



**BRANCH LINE INTERFACE AGREEMENT BETWEEN:-**

**TRANSNET FREIGHT RAIL** an operating division of  
**TRANSNET SOC LTD**  
**(REGISTRATION NUMBER: 1990/000900/30)**

**AND**

**[NAME OF CONCESSIONAIRE] (PROPRIETARY) LIMITED,**  
**THE CONCESSIONAIRE**  
**(hereinafter referred to as “the Concessionaire”)**

**AND**

**[NAME OF PSO] PRIVATE SIDING OPERATOR**  
**(hereinafter referred to as “the Private Siding Operator”)**

**AND**

**[NAME OF SO] STATION OPERATOR**  
**(hereinafter referred to as “the Station Operator”)**

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## 1. Appendices

### 1.1. Appendix A:

Access Route Plan Part 1

Access Route Plan Part 2

### 1.2. Appendix B:

Train Operating Instructions which includes the following (By Reference Only):

- a) General Appendix (Part 1);
- b) Local Appendix
- c) Train Working Rules
- d) Circulars

### 1.3. Appendix C:

Technology Management, Configuration Management & Infrastructure Management  
Infrastructure Interface and Compatibility Requirement and Recommended Practises  
Specification **BBF 3222** Version 1 (By Reference Only);

### 1.4. Appendix D:

Rolling Stock Interface and Compatibility Requirement and Recommended Practises  
Specification **BBF3221** (By Reference Only)

### 1.5. Appendix E:

SANS 3000 Standard (By reference only);

## **1.6. Appendix F**

Horizontal Clearance Diagram

## **1. INTRODUCTION**

- 1.1. Transnet Freight Rail, an operating division of Transnet is the Network Operator and Train Operator, as contemplated in the RSR Act, of Transnet's Rail Network, which includes the Core Network and Branch Lines.
- 1.2. The Concession Agreement has been concluded between the Concessionaire and Transnet Freight Rail (hereinafter referred to as "TFR") an operating division of Transnet, in terms of which, for purposes of this Agreement, a Concession is granted to the Concessionaire:–
  - 1.2.1. entitling the Concessionaire to conduct a Rail Freight Service (as defined in the Concession Agreement);
  - 1.2.2. obliging the Concessionaire to undertake Infrastructure Services (as defined in the Concession Agreement);
  - 1.2.3. in its capacity as a Network Operator (as defined in this Agreement) of the Douglas Rail Line (as defined in the Concession Agreement); and
  - 1.2.4. with the proviso that all train operations of the Concessionaire will, subject to the Train Operation and Management Agreement ("Train O&M Agreement"), be executed by the Train O&M Provider for and on behalf of the Concessionaire (as defined in the Train O&M Agreement).
- 1.3. The Private Siding Operator (as defined in this Agreement) is the Operator of a Private Siding (as defined in this Agreement) which is connected to the Douglas Branch Line (as defined in the Concession Agreement) and has concluded a private siding agreement with TFR to regulate various: –
  - 1.3.1. rights of Access and use of the Private Siding by TFR for Wagon collection and delivery and/or shunting purposes; and
  - 1.3.2. interface matters arising from such Access and use as required by the RSR Act (as defined in this Agreement),these matters previously regulated in the Erstwhile Private Siding Agreement between the Private Siding Operator and TFR will now be regulated in this Agreement.
- 1.4. Consequent to the conclusion of the Concession Agreement, the Parties will have various operational and organisational interfaces with each other in respect of the Core Network, Branch Line, Private Siding and train services to be rendered.
- 1.5. In accordance with the RSR Act and regulations thereto, a Train Operator shall conclude agreements relating to the Access and usage with the relevant network operators prior to applying for a Safety Permit in terms of the RSR Act. This Agreement is concluded in compliance with these requirements.
- 1.6. This Agreement governs the operational aspects amongst the Parties on the Core Network, Branch Line and Private Siding.

## **2. DEFINITIONS**

- 2.1. In this Agreement, unless the context indicates otherwise:-

- a. the capitalised terms that follows hereunder shall have the meanings assigned to them and cognate expressions shall have corresponding meanings; and
- b. the terms used in this Agreement that have the same meaning as in the RSR Act is set out in inverted commas (“ ”); and
- c. the terms used in this Agreement that have the same meaning as in the Concession Agreement are typed in *italics*,

and as and when the meaning of the terms as used in the RSR Act or Concession Agreement are amended in either the Concession Agreement or the RSR Act, the meanings of those terms in this Agreement will change accordingly and the term used as amended in the RSR Act or Concession Agreement will apply from the date of the relevant amendment to the RSR Act or Concession Agreement as the case may be insofar as such amendment applies or is capable of applying to any transaction entered into under this Agreement: -

