12.1.3 (<i>Improvement Work</i>);
"Provisional Certificate"	means a provisional certificate of completion

of Completion"	issued by the Grantor substantially in the form set forth in Schedule 8 (<i>Form of Provisional Certificate of Completion</i>);
"Punch List"	shall have the meaning ascribed to it in Clause 9.8.5 (<i>Certificate of Completion and Provisional Certificate of Completion</i>);
"Railway"	means the Tanzania-Zambia Railway which runs from the Kurasini Station at Dar es Salaam in the United Republic of Tanzania to the New Kapiri Mposhi Station at Kapiri Mposhi in the Republic of Zambia, as described in Schedule 1 (<i>The Project Site</i>);
"Railway Development Fund"	shall have the meaning ascribed to it in Clause 17.4 (<i>Railway Development Fund</i>)
"Railway Development Fund Escrow Account"	means the multicurrency account which the Concessionaire shall open and maintain with the Escrow Bank in which all inflows and outflows of the Railway Development Fund shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement and the Railway Development Fund Escrow Agreement;
"Railway Development Fund Escrow Agreement"	means the escrow account agreement entered or to be entered into between the Grantor, the Project Concessionaires and the Escrow Bank in form and substance satisfactory to the Parties;
"Railway Stations"	means the stations of the Railway;
"Receiving Party"	shall have the meaning ascribed to it in Clause 12.1.3 (<i>Improvement Work</i>);
"Reimbursable Amount"	shall have the meaning ascribed to it in Clause 17.3.1 (<i>Reimbursement</i>);
"Reimbursement Notice"	shall have the meaning ascribed to it in Clause 17.3.1 (<i>Reimbursement</i>);

"Rehabilitation Works" means all works necessary to rehabilitate, replace and renovate the Project Infrastructure during the Construction Period in accordance with the Functional Requirements and Specifications and Standards;

"Relief Events" means any of the following:

- (a) a Non-Political Event;
- (b) a Political Event;
- (c) a Material Adverse Government Action;
- (d) any breach of a Project Agreement by a Governmental Party;
- (e) any action, inaction, failure or delay by any Governmental Party, including statutory authority, utility company, local authority, county government or like body, to carry out works or provide services, including failure to undertake any required works for the removal of any Encumbrance or Encroachment, movement or shifting of Utilities, reinstatement of the Utilities network after carrying out such works, felling of trees or the removal of any geological or archaeological findings;
- (f) any other event as specifically set out in this Agreement to be a Relief Event; and
- (g) any "Relief Event" under The Other Concession Agreement,

which has rendered a Project Concessionaire or Contractor wholly or partially unable to perform its obligations under the Project Concession Agreements or the Commercial Contracts unless any of the events listed above is a directly result of any wilful default or wilful act of a Project Concessionaire or Contractor;

"Reserved Services"	shall have the meaning set forth in Clause 13.1 (<i>Reserved Services</i>);
"Reserved Services Standard"	shall have the meaning set forth in Clause 13.2.1 (<i>Reserved Services Standard</i>);
"Revenue for Development"	shall have the meaning ascribed to it in Clause 17.4.2 (<i>Railway Development Fund</i>);
"Review Report"	shall have the meaning ascribed to it in Clause 2.4.3 (<i>Concession Period and Review Mechanism</i>);
"Right of Way"	means the access, licence and/or constructive possession of the Project Site, together with all way leaves, easements, unrestricted access and use and other rights of way, howsoever described, necessary for the implementation of the Project in accordance with the provisions of this Agreement;
"Rolling Stock"	means locomotives, coaches, carriages and wagons;
"Safety Standards"	shall have the meaning ascribed to it in Clause 14.1.1 (<i>Safety, breakdowns and accidents</i>);
"Scheduled Project Completion Date"	shall have the meaning set forth in the Project Completion Schedule as may be amended pursuant to this Agreement;
"Scope of the Concession"	means the scope of the Concession as specified in Clause 2.1 (<i>Scope of the Concession</i>);
"Service Commencement Date"	shall have the meaning set forth in Clause 10.1.1 (<i>Provision of Freight Services</i>);
"Site Acceptance Test (SAT)"	means the site acceptance test of the Rolling Stock as agreed between the Parties and the Inspector of Railways in accordance with the Applicable Law;
"SOFR"	means the Secured Overnight Financial Rate a

	board measure of borrowing cost in USD published daily by the Federal Reserve Bank of New York;
"Special Cargo"	means goods that require special handling, transportation or storage due to their unique characteristics as reasonably determined by the Grantor and notified to the Concessionaire;
"Tariffs"	means the price for Freight Services charged by the Concessionaire, including freight charges, storage charges, loaded and off-loaded charges, private siding charges, cancellation fees, demurrage charges and any other charges associated with the Freight Services;
"Taxes"	means all forms of taxation, duties, imposts, levies and rates imposed and applicable and pursuant to the Applicable Laws and "Tax" shall be construed accordingly;
"Termination"	means the expiry or termination of this Agreement;
"Termination Date"	means the date of Early Termination of this Agreement in accordance with its terms;
"Termination Notice"	means the communication issued in accordance with this Agreement by either Party to the other Party terminating this Agreement;
"Termination Payment"	means the compensation payable by the Grantor to the Concessionaire upon an Early Termination in accordance with Schedule 13 (<i>Termination Payment</i>);
"Tests"	means the tests to determine the completion of Rehabilitation Work;
"The Other Concession Agreement"	means the concession agreement dated on or about the Execution Date and entered into between the Grantor and The Other

	Concessionaire;
"The Other Concessionaire"	means TAZARA Revitalization Zambia Limited, a company established under the laws of Zambia with its registered address at Plot 393, Copper Street, ROMA Park, Lusaka, Zambia and registration number 120251028920;
"Track Maintenance Report"	shall have the meaning ascribed to it in Clause 13.8.2 (<i>Obligations of the Concessionaire in respect of Reserved Services (Maintenance of Railway Tracks)</i>);
"Traffic Block"	means a section of the Railway on which traffic is blocked to enable the Rehabilitation Work or other Project Activities to be undertaken;
"Traffic Management"	means the management of all train operations on the Railway including the timetable management, cargo transportation planning, train operation planning, locomotive and wagon routing planning, traffic block planning, normal operation and train control, command of irregularities, failures handling and other related services;
"Transfer Date"	means the date on which this Agreement expires or terminates pursuant to the terms of this Agreement;
"Transfer Period Commencement Date"	means the date falling one (1) year prior to the anticipated Expiry Date;
"Transfer Process"	means the process set forth in Clause 21.8 (<i>Transfer Process</i>) whereby the assets, rights and obligations under the Concession are transferred to the Grantor or a successor operator, as the case may be;
"Transferred Employees"	shall have the meaning ascribed to it in Clause 6.1.4 (<i>Transfer of Existing Grantor's Employees</i>);

"Utilities"	unless otherwise provided in this Agreement, means water, sewerage, waste disposal, electricity, gas, telecommunications and any other public utilities relevant to the Project;
"Utility Provider"	means the persons responsible for the provision of Utilities;
"Variable Concession Fee"	shall have the meaning ascribed to it in Clause 2.2.1(b) (<i>Concession Fees</i>);
"Variation"	means any changes to the Scope of the Concession including the provision of additional works and services by the Concessionaire which are not included in the Scope of the Concession as contemplated by this Agreement;
"Variation Order"	shall have the meaning ascribed to it in Clause 9.7.3 (<i>Variations</i>);

1.2. Interpretation

- 1.2.1. 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) references to the laws of a Contracting State or Applicable Law shall include the laws, acts, ordinances, rules, regulations, by-laws or notifications which have the force of law in such Contracting State and as from time to time may be amended, modified, supplemented, extended or re-enacted;
 - (c) references 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 authority 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;
- (d) 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;
 - (e) the terms and words beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein and the terms and words defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules;
 - (f) 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;
 - (g) references to "**rehabilitation**" "**construction**" or "**building**" 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 "rehabilitate", "construct" or "build" shall be construed accordingly;
 - (h) references to "**development**" include, unless the context otherwise rehabilitation, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and "develop" shall be construed accordingly;
 - (i) any reference to any period of time shall mean a reference to that period according to the standard time of the relevant Contracting State;
 - (j) any reference to "**day**" shall mean a reference to a calendar day;
 - (k) references to a "**business day**" shall be construed as a reference to a day (other than a Sunday, or a public holiday) on which banks in the Contracting States are generally open for business;
 - (l) any reference to month shall mean a reference to a calendar month as per the Gregorian Calendar;

- (m) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (n) 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;
- (o) the words importing singular shall include plural and vice-versa;
- (p) references to any gender shall include the other and the neutral gender;
- (q) "**indebtedness**" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (r) "**Shilling**" shall mean the lawful currency of the United Republic of Tanzania. "**Kwacha**" shall mean the lawful currency of the Republic of Zambia. "**RMB**" shall mean the lawful currency of the People's Republic of China. "**USD**", "**US Dollars**" or "**Dollars**" shall mean the lawful currency of the United State of America.
- (s) references to the "**winding-up**", "**dissolution**", "**insolvency**" or "**re-organization**" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, re-organization, dissolution, arrangement, protection or relief of debtors;
- (t) save and except as otherwise provided in this Agreement, 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;
- (u) the Schedules and 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; and
 - (v) references to Recitals, Clauses, Sub-Clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Clauses, Sub-Clauses and Schedules of or to this Agreement, and references to a paragraph shall, subject to any contrary indication, be construed as a reference to a paragraph of this Agreement or of the Schedule in which such reference appears; and
 - (w) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.
- 1.2.2. Unless expressly provided otherwise in this Agreement, any Document required to be provided or furnished by the Concessionaire to the Grantor shall be provided free of cost and in four copies, and if the Grantor is required to return any such Document with their comments and/or approval, they shall be entitled to retain a copy thereof.
- 1.2.3. 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.
- 1.2.4. Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning.
- 1.2.5. Unless expressly provided otherwise in this Agreement, where this Agreement specifies an amount in a given currency (the "specified currency") "or its equivalent", the "equivalent" is a reference to the amount of any other currency which, when converted into the specified currency utilising the spot buying rate of exchange published by the Central Bank of the respective Contracting State for the purchase of the specified currency with that other currency at or about 11 a.m. on the relevant date, is equal to the relevant amount in the specified currency.

1.3. Measurements and arithmetic conventions

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

1.4. Priority of Agreements, Clauses and Schedules

1.4.1. This Agreement, and all other agreements and documents forming part of or referred to in 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 or referred to herein 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 or referred to herein,

i.e. the Agreement at this Clause 1.4.1 above shall prevail over the agreements and documents at (b) above.

1.4.2. Subject to provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
- (d) between the written description on any drawings and the Functional Requirements and Specifications and Standards, the latter shall prevail;
- (e) between the dimension scaled from the drawing and its specific written dimension, the latter shall prevail; and
- (f) between any value written in numerals and that in words, the latter shall prevail.

PART II. THE CONCESSION



2. THE SCOPE OF CONCESSION

2.1. Scope of the Concession

The scope of the Concession shall mean and include, in respect of the part of the Project within the territory of the United Republic of Tanzania, during the Concession Period:

- 2.1.1. the design, procurement, financing, replacing, repairing and rehabilitation of the Project Infrastructure and its related facilities in accordance with the terms of this Agreement including the Functional Requirement and Specifications and Standard;
- 2.1.2. undertaking the agreed Improvement Work to the Project Infrastructure provided that any cost in respect of or in connection with such improvement shall be funded solely with the proceeds of the Railway Development Fund;
- 2.1.3. financing, acquisition and transfer of the Rolling Stock for the Freight Service necessary to meet the traffic requirement in accordance with the Functional Requirements and Specifications and Standards;
- 2.1.4. operation, and management of the Freight Service in accordance with the Freight Services Standards;
- 2.1.5. undertaking Traffic Management during the Operation and Maintenance Period;
- 2.1.6. assisting the Grantor in the performance of its responsibilities in respect of its Reserved Services;
- 2.1.7. performance and fulfilment of all other obligations of the Concessionaire and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement; and
- 2.1.8. transfer of the Project to the Grantor in accordance with terms of this Agreement.

2.2. Concession Fees

2.2.1. In consideration of the grant of the Concession, the Concessionaire shall, together with The Other Concessionaire, pay to the Grantor concession fees (inclusive of any Taxes or surcharges) ("**Concession Fees**") consisted of:

- (a) a Concession Fee (the "**Fixed Concession Fee**") payable collectively by the Project Concessionaires in the aggregate amount calculated in accordance with the

following formula in respect of each Concession Year:

- (i) Fixed Concession Fee = US\$ + US\$ (N-1); and
- (ii) "N" means the ordinal number of the Concession Year during which the relevant Fixed Concession Fee accrues. For illustration purposes, N = 1 if the Fixed Concession Fee is payable in respect of a period falling within the first Concession Year, being the Concession Year commencing on (and including) the Service Commencement Date and ending on (and including) December 31 of the same calendar year, and N = 2 if the Fixed Concession Fee is payable in respect of period falling within the second Concession Year, being the Concession Year immediately following the first Concession Year,

provided that if the relevant Concession Year is less than a full calendar year, the Fixed Concession Fee payable for that Concession Year shall be calculated on a pro rata basis, by reference to the actual number of days in that Concession Year as a proportion of the total number of days in the relevant calendar year in which that Concession Year falls; and

- (b) a variable Concession Fee (the "**Variable Concession Fee**") payable collectively by the Project Concessionaires in the aggregate amount equivalent to % of the Project Concessionaires' Gross Freight Revenue. For the purposes of this paragraph (b):

- (i) "**Gross Freight Revenue**" means, in respect of the relevant period, the USD (or such other freely convertible currency as agreed between the Parties) equivalent of the aggregate amount of the General Cargo Revenue, Essential Goods Revenue, Special Cargo Revenue, Containerised Cargo Revenue and Open Access Fees collected by the Project Concessionaires.

- (ii) "**General Cargo Revenue**" means, in respect of the relevant period, the total revenue collected by the Project Concessionaires from the carriage by rail of goods classified as general cargo, being goods other than the Essential Goods, Special Cargo and Containerised Cargo (the "**General Cargo**"). In respect of the relevant General Cargo, General Cargo Revenue shall be calculated in accordance with the following formula in so far as they have been collected by the Project Concessionaires during the relevant period:

$$\text{General Cargo Revenue} = \frac{\text{Contract Unit Price}}{\text{Total Tonnage}} \times \text{Total Mileage}$$

- (iii) "**Essential Goods Revenue**" means, in respect of the relevant period, the total revenue collected by the Project Concessionaires from the carriage by rail of goods classified as Essential Goods. In respect of the relevant Essential Goods, Essential Goods Revenue shall be calculated in accordance with the following formula in so far as they have been collected by the Project Concessionaires during the relevant period:

$$\text{Essential Goods Revenue} = \frac{\text{Contract Unit Price}}{\text{Total Tonnage}} \times \text{Total Mileage}$$

- (iv) "**Special Cargo Revenue**" means, in respect of the relevant period, the total revenue collected by the Project Concessionaires from the carriage by rail of goods classified as Special Cargo. In respect of the relevant Special Cargo, Special Cargo Revenue shall be calculated in accordance with the following formula in so far as they have been collected by the Project Concessionaires during the relevant period:

$$\text{Special Cargo Revenue} = \frac{\text{Contract Unit Price}}{\text{Total Tonnage}} \times \text{Total Mileage}$$

- (v) "**Containerised Cargo Revenue**" means, in respect of the relevant period, the total revenue collected by the Project Concessionaires from the carriage by rail of cargo loaded in intermodal containers measured in Twenty-Foot Equivalent Units (TEUs) (the "**Containerised Cargo**"). In respect of the relevant Containerised Cargo, Containerised Cargo Revenue shall be calculated in accordance with the following formula in so far as they have been collected by the Project Concessionaires during the relevant period:

Containerised Cargo Revenue = Contract Unit Price × Total Containers × Total Mileage

- (vi) "**Contract Unit Price**" means the actual Tariff charged by the Project Concessionaire in respect of the relevant goods, cargos or containers for carriage by rail, expressed in:

- (A) in respect of non-containerised cargo, USD, RMB Shilling or other freely convertible currencies (as applicable) per metric ton per kilometre; or
- (B) in respect of Containerised Cargo, USD, RMB, Shilling or other freely convertible currencies (as applicable) per container in Twenty-Foot Equivalent Units (TEUs) per kilometre;

- (vii) "**Total Containers**" means the total number of containers, measured in Twenty-Foot Equivalent Units (TEUs), carried by the Project Concessionaires by rail; and

- (viii) "**Total Mileage**" means the total distance, measured in kilometres, over which the relevant goods, cargos or containers are carried by the Project Concessionaires by rail;

and

- (ix) "**Total Tonnage**" means the total weight, measured in metric tons, of the relevant goods, cargos or containers carried by the Project Concessionaires by rail.

2.2.2. The Parties acknowledge that the calculation and payment of the Concession Fees shall be made in USD (or such other freely convertible currency as agreed between the Parties) quarterly in arrears in accordance with the following procedures:

- (a) at the end of each Concession Quarter following the Service Commencement Date, the Concessionaire shall calculate the Concession Fees due and payable by the Project Concessionaires for that Concession Quarter;
- (b) within ten (10) business days after the end of the relevant Concession Quarter, the Concessionaire shall deliver a written notice to the Grantor setting out:
 - (i) the aggregate amount of the Concession Fees payable collectively by the Project Concessionaires; and
 - (ii) the individual amount of Concession Fees payable by each Project Concessionaire,

for that Concession Quarter with reasonable details of the calculation of the Concession Fees (the "**Concession Fee Notice**") provided that the Grantor expressly agrees that the Project Concessionaires may deliver a joint Concession Fee Notice under both Project Concession Agreements;

- (c) if the Grantor agrees to the amount of the Concession Fees specified in the Concession Fee Notice, the Grantor shall issue to the Concessionaire an invoice in the individual amount notified to it as payable by the Concessionaire in the Concession Fee Notice within ten (10) business days of receipt of such Concession Fee Notice; and
- (d) the Concessionaire shall pay to the Grantor the invoiced amount within ten (10) business days of receipt of the Grantor's invoice pursuant to paragraph (c) above,

provided that if the relevant Concession Quarter is less than a full calendar quarter, the Fixed Concession Fee payable for that Concession Quarter shall be calculated on a pro rata basis, by reference to the actual number of days in that Concession Quarter as a proportion of the total number of days in the relevant calendar quarter in which that Concession Quarter falls.

- 2.2.3. If the Grantor disputes the amount of the Concession Fee specified in the Concession Fee Notice, the Grantor shall notify the Concessionaire in writing within ten (10) business days of receipt of the Concession Fee Notice detailing its reasons and calculations of the Concession Fee (the "**Concession Fee Dispute Notice**").
- 2.2.4. The Concessionaire may, if it agrees with the Grantor's Concession Fee Dispute Notice, deliver a new Concession Fee Notice with the adjusted amount within ten (10) business days of receipt of the Concession Fee Dispute Notice.
- 2.2.5. If the Parties cannot agree to the calculation and the amount of the Concession Fee due and payable hereunder, any dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 2.2.6. Within twenty (20) business days following the issuance of the Concessionaire's audited financial statements for any given year, the Parties shall review and reconcile the aggregate amount of Concession Fees paid by the Concessionaire for that year ("**Paid Concession Fees**") against the amount of Concession Fees payable for the same year, as determined based on the audited financial statements ("**Payable Concession Fees**").
- 2.2.7. If the Paid Concession Fees are less than the Payable Concession Fees for that year, the Concessionaire shall pay the shortfall to the Grantor within twenty (20) business days of such reconciliation.
- 2.2.8. If the Paid Concession Fees exceed the Payable Concession Fees for that year, the Concessionaire may set off the excess amount against the subsequent quarterly Concession Fees payable, until the overpaid amount is fully recovered.
- 2.2.9. Without prejudice to any other rights or remedies of the Concessionaire, the Concessionaire shall have the right, at its sole discretion, to set off or deduct from any Variable Concession Fees payable by the Concessionaire under this Agreement any Grantor's Liabilities that are due and payable by the Grantor under this Agreement or otherwise.

2.3. Grant of the Concession

- 2.3.1. Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Grantor hereby grants to the Concessionaire the concession in respect of the part of the Project within the territory of the United Republic of Tanzania as set forth herein including the exclusive right, licence and authority to design, procure, finance, replace, repair and rehabilitate the Project Infrastructures, operate freight trains and Traffic Management, charge and collect Tariffs and other fees for the Freight Services during the Concession Period (the "**Concession**").
- 2.3.2. The Concessionaire hereby accepts the Concession set forth herein including the exclusive right, licence and authority to design, procure, finance, replace, repair and rehabilitate the Project Infrastructures, operate freight trains and Traffic Management, charge and collect Tariffs and other fees for the Freight Services during the Concession Period.
- 2.3.3. Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Concession hereby granted, shall oblige or entitle, as the case may be, the Concessionaire to:
- (a) the Right of Way, access and licence to the Project Site and Land Lease for the purposes of carrying out and fulfilling the objectives and provisions set out in this Agreement;
 - (b) undertake the Project Activities in accordance with this Agreement;
 - (c) the exclusive right to operate, maintain, manage and/or delegate the Freight Service;
 - (d) procure financing for the Project and undertake the design, procurement, replace, repair and rehabilitation of the Project Infrastructure, ensuring that it meets the Functional Requirements and Specifications and Standards;
 - (e) assist the Grantor to manage, operate and maintain the Project Infrastructure throughout the Concession Period in accordance with the terms of this Agreement including developing Track Maintenance Report during the

- Operation and Maintenance Period and providing the necessary technical assistance, tools, equipment and spare parts required in accordance with Clauses 13.8 (*Obligations of the Concessionaire in respect of Reserved Services (Maintenance of Railway Tracks)*) and 13.10 (*Obligations of the Concessionaire in respect of Reserved Services (Technical Support and Consultation)*);
- (f) undertake the Project Activities and delegate the performance of all or part of the Project Activities to an Affiliate or another third party and to enter into contract of association with such third parties for the performance of all or part of the Project Activities;
 - (g) undertake the Freight Services and Traffic Management and reserves the right to delegate all or part of the provision of the Freight Services and Traffic Management to Affiliates or third party contractors as it deems necessary, including Open Access Operators; and
 - (h) the exclusive right to collect and levy Tariffs from Freight Customers, Open Access Fees from Open Access Operators and any other fees in respect of any other services provided, including but not limited to commercial activities associated with Freight Services.
- 2.3.4. Prior to the Expiry Date, the Parties may by mutual agreement extend the Concession for a period as determined between the Parties subject to the Concessionaire achieving the performance benchmarks under this Agreement, other new terms and conditions (if any) agreed between the Parties and the approval of the Contracting State.
- 2.3.5. Upon expiry of the Concession Period and if the Grantor intends to continue operating the Railway by way of a public private partnership, the Concessionaire shall be given priority over any other person subject to such investment proposal and other new terms and conditions (if any) agreed between the Parties.
- 2.3.6. The Concessionaire shall not assign, transfer or sublet or create any lien or encumbrance of the Project Infrastructure nor transfer, mortgage, lease or part of possession thereof, save and except as expressly permitted by this Agreement.
- 2.3.7. The Parties agree that the Concession granted hereunder shall be based on the financing, rehabilitation, operation, maintenance and

transfer of the Project to the Grantor in accordance with the terms of this Agreement and under this arrangement, the exclusive right to operate the Freight Services and the Traffic Management shall be granted to the Concessionaire.

2.4. Concession Period and Review Mechanism

- 2.4.1. Subject to and in accordance with the provision of this Agreement and Applicable Laws, this Agreement shall take effect on the Effective Date for a period of thirty-one (31) years plus such additional period as may be granted by the Grantor to the Concessionaire in accordance with Clause 2.3.4 (*Grant of the Concession*), 2.3.5 (*Grant of the Concession*) and this Clause 2.4 (*Concession Period and Review Mechanism*) and other provisions of this Agreement (the "**Concession Period**").
- 2.4.2. The Parties agree that a review of the Project shall be undertaken, at the request of a Party, every ten (10) years from the Effective Date (each, a "**Periodic Review**") to assess:
- (a) the physical and operational conditions of the Project Infrastructure;
 - (b) the operation of the Freight Services, including the Annual Achieved Volumes and forecast of future demand for the Freight Services; and
 - (c) the necessity, scope, and timing of any additional investments necessary or preferable to enhance the capacity, efficiency and performance of the Railway.
- 2.4.3. At least three (3) months prior to the tenth (10th) anniversary of the Effective Date, and every ten (10) years thereafter, either Party may submit to the other Party a report (the "**Review Report**") addressing the matters set out in Clause 2.4.2 above and proposing:
- (a) any additional investments from the Concessionaire which may be necessary or desirable to enhance the capacity, efficiency and performance of the Railway;
 - (b) any extension of the existing Concession Period and/or other amendments to this Agreement in consideration of the proposed additional investments from the Concessionaire; and
 - (c) the possible impact of the proposal on the Financial Model.

- 2.4.4. Following submission of the Review Report, the Parties shall engage in good faith discussion to determine:
- (a) the reasonableness and adequacy of the proposal submitted in the Review Report;
 - (b) the impact of the proposal on the operation and performance of the Railway; and
 - (c) the corresponding extension of the Concession Period and any other amendments to this Agreement which may be necessary, taking into account the updated Financial Model and ensuring a fair and reasonable return on the Concessionaire's investment.
- 2.4.5. If and upon reaching agreement during any Periodic Review, the Parties shall enter into a written addendum to this Agreement setting out, among others, the additional investment from the Concessionaire, the implementation plan, the extension of the then current Concession Period and any other amendments to the terms of this Agreement.
- 2.4.6. For the avoidance of doubt, neither Party shall have any obligation to agree to any extension of the Concession Period or other amendments to this Agreement during any Periodic Review.

2.5. Project Assets

For the avoidance of doubt, it is expressly acknowledged and agreed that:

- (a) the Project Infrastructure shall remain the properties of the Grantor during the Concession Period; and
- (b) any Rolling Stock and other assets purchased and procured by the Concessionaire in connection with the Project shall be the properties of the Concessionaire unless and until such Rolling Stock and other assets are transferred to the Grantor in accordance with the terms of this Agreement.

2.6. Conditions Precedent

- 2.6.1. Save and except as expressly provided otherwise in Clauses 2 (*The Scope Of Concession*), Clause 3 (*Obligation Of The Parties To The Concession*), Clause 4 (*Representations And Warranties*), Clause 5 (*Project Site, Assets And Related Matters*), Clause 10.3.6 (*Open Access Operators*), Clause 18 (*Force Majeure*), Clause 25 (*Dispute Resolution*) and/or Clause 26 (*Miscellaneous*) or unless the context otherwise requires, the respective rights and obligations of the Parties

under this Agreement shall be subject to the satisfaction or waiver of the Conditions Precedent specified in this Clause 2.6.

2.6.2. Except as set forth in Clause 2.6.1, the rights and obligations of the Parties under the Agreement shall be conditional upon the fulfilment of:

- (a) Concessionaire Conditions Precedents;
- (b) Grantor Conditions Precedent; and
- (c) Joint Conditions Precedent.

2.6.3. The following Conditions Precedent shall be satisfied by the Concessionaire or at the Grantor's discretion waived in writing (the "**Concessionaire Conditions Precedent**"):

- (a) (No insolvency): the Concessionaire has submitted proof to the Grantor of not being subject to bankruptcy, liquidations or winding-up proceedings whether compulsory or voluntary, and there are no threatened bankruptcy, liquidations or winding-up proceedings, whether compulsory or voluntary;
- (b) (Board of Directors Resolutions and Shareholders Resolution): the Concessionaire has furnished all resolutions adopted by its board of directors and shareholders authorising its execution, delivery and performance of each of the transaction documents including but not limited to:
 - (i) financial standing and resources to fund or raise finances for undertaking and implementing the Project in accordance with this Agreement; and
 - (ii) the Concessionaire is duly organised and validly existing under the laws of the jurisdiction of its incorporation;
- (c) (Financial Model): the Concessionaire has submitted an updated Financial Model to the Grantor in the form as prescribed in Schedule 12 (*Financial Model*);
- (d) (Execution of Financing Agreement): the Concessionaire has furnished a notice to the Grantor confirming the execution of the Financing Agreement;

- (e) (Financial Close): the Concessionaire has furnished a notice to the Grantor confirming that Financial Close has been or will be achieved under the Financing Agreements except those conditions precedent relating to achieving the Effective Date of the Project Concession Agreements;
- (f) (Legal Opinion): the Concessionaire has furnished to the Grantor a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability hereof;
- (g) (Insurance): the Concessionaire has furnished to the Grantor certificates of insurance evidencing the Concessionaire's Insurance Cover in accordance with Clause 17.7 (*Insurance Coverage*);
- (h) (Applicable Permit): obtaining Applicable Permits as may be required for commencement of the Projects in accordance with the Applicable Laws and terms of this Agreement;
- (i) (Environmental): the Concessionaire has procured all environmental licences and permits, including environmental impact assessment approvals and environmental audits, in connection with the implementation of the Project and provision of Freight Services; and
- (j) (Registration of the Strategic Project): as applicable, the Concessionaire has completed the registration of the Project as a strategic project to the appropriate investment authorities in a Contracting State and submit to the Grantor proof of registration in accordance with the Applicable Law.

2.6.4. The following Conditions Precedent shall be satisfied by the Grantor or at the Concessionaire's discretion waived in writing (the "**Grantor Conditions Precedent**"):

- (a) (Existing Agreements): the Grantor has provided to the Project Concessionaires a full and complete list of the Existing Agreements;
- (b) (Right of Way): the Grantor has granted the Right of Way

- and Land Lease required for the Project to the Project Concessionaires, including due registration and recording of its ownership interest over the land specified in Schedule 4 (*Land Lease*) to the extent it has not been done, the execution and registration of the necessary Lease Agreements with all relevant Governmental Authorities of the respective Contracting State as may be required;
- (c) (Host Government Agreement): the Host Government Agreements and Letters of Support have been duly executed and become valid and effective;
 - (d) (Government Support): the Government Support has been fully implemented by the relevant Governmental Parties and become effective in respect to this Project, including the publication of the relevant Tax preferential treatment agreed under the Host Government Agreement in the Government Gazette as required by the Applicable Laws;
 - (e) (Direct Agreement): the Direct Agreements have been duly executed by the Grantor and the Lenders.
 - (f) (Attorney General Legal Opinion): issuance of a legal opinion of the Attorney General of each Contracting States in respect of, inter alia, the legality and validity of the Project and the Project Agreements, compliance with the Public Private Partnership Act of this Contracting State and the capacity and authority of the relevant Governmental Parties in respect of their entering into the Project Agreements;
 - (g) (Cabinet Approval): the approval of the Project Agreements by the Cabinet of the United Republic of Tanzania in accordance with the PPP Act of Tanzania;
 - (h) (Exemption from the Regulation on the Use of Foreign Currency): except for tariffs for the domestic Passenger Train Services and Local Freight Services, the Project, including all transaction relating to its construction, development, financing, operation and maintenance, has been exempted from the restrictions on the use of foreign currency for domestic transactions under the Regulation on Use of Foreign Currency, G.N. 198 of 2025 in

accordance with the Applicable Laws;

- (i) (Novation of Existing Open Access Agreements) due execution of amendment and novation agreements in respect of the Existing Open Access Agreements (1) amending the Existing Open Access Agreements to, among others, comply with the Functional Requirements and Specifications and Standards and Safety Standards and (2) transferring such agreements from the Grantor to the Concessionaire, which agreements shall become effective from the Service Commencement Date or an earlier date as agreed between the Concessionaire, the Grantor and the Open Access Operators;
- (j) (Submission to ICSID): the Contracting States have designated the Grantor as its agency to the International Centre for Settlement of Investment Disputes and agreed for the Grantor to submit this Agreement to the jurisdiction of International Centre for Settlement of Investment Disputes pursuant to Article 25 of the ICSID Convention;
- (k) (Board of Directors and Council of Ministers Resolutions): the Grantor has furnished all resolutions adopted by its Board of Directors and Council of Ministers authorising its execution, delivery and performance of this Agreement and the transaction and each other documents contemplated herein; and
- (l) (Other Concession Agreement): the "Grantor Conditions Precedent" under Clause 2.6.4 and the "Joint Conditions Precedent" under Clause 2.6.5 of The Other Concession Agreement shall have been satisfied or otherwise waived in accordance with the terms thereof.

2.6.5. The following Conditions Precedent shall be satisfied by the Grantor and Concessionaire acting together ("**Joint Conditions Precedent**"):

- (a) (Handover Condition Survey): the Parties have jointly carried out and completed the Handover Condition Survey in accordance with Clause 5.2 (*Handover Condition Survey*);
- (b) (Railway Development Fund): the Grantor and the

Concessionaire shall enter into the Railway Development Fund Escrow Agreement and open the Railway Development Fund Escrow Account in accordance with the terms of this Agreement;

- (c) (Existing Agreements): the Parties have agreed to the final list of Existing Agreements and Existing Facilities warranties and have assigned the Existing Agreements and Existing Facilities warranties from the Grantor to the Concessionaire; and
- (d) (List of Foreign Staff Positions): the Project Concessionaires and the Host Government have agreed to the List of Foreign Staff Positions; and
- (e) (Interchange Agreement): the Project Concessionaires have executed the Interchange Agreement.

2.6.6. The Conditions Precedent set forth in Clause 2.6 (*Conditions Precedent*) shall be complied with within twelve (12) months from the Execution Date. Each Party shall promptly inform the other Party as soon as any of its Conditions Precedent and the Joint Conditions Precedent are satisfied. The Parties shall execute a certificate to be dated the Effective Date confirming that all of the Conditions Precedent have been fulfilled or waived by the relevant Party and upon which the Effective Date shall occur.

2.6.7. From the Execution Date, each Party shall report quarterly to the other Party on the progress towards fulfilment of the respective Conditions Precedents set out under Clause 2.6.2.

2.6.8. Any of the Conditions Precedent set forth in Clause 2.6.3 may be waived fully or partially by the Grantor at any time in its sole discretion or the Grantor may grant additional time for compliance with these conditions and the Concessionaire shall ensure compliance within such additional time as specified by the Grantor.

2.6.9. Any of the Conditions Precedent set forth in Clause 2.6.4 may be waived fully or partially by the Concessionaire at any time in its sole discretion or the Concessionaire may grant additional time for compliance with these conditions and the Grantor shall ensure compliance within such additional time as specified by the Concessionaire.

2.6.10. Any of the Conditions Precedent set forth in Clause 2.6 (*Conditions*

Precedent) may be waived fully or partially by both Parties at any time or additional time for compliance with these Conditions Precedent may be granted by agreement between the Parties in writing.

2.6.11. The Parties shall cooperate in good faith and use their respective best endeavours to do all things reasonably necessary to procure the satisfaction of the Conditions Precedent as soon as reasonably practicable.

2.6.12. Subject to Clause 2.6.13, in the event that the Conditions Precedents are not complied with within the time (including the extended time, if any) in accordance with this Clause 2.6, this Agreement may be terminated forthwith by either Party by written notice. Upon such termination:

- (a) this Agreement shall be rendered void and shall have no force and effect;
- (b) each Party shall be discharged from any further obligations under this Agreement; and
- (c) no Party shall have a claim against the other save for those liabilities which have accrued and any rights and obligations expressed to arise upon or survive such termination.

2.6.13. If the failure to fulfil the Conditions Precedent is caused by the default, breach, delay, action or inaction of any Governmental Parties, the Grantor shall be obliged to:

- (a) extend the time to fulfil all Conditions Precedent at the Concessionaire's request; or
- (b) indemnify the Concessionaire for the loss and expenses incurred by the Concessionaire if this Agreement is terminated pursuant to Clause 2.6.12.

2.7. **Concession Fee Payment Guarantee**

2.7.1. The Concessionaire shall, no later than the Service Commencement Date, submit to the Grantor, an irrevocable and unconditional guarantee issued by a bank in this Contracting State or a foreign bank confirmed or authenticated by a reputable local bank in this Contracting State that shall continue to be effective up to the termination of this Agreement (the "**Payment Guarantee**"). The aggregate amount of the Payment Guarantee (as defined in both

Project Concession Agreements) submitted by the Project Concessionaires shall be USD (or its equivalent).

- 2.7.2. The Concessionaire shall renew the Payment Guarantee and submit to the Grantor proof of the renewal of the Payment Guarantee on or before thirty (30) days prior to the date of expiration of the Payment Guarantee.
- 2.7.3. With the consent of the Grantor, the Concessionaire may replace this Payment Guarantee with another Payment Guarantee issued by another bank in this Contracting State or a foreign bank confirmed or authenticated by a reputable local bank in this Contracting State.
- 2.7.4. The Payment Guarantee shall answer for and guarantee the prompt payment of the Concession Fees by the Project Concessionaires in accordance with the terms of the Project Concession Agreements. Upon occurrence of a failure to pay any Concession Fees (as defined in both Project Concession Agreements) due and payable by any Project Concessionaires, the Grantor shall be entitled to encash and appropriate from the Payment Guarantee the outstanding amounts of the Concession Fees (as defined in both Project Concession Agreements) due to it.
- 2.7.5. Upon such encashment and appropriation from the Payment Guarantee, the Concessionaire shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to the original level of Payment Guarantee, and in case of appropriation of the entire Payment Guarantee provide a fresh Payment Guarantee, as the case may be. Upon each replenishment or furnishing of a fresh Payment Guarantee, as the case may be, the Concessionaire shall be entitled to an additional cure period of 30 (thirty) days to remedy the Concessionaire Event of Default in connection with the failure to pay the Concession Fees.
- 2.7.6. All premiums or other costs in the furnishing of the Payment Guarantee and procuring the Payment Guarantee shall be paid by the Concessionaire.
- 2.7.7. Subject to the Grantor's accrued rights on the Payment Guarantee the Concessionaire shall be released from the obligation of the Payment Guarantee upon termination of this Agreement.

3. OBLIGATION OF THE PARTIES TO THE CONCESSION

3.1. Obligations of the Concessionaire

3.1.1. Subject to and on the terms and conditions of this Agreement and other Project Agreements, the Concessionaire shall:

- (a) at its own cost and expense, procure finance for and undertake to implement the Project Activities and observe, fulfil, comply with and perform all its obligations as set out in this Agreement including those as set forth in Schedule 10 (*Responsibility Assignment Matrix of Railway Operation and Maintenance between Grantor and Concessionaire*);
- (b) provide support to the Grantor in the performance of the Reserved Services, including:
 - (i) developing Track Maintenance Reports for the Operation and Maintenance Period and providing the necessary technical assistance, tools, equipment and spare parts required to maintain the Project Infrastructure; and
 - (ii) providing both supervision and technical support at critical positions and locations within the Railway's engineering maintenance and transportation organization to ensure high-quality operations;
 - (iii) be obliged to obtain the Applicable Permits for the implementation of the Project under the Applicable Law;
 - (iv) be obliged to carry out the Handover Condition Survey jointly with the Grantor which shall include an assessment of the Existing Facilities to be utilized by the Project Concessionaires in accordance with this Agreement;
 - (v) provide Freight Services for local, emergency and pickup traffic;
 - (vi) assist the Grantor to manage, operate and maintain the Project Infrastructure throughout the Concession Period in accordance with the terms of this Agreement including developing Track Maintenance Report during the

Operation and Maintenance Period and providing the necessary technical assistance, tools, equipment and spare parts required in accordance with Clauses 13.8 (*Obligations of the Concessionaire in respect of Reserved Services (Maintenance of Railway Tracks)*) and 13.10 (*Obligations of the Concessionaire in respect of Reserved Services (Technical Support and Consultation)*).

- (c) have the exclusive rights to operate, manage and maintain the Freight Services including overseeing all aspects of the Freight Services and ensuring that the Freight Service operates in accordance with the terms of this Agreement;
- (d) allow Open Access during the Operation and Maintenance Period subject to the Open Access Agreements and in conformity with the Applicable Laws;
- (e) to undertake the Traffic Management during the Operation and Maintenance Period;
- (f) comply with all Applicable Laws and Applicable Permits in the performance of its obligations under this Agreement; and
- (g) at its own cost and expense observe, undertake, comply with and perform, in addition to and not in derogation of its obligations elsewhere set out in this Agreement, the following:
 - (i) make, or cause to be made, necessary applications to the relevant Governmental Authorities with such particulars and details, as may be necessary for obtaining all Applicable Permits, and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
 - (ii) following the issuance of the Certificate of Completion, remove from the Project Infrastructure all waste materials (including, without limitation to hazardous materials and wastewater), rubbish and other debris from the Rehabilitation Work in a timely manner;

- (iii) provide the Grantor with reports on the implementation of the Project in accordance with the terms of this Agreement;
- (iv) not to place or create and nor permit any Contractor or other person claiming through or under the Concessionaire to create or place any Encumbrance or security interest over all or any part of the Project Site or the Project Infrastructure, or on any rights of the Concessionaire therein or under this Agreement, save and except as expressly set forth in this Agreement;
- (v) not claim or demand possession or control of any structures from the Grantor or the Host Government which do not form part of the Project Infrastructure, Project Site, Right of Way or Land Lease except as may otherwise be agreed or provided for in any Project Agreements;
- (vi) ensure that its Contractors comply with the Applicable Laws and Applicable Permits in the performance of any of the Concessionaire's obligations under this Agreement;
- (vii) support, cooperate with and facilitate the Grantor in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
- (viii) comply with the Divestment Requirements under Clause 21.9 (*Divestment Requirements*).

3.1.2. Obligations before commencement of Rehabilitation Works

The Concessionaire shall, before commencement of the Rehabilitation Work:

- (a) submit to the Grantor with due regard to the Project Completion Schedule and Scheduled Project Completion Date, its design, engineering and rehabilitation time schedule and shall formulate and provide charts for the

completion of the said activities; and

- (b) have designated and appointed a project manager and such other managers, officers and representatives as it may deem appropriate to supervise the Project and to deal with the Grantor's representative and be responsible for all necessary exchanges of information required pursuant to this Agreement.

3.1.3. Obligations relating to Commercial Contracts

- (a) It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in any Commercial Contracts, and no default under any Commercial Contract shall excuse the Concessionaire from its obligations or liability hereunder.
- (b) It is expressly agreed that the Concessionaire's obligations under this Agreement and any Commercial Contracts shall, notwithstanding anything provided to the contrary herein or therein, shall be subject to the due performance and fulfilment of the obligations of Governmental Parties under the Host Government Agreements and the Concessionaire shall not be responsible or liable for any of its obligations under this Agreement or any Commercial Contract due to the failure to perform or fulfil any of the obligation of a Governmental Party under the Host Government Agreements and such failure to perform or of fulfilment shall excuse the Concessionaire from its obligations or liability hereunder and under any Commercial Contracts.
- (c) The Concessionaire shall undertake reasonable efforts to seek that each of the Commercial Contracts contain provisions that entitle the Grantor to step into such agreement, in its sole discretion, in the event of termination or suspension, where in such instance the Lenders opt to not exercise any right to step into such agreement as may be contained in any Commercial Contracts.

3.1.4. Obligations relating to Change in Ownership

- (a) The Concessionaire shall notify the Grantor of any

proposed Change in Ownership as soon as reasonably practicable and in any event at least thirty (30) days before any such Change in Ownership is made, save where Changes in Ownership are caused by Lenders' enforcement under a Financing Agreement.

- (b) Except as set out in Clause (c) below, the Concessionaire shall not undertake or permit any Change in Ownership, except with the prior written approval of the Grantor, which may not be refused if the transferee of ownership provides proof that it has sufficient financial and technical capacity to perform and assume the Concessionaire's obligations under this Agreement. Any Change in Ownership without prior written approval of the Grantor shall constitute a material breach of the Concession Agreement.
- (c) The Concessionaire undertakes that it shall not give effect to any such Change in Ownership of the Concessionaire without such prior approval of the Grantor.
- (d) For the avoidance of doubt, it is expressly agreed that the denial of the approval by the Grantor shall be limited to matters of national security and public interest perspective, and the Grantor shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Grantor shall not be liable in any manner on account of its decision with regard to approval or denial of Change in Ownership and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

3.1.5. Employment of foreign nationals

- (a) The Concessionaire acknowledges, agrees and undertakes that employment of Foreign Staff shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Concessionaire.
- (b) The Grantor acknowledge that, under the Host Government Agreements, the Foreign Staff in the positions as agreed in the List of Foreign Staff Positions

shall be granted the necessary permits and approvals including employment/residential visas and work permits in a timely manner subject only to the submission of the relevant application material in conformity with the Applicable Laws.

3.1.6. Employment of Qualified Personnel

- (a) The Concessionaire shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly qualified for their respective functions.
- (b) The Concessionaire shall comply with the Applicable Laws with regard to the employment of Zambian and Tanzanian nationals throughout the Concession Period and shall organise employee training programs for its Zambian and Tanzanian employees in accordance with Clause 3.1.7(b) (*Local Content and Concessionaire Personnel*).

3.1.7. Local Content and Concessionaire Personnel

- (a) The Concessionaire shall support the local Tanzanian and Zambian economy, through the principle of local content by using the Tanzanian and Zambian local companies for the awarding of contracts for works, supply of goods, and provision of services in the implementation of the Project as required by the Applicable Laws; and utilisation of Tanzanian and Zambian human and material resources of the relevant Contracting State in the execution of the Project Activities to the extent practicable and as required by the Applicable Laws.
- (b) In compliance with local content requirements of the relevant Contracting State, the Concessionaire shall (and shall procure that its Contractors will) utilise local suppliers of the relevant Contracting State to the extent practicable and as required by the Applicable Laws. Without prejudice to any other provisions of this Agreement, the Concessionaire undertakes to the Grantor that it shall comply with local content requirements of the relevant Contracting State as required by the Applicable Laws including, without limitation, in relation to the

following:

(i) Human Rights Standards

The Concessionaire shall ensure that the Project is undertaken in a manner consistent with the Human Rights Standards.

(ii) Labour Standards and Engagement of Employees

(i) The Concessionaire shall ensure that the Project comply with all the relevant Labour Standards in relation to any personnel engaged by it for purposes of the Project, including Applicable Laws relating to the employment in the relevant Contracting State in respect of, but not limited to, hours of work, leave, remuneration, benefits, occupational health and safety standards, compensation benefits and terms of employment which shall not be less beneficial than provided in the Applicable Laws.

(ii) The Concessionaire shall engage the Grantor's existing employees in accordance with Clause 6.1 (*Transfer of Existing Grantor's Employees*).

(iii) Training and Development

(i) The Concessionaire shall procure that the implementation of the Project will promote training and development, capacity building and transfer of technology, knowledge and skills to the Tanzanian and Zambian employees including the Grantor's employees in accordance with a

training programme agreed between the Parties. The Parties shall discuss in good faith and jointly establish a training programme no later than one hundred and eighty (180) days before the Scheduled Project Completion Date.

- (ii) The Concessionaire shall give its employees the opportunity to develop and grow in their careers by offering career progression and increased responsibilities.

(iv) Procurement

In accordance with the Applicable Laws, in relation to procurement, the Concessionaire shall:

- (i) comply with prescribed local content requirements of the relevant Contracting State in relation to the award of sub-contracts, supply of goods and services within such Contracting States; and
- (ii) use reasonable endeavours to ensure that all materials, products and services are sourced and produced in compliance with Human Rights Standards.

(v) Corporate Social Responsibility

The Concessionaire acknowledges the importance of corporate social responsibility and will develop a corporate social responsibility policy for the Project in collaboration with the Grantor.

3.1.8. Environmental and Social Impact Assessment

- (a) Subject to the Applicable Laws, the Concessionaire shall

be fully responsible for addressing and managing all environmental and social concerns that may arise in connection with the Project Activities. This responsibility includes ensuring that all Project Activities comply with the applicable environmental laws, regulations and standards of the relevant Contracting State.

- (b) Additionally, the Concessionaire shall be required to regularly monitor its environmental performance and implement corrective measure when necessary to ensure ongoing compliance with the environmental legislation of the relevant Contracting State.

3.2. Obligation of the Grantor

3.2.1. The Grantor shall, at its own cost and expense undertake, observe, fulfil, comply with and perform all its obligations as set out in this Agreement, including those relating to the Reserved Services and as set forth in Schedule 10 (*Responsibility Assignment Matrix of Railway Operation and Maintenance between Grantor and Concessionaire*).

3.2.2. The Grantor agree to provide reasonable assistance to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:

- (a) provide reasonable assistance to ensure that the competent Governmental Authorities shall process and approve requests submitted by the Concessionaire and its Contractors for the issuance or renewal of any Applicable Permits. The Grantor also undertake to ensure that the Governmental Authorities shall maintain the validity of the Applicable Permits during the Concession Period;
- (b) upon written request from the Concessionaire and subject to the Applicable Laws, provide assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including additional or widening access roads, proper electricity, water and drainage system and access to public solid waste dump, land-fill sites and sewage sites;
- (c) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement or which may materially hinder or adversely

affect the Concessionaire's ability to perform its rights and obligations under this Agreement;

- (d) support, cooperate with and facilitate the Concessionaire in the implementation of the Project in accordance with the provisions of this Agreement;
- (e) avail reasonable assistance in procuring the grant of visas, work permits and any other permits to the foreign workers of the Concessionaire or its Contractors for the purposes of discharging the Concessionaire's obligations under this Agreement and any Commercial Contracts in accordance with the Applicable Laws and the Project Agreements; and
- (f) enable access to the Project Site, free from Encumbrances and Encroachment, in accordance with this Agreement.

3.2.3. The Grantor shall grant the Right of Way and Land Lease to the Concessionaire in accordance with the terms of this Agreement.

3.2.4. The Grantor shall ensure that the Concessionaire shall have exclusive right to operate, manage and collect fees from the Freight Service and associated services in accordance with the terms of this Agreement.

3.2.5. The Grantor shall ensure the security of the Project Infrastructure, including the removal of trespassers, and shall procure adequate police assistance to ensure the enforcement of TAZARA Act in relation to the protection of the Project Infrastructure and the Rolling Stocks operating on the Railway.

3.2.6. The Grantor acknowledges the importance of the Interchange Agreements for the Project and undertakes to cooperate and support the Concessionaire to interface with the other railway networks under the Interchange Agreement.

3.2.7. The Grantor shall ensure adequate uninterrupted work window for the Concessionaire to carry out the Rehabilitation Works along the Railway during the Construction Period.

3.2.8. In consideration of the Project Concessionaires undertaking the Project Activities and without any other amount payable by the Project Concessionaires, the Grantor shall grant the Concessionaire the right to:

- (a) use the Project Infrastructure to transport all Project Infrastructure Materials required for the implementation

of the Project and shall support, cooperate with and facilitate the Concessionaire to transport the Project Infrastructure Material in a timely and efficient manner; and

(b) remodel, upgrade, rehabilitate, or make use of Existing Facilities owned by the Grantor as listed in Schedule 3 (*List of existing facilities and assets*).

- 3.2.9. The Grantor shall ensure that its employees who shall be transferred to join the Concessionaire are competent and qualified for the work they are expected to carry out with the Concessionaire in accordance with the Employment Contracts.
- 3.2.10. The Grantor shall accept the attachment of the Concessionaire's staff in accordance with Clause 6.2 (*Attachment of the Concessionaire's Employees*) and comply with the agreement in relation to Delegated Department in accordance with Schedule 10 (*Responsibility Assignment Matrix of Railway Operation and Maintenance between Grantor and Concessionaire*).
- 3.2.11. The Grantor shall not undergo any restructure or reorganization or increase or reduce the number of or alter the seniority or level of its employees (including in relation to any Delegated Departments) after the Execution Date which may increase the personnel or operational costs of the Grantor or otherwise have a Material Adverse Effect to any Party of this Agreement.
- 3.2.12. The Grantor shall ensure that any of its outstanding liability, including any overdue salaries, social security contributions, pension obligations and other payable amounts, shall not have any Material Adverse Effect on the Concessionaire.
- 3.2.13. The Grantor undertakes to settle and discharge, prior to the Service Commencement Date, its material outstanding liabilities, including any overdue salaries, social security contributions, pension obligations and other payable amounts, and shall provide the Concessionaire with a letter confirming such settlement and discharge before the Service Commencement Date.

4. REPRESENTATIONS AND WARRANTIES

4.1. Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Grantor on the Execution Date and on the Effective Date that:

- 4.1.1. it is duly incorporated and validly exists under the Applicable Laws, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- 4.1.2. it has the financial and technical standing and capacity sufficient to undertake the Project in accordance with the terms of this Agreement;
- 4.1.3. this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- 4.1.4. it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- 4.1.5. the information furnished in the Unsolicited Investment, Operational and Technical Proposals have been prepared on the basis of recent historical information and on the basis of reasonable assumptions as at the date of the proposals;
- 4.1.6. the execution, delivery and performance of this Agreement does not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Articles of Association, any Applicable Laws or any obligation which is binding upon the Concessionaire or upon any of its assets;
- 4.1.7. there are no actions, suits, proceedings, or investigations 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 breach of this Agreement or which individually or in the aggregate may result in any Material Adverse Effect;
- 4.1.8. 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 Governmental Authority which may result in any Material Adverse Effect and no fact or circumstance exists which may give rise to such proceedings that would have a Material Adverse Effect;
- 4.1.9. 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;

- 4.1.10. no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any public official or officer or employee(s) of the Grantor in connection therewith;
- 4.1.11. the Concessionaire shall not engage in corruption, misconduct or anti-competitive business practices; and
- 4.1.12. the Concessionaire undertakes its obligation to deliver statements as maybe required by the Grantor or regulator on the Concessionaire's financial status including any specific requirements relating to the Concessionaire capitalisation and shareholding and its tax status.

4.2. Representations and Warranties of the Grantor

The Grantor represents and warrants to the Concessionaire on the Execution Date and on the Effective Date that:

- 4.2.1. it is a public corporation established under the provision of the Tanzania- Zambia Railway Act No. 4 and No. 10 of 1995 of the laws of Tanzania and Zambia respectively and has all requisite legal power to execute and perform its obligation as contemplated in this Agreement;
- 4.2.2. it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- 4.2.3. it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement, as well as the direct award of this Concession;
- 4.2.4. it has the capacity to perform its obligations under this Agreement;
- 4.2.5. this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- 4.2.6. 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 Governmental Authority in the Contracting

States which may result in any Material Adverse Effect;

- 4.2.7. any statement, notice or other Documents, in written or electronic form, made or delivered by the Grantor to the Concessionaire in relation to the Grantor, the Project Infrastructure, the facilities and assets of the Grantor and the Project are true and accurate and not misleading in material particulars;
- 4.2.8. it has complied with the Applicable Laws in all material respects;
- 4.2.9. it has good and valid right to the Project Site and Existing Facilities, and has power and authority to grant the Right of Way, Land Lease and the right to access and use the Existing Facilities to the Concessionaire free from any Encumbrances or Encroachments;
- 4.2.10. 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 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;
- 4.2.11. there are no actions, suits, proceedings, or investigations 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 breach of this Agreement or which individually or in the aggregate may result in any Material Adverse Effect;
- 4.2.12. it has no material outstanding liabilities including any overdue salaries, social security contributions, pension obligations or other payments payable to its employees as of the Service Commencement Date;
- 4.2.13. the list of the Existing Agreements provided by the Grantor at Conditions Precedent is full, complete and up-to-date; and
- 4.2.14. information furnished by the Grantor to the Concessionaire is true and accurate in all material respects.

4.3. Disclosure

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. 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 nor shall

it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.

5. PROJECT SITE, ASSETS AND RELATED MATTERS

5.1. Project Site

5.1.1. The site of the Project shall comprise the areas as detailed in Schedule 1 (*The Project Site*) and in respect of which the necessary Right of Way and/or Land Lease shall be made available to the Concessionaire as a licensee, lessee or otherwise in accordance with this Agreement, the Host Government Agreement and Applicable Laws (the "**Project Site**").

5.2. Handover Condition Survey

5.2.1. The Parties shall within one hundred and twenty (120) days after the Execution Date, jointly inspect the Project Site, the Existing Facilities and Utilities and prepare a memorandum (the "**Handover Condition Survey**") containing an inventory of the Project Site and Existing Facilities provided that:

- (a) the Parties shall cooperate in good faith to investigate the Project Site and Existing Facilities and obtain the details of the vacant and unencumbered land, buildings, rolling stocks, structures, road/ railway works, trees and any other immovable property on or attached to the Project Site as well as any Encumbrances and Encroachment thereto; and
- (b) the Grantor shall liaise with the relevant Governmental Authorities to obtain the relevant information and details of the drawings of all underground cables and other Utilities underneath the Project Site.

5.2.2. The Handover Conditions Survey shall have appended thereto an appendix specifying in reasonable detail those parts of the Project Site to which vacant access, possession and Right of Way has not been granted to the Concessionaire.

5.3. Right of Way and Land Lease

5.3.1. The Grantor hereby grants to the Concessionaire the Right of Way and the Concessionaire shall have the rights to access, use and/or possess the Project Site without the Concessionaire being required to make any additional payment to the Grantor on account of any costs, compensation, expenses and charges for the access and use of such

Project Site for the duration of the Concession Period. If any Encumbrances or Encroachments are discovered on the Project Site and found to materially affect the implementation of the Project, the Concessionaire shall notify the Grantor in writing and the Grantor shall undertake to remove such Encumbrances or Encroachments as soon as practicable and in any event within 120 days after the receipt of the written notice to ensure that the Railway and any Project Activities shall not be adversely affected by such Encumbrances or Encroachments.

- 5.3.2. Prior to the Effective Date, the Concessionaire shall have the rights to access the Project Site for carrying out any surveys, investigations including soil tests and environmental impact assessment that the Concessionaire may deem necessary, it being expressly agreed and understood that the Grantor shall have no liability whatsoever in respect of survey, investigations and soil tests carried out or undertaken by the Concessionaire on the Project Site.
- 5.3.3. The Grantor shall grant permission for access to the Project Site for the construction and installation of public utility infrastructure. This includes, but is not limited to, water mains, power lines and other essential utilities required for the Project and public use.
- 5.3.4. The Grantor shall grant to the Concessionaire the Land Lease within or near the Kurasini Station and the Dar es Salaam workshop free from any Encumbrances, Encroachments and occupations and subject to the payment of a nominal amount agreed between the Parties in consideration and without the Concessionaire being required to make any additional payment to the Grantor on account of any costs, compensation, expenses and charges for the duration of the Concession Period.
- 5.3.5. The Grantor shall take all actions necessary to effectuate the granting of the Land Lease and Right of Way under the Applicable Laws including the execution, registration and/or filing of the Lease Agreements as required under the Applicable Laws.
- 5.3.6. It is expressly agreed that the Right of Way and Land Lease granted in this Agreement shall terminate automatically and forthwith, without the need for any action to be taken by the Grantor to terminate, upon the termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Project Site by

the Concessionaire, the possessive rights shall automatically terminate, without any further act of the Parties, upon termination of this Agreement.

- 5.3.7. In the event the Financial Close and/or Effective Date is delayed solely on account of delay in grant of Right of Way and/or Land Lease by the Grantor, the expected date for achieving the Financial Close and/or Effective Date hereunder shall be extended.
- 5.3.8. Save as otherwise provide in this Agreement, it is expressly agreed that the Project Infrastructure shall remain the property of the Grantor except that the Concessionaire shall be entitled to exercise usufructuary rights thereon or as otherwise agreed between the Parties during the Concession Period.
- 5.3.9. The Grantor shall have access to the Project Site at all times for the authorised representatives and vehicles of the Grantor to monitor compliance with the Concessionaire's obligations under this Agreement, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

5.4. Additional Land

- 5.4.1. The Concessionaire through a written notice may request the Grantor to make available additional land along or adjacent to the existing Project Site, owned by the Grantor and free from any Encumbrances or Encroachments for the purpose of rehabilitation works or implementation of the Project Activities.
- 5.4.2. The Grantor upon receipt of a written notice for additional land free from any Encumbrances or Encroachments, shall within one hundred and twenty (120) days process the request and handover that land subject to the terms and conditions to be agreed upon and Applicable Laws.
- 5.4.3. Upon procurement of the additional land thereof, such land shall form part of the Project Site.

5.5. Special or Temporary Right of Way

- 5.5.1. The Grantor shall facilitate the Concessionaire, its agents, employees, Contractors and subcontractors to have access to the public roads and ancillary equipment and infrastructure enabling access to the Project Site from the Effective Date throughout the Concession Period, for the purpose of the performance of the Concessionaire's obligations

and the exercise of the Concessionaire's rights under this Agreement.

- 5.5.2. The right of access under Clause 5.5.1 shall be granted in accordance with the Applicable Laws.

5.6. Geological and archaeological finds

5.6.1. It is expressly agreed that mining, geological or archaeological rights, flora and fauna do not form part of the Right of Way and the Concessionaire hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Project Site shall vest in and belong to the Contracting States.

- 5.6.2. The Concessionaire shall take all reasonable precautions to prevent its personnel from removing or damaging such interest or property and shall inform the Grantor forthwith of the discovery thereof and comply with such instructions as the concerned Grantor or Governmental Authority may reasonably give for the removal of such property.

5.7. Utilities

5.7.1. The Grantor shall be responsible for procuring and making available the necessary Utilities and road access that will be required in order for the Concessionaire to undertake the rehabilitation works on the Project Infrastructure and other Project Activities, except that gas may be made available only to the extent that the necessary gas infrastructure has been put in place by the relevant Governmental Authority.

5.7.2. The Grantor shall, subject to Applicable Laws and with assistance of the Concessionaire, shift or procure the shifting of any obstructing Utilities reasonably determined by the Concessionaire including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Project Site as necessary for the rehabilitation, construction and improvement of the Project Infrastructure in a timely manner and without adversely affecting any Project Activities.

5.7.3. Any reasonable cost incurred by the Grantor for shifting such obstructing Utilities shall be borne by the Concessionaire except that the Concessionaire shall not be responsible for the cost of shifting any

buildings, structures, fixtures, facilities or Utilities which have been constructed, erected or built illegally and not in accordance with the Applicable Laws.

- 5.7.4. In the event of a delay in shifting of obstructing Utilities by the Grantor, relevant Utility Provider or other Governmental Parties of the Contracting States, the Concessionaire shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning such utility, as the case may be and be entitled to an extension of all relevant time periods, including the Construction Period, the Operation and Maintenance Period, the Concession Period and any other relevant period under this Agreement for a period equal in length to the period of delay in the shifting of the obstructing Utilities.

5.8. Felling of trees

- 5.8.1. The Grantor shall obtain the Applicable Permits for felling of trees which have caused or are reasonably likely to cause a Material Adverse Effect. In the event of any delay in felling thereof for reasons beyond the control of the Concessionaire, it shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees. For the avoidance of doubt, the costs and expense in respect of felling of trees, transplantation (if required) and its transportation to nominated place shall be borne by the Concessionaire.

5.9. Sub-lease

- 5.9.1. The Concessionaire shall not sub-lease the whole or any part of the Project without the consent of the Grantor, save and except as may be expressly set forth in this Agreement, provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint Contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Project Infrastructure.

6. Employees Management

6.1. Transfer of Existing Grantor's Employees

- 6.1.1. The Parties agree that some of the Grantor's employees may be employed by the Concessionaire for the purpose of the implementation of the Project in accordance with the terms of this Agreement and the Employment Contract.

- 6.1.2. No later than one hundred and eighty (180) days before the Scheduled Project Completion Date, the Grantor shall prepare and submit a list and profiles of the Grantor's employees that are eligible for employment by the Concessionaire in respect of the Project Activities during the Operation and Maintenance Period (the "**Employees List**"). The Employees List shall include all employees of the Grantor in its human resources department, supplies department, finance department, freight marketing division of the marketing department and the traffic department.
- 6.1.3. The Concessionaire shall no later than thirty (30) days upon receipt of the Employees List, review and submit to the Grantor an analytical report of the Grantor's employees that qualify to be employed by the Concessionaire for review and approval by the Grantor.
- 6.1.4. After the Parties have agreed on the analytical report of the Grantor's employees, the Grantor shall procure the lawful termination of all contracts of employment and any other contracts of service in respect of those employees that are to be employed by the Concessionaire (the "**Transferred Employees**"), such termination shall be effective no later than the business day immediately prior to the Service Commencement Date or such later date as the Parties may agree.
- 6.1.5. Upon termination of the employment of the Transferred Employees that have agreed to be employed by the Concessionaire, the Grantor shall procure the payment in full (no later than the business day immediately prior to the Service Commencement Date) to the Transferred Employees of all of their statutory and contractual amount and other terminal benefit due arising under Applicable Law, their respective contracts of employment or any applicable collective bargaining agreements;
- 6.1.6. The Grantor shall procure the filing of all requisite notices of termination of employment in respect of the Transferred Employees with all relevant Governmental Authorities and so far as is required by Applicable Law, the winding down of any provident or similar benefits schemes in respect of such Transferred Employees;
- 6.1.7. The Parties shall take all requisite steps to effect the change of employment from the Grantor to the Concessionaire of the Transferred Employees with effect from the Service Commencement Date or any other date agreed by the Parties.
- 6.1.8. With effect from the Service Commencement Date or such other date

agreed by the Parties, the Concessionaire shall offer employment to the Transferred Employees, on financial terms and conditions that are no less favorable than those set out in their existing contracts of employment and enters into an Employment Contract with the Transferred Employees.

- 6.1.9. The Grantor shall bear the costs of any statutory redundancy or end-of-service gratuities or similar payments required by Applicable Law in respect of the Transferred Employees.
- 6.1.10. The Grantor shall do all things, execute any documents and take any further steps required by the Concessionaire to assist in and facilitate the employment by the Concessionaire of the Transferred Employees on and from the Service Commencement Date or such other date agreed by the Parties.
- 6.1.11. The Grantor's employees that will not be employed by the Concessionaire shall continue to be employees of the Grantor in accordance with the terms and conditions of their existing employment and subject to the Applicable Law.

6.2. Attachment of the Concessionaire's Employees

- 6.2.1. The Parties agree that some of the Concessionaire's employees may be attached to the Grantor for the purpose of assisting the Grantor to undertake the Reserved Services in accordance with Clause 13.9 (*Obligations of the Concessionaire in respect of Reserved Services (Delegation of Management)*).
- 6.2.2. No later than one hundred and eighty (180) days before the Scheduled Project Completion Date, the Concessionaire shall prepare and submit a list and profiles of the Concessionaire's employees that are eligible for attachment to the Grantor (the "**First Attachment List**"). The Concessionaire may submit additional lists and profiles of the Concessionaire's employees for attachment to the Grantor during the Concession Period (together with the First Attachment List, the "**Attachment List**").
- 6.2.3. The Grantor shall no later than thirty (30) days upon receipt of the Attachment List, review and confirm the Attachment List.
- 6.2.4. The Grantor shall enter into the Attachment Agreement with the Concessionaire in respect of the attachment of the Concessionaire's employees to the Grantor (the "**Attached Staff**") on or prior to the Effective Date or Service Commencement Date or such later date as

the Parties may agree.

- 6.2.5. The Attachment Agreement may be renewed and/or amended from time to time in writing by the mutual agreement of the Parties.
- 6.2.6. The Grantor shall procure that the Attached Staff shall be given such roles, titles, functions and responsibilities within the organisations of the Grantor in accordance with the terms of this Agreement, the Attachment Agreement or as otherwise agreed between the Parties.

7. ENABLING POLICY, TAXES AND OTHER CHARGES

7.1. Compliance with the Applicable Laws

- 7.1.1. The Concessionaire agrees to operate in full compliance with all Applicable Laws, regulations, and statutes of the Contracting States. This includes adherence to all local, regional, and national legislation that governs its operations throughout the term of this Concession Agreement.
- 7.1.2. Subject to Clauses 18.3 (*Political Event*) and 23 (*Change In Law*), should there be any amendments to the laws or the introduction of new regulations, the Concessionaire shall promptly modify its operations, practices and procedures to ensure full compliance.
- 7.1.3. Additionally, the Concessionaire shall secure and maintain all necessary permits, licences, and authorisations required for its activities under this Agreement.
- 7.1.4. Non-compliance with Applicable Laws and regulations may result in penalties, sanctions or the suspension of Concession in accordance with the Applicable Law and the terms of this Agreement.

7.2. Enabling Policy Support Requirements

- 7.2.1. Subject to the Applicable Laws in respect to the granting of enabling policies, support mechanisms and regulatory exemptions, the Grantor shall assist the Concessionaire's request for enabling policies, support mechanisms or regulatory exemptions from the Contracting States during the implementation of this Agreement. Each requested policy shall be accompanied by a clear justification, citing relevant legal provisions where appropriate. This list shall be submitted for review, approval or directing otherwise by the relevant Governmental Authorities.
- 7.2.2. The Concessionaire acknowledges that each request shall be determined on its own merit, subject to the Applicable Laws and will

be evaluated based on the legal frameworks of the Contracting States, and that the granting of such preferential treatment is at the sole discretion of the respective Governmental Authorities unless otherwise provided under the Applicable Laws. Additionally, the Concessionaire agrees to cooperate with the Governmental Authorities as needed to discuss, clarify, or negotiate any aspects of the requested preferential policies.

8. FINANCING OF THE PROJECT

8.1. Financing of the Project

8.1.1. The Concessionaire shall be responsible for financing the implementation of the Project Activities including but not limited to the Rehabilitation Works on the Project Infrastructure and acquisition of new Rolling Stock. The aggregate investment amount which shall be utilized by the Project Concessionaires for the implementation of the Project shall be an estimated amount of the equivalent of USD 1,408,000,000 during the Concession Period, consisting of:

- (a) an estimated amount of the equivalent of USD 1,170,000,000 before the Service Commencement Date; and
- (b) an estimated amount of the equivalent of USD 238,000,000 after the Service Commencement Date.

8.1.2. The Project shall be financed by the Concessionaire through a combination of debt financing under the Financing Agreements and/or Equity Financing to be determined by the Concessionaire in its sole and absolute discretion and outlined in the Schedule 12 (*Financial Model*).

8.1.3. The Parties acknowledge that the execution of the Financing Agreements is a Concessionaire Condition Precedent pursuant to Clause 2.6.3 (*Concessionaire Conditions Precedents*) of this Agreement. As part of the satisfaction of this Condition Precedent, the Concessionaire shall provide the Grantor with the executed Financing Agreements.

8.1.4. The Concessionaire shall:

- (a) promptly notify the Grantor of the execution of the Financing Agreements with the Lenders and shall provide the Grantor with copies thereof; and
- (b) promptly notify the Grantor of any material change in the

Financing Agreements together with copies of documents incorporating such change and copies of notices indicating such change, including default notices.



PART III. DEVELOPMENT AND OPERATIONS

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9. REHABILITATION MATTERS

9.1. Design and drawings

- 9.1.1. The Concessionaire shall furnish to the Grantor the detailed design and drawings for the Rehabilitation Work at the time set forth in the Project Completion Schedule in conformity with the Functional Requirements and Specifications and Standards.
- 9.1.2. If the Concessionaire fails to comply with the Functional Requirements and Specifications and Standards, the Grantor may provide its suggestive changes to the detailed design and drawings within 14 days of their delivery if, in the Grantor's opinion (acting reasonably), the detailed design and drawings fail to comply with the Functional Requirements and Specifications and Standards. If the Concessionaire agrees to the Grantor's opinion, the Concessionaire shall resubmit the detailed design and drawings taking into account the Grantor's suggestive changes.
- 9.1.3. If no response is received from the Grantor within 14 days of the delivery of the detailed design and drawings, the detailed design and drawings shall be deemed to have met the Functional Requirements and Specifications and Standards and accepted by the Grantor.
- 9.1.4. The detailed design and drawings may be modified by the Concessionaire from time to time provided that the modification complies with the Functional Requirements and Specifications and Standards and is notified to the Grantor in writing. Any modification which does not comply with the Functional Requirements and Specifications and Standards must be approved by the Grantor in writing.

9.2. Project Completion Schedule

- 9.2.1. Prior to the commencement of the Rehabilitation Work, the Concessionaire shall develop and submit to the Grantor a Project Completion Schedule for all Rehabilitation Works.
- 9.2.2. In every such event when the Concessionaire proposes to amend the Project Completion Schedule, the Concessionaire shall submit a draft Project Completion Schedule with the suggestive changes to the Grantor. The Grantor may reject or approve such draft Project Completion Schedule according to its observations after duly providing the suggestive amendments, if any, within twenty (20) business days of receipt of the draft Project Completion Schedule

from the Concessionaire provided that the Grantor may only reject the draft Project Completion Schedule if it does not comply with the Applicable Laws, the Functional Requirements and Specifications and Standards or other requirements of this Agreement.

- 9.2.3. Should the Grantor not expressly reject the draft Project Completion Schedule by the above deadline, the draft Project Completion Schedule shall be deemed to have been accepted.
- 9.2.4. If at any time the Grantor gives notice in writing to the Concessionaire that in its opinion (acting reasonably) the Project Completion Schedule fails to comply with the Functional Requirements and Specifications and Standards or is inconsistent with the actual progress of the Rehabilitation Works, the Concessionaire, if it agrees with the Grantor's opinion, shall submit a revised Project Completion Schedule to the Grantor for approval. Any dispute regarding the Project Completion Schedule shall be dealt with in accordance with the Dispute Resolution Procedure.

9.3. Rehabilitation of the Project Infrastructure

- 9.3.1. On or after the Effective Date, the Concessionaire shall undertake the rehabilitation of the Project Infrastructure within the timeframes specified in the Project Completion Schedule, in conformity with the Functional Requirements and Specifications and Standards. The Parties shall cooperate and fulfil their respective obligations in relation to the rehabilitation of the Railway in accordance with Schedule 10 (*Responsibility Assignment Matrix of Railway Operation and Maintenance between Grantor and Concessionaire*).
- 9.3.2. The Concessionaire shall rehabilitate the Project Infrastructure in accordance with the Project Completion Schedule. In the event that the Concessionaire fails to achieve any Project Milestone within a period of ninety (90) days from the date set forth for such Project Milestone in Project Completion Schedule (unless such failure has occurred due to Force Majeure or for reasons solely attributable to a Governmental Party, in which cases the Project Milestones or other time period under this Agreement shall be automatically extended provided that a prior notice has been given by the Concessionaire to the Grantor in writing), the Grantor shall extend the Project Milestone, Scheduled Project Completion Date, Concession Period and other relevant time periods to the number of days equal to the event occurred, provided that if any or all Project Milestones or the

Scheduled Project Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in Project Completion Schedule shall be deemed modified accordingly, and the provisions of this Agreement shall apply as if the Project Completion Schedule has been amended as above.

9.4. Extension of Scheduled Project Completion Date

In the event that the Rehabilitation Works are not completed by the Scheduled Project Completion Date (unless the delay is on account of reasons solely attributable to the Grantor or due to Force Majeure or for reasons solely attributable to the Grantor, in which cases the Scheduled Project Completion Date, Concession Period and any other relevant time period under this Agreement shall be extended to the number of equal days to the event occurred), the Grantor shall extend the Scheduled Project Completion Date, Concession Period and any other relevant time periods under this Agreement to the number of days equal to the event occurred.

9.5. Traffic Blocks

9.5.1. The Grantor shall use its best efforts to support, cooperate with and facilitate the Rehabilitation Work and other Project Activities undertaken by the Concessionaire.

9.5.2. During the Construction Period,

- (a) the Grantor shall arrange Traffic Blocks as reasonably requested by the Concessionaire to enable the Concessionaire to undertake the Rehabilitation Work;
- (b) the Concessionaire shall, in consultation with the Grantor, submit a weekly programme of Traffic Blocks, commencing from Monday with a written notice to the Grantor no less than 3 days prior to the start of the week. The Concessionaire shall use its best efforts to minimise interference with ongoing transport services on the Railway when preparing the weekly programme; and
- (c) the Grantor shall implement the requested Traffic Blocks and ensure adequate window of time as required by the Concessionaire to access exclusively the section of the Railway notified by the Concessionaire for Rehabilitation Work, which shall be no less than 6 hours during daylight hours or such longer time as requested by the Concessionaire for major Rehabilitation Work.

9.6. Performance Monitoring and Inspection of the Rehabilitation Works

- 9.6.1. The Concessionaire shall, no later than seven (7) days after the end of each month, furnish the Grantor with a monthly report on the progress of the Rehabilitation Works and shall promptly give such other relevant information about the Rehabilitation Work as may be reasonably requested by the Grantor. The monthly progress report shall be in the form agreed between the Parties.
- 9.6.2. The Grantor shall have the right to inspect the Rehabilitation Work at reasonable hours once a month during the Concession Period provided that such inspection shall not interrupt or adversely affect the Rehabilitation Work. The Grantor may deliver a report of such inspection (the "**Inspection Report**") to the Concessionaire stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Functional Requirements and Specifications and Standards.
- 9.6.3. Upon receipt of the Inspection Report, the Concessionaire shall as soon as reasonably practicable, rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Grantor shall not relieve or absolve the Concessionaire of its obligations and liabilities herein any manner whatsoever.
- 9.6.4. If the Concessionaire does not achieve any of the Project Milestones and the Grantor shall have reasonably determined that the rate of progress of Rehabilitation Works is such that Project Infrastructure is not likely to be achieved by the Scheduled Project Completion Date, the Grantor shall notify the Concessionaire to this effect, and the Concessionaire shall, within fifteen (15) days of such notice, by written communication inform the Grantor in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Scheduled Project Completion Date.
- 9.6.5. The costs incurred to expedite the progress of the Rehabilitation Work to meet the Scheduled Project Completion Date shall be borne in the following manner:
- (a) in case the delay is on account of reasons solely attributable to the Concessionaire, by the Concessionaire;
 - (b) in case the delay is due to Force Majeure, it shall be determined in accordance with Clause 18.6 (*Allocation of costs arising out of Force Majeure*); and

- (c) in case the delay is due to the default of a Grantor, by the Grantor.

9.7. Variations

9.7.1. If either Party requests for Variations, the Concessionaire shall prepare a report within thirty (30) days from the date of the proposal for such Variation, setting out details of such Variation, including:

- (a) the reasons thereof (if proposed by the Concessionaire);
- (b) the detailed description of the Variation;
- (c) an estimate of the expenditure needed to implement the Variation accompanied by a proposal for the financing and payment of such cost;
- (d) any amendments to this Agreement that would be required in connection with the Variation;
- (e) any effect such Variation would have on the Project Activities and/or on any of the Concessionaire's rights and obligations under the Project Concession Agreements, including any need for an extension of the Scheduled Project Completion Date or of any duties and obligations of the Concessionaire under this Agreement; and
- (f) a plan (including a time schedule) for the implementation of the Variation.

9.7.2. The Concessionaire shall be required to implement a Variation requested by the Grantor and shall only be entitled to object to such Variation (such objection to be duly justified in writing by the Concessionaire) on one or more of the following grounds:

- (a) implementing the Variation would materially and adversely affect the health and safety of any person;
- (b) implementing the Variation would result in a fundamental change in the nature or the Scope of the Concession or materially and adversely change the risk allocation of the Concession;
- (c) the proposed Variation is not possible on construction, operational, engineering or other technical grounds and/or is not compliant with Applicable Laws or there is insufficient time to effect that Variation prior to the Expiry Date;

- (d) the proposed Variation would materially and adversely affect the capacity of the Concessionaire to undertake the Project Activities or perform its rights and obligations under this Agreement; and/or
- (e) the Grantor does not provide the necessary funds to the Concessionaire to finance the expenditure required for the implementation of the Variation.

9.7.3. If the Grantor and the Concessionaire reach an agreement on all matters identified in the report provided by the Concessionaire in accordance with Clause 9.7.1 then the Grantor may issue a Variation Order giving effect thereto (a "**Variation Order**"). Such Variation Order shall contain the description of such Variation. If the Parties are unable to agree the report, any Party may refer the Dispute to the Dispute Resolution Procedure provided for in this Agreement.

9.7.4. The Variation Order shall be signed by the Parties and, upon obtaining all necessary Applicable Permits in accordance with Applicable Law, the Variation shall thereupon form part of this Agreement.

9.7.5. Subject to Clause 9.7.6, the cost of the Variations shall be funded by:

- (a) the Grantor if the Variation is requested by the Grantor; or
- (b) the Concessionaire if the Variation is requested by the Concessionaire.

9.7.6. If as a result of any unforeseen events, any Variations are required to ensure that the Project will meet the Functional Requirements and Specifications and Standards, the cost of the Variations shall be funded by the Railway Development Fund and if there is insufficient fund in the Railway Development Fund, the Concessionaire may fund the Variations and be reimbursed by the Grantor in accordance with Clause 17.3 (*Reimbursement*).

9.8. **Certificate of Completion and Provisional Certificate of Completion**

9.8.1. The Concessionaire upon completion of the Rehabilitation Works in accordance with the terms and conditions of this Agreement, shall notify the Grantor and the Inspector of Railways and undertake the Tests in accordance with Schedule 6 (*List of Tests*).

9.8.2. If the Tests are satisfied, the Grantor shall, upon recommendation from the Inspector of Railways, issue the Certificate of Completion of the Rehabilitation Works within fourteen (14) days of the completion of the Tests.

- 9.8.3. In the event that the Tests fail to be satisfied, the Grantor shall, upon recommendation from the Inspectors of Railways, within seven (7) days of the Tests, notify the Concessionaire of the defects and deficiencies in the Project Infrastructure and direct the Concessionaire to remedy the defects.
- 9.8.4. Upon receipt of the Grantor's notice, the Concessionaire shall remedy and rectify such defects or deficiencies and thereupon notify the Grantor and the Inspector of Railways for testing and verifications of deficiencies outlined in the notice. The Tests shall be undertaken in accordance with this Clause 9.8 (*Certificate of Completion and Provisional Certificate of Completion*). Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.
- 9.8.5. The Grantor may, at the request of the Concessionaire and upon recommendation of the Inspector of Railways, issue a Provisional Certificate of Completion if the Tests are satisfied in part and the Project Infrastructure can be safely and reliably placed in commercial operation though certain works forming part thereof are outstanding and not yet completed. In such an event, the Provisional Certificate of Completion shall have appended thereto a list of outstanding items signed jointly by the Parties (the "**Punch List**"), provided that the Grantor shall not withhold the Provisional Certificate of Completion for reason of any work remaining incomplete if the delay in completion thereof is attributable to the Grantor or any other Governmental Parties.
- 9.8.6. The Parties hereto expressly agree that a Provisional Certificate of Completion may, upon request of the Concessionaire to this effect, if eighty percent (80%) of the Rehabilitation Work has achieved substantial completion, the criteria of which are set out in Schedule 8 (*Form of Provisional Certificate of Completion*).
- 9.8.7. All items in the Punch List shall be completed by the Concessionaire within three hundred and sixty five (365) days from the date of issue of Provisional Certificate of Completion and for any delay thereafter, other than for reasons solely attributable to the Grantor or due to Force Majeure or any other Relief Events, the Concessionaire shall be entitled to a further period not exceeding one hundred and twenty (120) days for completion of the Punch List items. For the avoidance of doubt, it is agreed that if completion of any item is delayed for reasons solely attributable to the Grantor or due to Force Majeure or other Relief Events, the completion date thereof shall be jointly

determined by the Parties in accordance with Good Industry Practice, and such completion date shall be deemed to be the date of issue of the Provisional Certificate of Completion for the purposes of damages, if any, payable for such item under this Clause.

- 9.8.8. Upon the completion of all Punch List items, the Grantor shall issue the Certificate of Completion.
- 9.8.9. It is agreed that any Certificate of Completion or Provisional Certificate of Completion shall only be issued if the certificate of completion or provisional certificate of completion can be issued on or about the same time under The Other Concession Agreement.

9.9. Procurement of new Rolling Stock

- 9.9.1. Subject to Clause 9.9.2 below, the Concessionaire shall have the right to procure Rolling Stock as it deems necessary at any time during the Concession Period for the purpose of undertaking the Project Activities, including the Rehabilitation Work and the Freight Services, provided that the Project Concessionaires shall collectively procure at a minimum thirty four (34) locomotives (including two (2) shunting locomotives) and seven hundred and sixty (760) wagons.
- 9.9.2. No later than sixty (60) days after the Effective Date, the Concessionaire shall prepare and submit to the Grantor a detailed procurement plan together with technical specifications of the required Rolling Stock and the timelines for their procurement (the "**Procurement Plan**").
- 9.9.3. The Grantor upon receipt of the Procurement Plan shall immediately submit it to the Inspector of Railways who shall (and the Grantor shall procure that the Inspector of Railways will) review and grant approval within 30 days thereafter provided that the technical specifications of the Rolling Stock conform to the technical requirements of the Railway.
- 9.9.4. Upon the completion of manufacturing of Rolling Stock but prior to shipment, the Concessionaire shall notify the Grantor and the Inspector of Railways and invite them to participate in the Factory Acceptance Test (FAT) in accordance with Schedule 6 (*List of Tests*).
- 9.9.5. During the commissioning process of the new Rolling Stock, the Concessionaire shall notify and invite the Inspector of Railways and Grantor to participate in the Site Acceptance Test (SAT) in accordance with Schedule 6 (*List of Tests*).

9.10. Access to the Railway

The Grantor shall in consideration of the Concessionaire undertaking the Project Activities, grant the Concessionaire the right to access and use the Railway and operate any trains (including any new trains acquired by the Concessionaire or the existing trains made available by the Grantor to the Concessionaire) on the Railway and without the Concessionaire being required to make any payment to the Grantor at any time as reasonably requested by the Concessionaire to transport any materials, machines, equipment, personnel and other assets required for any Rehabilitation Work, Additional Rehabilitation Work and other Project Activities during the Concession Period subject to Applicable Laws.

9.11. Existing Facilities and Assets of the Grantor

- 9.11.1. The Grantor shall grant the Concessionaire the exclusive right to access and continuous and uninterrupted use the Existing Facilities (including any products of any Existing Facilities which are production facilities such as sleeper production factories and quarries) required for undertaking the Project Activities during the Concession Period and without any other amount payable by the Concessionaire.
- 9.11.2. The Concessionaire shall renovate, upgrade and maintain the Existing Facilities as it deems necessary for the sole purpose of undertaking the Project Activities.
- 9.11.3. The Concessionaire shall be liable for any damage caused to the Existing Facilities in the course of the Rehabilitation Work as a result of its failure to maintain the Existing Facilities as required pursuant to the Good Industry Practice and shall bear the costs of repairing or, where necessary, replacing the damaged Existing Facilities.
- 9.11.4. Without prejudice to any other provisions in this Clause, the Parties shall, before the Service Commencement Date, jointly inspect the freight Rolling Stock owned by the Grantor to determine which units will be usable following reasonable repairs. The Rolling Stock determined to be beyond repair shall be disposed of by the Grantor. The Rolling Stock deemed usable shall be repaired, refurbished and maintained at the Concessionaire's cost so long as they are used by the Concessionaire for Project Activities in accordance with Schedule 10 (*Responsibility Assignment Matrix of Railway Operation and Maintenance between Grantor and Concessionaire*). The Concessionaire shall have the exclusive right to use the repaired freight Rolling Stock for the sole purpose of undertaking the Project Activities. Once such freight Rolling Stock reach the end of their

serviceable life or are otherwise deemed beyond repair for any reason, the Concessionaire shall return them to the Grantor for its disposal.

9.12. Installation of New Signalling and Telecommunication Systems

The Concessionaire undertakes to supply and install positioning and communication equipment between the Railway Stations and on all trains operated by the Grantor and communication system at the Mpanga station during the Construction Period as specified in Schedule 2 (*Functional Requirements and Specifications and Standards*).

9.13. Ownership of Replaced Railway Material

The Parties agree that all old Railway tracks replaced by the Concessionaire shall remain the properties of the Grantor.

9.14. Operations and Maintenance during the Construction Period

9.14.1. The Grantor shall, in consultation with the Concessionaire, continue operating the Passenger Train Service, allow the operation of the Existing Open Access Operators pursuant to the Existing Open Access Agreement and carry out any other ongoing activities on the Railway during the Construction Period at its own risk and without interrupting or adversely affecting the Rehabilitation Work. The Concessionaire shall have no responsibility in respect of any of the above operations during the Construction Period.

9.14.2. The Concessionaire shall cooperate with and provide the necessary technical and operational support to the Grantor to ensure that the Grantor's ongoing operations on the Railway shall not interrupt with the Rehabilitation Work.

9.15. Additional Rehabilitation Works

9.15.1. The Concessionaire shall undertake Additional Rehabilitation Works during the Operation and Maintenance Period in accordance with the Project Completion Schedule and in conformity with the Functional Requirements and Specifications and Standards, provided that such Additional Rehabilitation Works shall not affect the Concession Fees payable under this Agreement.

9.15.2. The Concessionaire shall use its best efforts to minimise interference with the Passenger Train Services when preparing the weekly programme.

9.15.3. The Grantor shall support, cooperate with and facilitate any Additional Rehabilitation Work to be undertaken by the

Concessionaire including the support as set forth in Schedule 10 (*Responsibility Assignment Matrix of Railway Operation and Maintenance between Grantor and Concessionaire*).

10. FREIGHT SERVICES

10.1. Provision of Freight Services

- 10.1.1. After the issuance of the Certificate of Completion or the Provisional Certificate of Completion by the Grantor under recommendation of the Inspectors of Railway, the Concessionaire shall send a notice to the Grantor setting out the date for the commencement of the Freight Services (the "**Service Commencement Date**").
- 10.1.2. The Concessionaire shall, in consultation with the Grantor, develop, implement and administer a reasonable standard for Freight Services (the "**Freight Services Standards**") no later than two (2) years before the Scheduled Project Completion Date.
- 10.1.3. The Concessionaire shall, promptly following the Service Commencement Date, operate and manage the Freight Services in accordance with the Freight Services Standards and with the support and assistance from and in collaboration with the Grantor pursuant to Schedule 10 (*Responsibility Assignment Matrix of Railway Operation and Maintenance between Grantor and Concessionaire*).
- 10.1.4. From the Service Commencement Date, the Concessionaire shall, subject to the Applicable Laws and terms of this Agreement:
- (a) have the exclusive right to and be responsible for operating Freight Services, including Cross Border Freight Services and Local Freight Services;
 - (b) run local pick up services as part of the Local Freight Services;
 - (c) determine the nature, configuration, technical and commercial organisation, including employment requirements, necessary to carry out the Freight Services;
 - (d) enter into Non-Exclusive Offtake Agreements; and
 - (e) determine, charge and collect Tariffs from the Freight Customers and Open Access Fees from Open Access Operators in accordance with Clause 17 (*Tariff And Financial*).
- 10.1.5. The Concessionaire shall provide the Freight Services to all Freight

Customers on a non-discriminatory basis and in accordance with the Applicable Laws provided that the granting of reserved and/or priority capacity to Freight Customers pursuant to their Non-Exclusive Offtake Agreements in order to ensure stable revenues for the Concessionaire shall not be deemed discriminatory to other Freight Customers.

- 10.1.6. Upon written notification by the Grantor to the Concessionaire, the Concessionaire shall provide Freight Services on Special Cargo in accordance with terms and conditions mutually agreed upon between the Parties.

10.2. Freight trains

The Concessionaire shall procure, operate and maintain freight trains as it deems necessary to undertake the Freight Services in accordance with the Freight Services Standards with the support and assistance from and in collaboration with the Grantor pursuant to Schedule 10 (*Responsibility Assignment Matrix of Railway Operation and Maintenance between Grantor and Concessionaire*) during the Concession Period.

10.3. Open Access Operators

- 10.3.1. The Concessionaire shall allow Open Access Operators to operate Freight Services by entering into Open Access Agreements subject to the Applicable Laws and commercial terms to be agreed between the Concessionaire and the Open Access Operators.
- 10.3.2. The Concessionaire shall establish and communicate uniform Freight Services Standards, Safety Standards and any other applicable operational standards, including but not limited to safety, maintenance, and performance criteria, applicable to all Open Access Operators operating on the Railway, in accordance with Applicable Laws.
- 10.3.3. The Concessionaire shall supply the existing Open Access Operators with the new Freight Services Standards, Safety Standards and any other applicable operational standards two (2) years prior to the Scheduled Project Completion Date. Upon being served with the new Freight Services Standards, Safety Standards and any other applicable operational standards, the Open Access Operators shall ensure their compliance from the Service Commencement Date.
- 10.3.4. The Concessionaire shall regularly monitor the Open Access Operators for compliance with the Freight Services Standards, Safety Standards and any other applicable operational standards in

accordance with Applicable Laws.

- 10.3.5. In the event of non-compliance, the Concessionaire may take corrective actions, including issuing compliance notices or, where necessary and subject to the Applicable Laws suspend access rights until the Open Access Operators rectify any identified issues.
- 10.3.6. The Grantor shall not enter into any Open Access Agreement other than the Existing Open Access Agreements or amend or renew any Existing Open Access Agreements from the date of this Agreement.

10.4. Grantor's obligations

The Grantor shall support, cooperate with and facilitate the Freight Services including undertaking the Reserved Services in accordance with this Agreement and allowing the Concessionaire and its Contractors and their staff and employees such access, space and facilities at the Project Site as may be necessary to enable them to undertake the Freight Services and carry out other Project Activities in accordance with this Agreement.

11. TRAFFIC MANAGEMENT

11.1. Traffic Management during the Construction Period

- 11.1.1. During the Construction Period, the Grantor shall undertake Traffic Management on the Railway in consultation with the Concessionaire to facilitate the Rehabilitation Work including the transportation of the construction materials, machines and equipment required for the implementation of the Project on the Railway.

11.2. Traffic Management during the Operation and Maintenance Period

- 11.2.1. During the Operation and Maintenance Period, the Concessionaire shall undertake Traffic Management on the Railway and shall have the right to access and use, as appropriate, the Project Site and Project Infrastructure for purposes of undertaking Traffic Management.
- 11.2.2. The Grantor shall support, cooperate with and facilitate the Traffic Management by the Concessionaire and agrees to deliver its proposed time-table of the Passenger Train Services on Wednesday each week (if such day is not a business day, the immediately preceding business day) to the Concessionaire, provided that if the Grantor does not deliver its proposed time-table of the Passenger Train Services on a Wednesday, the latest time-table delivered by the Grantor shall be deemed to continue to apply.
- 11.2.3. The Concessionaire shall promptly upon receipt review the proposed

time-table of the Passenger Train Services form TAZARA and either approve or suggest changes to the proposed time-table.

- 11.2.4. The Concessionaire shall publish the schedules for all trains operating on the Railway on Friday each week (if such day is not a business day, the immediately preceding business day).



12. IMPROVEMENT OF PROJECT INFRASTRUCTURE

12.1. Improvement Work

12.1.1. The Concessionaire undertakes to carry out the Improvement Work to the Project Infrastructure in accordance with this Clause 12.

12.1.2. During the Operation and Maintenance Period, the Concessionaire may carry out the following work to the Project Infrastructure (the "**Improvement Work**"):

- (a) any work (including design, procurement, engineering and construction) to increase the Railway capacity;
- (b) upgrading the signalling and communication system; and
- (c) any other improvement to the Project Infrastructure and the Railway as agreed between the Parties,

provided that any Improvement Work shall be funded solely using the proceeds of the Railway Development Fund in accordance with the terms of this Agreement and the Railway Development Fund Escrow Agreement.

12.1.3. Either Party (the "**Proposing Party**") may propose an Improvement Work by delivering to the other Party (the "**Receiving Party**") a proposal setting forth the technical details and financial and economic analysis of the proposed Improvement Work and evidence that there is sufficient fund in the Railway Development Fund to cover the cost of the proposed Improvement Work (the "**Improvement Proposal**").

12.1.4. The Receiving Party shall provide its written response within thirty (30) days after receipt of the Improvement Proposal, either approving or rejecting the Improvement Proposal, provided that such approval shall not be unreasonably withheld.

12.1.5. If the Improvement Proposal is rejected by the Receiving Party, the Proposing Party may deliver a new Improvement Proposal no earlier than one (1) month from the date of the rejection and the approval process under this Clause 12.1 shall again be complied with.

12.1.6. If the Improvement Proposal is approved by the Receiving Party, the Concessionaire shall prepare and deliver to the Grantor a detailed development plan for the proposed Improvement Work in the form agreed between the Parties including the procurement, construction and/or funding time tables (the "**Improvement Plan**") within three (3) months of the Receiving Party's approval or such other time as agreed between the Parties.

- 12.1.7. Unless the Grantor delivers a notice to the Concessionaire rejecting the Improvement Plan within fourteen (14) days of receipt of the Improvement Plan, the Improvement Plan shall be deemed accepted by the Grantor, provided that the Grantor may only reject the Improvement Plan if it does not conform to the Improvement Proposal, the terms of this Agreement or the Applicable Laws. If the Improvement Plan is rejected by the Grantor, the Concessionaire may submit a revised Improvement Plan within thirty (30) days of the rejection.
- 12.1.8. Upon the approval of the Improvement Plan, the Concessionaire shall undertake the Improvement Work in accordance with the Improvement Plan and the terms of this Agreement.
- 12.1.9. To the extent any authorisation, approval, consent or permit are required to be obtained by the Grantor in respect of the Improvement Work under the Applicable Laws, the Grantor shall obtain such authorisation, approval, consent or permit in a timely manner and in accordance with the Improvement Plan.

13. RESERVED SERVICES

13.1. Reserved Services

- 13.1.1. The Grantor shall perform or cause to be performed the following services (the "**Reserved Services**") at the Project during the Concession Period, including:
- (a) operation, management maintenance of the Passenger Train Services;
 - (b) operation, management and maintenance of the Railway Stations;
 - (c) maintenance of the Project Infrastructure in accordance with the terms of this Agreement;
 - (d) allocate necessary staff required for providing the Reserved Services and the facilities of the Grantor; and
 - (e) those services and obligations as set forth in Schedule 10 (*Responsibility Assignment Matrix of Railway Operation and Maintenance between Grantor and Concessionaire*).

13.2. Reserved Services Standard

- 13.2.1. The Parties shall cooperate in good faith and jointly prepare the standards and requirements for the Reserved Services (the "**Reserved**



Services Standard") within one hundred and eighty (180) days after the Execution Date.

- 13.2.2. In the event that the Parties cannot agree to the Reserved Services Standard, the Parties shall appoint an Independent Expert in accordance with Clause 25.3 (*Fast Track Resolution Procedure*) and the Independent Expert shall prepare the Reserved Services Standard which shall be deemed as agreed by the Parties. Any amendments to the Reserved Services Standard shall be subject to written consent of both Parties.
- 13.2.3. The Grantor shall ensure that at all times during the Operation and Maintenance Period, the Reserved Services conforms to the Reserved Services Standards.
- 13.2.4. No later than one hundred and eighty (180) days prior to the Scheduled Project Completion Date, the Grantor shall, in consultation with the Concessionaire, prepare a repair and maintenance manual (the "**Maintenance Manual**") for the regular and preventive maintenance of the Project Infrastructure in conformity with the Reserved Services Standard and Good Industry Practice, and shall provide a copy thereof to the Concessionaire.

13.3. Restoration of loss or damage to Project Infrastructure and Facilities

Subject to Clause 14 (*Safety, Breakdowns And Accidents*), in the event that the Project Infrastructure or any part thereof suffers any loss or damage during the Concession Period from any natural disasters or execution of the Project, the Grantor, with the assistance of the Concessionaire, shall rectify and remedy such loss or damage and restore the Project Infrastructure forthwith so that the Project Infrastructure conforms to the provisions of this Agreement. The cost of the restoration shall be funded by the Railway Development Fund and if there is insufficient fund in the Railway Development Fund, the Concessionaire may fund the cost of the restoration and be reimbursed by the Grantor in accordance with Clause 17.3 (*Reimbursement*).

13.4. Modifications to the Project Infrastructure

The Grantor shall not carry out any material modifications to the Project Infrastructure save and except where such modifications are necessary for the Project Infrastructure to operate in conformity with the Functional Requirements and Specifications and Standards, Reserved Services Standard, Good Industry Practice and Applicable Laws, provided that the Grantor shall consult with the Concessionaire of the proposed modifications along with particulars thereof at least fifteen (15) business days before commencing work on such modifications

and shall reasonably consider any suggestions that the Concessionaire may make within fifteen (15) business days of receiving the Grantor's proposal. For the avoidance of doubt, all modifications made hereunder shall comply with the Functional Requirements and Specifications and Standards, Applicable Laws and the provisions of this Agreement.

13.5. Concessionaire's Access and Information

- 13.5.1. The Grantor shall permit the Concessionaire or its representatives to visit, monitor, inspect or facilitate a remote virtual visit to the Project Infrastructure where the maintenance work are undertaken.
- 13.5.2. The Grantor shall provide to the Concessionaire, within the time given or such other reasonable period after request, such information on the Reserved Services, Project Site, Project Infrastructure, Existing Facilities, the Railway or the Project as the Concessionaire may reasonably request.
- 13.5.3. Any information which the Concessionaire receives from the Grantor which is not in the public domain shall be treated as confidential, unless the information is required to be made public under the Applicable Laws.

13.6. Obligations of the Concessionaire in respect of Reserved Services (Passenger Rolling Stock Procurement and Station Refurbishment)

- 13.6.1. During the Construction Period, the Concessionaire shall, collectively with The Other Concessionaire, procure and/or supply to the Grantor the passenger Rolling Stocks and carry out the refurbishment of the passenger Railway Stations which are identified as being in urgent need of being refurbished by the Parties in accordance with Schedule 14 (*Passenger Rolling Stock and Railway Stations*).
- 13.6.2. The Parties shall discuss in good faith and agree on the date (the "**Procurement Date**") by which the Concessionaire shall place the order for the purchase the passenger Rolling Stock and commence the refurbishment of the passenger Railway Stations in accordance with Schedule 14 (*Passenger Rolling Stock and Railway Stations*).
- 13.6.3. The Concessionaire shall notify the Grantor the cost incurred collectively by the Project Concessionaires for and in connection with the procurement and supply of the Rolling Stock and the refurbishment of the Railway Stations under Clause 13.6.1 above, including the cost of the procuring, transportation and assembling the Rolling Stock, the materials required for the refurbishment of the



Railway Stations, the construction and refurbishment work and all related administrative fees, costs and expenses ("**Passenger Service Procurement Amount**").

13.7. Obligations of the Concessionaire in respect of Reserved Services (Passenger Train Maintenance)

13.7.1. During the Operation and Maintenance Period, the Concessionaire shall supply the Grantor with the spare parts and equipment required for the sole purpose of maintaining the passenger locomotives and carriages which are in operating conditions as certified by the Inspectors of Railway in accordance with the Applicable Laws and are owned by TAZARA at the Service Commencement Date, including for the avoidance of doubt, the Rolling Stock supplied by the Concessionaire to the Grantor under Clause 13.6 (*Obligations of the Concessionaire in respect of Reserved Services (Passenger Rolling Stock Procurement and Station Refurbishment)*), to meet the train service level in accordance with the Functional Requirements and Specifications and Standards.

13.7.2. During the Operation and Maintenance Period and no later than forty-five (45) days prior to the beginning of each year, the Parties shall jointly inspect and carry out an inspection and assessment of the conditions of the passenger locomotives and carriages and prepare a passenger locomotives and carriages maintenance report setting out the proposed annual maintenance programme of the passenger locomotives and carriages and spare parts required for such the maintenance programme and the delivery schedule for the following year ("**Passenger Locomotives and Carriages Maintenance Report**").

13.7.3. The Concessionaire shall supply the Grantor with the equipment and spare parts to the Grantor in accordance with the Passenger Locomotives and Carriages Maintenance Report during the course of the following year.

13.8. Obligations of the Concessionaire in respect of Reserved Services (Maintenance of Railway Tracks)

13.8.1. The Concessionaire shall supply the Grantor with the spare parts and equipment required for the sole purpose of maintaining the Railway tracks during the Operation and Maintenance Period in accordance with this Clause 13.8.

13.8.2. During the Operation and Maintenance Period and no later than forty-

five (45) days prior to the beginning of each year, the Parties shall jointly inspect and carry out an inspection and assessment of the conditions of the Railway tracks and prepare a track maintenance report setting out the proposed annual maintenance programme of the Railway tracks and the equipment and spare parts required for such the maintenance programme and the delivery schedule for the following year ("**Track Maintenance Report**").

- 13.8.3. The Concessionaire shall supply the Grantor with the equipment and spare parts to the Grantor in accordance with the Track Maintenance Report during the course of the following year.

13.9. Obligations of the Concessionaire in respect of Reserved Services (Delegation of Management)

- 13.9.1. The Concessionaire shall provide management and operating support to the Grantor by attaching competent staff to assume the management responsibility of the day-to-day management of the relevant departments, factories or workshops of the Grantor (the "**Delegated Departments**") and the employees therein in accordance with the mechanism specified in Schedule 10 (*Responsibility Assignment Matrix of Railway Operation and Maintenance between Grantor and Concessionaire*).
- 13.9.2. The Grantor shall ensure that the Delegated Department shall run and the Attached Staffs in the Delegated Department shall assume the titles and responsibilities to manage the Delegated Department and the employees therein in accordance with Schedule 10 (*Responsibility Assignment Matrix of Railway Operation and Maintenance between Grantor and Concessionaire*), including the designation of responsibilities of the employees, evaluation of the employee's performance, financial management and management and operational policies and rules of the relevant departments, failing which the relevant departments of the Grantor shall not or no longer be deemed a Delegated Departments.
- 13.9.3. It is acknowledged and agreed that Schedule 10 (*Responsibility Assignment Matrix of Railway Operation and Maintenance between Grantor and Concessionaire*) may be amended from time to time by written consent of the Parties.
- 13.9.4. The remuneration and cost of the Attached Staff shall be borne by the Concessionaire.
- 13.9.5. The Concessionaire shall supply the Grantor with the spare parts,

material and equipment required by the relevant Delegated Department for the sole purpose of allowing them to carry out their functions in relation to the maintenance of the Railway and the facilities of the Grantor (other than the passenger trains and Railway tracks) during the Concession Period in accordance with Clauses 13.9.6 and 13.9.7 below.

- 13.9.6. During the Concession Period and no later than forty-five (45) days prior to the beginning of each year (or at such other date as mutually agreed between the Parties), the Parties shall jointly inspect and carry out an inspection and assessment of the spare parts, material and equipment required and prepare a maintenance report setting out the proposed annual maintenance programme of the Railway and other facilities of the Grantor and the equipment, material and spare parts required for such maintenance programme and the delivery schedule for the following year ("**Delegated Department Maintenance Report**").
- 13.9.7. The Concessionaire shall supply the Grantor with the equipment, material and spare parts to the Grantor in accordance with the Delegated Department Maintenance Report during the course of the following year.

13.10. Obligations of the Concessionaire in respect of Reserved Services (Technical Support and Consultation)

- 13.10.1. The Concessionaire shall provide technical support in respect of the maintenance of the Project Infrastructures in accordance with Schedule 10 (*Responsibility Assignment Matrix of Railway Operation and Maintenance between Grantor and Concessionaire*).
- 13.10.2. At the request of the Grantor, the Concessionaire shall provide recommendations to and support the Grantor to reform and optimize its existing operation and management system, including existing rules, procedures, manuals, standards, software and infrastructure configuration adopted by the Grantor.
- 13.10.3. In case of any material changes to the rules, procedures, manuals, standards, software, payrolls and infrastructure configuration which might adversely affect the Project Activities, the Grantor shall obtain the written consent of the Concessionaire before implementing the changes.
- 13.10.4. The Grantor and the Concessionaire may by mutual agreement enter into any other agreement in respect of the support and/or services



which may be provided by the Concessionaire to the Grantor.

14. SAFETY, BREAKDOWNS AND ACCIDENTS

14.1. Safety, breakdowns and accidents

- 14.1.1. The Concessionaire shall, in consultation with the Grantor, develop, implement and administer a reasonable surveillance and safety programme and standard to provide a safe environment on or about the Project (the "**Safety Standards**") no later than two (2) years before the Scheduled Project Completion Date.
- 14.1.2. Each Party shall be responsible to oversee and manage breakdowns and accidents that associated with its provisions of the Freight Services or Reserved Services along the Railway respectively in compliance with the operating Safety Standards and Good Industry Practice.
- 14.1.3. The Grantor shall deploy adequate man and machinery for quick restoration of the Project. The Grantor shall keep sufficient reserve material inventory for immediate and permanent restoration of the Project Infrastructures.
- 14.1.4. In case of accidents or any unusual occurrences on the Railway, the Parties shall accord the highest priority for safety and rescue of human life involved in such accident or unusual occurrence.
- 14.1.5. Each Party shall, as soon as possible, give notice to the other Party of the occurrence of any unsafe conditions including damage to the Project Infrastructures, breakdowns and accidents or any other contingent events which have affected or is reasonably likely to affect the Project immediately after becoming aware of them.

14.2. Accident Enquiry

- 14.2.1. In case of any accident, the accident enquiry shall be conducted by a joint committee (the "**Accident Enquiry Committee**"), which shall comprise of 3 (three) members, of whom 1 (one) member shall be the Inspector of the Railways or any other person from the Grantor nominated by the managing director of the Grantor, 1 (one) member from the Concessionaire and 1 (one) member shall be an independent expert jointly appointed by the Parties.
- 14.2.2. The accident enquiry shall be in conformity with the Grantor's accident manual with amendments to conform to the provisions of this Agreement, Applicable Laws and Good Industry Practice. Upon completion of the enquiry, the Accident Enquiry Committee shall

issue an enquiry report of such accident which shall include a detailed note, describing the nature and cause of the accident and determining the liability for any loss, damage, compensation arising out of such accident.

- 14.2.3. If any Party disagrees with the results of the enquiry report, the dispute shall be determined in accordance with Clause 25 (*Dispute Resolution*)
- 14.2.4. Subject to Clause 20.3 (*Default of a Delegated Department*), in the event of any train accident occurring due to the negligence of the Grantor's personnel or the Grantor's failure to carry out the Reserved Services in accordance with this Agreement, Applicable Laws and Good Industry Practice, the Grantor shall be liable for all loss, damage, destruction and deterioration caused by the accident and shall indemnify the Concessionaire in accordance with Clause 24.3 (*Grantor indemnities*).
- 14.2.5. In the event of any train accident occurring due to the negligence of the Concessionaire or its Contractor or the Concessionaire's failure to implement the Project Activities in accordance with this Agreement, Applicable Laws and Good Industry Practice, the Concessionaire shall indemnify the Grantor in accordance with Clause 24.1 (*General indemnity*).

15. MONITORING OF OPERATIONS AND REPORT

15.1. Monitoring of Operations

- 15.1.1. The Parties shall establish a proper monitoring and evaluation system to oversee the execution and performance of the Concession Agreement by each Party no later than ninety (90) days before the Service Commencement Date.
- 15.1.2. During the Operation and Maintenance Period, each Party shall deliver to the other Party:
 - (a) within seven (7) business days after the end of each month, a monthly management report;
 - (b) within fourteen (14) business days after the end of each quarter, a quarterly management report; and
 - (c) within thirty (30) business days after the end of each year, an annual management report,

on the progress of the implementation of the Project in the form

agreed between the Parties, including:

- (d) in respect of the Concessionaire's reports,
 - (i) details of the Freight Services and the Open Access Agreement including the revenues generated;
 - (ii) total tonnage, ton kilometres and the type of cargo transported;
 - (iii) details of the claims received in relation to cargo damage and loss;
 - (iv) notification of accidents, injury or death;
 - (v) immediate notification of incidents causing oil pollution or other forms of environmental damage;
 - (vi) industrial relations;
 - (vii) public complaints and their resolution; and
 - (viii) notification of additions to and disposals of mechanical equipment and other significant assets; and
- (e) in respect of the Grantor's reports,
 - (i) details of the Reserved Services including the revenues generated;
 - (ii) notification of accidents, injury or death;
 - (iii) immediate notification of incidents causing oil pollution or other forms of environmental damage;
 - (iv) industrial relations;
 - (v) public complaints and their resolution; and
 - (vi) notification of additions to and disposals of mechanical equipment and other significant assets.

15.1.3. Any information which a Party receives from the other Party which is not in the public domain shall be treated as confidential, unless the information is required to be made public under the Applicable Law.

15.2. Records and Access to Information

- 15.2.1. Each Party shall keep books of accounts:
- (a) in accordance with International Financial Reporting Standards (IFRS); and
 - (b) in manner that complies with the Applicable Laws.
- 15.2.2. Each Party shall establish a document retention policy in accordance with the Applicable Law.
- 15.2.3. Each Party shall, upon receiving a prior written request from the other Party, permit the other Party or its representatives to visit, monitor, inspect or facilitate a remote virtual visit to the location where its business is conducted.

15.3. Computer Systems and Network

The Concessionaire shall install, operate and maintain a computer network system with round-the-clock connections to the networks of the Grantor and other relevant Governmental Authorities including customs for exchange of data and information useful or necessary for efficient and transparent regulation and management of traffic as required under the Applicable Laws.

15.4. Regulatory Compliance

The Concessionaire shall ensure that it complies with this Agreement, the TAZARA Act and other Applicable Laws of the relevant Contracting State including:

- 15.4.1. adherence to Safety Standards in the railway operations;
- 15.4.2. monitoring the performance of the rail sector including levels of investment, quality and standards of services, cost of services, efficiency of production and distribution of services and other relevant matters;
- 15.4.3. certifications of Project Infrastructure and Rolling Stock; and
- 15.4.4. certification of the crew of the Freight Services.

16. Security

16.1. Security

- 16.1.1. The Grantor shall (and shall cause the relevant Governmental Authorities to) take adequate measures and arrangement to safeguard the security and safety of the Project Site and Project Infrastructure without unduly or unreasonably disrupting the Project Activities of the Concessionaire.
- 16.1.2. The Concessionaire shall extend its full support and cooperation to

the Grantor and the relevant Governmental Authority in the discharge of their obligations hereunder.

- 16.1.3. The Concessionaire shall be responsible for the security arrangements of the construction camp and Project Infrastructure Material.
- 16.1.4. Subject to compliance of Clauses 16.1.1 to 16.1.3 above, the Concessionaire and the Grantor may, at their own cost, provide additional security forces in limited areas and cases within the Project Site for the prevention of acts of terrorism, hijacking, abduction, sabotage and/or similar acts or occurrences.
- 16.1.5. The Grantor shall ensure and procure that the personnel of the Concessionaire and all its Contractors, suppliers, sub-contractors and agents and the Freight Customers are allowed free entry and exit from the Project Site without any unreasonable interference by the personnel of the Grantor or other relevant Governmental Authority, including the security personnel employed by or on behalf of the Grantor or other relevant Governmental Authority.
- 16.1.6. A detailed standing operating procedure shall be drawn up and finalized by the Grantor in consultation with the Concessionaire in respect of the security measures for the Project Infrastructures within 6 (six) months from the Execution Date.



PART IV. FINANCIAL COVENANTS



17. TARIFF AND FINANCIAL

17.1. Tariff of Freight Services

- 17.1.1. Subject to the Applicable Laws, the Concessionaire shall be entitled to set and charge Tariff for the provision of Freight Services. The Grantor confirms that there is no Applicable Law which requires any Tariff set or charged by the Concessionaire to be approved by the Grantor or any other Governmental Authorities at any time and the procedure for setting Tariff shall be as set forth in Schedule 10 (*Responsibility Assignment Matrix of Railway Operation and Maintenance between Grantor and Concessionaire*) or as otherwise notified by the Concessionaire to the Grantor in writing.
- 17.1.2. The Tariffs set by the Concessionaire relating to the Freight Services shall always be sufficient to cover the long-term costs of the Concessionaire and enable the Concessionaire to yield economic return when providing the Freight Services in line with the Financial Model.
- 17.1.3. Unless otherwise agreed between the Parties, the Concessionaire may set and charge:
- (a) the Tariffs for Cross Border Freight Services in RMB, USD or any other freely convertible foreign currency; and
 - (b) the Tariffs for Local Freight Services in Shilling.

17.2. Access Fees

The Concessionaire may enter into Open Access Agreements in accordance with the Applicable Laws and charge Open Access Fees and other related charges applicable to the Open Access Operators.

17.3. Reimbursement

- 17.3.1. In respect of any amount reimbursable by the Grantor to the Concessionaire under this Agreement, including any costs incurred by the Concessionaire to respond to unforeseen and contingent events (such as restoration works required due to natural disasters and other accidents if there is insufficient fund in the Railway Development Fund) the cost of which should be borne by the Grantor pursuant to Clause 13.3 (*Restoration of loss or damage to Project Infrastructure and Facilities*) or undertake any Variations the cost of which should be borne by the Grantor pursuant to Clause 9.7.6 (*Variations*) ("**Reimbursable Amount**"), the Concessionaire shall, within thirty

(30) days after the Reimbursable Amount has been incurred, consult with and deliver to the Grantor a reimbursement notice ("**Reimbursement Notice**") setting out the total amount to be reimbursed by the Grantor including any related Taxes (if any). The Reimbursement Notice shall itemize each cost with reasonable details for identification and shall be accompanied by supporting documentation, including copies of relevant contracts and invoices evidencing the amount incurred by the Concessionaire. In the absence of manifest error, the Reimbursement Notice shall constitute prima facie evidence of the Reimbursable Amount.

- 17.3.2. The Grantor shall reimburse the Concessionaire for the Reimbursable Amount within sixty (60) days after the date of the Reimbursement Notice and thereafter the Concessionaire shall have the right to set off or deduct any outstanding Reimbursable Amount from any Variable Concession Fees payable by the Concessionaire under this Agreement, provided that no Default Rate shall accrue on any Reimbursable Amount.
- 17.3.3. Any dispute in relation to the Reimbursable Amount shall be determined in accordance with Clause 25 (*Dispute Resolution*).

17.4. **Railway Development Fund**

- 17.4.1. The Grantor shall on or before the Effective Date enter into a Railway Development Fund Escrow Agreement and open and establish a Railway Development Fund Escrow Account with a reputable financial institution agreed by the Parties (the "**Escrow Bank**") in accordance with this Agreement.
- 17.4.2. If the Annual Achieved Volume exceeds the Planned Capacity Volume, the Concessionaire shall notify the Grantor within thirty (30) days after the end of each year the Revenue for Development of the Project Concessionaires calculated by reference to the following formula:

Revenue for Development = US\$ ton•km * (Annual Achieved Volume - Planned Capacity Volume)

For the purpose of this Clause,

"**Annual Achieved Volume**" means, in respect of the Project Concessionaires in any given year, the aggregate of the actual achieved freight tonnage multiplied by its actual operating distance.

"**Planned Capacity Volume**" means 2,400,000 ton * 1860.5 km.

17.4.3. The Concessionaire shall notify the Grantor as soon as reasonably practicable, the date on which the aggregate amount of the Revenue for Development exceeds the aggregate amount of the Passenger Service Procurement Amount and the Concessionaire's funding cost in respect thereof (calculated at the interest rate charged by the Lenders under the Financing Agreements from the Procurement Date) (the "**Contribution Commencement Date**").

17.4.4. The Concessionaire shall, together with The Other Concessionaire, pay into the Railway Development Fund Escrow Account an aggregate amount equal to the Revenue for Development (inclusive of any Taxes and surcharges) collected by the Project Concessionaires after the Contribution Commencement Date each year (the "**Annual Development Contribution**") in accordance with the following procedures:

- (a) any Annual Development Contribution shall be made in USD (or other freely convertible currency as agreed between the Parties) annually in arrears;
- (b) at the end of each calendar year following the Contribution Commencement Date, the Concessionaire shall calculate the Annual Development Contribution due and payable for that year;
- (c) within thirty (30) days after the end of the relevant calendar year, the Concessionaire shall deliver a written notice to the Grantor setting out:
 - (i) the aggregate amount of the Annual Development Contribution payable by the Project Concessionaires; and
 - (ii) the individual amount of the Annual Development Contribution payable by each Project Concessionaire,

for that year with reasonable details of the calculation of the Annual Development Contribution (the "**Annual Development Contribution Notice**"), provided that the Grantor expressly agrees that the Project Concessionaires may deliver a joint Annual Development Contribution Notice under both Project Concession Agreements;

- (d) if the Grantor agrees to the amount of the Annual Development Contribution specified in the Annual Development Contribution Notice, the Grantor shall issue to the Concessionaire an invoice in the individual amount notified to it as payable by the Concessionaire in the Annual Development Contribution Notice within thirty (30) days of receipt of such Annual Development Contribution Notice;
- (e) the invoice issued by the Grantor shall specify that the amount agreed in paragraph (d) above shall be payable into the Railway Development Fund Escrow Account; and
- (f) the Concessionaire shall pay the invoiced amount within thirty (30) days of receipt of the Grantor's invoice pursuant to paragraph (d).

- 17.4.5. If the Grantor disputes the amount of the Annual Development Contribution specified in the Annual Development Contribution Notice, the Grantor shall notify the Concessionaire in writing within fifteen (15) days of receipt of the Annual Development Contribution Notice detailing its reasons and calculations of the Annual Development Contribution (the "**Annual Development Contribution Dispute Notice**").
- 17.4.6. The Concessionaire may, if it agrees with the Grantor's Annual Development Contribution Dispute Notice, deliver a new Annual Development Contribution Notice with the adjusted amount within fifteen (15) days of receipt of the Annual Development Contribution Dispute Notice.
- 17.4.7. If the Parties cannot agree to the calculation and the amount of the Annual Development Contribution due and payable hereunder, any dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 17.4.8. Within thirty (30) days following the issuance of the Concessionaire's audited financial statements for any given year, the Parties shall review and reconcile the aggregate amount of Annual Development Contribution paid by the Concessionaire for that year ("**Paid Annual Development Contribution**") against the amount of Annual Development Contribution payable for the same year, as determined based on the audited financial statements ("**Payable Annual**



Development Contribution").

- 17.4.9. If the Paid Annual Development Contribution is less than the Payable Annual Development Contribution for that year, the Concessionaire shall pay the shortfall to the Grantor within thirty (30) days of such reconciliation.
- 17.4.10. If the Paid Annual Development Contribution exceeds the Payable Annual Development Contribution for that year, the Concessionaire may set off the excess amount against the subsequent Annual Development Contribution payable, until the overpaid amount is fully recovered.
- 17.4.11. The Grantor shall ensure that the proceeds of the disposal of any replaced and redundant railway material, equipment and other assets shall be deposited directly into the Railway Development Fund Escrow Account.
- 17.4.12. Any amount standing to the credit of the Railway Development Fund Escrow Account may only be withdrawn with the consent of both Parties and shall only be applied for the following purposes and in the following order or priority:
- (a) response to unforeseen and contingent events including restoration works required due to natural disasters and major accidents;
 - (b) payment of Grantor's Liabilities;
 - (c) the cost of any Project Improvement Works;
 - (d) purchase of Rolling Stock for the Passenger Train Services;
 - (e) upgrading of the passenger Railway Stations; and
 - (f) any other purposes as agreed between the Parties.
- 17.4.13. Disbursements from the Railway Development Fund Escrow Account shall only be made on joint written instructions of representatives of both Parties in accordance with the Railway Development Fund Escrow Agreement.
- 17.4.14. Each Party shall have the right to access information relating to transaction records and periodic account statements of the Railway Development Fund Escrow Account.
- 17.4.15. The Railway Development Fund Escrow Account shall be closed upon termination of the Concession Agreement in accordance with

Clause 21.9.1(d) (*Divestment Requirements*), provided that any funds standing to the credit of the Railway Development Fund Escrow Account shall first be used to settle all outstanding Grantor's Liabilities prior to the closure of the Railway Development Fund Escrow Account. The Concessionaire shall deliver a written request to the Escrow Bank, with a copy to the Grantor, requesting for release of funds for payment of outstanding Grantor's Liabilities. Unless the Grantor delivers a written objection to the Concessionaire and the Escrow Bank in two (2) days after receipt of the Concessionaire's written request, the Escrow Bank shall transfer the amount requested to the Concessionaire.

- 17.4.16. The provisions of this Clause and the instructions contained in the Railway Development Fund Escrow Agreement shall remain in full force and effect until the obligations set forth in this Clause and the Railway Development Fund Escrow Agreement have been discharged.

17.5. Concessionaire's Bank Accounts

- 17.5.1. The Concessionaire shall be entitled to open and operate any bank accounts in and outside the Contracting States in any currencies including RMB or USD and the Grantor hereby acknowledges that it shall actively support the Concessionaire in obtaining such authorisation for the opening of such bank accounts if needed.
- 17.5.2. Subject to the Applicable Law, the Concessionaire shall be entitled to convert revenue collected in the local currency into any freely convertible currency at any time and transfer such funds to bank accounts held by the Concessionaire outside of the Contracting States.
- 17.5.3. Subject to the Applicable Law, the Concessionaire shall be entitled to convert and repatriate profits and/or dividends, provided that such transactions comply with the provisions of tax laws of the Contracting States.

17.6. Accounts Management and Operations

- 17.6.1. The Concessionaire shall engage qualified professional accountants and other accounting staff in compliance with Applicable Law of the relevant Contracting State.
- 17.6.2. The Concessionaire shall maintain books of accounts recording all its receipts, (including all realisable fees and other revenues derived or collected by it from or on account of the Project), income, expenditure, payments, assets and liabilities in accordance with the

Applicable Law.

- 17.6.3. The Concessionaire shall prepare draft financial statements consisting of a statement of financial position, a statement of profit or loss and other comprehensive income, a statement of cash flows, a statement of changes in shareholders' equity/net assets, and accompanying notes to the financial statements within three (3) months after each Financial Year ends for submission to the external auditor.
- 17.6.4. The financial statements shall be prepared in accordance with the International Financial Reporting Standards or other recognised and acceptable international accounting standards, and the Applicable Law.
- 17.6.5. Each Party shall, in every Financial Year during the Concession Period, provide the other Party with copies of its annual report, including the audited financial statements within thirty (30) days from the date on which such audited financial statements become available.
- 17.6.6. The Concessionaire shall establish an effective internal control system in compliance with Applicable Law of the Contracting States.
- 17.6.7. The external auditor shall audit a complete set of the financial statements consisting of a statement of financial position, a statement of profit or loss and other comprehensive income, a statement of cash flows, a statement of changes in shareholders' equity/net assets and accompanying notes to the financial statements. The external auditor shall also review the governance report prepared by the Concessionaire in compliance with the Applicable Law and the international best practices.

17.7. Insurance Coverage

- 17.7.1. The Concessionaire shall maintain the insurance coverage (the "**Insurance Cover**") in respect of the Project Activities as required under the Applicable Laws as listed in Schedule II (*Insurances*) and shall, upon reasonable request by the Grantor, provide the Grantor with certificates of the insurance evidencing the Concessionaire's Insurance Cover.
- 17.7.2. The proceeds of the Concessionaire's Insurance Cover from all insurance claims, except life and injury, shall be applied by the Concessionaire for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation in respect of the Project Activities, and the balance remaining, if any, shall be applied in accordance with the provisions of the Financing Agreements.

- 17.7.3. The Grantor shall maintain adequate insurance cover in respect of its Passenger Train Services from the Service Commencement Date and shall, upon reasonable request by the Concessionaire, provide the Concessionaire with certificates of the insurance evidencing the Grantor's insurance cover. For the avoidance of doubt, any loss or damage in relation to accidents of the Passenger Train Services of the Grantor prior to the Service Commencement Date shall continue to be covered and supported by the Contracting States.

17.8. Invoices and Receipt

- 17.8.1. Without prejudice to any other provisions of this Agreement, the Grantor shall, in respect of any amount payable by the Concessionaire to the Grantor under or in connection with this Agreement (including the Concession Fees and Annual Development Contributions), first issue an official and valid invoice specifying the agreed amount payable, the purpose of the payment and the Grantor's designated bank account for receipt of the payment within the time period stipulated under this Agreement (if any), and shall deliver an official and valid receipt to the Concessionaire within five (5) business days following receipt of each payment.
- 17.8.2. If any Governmental Authority raises any queries or challenges in relation to any invoices or receipts issued by the Grantor to the Concessionaire, the Grantor shall, upon the Concessionaire's request, provide reasonable assistance in addressing such queries or challenges, including by providing the necessary documentation and explaining to the relevant Governmental Authority the purpose and nature of the relevant payments.



PART V. FORCE MAJEURE AND TERMINATION



18. FORCE MAJEURE

18.1. Force Majeure

The term "Force Majeure" as used in this Agreement means the occurrence of any or a combination of the Non-Political Event, Political Event and Material Adverse Government Action,

- 18.1.1. which (or the consequences of which) has a Material Adverse Effect on the performance of any of the obligations or exercise of any of the rights by the Grantor or a Project Concessionaire under this Agreement (the "**Affected Party**");
- 18.1.2. which is without fault or negligence on the part of Affected Party and is not the direct result of a breach by such Affected Party of any of its obligations under this the Project Concession Agreements; and
- 18.1.3. which the Affected Party could not reasonably have prevented or avoided or overcome.

18.2. Non-Political Event

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

- 18.2.1. act of God, pandemic, epidemic, plagues and restrictions imposed with respect thereto, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, tsunami, tempest, typhoon, tornado, storms, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, pressure waves caused by supersonic speed, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Project Site);
- 18.2.2. any delay or failure of an overseas Contractor to deliver equipment in a Contracting State if such delay or failure is caused outside the Contracting State by any event specified in Clause 18.2.1 above and which does not result in any offsetting compensation being payable to the Project Concessionaires by or on behalf of such Contractor;
- 18.2.3. the discovery of geological conditions, toxic contamination or archaeological remains on the Project Site that could not reasonably have been expected to be discovered through a site inspection;
- 18.2.4. any event or circumstances of a nature analogous to any of the foregoing; or
- 18.2.5. any "Non-Political Event" under The Other Concession Agreement shall have occurred.

18.3. Political Event

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

- 18.3.1. an act of war (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;
- 18.3.2. strikes, boycotts, lock out, go-slow or other industrial action (other than those involving any Project Concessionaire, Contractor or their respective employees/representatives, or attributable to any act or omission of any of them) for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in a Financial Year;
- 18.3.3. any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;
- 18.3.4. any event or circumstances of a nature analogous to any of the foregoing; or
- 18.3.5. any "Political Event" under The Other Concession Agreement shall have occurred.

18.4. Material Adverse Government Action

A Material Adverse Government Action shall mean one or more of the following acts or events by or on account of any Governmental Party (other than the Grantor):

- 18.4.1. any Project Agreement is not, or ceases to be, in full force or effect or is otherwise invalid or ineffective;
- 18.4.2. any Governmental Party repudiates a Project Agreement or evidence of intention to repudiate a Project Agreement;
- 18.4.3. any breach of any Project Agreement by any Governmental Party which has or might cause a Material Adverse Effect and any relevant cure period under the Project Agreements has expired;
- 18.4.4. Change in Law, and only if the Project Concessionaires cannot be put in a no better no worse position under and in accordance with the provisions of Clause 23 (*Change In Law*);
- 18.4.5. a Project Concessionaire is unable to set or charge its Tariff pursuant

to Clause 17.1.3 (*Tariff of Freight Services*), convert revenue collected in the local currency into any freely convertible currency at any time or transfer any of its funds to bank accounts held by that Project Concessionaire outside of a Contracting State as a result of any restrictions imposed by or actions or inactions of any Governmental Parties;

- 18.4.6. any compulsory acquisition, expropriation or nationalization of any assets or rights of the Project Participants in relation to the Project;
- 18.4.7. 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 any Project Concessionaire or Contractor to perform their respective obligations under this Agreement and the Commercial Contracts; provided that such delay, modification, denial, refusal or revocation did not result from any Project Concessionaire or Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorization, no objection certificate, exemption, consent, approval or permit;
- 18.4.8. any failure or delay of a Contractor but only to the extent caused by another Material Adverse Government Action and which does not result in any offsetting compensation being payable to the Project Concessionaires by or on behalf of such Contractor;
- 18.4.9. any event or circumstance of a nature analogous to any of the foregoing; or
- 18.4.10. any "Material Adverse Government Action" under The Other Concession Agreement shall have occurred.

18.5. Excuse 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, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure; provided that:

- 18.5.1. the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure;
- 18.5.2. 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 and to cure the same

with due diligence; and

- 18.5.3. 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.

18.6. Allocation of costs arising out of Force Majeure

- 18.6.1. Upon occurrence of a Force Majeure, the costs incurred and attributable to such event and directly relating to the Project (the "**Force Majeure Costs**") shall be allocated and paid as follows:

- (a) if such Force Majeure is a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof; and
- (b) if such Force Majeure is a Political Event or Material Adverse Government Action, all Force Majeure Costs attributable to such Political Event or Material Adverse Government Action, and not exceeding the Insurance Cover for such Political Event or Material Adverse Government Action, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, such excess amount shall be reimbursed by the Grantor to the Concessionaire.

For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, any increase in the cost of rehabilitation work on the Project Infrastructure on account of inflation and all other costs directly attributable to the Force Majeure, but shall not include any costs which are expressly covered under any provision of this Agreement or debt repayment obligations, and for determining such costs, information contained in the Financial Model may be relied upon to the extent that such information is relevant. Reimbursement of additional cost due to Force Majeure (if any) shall be made by the Grantor in accordance with Clause 17.3 (*Reimbursement*).

- 18.6.2. Save and except as expressly provided in this Clause 18, 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 or exercise of any right pursuant hereto.



18.7. Duty to report Force Majeure

- 18.7.1. Upon occurrence of a Force Majeure, the Affected Party shall as soon as reasonably practicable after it becomes aware that it is affected by a Force Majeure by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:
- (a) the nature and extent of each Force Majeure which is the subject of any claim for relief under this Clause 18.3 with evidence in support thereof;
 - (b) the estimated duration and the effect or probable effect which such Force Majeure is having or will have on the Affected Party's performance of its obligations under this Agreement;
 - (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure; and
 - (d) any other information relevant to the Affected Party's claim.
- 18.7.2. The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure unless it shall have notified the other Party pursuant to Clause 18.7.1 above.
- 18.7.3. For so long as the Affected Party continues to claim to be materially affected by such Force Majeure, it shall provide the other Party with regular reports on a periodic basis that is reasonable and appropriate under the circumstances containing information as required by Clause 18.7.1, and such other information as the other Party may reasonably request the Affected Party to provide.

18.8. Reinstatement following Force Majeure

Following the occurrence of a Force Majeure which results in material physical damage to the Project (or any portion thereof), the Concessionaire shall within ninety (90) days notify (the "**Reinstatement Notice**") the Grantor of whether it will reinstate the Project (or any part thereof) affected by the case of Force Majeure and if the Concessionaire decides to reinstate, the Reinstatement Notice shall specify the time within which the reinstatement shall take place (the "**Reinstatement Period**").

18.9. Termination for Force Majeure

In the event that a Force Majeure occurs which:

- 18.9.1. results in material physical damage to the Railway or any portion thereof, and the Concessionaire fails to provide the Reinstatement Notice within the time stipulated in Clause 18.8 (*Reinstatement following Force Majeure*), or it does not reinstate the Railway (or the relevant part thereof) affected by the Force Majeure in accordance with the Reinstatement Notice by the end of the Reinstatement Period; or
- 18.9.2. does not result in material physical damage to the Railway or any portion thereof and persists for one hundred and eighty (180) days from the date of notification referred to in Clause 18.7 (*Duty to report Force Majeure*) and, due to such persistence, the Concessionaire is unable to exercise and/or perform a substantial portion of its rights and/or obligations respectively.

18.10. Termination Notice for Force Majeure

- 18.10.1. If a Force Majeure 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 Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Clause 18 (*Force Majeure*), and upon issue of such 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 such intention and grant 15 (fifteen) days time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.
- 18.10.2. Upon termination of this Agreement as a result of Force Majeure, the Grantor shall make the Termination Payment as specified in Schedule 13 (*Termination Payment*).

18.11. Dispute resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure as set forth in Clause 25 (*Dispute Resolution*); provided that the burden of proof as to the occurrence or existence of such Force Majeure shall be upon the Party claiming relief and/or excuse on account of such Force Majeure.

19. RELIEF EVENTS

19.1. Relief Events

Without prejudice to any other rights of the Concessionaire under this Agreement, upon the occurrence of a Relief Event, the Concessionaire shall be excused from performing its obligations under this Agreement and relieved from any rights of the Grantor in respect of any such non-performance in accordance with this Clause 19 (*Relief Events*).

19.2. Notice of Claim

To obtain relief, the Concessionaire shall within 20 (twenty) days after it becomes aware that such Relief Event provide to the Grantor a notice of claim for relief, including full details of the nature of the Relief Event, the date of occurrence and its likely duration. Thereafter and in any event within 60 (sixty) days from the date of the notice of claim for relief, it must provide to the Grantor details of the following in relation to the Relief Event:

- 19.2.1. the details of the Relief Event and its consequences;
- 19.2.2. the time lost and cost suffered which could not reasonably be mitigated or recovered by any Project Concessionaire or Contractor acting in accordance with Good Industry Practice; and
- 19.2.3. the mitigation measures (if any) undertaken by any Project Concessionaire or Contractor.

19.3. Relief and extension of time

In the event that the Concessionaire has complied with its obligations under Clause 19.2 (*Notice of Claim*) and without prejudice to any other rights of the Concessionaire under this Agreement:

- 19.3.1. any time period under this Agreement shall be extended; and
- 19.3.2. the Concessionaire shall not be considered in breach of this Agreement and shall be excused from performance of its obligations; and
- 19.3.3. the Grantor shall not be entitled to exercise its right including without limitation the right to seek compensation or to terminate this Agreement,

in respect of the relevant Relief Event provided that:

- (a) the suspension of performance and extension shall be of no greater scope and of no longer duration than is reasonably required by the Relief Event;

- (b) the Concessionaire shall make all reasonable efforts to mitigate or limit damage to the Grantor arising out of or as a result of the existence or occurrence of such Relief Event and to cure the same with due diligence; and
- (c) when the Concessionaire is able to resume performance of its obligations under this Agreement, it shall give to the Grantor notice to that effect and shall promptly resume performance of its obligations hereunder.

20. COMPENSATION FOR BREACH OF AGREEMENT

20.1. Compensation for default by the Concessionaire

Subject to any Dispute and the resolution of such Dispute pursuant to the Dispute Resolution Procedure and Clause 20.6 (*Mitigation of costs and damage*), notwithstanding any other remedies of the Grantor under this Agreement, in the event of the Concessionaire being in material breach or default of this Agreement, it shall pay to the Grantor by way of compensation, all direct costs suffered or incurred by the Grantor as a consequence of such material breach or default and place the Concessionaire (without double counting) in a no better no worse position, within sixty (60) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 20.1 for any material breach or default in respect of which damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Grantor.

20.2. Compensation for default by the Grantor

20.2.1. Subject to any Dispute and the resolution of such Dispute pursuant to the Dispute Resolution Procedure and the provisions of this Clause and 20.2 (*Compensation for default by the Grantor*) and Clauses 20.4 (*Extension of Concession Period*) and 20.6 (*Mitigation of costs and damage*), notwithstanding any other remedies of the Concessionaire under this Agreement, in the event of the Grantor being in material breach or default of this Agreement, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material breach or default and place the Concessionaire (without double counting) in a no better no worse position provided that no such compensation shall be payable for any material breach or default in respect of which damages have been expressly specified in this Agreement. The Concessionaire shall make any claim in respect of a material breach or default within sixty (60) days of occurrence and shall procure that

any such demand is supported by necessary and full particulars thereof.

20.2.2. For the avoidance of doubt, compensation payable may include interest payments on debt, any increase in capital costs on account of inflation and all other costs directly attributable to such material breach or default but shall not include any other indirect or consequential losses or loss of profit.

20.3. Default of a Delegated Department

The Grantor shall not be liable to the Concessionaire or Open Access Operators for any failure of a Delegated Department to meet the Reserved Services Standard.

20.4. Extension of Concession Period

Subject to the provisions of Clause 20.6 (*Mitigation of costs and damage*), in the event that a material default or breach of this Agreement set forth in Clause 20.2 (*Compensation for default by the Grantor*) causes delay in implementation of the Project or achieving the Service Commencement Date, the Grantor shall, in addition to payment of compensation under Clause 20.2 (*Compensation for default by the Grantor*) to place the Concessionaire in a no better no worse position, extend the Concession Period or any other relevant period under this Agreement, such extension being equivalent to the duration of the delay of material default or breach.

20.5. Compensation to be in addition

Compensation payable under this Clause 20 (*Compensation For Breach Of Agreement*) shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any provided that there is double counting.

20.6. Mitigation of costs and damage

The Affected Party shall use all reasonable efforts to mitigate or limit any delay, costs and/or damage arising out of or as a result of breach of Agreement by the other Party.

21. TERMINATION, HANDBACK AND TRANSFER

21.1. Right to Terminate the Agreement

The Grantor has the right to terminate this Agreement upon the occurrence of the Concessionaire Event of Default and the Concessionaire has the right to terminate this Agreement upon the occurrence of the Grantor Event of Default, each of which has a Material Adverse Effect.

21.2. Termination for Concessionaire Default

21.2.1. The Grantor shall have the right to issue a written Termination Notice to the Concessionaire stating that a Concessionaire Event of Default has occurred and any cure period upon which the Concessionaire shall remedy such Concessionaire Event of Default, and such notice shall include reasonable details of the relevant event of default ("**Concessionaire Event of Default**"), which has a Material Adverse Effect, upon the occurrence of any of the following events:

- (a) the Concessionaire abandons the Rehabilitation Work or the Freight Service without the prior written consent of the Grantor for a continuous period of one hundred and eighty (180) days;
- (b) the Concessionaire has failed to make any payment to the Grantor within ninety (90) days of due date;
- (c) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an irrevocable intention not to be bound by the Agreement;
- (d) the Concessionaire without reasonable cause has failed to achieve the Service Commencement Date within ninety (90) days after the Scheduled Project Completion Date save that the Concessionaire upon furnishing reasons to the Grantor shall have a further cure period of one hundred and eighty (180) days if the Project Concessionaires have in aggregate invested no less than the equivalent of USD400,000,000 in the Project;
- (e) the Concessionaire commits a substantial adverse default in complying with any of the provision of this Agreement and such default has a Material Adverse Effect, provided that the Concessionaire fails to remedy or rectify the same within ninety (90) days after receiving notice thereof from the Grantor setting forth the details of such default and requesting that the failure be cured;
- (f) there is an unauthorised Change in Ownership and the Concessionaire does not on its own cure such default within one hundred and eighty (180) days of its occurrence;
- (g) there is a transfer pursuant to Applicable Law of either (a) the rights and/or obligations of the Concessionaire under any of the Commercial Contracts, or (b) all or material

part of the assets or undertaking of the Concessionaire except where such transfer is permitted under this Agreement or, in the reasonable opinion of Grantor, does not affect the ability of the Concessionaire to perform, and the Concessionaire has the financial and technical capability to perform, its material obligations under the Commercial Contracts;

- (h) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;
- (i) the Concessionaire submits to the Grantor any statement, notice or other Document, in written or electronic form, which has a material effect on the Grantor's rights, obligations or interests and which is false in material particulars;
- (j) the Concessionaire has failed to fulfill any obligation, for which failure Termination has been specified in this Agreement;
- (k) the Concessionaire is subject to an Insolvency Event, and
- (l) any other event which has a Material Adverse Effect.

21.2.2. This Agreement shall terminate upon lapse of the cure period as provided in Clause 21.2.1 above (or at such later time as may be provided in the Termination Notice), provided that if the Concessionaire cures the Concessionaire Event of Default in respect of which a Termination Notice has been served, the Termination Notice shall be automatically revoked and shall have no effect and this Agreement shall not terminate.

21.2.3. If the material default cannot be cured within the specified cure period, the Concessionaire shall seek consent from the Grantor for an extension of cure period (which shall not be unreasonably withheld). The Concessionaire shall, upon receipt of approval for the extension of cure period, continue with efforts to cure such default within the extended cure period.

21.3. Termination for Grantor Default

21.3.1. The Concessionaire shall have the right to issue a written Termination

Notice to the Grantor stating the particular Grantor Event of Default that has occurred and any cure period upon which the Grantor shall remedy such Grantor Event of Default, and such notice shall include reasonable details of the relevant event of default ("**Grantor Event of Default**"), which has a Material Adverse Effect, upon the occurrence of any of the following events:

- (a) the Grantor commits a default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect, the Grantor shall have failed to cure such failure within ninety (90) calendar days after receiving notice thereof from the Concessionaire (acting on behalf of itself or any Affiliate or Contractor) setting forth the details of such default and requesting that the failure be cured;
- (b) the Grantor has failed to make any payment including damages due to the Concessionaire in accordance with this Agreement within ninety (90) days of due date;
- (c) the Grantor has failed to grant the Right of Way, Land Lease or the right to access and use the Existing Facilities to the Concessionaire free from Encumbrances or Encroachments in accordance with the terms of this Agreement or such right is terminated, suspended or curtailed;
- (d) the Grantor has failed to perform the Reserved Services in conformity with the Reserved Services Standard except to the extent such failure is due to the default or breach of a Delegated Department;
- (e) the Grantor repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement;
- (f) any representation or warranty of the Grantor herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Grantor is at any time hereafter found to be in breach thereof;
- (g) the Grantor has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;
- (h) the Grantor takes any action which leads to a Material

Adverse Effect to the Concessionaire including introduction, application, or change of any policy, procedures, rules or bylaw after the Execution Date;

- (i) any part(s) of the Project Site and/or the Project Infrastructure, or any assets, right, equity, shares or ownership interests of whatever nature held in or by the Concessionaire or any of its Affiliates, is unilaterally expropriated by a Contracting State;
- (j) the Grantor breaches the stipulation in Clause 22 (*Assignment And Charges*);
- (k) any "Grantor Event of Default" under The Other Concession Agreement shall have occurred and is continuing; and
- (l) any other event which has a Material Adverse Effect.

21.3.2. If the material default cannot be cured within the specified cure period, the Grantor shall seek consent from the Concessionaire for an extension of cure period (which shall not be unreasonably withheld). The Grantor shall, upon receipt of approval for the extension of cure period, continue with efforts to cure such default within the extended cure period.

21.3.3. This Agreement shall terminate upon lapse of the cure period as provided in Clause 21.3.1 above (or at such later time as may be provided in the Termination Notice) (or at such later time as may be provided in the Termination Notice), provided that if the Grantor cures the Grantor Event of Default in respect of which a Termination Notice has been served, the Termination Notice shall be automatically revoked and shall have no effect and this Agreement shall not terminate.

21.4. Termination Payment

Upon termination of this Agreement, the Grantor shall make the Termination Payment as specified in Schedule 13 (*Termination Payment*).

21.5. Survival

21.5.1. Termination shall not relieve the Concessionaire or the Grantor, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof, including Clause 21 (*Termination, Handback And Transfer*), Clause 25 (*Dispute Resolution*) and Clause 26 (*Miscellaneous*).

- 21.5.2. Notwithstanding anything to the contrary contained in this Agreement, any Termination pursuant to the provisions 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.
- 21.5.3. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

21.6. Transfer of the Concession upon Termination

- 21.6.1. If a Termination Notice that was served by either Party expires and the cure period was not extended within twenty (20) days from the expiry of the Termination Notice, the Concessionaire shall prepare in accordance with the Divestment Requirements and submit to the Grantor, for its review and approval (such approval not to be unreasonably withheld or delayed), a draft comprehensive transition plan (the "**Termination Transition Plan**") outlining the responsibilities and obligations of the Concessionaire in relation to the transfer of the Project Infrastructure, including the Project Site, the employees, the Applicable Permits and contracts to the Grantor on Termination Date.
- 21.6.2. The Grantor shall provide its reasonable comments on or any reasonable amendments to such draft Termination Transition Plan within fifteen (15) days from receipt of the Termination Transition Plan and the Concessionaire shall submit the final version of such Termination Transition Plan, reflecting such comments and/or amendments, to the Grantor no later than ten (10) days after receipt of the Grantor's comments and amendments; provided that if the Grantor does not provide comments or amendments within such 15 (fifteen) day period, then the Grantor shall be deemed to have approved the draft Termination Transition Plan. In the event that the Grantor disapproves any aspect of the final version of such Termination Transition Plan, it shall so notify the Concessionaire with detailed reasons and proposals for changes and the Concessionaire shall prepare and resubmit for approval by the Grantor, as soon as practicably possible, a revised plan.
- 21.6.3. Promptly after finalisation of the Termination Transition Plan, the

Parties shall jointly implement the Termination Transition Plan. In the event that the Parties fail to agree to any step of the process described in this Clause 21.6, either Party may refer the matter to the Independent Expert.

21.7. Divestment of Rights and Interest

- 21.7.1. By no later than sixty (60) days prior the Transfer Period Commencement Date, the Concessionaire shall prepare in accordance with the Divestment Requirements and submit to the Grantor, for its review and approval (such approval not to be unreasonably withheld or delayed), a draft comprehensive transition plan (the "**Transfer Transition Plan**") outlining the responsibilities and obligations of the Concessionaire in relation to the transfer of the Project Infrastructure, including the Project Site, the Applicable Permits and contracts to the Grantor or to a successor operator.
- 21.7.2. The Grantor shall provide its reasonable comments on or any reasonable amendments to such draft Transfer Transition Plan no later than thirty (30) days prior to the Transfer Period Commencement Date and the Concessionaire shall submit the final version of such Transfer Transition Plan, reflecting such comments and/or amendments, to the Grantor no later than the Transfer Period Commencement Date; provided that if the Grantor does not provide comments or amendments within such thirty (30) days period, then the Grantor shall be deemed to have approved the draft Transfer Transition Plan.
- 21.7.3. In the event that the Grantor disapproves any aspect of the final version of such Transfer Transition Plan, it shall so notify the Concessionaire with detailed reasons and proposals for changes and the Concessionaire shall prepare and resubmit for approval by the Grantor, as soon as practicably possible, a revised plan.
- 21.7.4. Any Dispute with respect to the Transfer Transition Plan not resolved within twenty-one (21) days by the Parties, shall be referred to the Dispute Resolution Procedure. Without prejudice to the dispute resolution proceedings the Concessionaire shall be required to proceed with the applicable Transfer Process.

21.8. Transfer Process

- 21.8.1. Promptly after delivery of the first draft of a Transfer Transition Plan but in no event later than forty (40) days prior to the Transfer Period Commencement Date, the Grantor shall meet with the Concessionaire

to discuss the detailed procedures and milestones for the Transfer Process and orderly transfer of the Project Infrastructure, including the Project Site, back to the Grantor in accordance with the Divestment Requirements (a "**Transfer Kick-off Meeting**").

- 21.8.2. Promptly after the Transfer Kick-off Meeting, the Parties shall jointly implement the Transfer Transition Plan. In the event that the Parties fail to agree to any step of the process described in this Clause 21.8, either Party may refer the matter to the Dispute Resolution Procedure.

21.9. Divestment Requirements

- 21.9.1. Upon termination of this Agreement, the Concessionaire shall comply with and conform to the following requirements (the "**Divestment Requirements**"):

(a) Concessionaire's Assets

On the Transfer Date or as soon as reasonably practicable thereafter, the Concessionaire shall deliver and/or transfer all Rolling Stocks for Freight Services it owns to the Grantor free and clear of all Encumbrances and free of charge on "as is where is" basis.

(b) Books and records

On the Transfer Date or as soon as reasonably practicable thereafter, the Concessionaire shall deliver and transfer relevant records and reports pertaining to the Freight Services and Traffic Management including all programmes and manuals pertaining thereto.

(c) Existing Facilities

On the Transfer Date or as soon as reasonably practicable thereafter, the Concessionaire shall deliver and hand back any Existing Facilities which is still being used by Concessionaire on "as is where is".

(d) Railway Development Fund

Upon Termination of this Agreement, the Railway Development Fund Escrow Agreement shall be terminated provided that any amount standing to the credit of the Railway Development Fund shall first be applied towards the payment of the Grantor's Liabilities (if any).

(e) Grantor's outstanding liability

If the amount standing to the credit of the Railway Development Fund is insufficient to settle the Grantor's Liabilities in full, the outstanding Grantor's Liabilities shall (a) be written off by the Concessionaire and no longer payable by the Grantor on the Expiry Date of this Agreement if there is no Early Termination, and (b) be due and payable by the Grantor within one hundred and eighty (180) days of the Transfer Date if there is an Early Termination.

(f) Land Lease

The Land Lease shall be automatically terminated upon the termination of the Concession Agreement. Any other land leases to which the Concessionaire is the lessee shall be transferred to the Grantor at no cost or at a nominal cost subject to the terms of such land leases.

(g) Concessionaire's Employees

On or about the Transfer Date, the Concessionaire shall lawfully terminate the employment of its employees and pay their terminal benefit in accordance with the Applicable Laws.

21.9.2. The Parties shall cooperate on a best endeavours basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Freight Customers, other members of the public or the lawful occupiers of any part of the Project Site.

21.9.3. The transfer shall be deemed complete once the Divestment Requirements are satisfied. In the event of any Dispute relating to this matter, the Dispute Resolution Procedure shall apply.

21.9.4. This Clause 21.9 shall survive Termination.

PART VII. OTHER PROVISIONS



22. ASSIGNMENT AND CHARGES

22.1. Restrictions on Assignment and Charges

22.1.1. Subject to Clause 22.2 (*Permitted Assignment and Charges*), neither Party may transfer or assign any of its rights, obligations or liabilities under this Agreement to any person, save and except with the prior consent in writing of the other Party.

22.1.2. Subject to Clause 22.2 (*Permitted Assignment and Charges*), the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Commercial Contract to which the Concessionaire is a party except with prior consent in writing of the Grantor.

22.2. Permitted Assignment and Charges

The restraints set forth in Clause 22.1 (*Restrictions on Assignment and Charges*) shall not apply to any of the following:

- (a) any security, mortgages, pledges, hypothecation created in the ordinary course of business of the Project and as security only for indebtedness under the Financing Agreements and/or for working capital arrangements for the Project; and
- (b) liens or encumbrances arising out of the operation of any Applicable Laws in the ordinary course of business of the Concessionaire and which are not created by the Concessionaire for the purpose of financing the Project.

22.3. Direct Agreements

22.3.1. The Lenders or their representative may exercise the right to step-in and, if necessary, substitute the Concessionaire pursuant to the Direct Agreements.

22.3.2. Upon substitution of the Concessionaire under and in accordance with the Direct Agreement, the nominated company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire.

22.4. Sub-Contracting

Nothing in this Agreement shall prohibit the Concessionaire from providing or procuring the Project Activities from a Contractor having the legal capacity,

power and authority to perform the obligations of the relevant EPC Contract or Operation and Maintenance Contract and employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it which are sufficient to enable it to perform the obligations of a Contractor under, respectively, the relevant EPC Contract and Operation and Maintenance Contract, provided that the Concessionaire remains liable for the Concessionaire's obligations under this Agreement.

23. CHANGE IN LAW

23.1. Change in Law

- 23.1.1. If as a result of any Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return, the Concessionaire shall notify the Grantor and the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice and agree to an amendments to this Agreement or any other mutually agreed arrangement and/or an amount to be paid by the Grantor to the Concessionaire, so as to place the Concessionaire in a no better no worse and in the same financial position in which it would have been had there been no such Change in Law. Any agreed amendments to this Agreement or other arrangement and/or amount payable by the Grantor to the Concessionaire shall be effectuated and/or paid within sixty (60) days of agreement between the Parties to such amendment, arrangement and/or payment.
- 23.1.2. If the Grantor disputes the claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure.
- 23.1.3. If the Parties agree or it is determined under Clause 25 (*Dispute Resolution*) that the Concessionaire is required to incur additional capital expenditure due to a Change in Law, then the Concessionaire shall use its reasonable endeavours to obtain finance for such capital expenditure on terms reasonably satisfactory to it and the Lenders. If despite its reasonable endeavours, the Concessionaire has been unable to obtain funding for the additional capital expenditure within forty (40) days of the date that the agreement or determination of such capital expenditure, the Grantor shall pay to the Concessionaire an amount equal to that capital expenditure on or before the date falling sixty (60) days after the capital expenditure has been incurred.

24. LIABILITY AND INDEMNITY

24.1. General indemnity

24.1.1. Each Party (the "**Indemnifying Party**") shall indemnify, defend, save and hold harmless the other Party and its officers, employees, servants and agents (the "**Indemnified Party**") against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Indemnifying Party of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Indemnifying Party to Indemnified Party or from any negligence of the Indemnifying Party under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Indemnified Party.

24.2. Concessionaire Indemnities

24.2.1. Subject to other provisions of this Agreement, the Concessionaire shall indemnify and keep the Grantor indemnified at all times against all reasonable direct losses (including without limitation any legal fees or costs) caused by the gross negligence, or wilful misconduct of the Concessionaire, its Contractors, service providers, or their employees, and arising in connection with the performance or non-performance of this Agreement, and notified to the Grantor in writing with full supporting evidence, in consequence of any:

- (a) loss of or damage to the property of the Grantor present at the Project Infrastructure or on the Railway;
- (b) breach by the Concessionaire or any of its Contractors of a statutory duty arising under Applicable Law;
- (c) claim for or in respect of the death or personal injury of any third party engaged in the Project;
- (d) other claim, action, charge, cost, demand or expense by a third party engaged in the Project; or
- (e) breach by the Concessionaire of any of the warranties given by it in this Agreement.

24.2.2. Should the Concessionaire be required to provide an indemnity in accordance with Clause 24.2.1 upon termination of this Agreement,

the net Termination Payment owed by the Grantor, after deducting the indemnity due from the Concessionaire, shall not be less than the Debt Due (as defined in Schedule 13 (*Termination Payment*)).

24.3. Grantor indemnities

24.3.1. The Grantor shall indemnify and keep the Concessionaire indemnified at all times against all reasonable direct losses (including without limitation any legal fees or costs) caused by the negligence, gross negligence, or wilful misconduct of the Grantor, its consultants or its employees, and notified to the Grantor in writing with full supporting evidence, in consequence of any:

- (a) loss of or damage to property of the Concessionaire or a third party engaged in the Project;
- (b) claim for or in respect of the death or personal injury of any person engaged in the Project;
- (c) other claim, action, charge, cost, demand, or expense by a third party engaged in the Project;
- (d) breach by the Grantor of any of the warranties given by it in this Agreement;
- (e) any expropriation;
- (f) failure or refusal to issue, or the revocation of any required Applicable Permit by the Grantor or a Governmental Authority; or
- (g) suspension the Rehabilitation Works or Additional Rehabilitation Works by the Grantor, that could create liability for the Concessionaire under this Agreement, except to the extent such losses are caused by the negligence, gross negligence, or wilful misconduct of the Concessionaire, its Contractors or any of their employees or consultants, or by a breach by the Concessionaire of an express provision of this Agreement, and except to the extent that such losses are covered by the Insurance Cover.

24.4. Notice and Contest of Claims

24.4.1. 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 Clause 24, it shall notify the other Party within fifteen (15) 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.

- 24.4.2. 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.

24.5. Defense of claims

- 24.5.1. 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.
- 24.5.2. 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 Clause 24, the Indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives 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.
- 24.5.3. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified 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.
- 24.5.4. If the Indemnifying Party has exercised its rights under Clause 24.4 (*Notice and Contest of Claims*), 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).
- 24.5.5. If the Indemnifying Party exercises its rights under Clause 24.4 (*Notice and Contest of Claims*), the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the 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 authorized in writing by the Indemnifying Party;
- (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;
- (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 paragraphs (b), (c) or (d) of this Clause 24.5.5 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.

24.6. No consequential claims

Notwithstanding anything to the contrary contained in this Clause 24, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

25. DISPUTE RESOLUTION

25.1. Dispute resolution

25.1.1. Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its formation, interpretation, performance, breach, termination or validity) between the Parties, and so notified in writing by either Party to the other Party (the "**Dispute**") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 25.2 (*Conciliation*).

25.1.2. The Parties agree to use all reasonable endeavours 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.

25.2. Conciliation

25.2.1. In the event of any Dispute between the Parties, either Party may require such Dispute to be referred to a Dispute resolution committee (the "**Dispute Resolution Committee**") consisted of:

- (a) the Permanent Secretary responsible for transport sector from each Contracting State;
- (b) the Managing Director of the Grantor;
- (c) the Managing Director of the Concessionaire; and
- (d) one representative each from the Embassy of the People's Republic of China in Tanzania and Zambia.

25.2.2. Upon such reference, the Dispute Resolution Committee shall endeavour to meet no later than seven (7) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the seven (7) day period or the Dispute is not amicably settled within ten (10) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within twenty one (21) days of the notice in writing referred to in Clause 25.1 (*Dispute resolution*) or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to fast track resolution procedure or arbitration in accordance with the provisions of Clause 25.3 (*Fast Track Resolution Procedure*) and Clause 25.4 (*ICSID Arbitration*).

25.3. Fast Track Resolution Procedure

25.3.1. In the case of technical, financial and accounting issues, any Dispute arising out of or relating to this Agreement may be referred to the fast track resolution procedure (as provided for in this Clause) and the following provisions shall apply:

- (a) Either Party may upon written notice to the other refer the Dispute to an independent expert named by the Parties to act as expert who shall be an independent person or firm with appropriate qualifications and experience (the "**Independent Expert**") in respect of the matter under Dispute (the "**Reference**").
- (b) The first Party shall deliver a notice to the other Party and propose an expert (the "**Proposing Notice**") from a list of experts, which list it shall also deliver to the other Party and the other Party shall confirm the proposed Independent Expert or choose from the list of experts proposed as the case may be, or object to the proposed Independent Expert or list of experts, giving reasons for the objection and proposing an alternative expert instead.
- (c) In the event that the Parties are unable to agree upon the Independent Expert within 5 (five) business days of the date of the Proposing Notice, the provisions of Clause 25.3.1(h) shall operate;
- (d) the Independent Expert shall act as an expert and not as an arbitrator and shall act fairly and impartially. The Independent Expert shall have the power to request either Party to provide him with such statements (which shall be written unless otherwise specifically required), documents or information that he may in his discretion determine;
- (e) the Independent Expert shall have power to revise or overrule any decision or instruction of the Parties;
- (f) the Independent Expert shall, within 10 (ten) business days of the date of the Reference, provide written notice of his decision to the Parties, provided that such ten (10) business days period may be extended upon prior notification by the Independent Expert to the Parties at the outset of the Reference under this Clause of his/her rationale for the extension and provided further that such

extension shall not exceed thirty (30) business days from the date of the Reference (unless otherwise agreed to in writing by the Parties). If so requested by another Party, the Independent Expert shall provide written reasons for his decisions within five (5) business days of any such request, which request shall be made within five (5) business days of receipt of the Independent Expert's decision;

- (g) the Independent Expert's fees shall be equally shared by the Parties and, upon determination by the Independent Expert's on matters of costs, the defaulting party shall reimburse the other Party in accordance with the determination; and
- (h) in the event that the Parties cannot so agree, or have been unable to agree upon the Independent Expert pursuant to paragraph (a), either Party may request the ICC International Centre for ADR to make an appointment and such Party shall do so in accordance with the Rules for the Appointment of Experts and Neutrals of the International Chamber of Commerce.

25.3.2. The Independent Expert's decision shall be final and binding and shall forthwith be given effect to by the Parties save in the case of manifest error or bad faith on the Independent Expert part, in which event either Party may commence proceedings in accordance with Clause 25.4 (*ICSID Arbitration*).

25.4. ICSID Arbitration

25.4.1. Any Dispute arising out of or relating to this Agreement (including the validity of this Clause 25.4) which cannot be amicably settled by the Parties in accordance with Clauses 25.2 (*Conciliation*) and 25.3 (*Fast Track Resolution Procedure*) above within 90 days from the date of the written notice of the Dispute in accordance with Clause 25.1.1 (*Dispute resolution*) shall be finally settled by arbitration in accordance with this Clause 25.4.

25.4.2. The Grantor and the Concessionaire hereby consent to submit any Dispute to the International Centre for Settlement of Investment Disputes (hereinafter the "**Centre**") pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (hereinafter the "**Convention**") and the Rules of

Arbitration of the International Centre for Settlement of Investment Disputes (hereinafter the "**Rules**").

- 25.4.3. The Grantor is an agency of the Contracting States which has been designated to the Centre by the Host Governments in accordance with Article 25(I) of the Convention, each Contracting State has given its approval to the consent of the Grantor to submit any Dispute arising out of this Agreement to the Centre pursuant to the Convention under the Host Government Agreements.
- 25.4.4. It is hereby stipulated by the Parties that (a) the transaction to which this Agreement relates is an investment, (b) although the Concessionaire is a national of the relevant Contracting State, it is controlled by nationals of the People's Republic of China and shall be treated as a national of the People's Republic of China for the purposes of the Convention, and (c) the consent given in Clause 25.4.2 above shall be considered to satisfy the requirement for written consent of the parties to a dispute for purposes of Chapter II of the ICSID Convention.
- 25.4.5. It is hereby agreed that the right of the Concessionaire to refer a dispute to the Centre pursuant to this Agreement shall not be affected by the fact that the Concessionaire has received full or partial compensation from any third party with respect to any loss or injury that is the subject of the Dispute.
- 25.4.6. Any tribunal constituted pursuant to this Clause shall consist of three arbitrators, unless the Parties agree otherwise. Each Party shall appoint one arbitrator. The two arbitrators appointed by the Parties shall agree on the third arbitrator within thirty (30) days of the last co-arbitrator being appointed, who shall serve as the President of the tribunal, failing which such appointment shall be made by the Secretary-General of the Centre. If the Parties fail to agree on the number of arbitrators, a tribunal of three arbitrators shall be appointed in accordance with the Rules. In the event of multiple claimants or multiple respondents following any joinder of third parties or consolidation of proceedings, the claimants shall appoint one arbitrator jointly and the respondents shall appoint one arbitrator jointly. If the multiple claimants or multiple respondents are unable to agree on a joint appointment within thirty (30) days of the request to arbitrate, the Secretary-General of the Centre shall appoint the arbitrator(s) on behalf of the parties. The President of the tribunal may not be a national or citizen of a Contracting State. The Secretary-

General shall use best efforts to comply with the request within 60 days of its receipt.

- 25.4.7. Any tribunal constituted pursuant to this Agreement shall decide the Dispute in accordance with the provisions of this Agreement and the principles of international law including principles of equity and fairness, where necessary to reconcile conflicting legal provisions of related agreements or where the Parties have so agreed. The tribunal shall have the power to decide a Dispute *ex aequo et bono*. For disputes arising under or involving related investment agreements governed by different laws (including other Project Agreements), the tribunal shall apply the governing law of each related agreement to the respective claims arising thereunder.
- 25.4.8. The Parties agree that any arbitration proceeding conducted pursuant to this Agreement shall be held at in Singapore. Unless otherwise agreed by the Parties, all in-person hearings shall be held at Maxwell Chambers or any other suitable venue in Singapore as determined by the tribunal. The tribunal may conduct hearings, deliberations and other procedural steps virtually or in other locations, as deemed necessary for the efficient conduct of the arbitration.
- 25.4.9. The languages to be used in the arbitral proceedings shall be English.
- 25.4.10. Without prejudice to the power of the tribunal to recommend provisional measures, either Party hereto may request any judicial or other authority to order any provisional or conservatory measure, including attachment, prior to the institution of the arbitration proceeding, or during the proceeding, for the preservation of its rights and interests.
- 25.4.11. Any arbitration proceeding pursuant to this Agreement shall be conducted in accordance with the Rules in effect on the date on which the proceeding is instituted.
- 25.4.12. The provisions of this Clause shall be valid and enforceable notwithstanding the illegality, invalidity, or unenforceability of any other provisions of this Agreement.
- 25.4.13. Any Party to this Agreement may request the joinder of any Governmental Parties, Project Participants and any other third parties to the arbitration under this Clause, provided that such party is a party to a Project Document or other related investment agreement concerning the same or a substantially related project or investment and such party consents in writing to be joined to the arbitration under

this Clause. Each Party hereby consent to be joined to any arbitration pursuant to the terms of any other Project Documents or other related investment agreement concerning the same or a substantially related project or investment.

- 25.4.14. The tribunal shall have the power to order the joinder of such Governmental Parties, Project Participants and other third parties provided that such party consents in writing to be joined and agrees to submit to ICSID arbitration under this Clause. In the event of a joinder, the third party shall have the same procedural rights and obligations as the original parties to the arbitration.
- 25.4.15. If disputes arise under two or more Project Documents or other investment agreements related to the Project, any party may request the consolidation of those proceedings into a single arbitration. The request for consolidation shall be decided by the Secretary-General of the Centre, who shall consider whether the disputes involve common questions of law or fact, whether consolidation would promote the efficient resolution of the disputes and any potential prejudice to the Parties. If consolidated, the disputes shall be heard by the same tribunal, unless the Secretary-General of the Centre determines otherwise.
- 25.4.16. The award rendered by the tribunal shall be final and binding on all Parties, including any joined or consolidated parties, and shall be enforceable in accordance with the ICSID Convention. No Party shall seek or be entitled to any appeal, review, or recourse to any court or other judicial authority, except as expressly provided under the ICSID Convention. The Parties hereby waive any right of sovereign immunity as to it and its property to the maximum extent permitted by the Applicable Laws in respect of the enforcement and execution of any award rendered by a tribunal constituted pursuant to this Agreement.

25.5. UNCITRAL Arbitration

- 25.5.1. If the Centre or the tribunal constituted pursuant to Clause 25.4 (*ICSID Arbitration*) objects to its jurisdiction to hear any Dispute, such Disputes shall be resolved finally by arbitration in accordance with the UNCITRAL Arbitration Rules 2013 (as modified from time to time), and such UNCITRAL Arbitration Rules are deemed to be incorporated by reference to this Clause 25.5.
- 25.5.2. Unless the Parties agree otherwise, the language to be used in the

arbitral proceedings shall be English and all documents used or referred to during such proceedings that are not originally in English shall be translated into English by the Party relying upon them.

- 25.5.3. The seat of the arbitration shall be Singapore. Hearings will be held at the facilities available in Singapore unless agreed otherwise in writing.
- 25.5.4. Any arbitral tribunal constituted pursuant to this Clause shall consist of three arbitrators, unless the Parties agree otherwise. Each Party shall appoint one arbitrator. The two arbitrators appointed by the Parties shall agree on the third arbitrator within thirty (30) days of the last co-arbitrator being appointed, who shall serve as the President of the tribunal, failing which such appointment shall be made by the Secretary-General of the Permanent Court of Arbitration.
- 25.5.5. In the event of multiple claimants or multiple respondents following any joinder of third parties or consolidation of proceedings, the claimants shall appoint one arbitrator jointly and the respondents shall appoint one arbitrator jointly. If the multiple claimants or multiple respondents are unable to agree on a joint appointment within thirty (30) days of the request to arbitrate, the Secretary-General of the Permanent Court of Arbitration shall appoint the arbitrator(s) on behalf of the parties. The President of the tribunal may not be a national or citizen of a Contracting State. The Secretary-General of the Permanent Court of Arbitration shall use best efforts to comply with the request within 60 days of its receipt.
- 25.5.6. Any Party to this Agreement may request the joinder of any Governmental Parties, Project Participants and any other third parties to the arbitration under this Clause, provided that such party is a party to a Project Document or other related investment agreement concerning the same or a substantially related project or investment and such party consents in writing to be joined to the arbitration under this Clause. Each Party hereby consent to be joined to any arbitration pursuant to the terms of any other Project Agreements or other related investment agreement concerning the same or a substantially related project or investment.
- 25.5.7. The tribunal shall have the power to order the joinder of such Governmental Parties, Project Participants and other third parties provided that such party consents in writing to be joined and agrees to submit to the arbitration under this Clause. In the event of a joinder, the third party shall have the same procedural rights and obligations

as the original parties to the arbitration.

- 25.5.8. If disputes arise under two or more Project Documents or other agreements related to the Project, any party may request the consolidation of those proceedings into a single arbitration. The request for consolidation shall be decided by the Secretary-General of the Permanent Court of Arbitration, who shall consider whether the disputes involve common questions of law or fact, whether consolidation would promote the efficient resolution of the disputes and any potential prejudice to the Parties. If consolidated, the disputes shall be heard by the same tribunal, unless the Secretary-General of the Permanent Court of Arbitration determines otherwise.
- 25.5.9. Any award rendered by an arbitral tribunal constituted under this Clause 25.5 shall be final and binding on the Parties from the date it is made, and the Parties hereby waive any right to refer any question of law and any right of appeal on the law and/or merits to any court of competent jurisdiction and any right of sovereign immunity as to it and its property to the maximum extent permitted by the Applicable Laws in respect of the enforcement and execution of any award rendered by a tribunal constituted pursuant to this Clause 25.5.
- 25.5.10. The tribunal shall have the power to order any interim or conservatory measures it deems appropriate.

25.6. **Related Disputes**

Without prejudice to other terms of this Clause 25:

- 25.6.1 Each Party agrees that the arbitration provisions set out in this Clause 25, clause 25 (*Dispute Resolution*) of The Other Concession Agreement and clause 32 (*Dispute Settlement*) of each Host Government Agreement and the arbitration provisions and/or agreements of any other Project Documents shall together be deemed to be a single arbitration agreement to the extent permitted under such Project Documents.
- 25.6.2 Any Party may, prior to the constitution of an arbitral tribunal under the Convention, ICSID Rules or UNCITRAL Arbitration Rules (as applicable) (hereinafter referred to as "**Arbitration Rules**") in respect of an arbitration commenced pursuant to this Clause 25, request to join any other party to a Project Documents or other agreement concerning the same or a substantially related project or investment (to the extent permissible thereunder and subject to the Arbitration Rules) to that arbitration by delivery of a notice to the party it seeks to

join at the address given by that party for the receipt of requests/notices pursuant to the Arbitration Rules and the relevant Project Documents.

- 25.6.3 Any party to any Project Document or other agreement concerning the same or a substantially related project or investment may, subject to and in accordance with the Arbitration Rules, and to the extent permissible under such agreements, be joined to any arbitration commenced under this Agreement and each Party hereunder consents to such joinder.
- 25.6.4 Any Party to this Agreement hereby gives its consent to be joined to any arbitration commenced pursuant to the terms of any other Project Document or other agreement concerning the same or a substantially related project or investment.
- 25.6.5 Any Party may, prior to the constitution of an arbitral tribunal under the Arbitration Rules in respect of an arbitration commenced pursuant to this Clause 25, request to consolidate any two or more arbitrations commenced pursuant to the arbitration provisions and/or agreements of any Project Documents (in each case to the extent permissible thereunder and subject to the Arbitration Rules), by delivery of a notice to the relevant parties at the address given by that party for the receipt of requests/notices pursuant to the Arbitration Rules and the relevant Project Documents (as applicable).
- 25.6.6 The Parties agree to the consolidation of any two or more arbitrations commenced pursuant to the aforesaid clause and/or the arbitration provisions and/or agreements of any Project Documents (to the extent permissible thereunder and subject to the Arbitration Rules). The Parties further agree that if an arbitral tribunal has been constituted under the Arbitration Rules, in more than one of the arbitrations in respect of which consolidation is sought pursuant to this Clause 25, the arbitral tribunal which shall have the power to order consolidation shall be the arbitral tribunal appointed first in time.
- 25.6.7 To the extent permitted by law, each Party waives any objection, on the basis that a dispute has been resolved in a manner contemplated by this Clause 25, to the validity and/or enforcement of any arbitral award.

26. MISCELLANEOUS

26.1. Governing Law and jurisdiction



This Agreement shall be construed and interpreted in accordance with the English law.

26.2. Waiver of immunity

Subject to the Applicable Laws, each Party unconditionally and irrevocably:

- 26.2.1. agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- 26.2.2. 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 (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- 26.2.3. 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; and
- 26.2.4. 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).

26.3. Delayed Payments

- 26.3.1. The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within thirty (30) calendar days of receiving a demand along with the necessary particulars.
- 26.3.2. Subject to Clause 17.3.2, in the event of delay beyond such period and save as otherwise specified in this Agreement, the defaulting Party shall pay principal amount with interest chargeable at the Default Rate.

26.4. Amendment and Waiver

- 26.4.1. Any modification or amendment of any provision of this Agreement shall be effective only if it is in writing and signed by duly authorised



representatives of both Parties.

- 26.4.2. Either Party may propose amendment to this Agreement by providing written notice to the other Party specifying the proposed changes. The Parties shall negotiate in good faith to agree on any amendment. Any agreed amendment shall be documented in written agreement that references this Clause and the specific provisions being amended.
- 26.4.3. Any 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.
- 26.4.4. 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 thereunder 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.

26.5. Liability for Review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

- 26.5.1. no review, comment or approval by the Grantor of any Commercial Contracts or drawing submitted by the Concessionaire nor any observation or inspection of the rehabilitation, construction, operation or maintenance of the Project Infrastructure nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- 26.5.2. the Grantor shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Clause 26.5.1 above.

26.6. Exclusion of implied warranties



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.

26.7. 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 save for those which will be included in this Agreement.

26.8. 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.

26.9. No partnership

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or 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.

26.10. Third parties

Subject to Clause 26.15 (*Single Project*), 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 unless expressly provided to the contrary hereunder.

26.11. Successors and Assignees

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

26.12. Confidentiality

26.12.1. Subject to the limitations set out in Clause 26.12.4, certain information relating to the business and operations of the Project, the Parties acknowledge that such information is highly commercially sensitive and the Parties and their Affiliates shall be entitled to keep such information confidential. The Parties acknowledge that disclosure of such information could reasonably be expected to have an adverse impact on the implementation of the Project.

26.12.2. If the Concessionaire designates in writing that information disclosed by it or its Affiliates to the Grantor is commercially sensitive, or if the Grantor designate in writing that information disclosed by it or any Governmental Authority to the Concessionaire or any of its Affiliates is commercially sensitive, then the receiving party undertakes to use its reasonable endeavours to keep such information confidential during the Concession Period unless and to the extent that it is required to disclose such information pursuant to Applicable Laws or such information is deemed not to be confidential pursuant to Clause 26.12.4.

26.12.3. This requirement to keep certain information confidential shall not prevent the receiving party from disclosing such information (x) to its Affiliates and professional advisors where reasonably necessary for it to do so, provided that the receiving party shall remain liable for any failure of such persons to keep the information confidential, (y) to any expert or arbitrator appointed pursuant to this Agreement in connection with any dispute or determination relating to the subject matter of this Agreement or (z) to any financiers or potential financiers, including any banks, financial institutions, investors, rating agencies, and any other parties involved in the financing, refinancing, or provision of credit support for the Concessionaire.

26.12.4. Notwithstanding the foregoing, the following information shall not be deemed to be confidential:

- (a) information that, at the date of disclosure is in the public domain, or that, at any time after that date, enters the public domain other than as a result of a breach of this Agreement by the receiving party;

- (b) information that was not obtained directly or indirectly from the disclosing party and was lawfully in the receiving party's possession before the date of disclosure pursuant to this Agreement;and
- (c) information that is required to be disclosed by the Applicable Law.

26.13. Notices

26.13.1. A notice,approval,consent or other communication given under or in connection with this Agreement:

- (a) must be in writing and in the English language;and
- (b) shall be deemed to have been duly given or made when it is delivered by hand,or by internationally or nationally recognised courier delivery service,or sent by email or sent by facsimile transmission to the Party to which it is required or permitted to be given or made at such Party's address and marked for the attention of the person so specified,or at such other address or email address or facsimile number and/or marked for the attention of such other person as the relevant Party may from time to time specify by notice given in accordance with this Clause 26.13.

26.13.2. The relevant details of the Grantor at the Execution Date are:

Tanzania-Zambia Railway Authority

Address: Mandela and Nyerere Road,Post Box 2834,Dar Es Salaam,
Tanzania

Tel: +255745503295

Facsimile: N/A

Email: mdhq@tazarasite.com

Attention: The Manging Director

26.13.3. The relevant details of the Concessionaire at the Execution Date are:

TAZARA Revitalization Tanzania Limited

Address: House No.5,Plot Nos.1879&1880,Block 5,Zambia Road,
Oysterbay, Msasani Ward, Kinondoni District, Dar es Salaam Region,
14111,Tanzania

Tel: +255766166166

Facsimile: N/A

Email: zhoul@ceccc.com.cn

Attention: The Managing Director

26.13.4. In the absence of evidence of earlier receipt, any notice shall take effect from the time that it is deemed to be received:

- (a) in the case of a notice delivered by hand at the address of the addressee, upon delivery at that address;
- (b) in the case of internationally or nationally recognised courier delivery service, when an internationally or nationally recognised courier has delivered such communication or document to the relevant address and collected a signature confirming receipt;
- (c) in the case of email, when despatched (provided that no delivery failure message is received by the sender); and
- (d) in the case of a facsimile, on production of a transmission report from the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.

26.13.5. A notice received or deemed to be received on a day which is not a business day or after 16:00 on any business day, according to local time in the place of receipt, shall be deemed to be received on the next following business day.

26.14. Authorised Representatives

26.14.1. Notwithstanding Clause 26.13 (Notices), each Party appoints the following person as its authorised representative through whom it may act and communicate and coordinate with the other Party for all matters relating to the implementation of the Project:

- (a) The Grantor's authorized representative: the Managing Director of the Grantor
- (b) The Concessionaire's authorized representative: the Managing Director of the Concessionaire

26.14.2. Each Party may change its authorized representative by seven (7) days prior written notice.

26.15. Single Project

26.15.1. The Parties acknowledge and agree that the Project is a single

integrated project notwithstanding that two Project Concession Agreements have been entered into by the Grantor with the two Project Concessionaires respectively.

- 26.15.2. The Project Activities and the obligations of each Project Concessionaire may be undertaken jointly by the Project Concessionaires where appropriate including in respect of any notices, proposals, plans, schedules and decisions in relation to the Project.
- 26.15.3. The Concessionaire hereby notifies the Grantor that (a) it has authorised The Other Concessionaire to act on its behalf as its authorised representative and agent in relation to all matters of the Project, (b) The Other Concessionaire has authorised it to act on behalf of The Other Concessionaire in relation to all matters of the Project and it has accepted such authorisation. The Grantor acknowledges and agrees that either Project Concessionaire may act on behalf of the other Project Concessionaire as an authorized representative and/or agent in relation to all matters of the Project.
- 26.15.4. The Grantor acknowledges and agrees that any default, breach, delay, action or inaction of any Governmental Parties or any force majeure or relief event under or in connection with any Project Concession Agreement will affect the Project as a whole and both Project Concessionaires.
- 26.15.5. Notwithstanding any other provisions of any Project Concession Agreements, any extension of any time period in or early termination of any one Project Concession Agreement shall equally apply to the other Project Concession Agreement.
- 26.15.6. The terms of the Project Concession Agreements shall be construed in accordance with this Clause 26.15.

26.16. Language

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

26.17. Addendum to the Agreement

Any matter arising and agreed in writing by the Parties after negotiation during the Concession Period shall form part of this Agreement in the form of an addendum to this Agreement which shall have the same effect as this Agreement.

26.18. Counterparts

This Agreement shall be executed in four original copies, each of which, when executed and delivered, shall constitute an original of this Agreement.



IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

SIGNED and DELIVERED for and on behalf of TANZANIA-ZAMBIA RAILWAY AUTHORITY

Signature:



Name: Eng. Bruno T. Chingandu

Designation: Managing Director

Postal Address: P.O Box 2834, DAR ES SALAAM

Tel: +255745503295

Email: mdhq@tazarasite.com

Witnessed by:

Signature:



Name: Marco Mabala

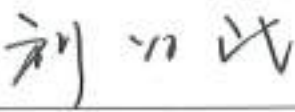
Designation: Corporation Secretary

Postal Address: P.O. Box 2834, DAR ES SALAAM

Tel: +255754277066

Email: marco.mabala@tazarasite.com

**SIGNED and DELIVERED for and on behalf of TAZARA REVITALIZATION
TANZANIA LIMITED**

Signature: 
Name: LIU, Weimin
Designation: Authorised Signatory
Postal Address: House No. 5, Plot Nos. 1879 & 1880, Block 5, Zambia Road,
Oysterbay, Msasani Ward, Kinondoni District, Dar es Salaam Region,
14111, Tanzania
Tel: +255766166166
Email: zhoulu@ccecc.com.cn

Witnessed by:

Signature: 
Name: LIU, Dong
Designation: Vice President of CCECC
Postal Address: No.4 Beifengwo, Haidian District, Beijing, China
Tel: +861052108888
Email: bangong@ccecc.com.cn