- 2.1.1. **"Access"** means depending on the context, either Core Network Track Access, Branch Line Exceptional Track Access or Private Siding Track Access;
- 2.1.2. **"Access Point"** means the point where the Branch Line connects with the Access Route;
- 2.1.3. **"Access Route"** means that portion of the Core Network which the Concessionaire, is authorised to traverse in order to Access a Marshalling Yard, or Exchange Yard, or consolidation point, or collection point (or similar natural hand-over point) on the Core Network to deliver and/or collect Wagons, being the Core Network line between Belmont Station and Beaconsfield;
- 2.1.4. **"Access Route Maintenance"** means the railway infrastructure services by TFR on the Access Route necessary to support and enable the operation of Rolling Stock including programmed (or planned) and unprogrammed (or unplanned) maintenance, upgrade and refurbishment works;
- 2.1.5. **"Access Route Plan"** means the Access Route Plan as compiled by TFR for the purposes of the Railway Undertakings envisaged under the Concession Agreement which is annexed hereto as Appendix A.
- 2.1.6. **"Access Services"** means Access, together with the Ancillary Services and Planning and Integration Services to, depending on the context to enable the Concessionaire, or TFR to Access either the Branch Line, Access Route or Private Siding;
- 2.1.7. **"Accident"** means “an unplanned event that results in harm to people or damage to property or the environment”;
- 2.1.8. **"Agreement"** means this Agreement, as amended from time to time, including any and all Appendices hereto;

- 2.1.9. **"Ancillary Services"** means all services required to enable Access, including the Ancillary Services and the Planning and Integration Services, and depending on the context, to enable the Concessionaire, through the Train O&M Provider, to exercise its rights in and to the Access Route for the Permitted Purpose, or to enable TFR to exercise its rights in and to the Branch Line Exceptional Track Access for one or more of the Restricted Purposes, or for the Train O&M Provider and/or TFR to Access a Private Siding(s), as the case may be;
- 2.1.10. **"Applicable Requirements"** means the mandatory requirements of any existing or future law, or of any licence, consent, permit, authorisation or agreement issued or entered into under any of the foregoing or of any local authority, statutory authority, court or other competent body or authority which has relevant jurisdiction, including, but not limited to any such requirements referred to in the Appendices to this Agreement, in each case to the extent that the same comprise legally enforceable obligations and are applicable to the Concession, the Railway Services and/or the Concession Assets;
- 2.1.11. **"BLOM"** means a division of TFR established to provide the Train O&M Services;
- 2.1.12. **"Branch Line"** means the Douglas Rail Line;
- 2.1.13. **"Branch Line Exceptional Track Access"** means the limited right of Access granted to TFR by the Concessionaire for TFR to traverse the Branch Line for any one or more of the Restricted Purposes;
- 2.1.14. **"Branch Line Network Operator"** means the Concessionaire;
- 2.1.15. **"Branch Line Stations"** means *collectively Douglas Station, St Clair Station, Broadwaters Station, Bakenskop Station, Rooipan Station, Salt Lake Station, Cooks Pride Station, Hayfield Station, Skietbaan Station, Glen Frere Station and Sheephouse Station, but excluding Belmont Station*;
- 2.1.16. **"Branch Line Train Operator"** means the Train O&M Provider;
- 2.1.17. **"Branch Line Termination Point"** means the point at which the Douglas Rail Line terminates (after commencing at Douglas Station), being the turnout set point number BLT761W at kilometre point 85,54, as depicted in Appendix A (Belmont Station – Termination Point of the Douglas Rail Line), it being recorded that the termination point does not form part of the Branch Line;
- 2.1.18. **"Business Day"** means *any day except a Saturday, Sunday or public holiday in the Republic of South Africa, as gazetted by the Government of the Republic of South Africa*;
- 2.1.19. **"Certified"** means certified by Transnet School of Rail or any party accredited by them or Personnel with a valid qualification as stipulated by the Relevant Authority;

- 2.1.20. **"Concession"** means the exclusive right to offer and render the Rail Freight Service in respect of the Branch Line and the obligation, to perform and undertake the Infrastructure Services, in all instances subject to the terms and conditions of the Concession Agreement and the Ancillary Agreements thereto;
- 2.1.21. **"Concession Agreement"** means the Concession Agreement entered into between Transnet and the Concessionaire for the undertaking of Railway Services on the Branch Line, and to which this Agreement is attached as Schedule 3 Part 3;
- 2.1.22. **"Concessionaire"** means [name of concessionaire] (Pty) Limited;
- 2.1.23. **"Core Network Track Access"** means the Concessionaire's right to Access and traverse that portion of the Core Network, which Access will be executed by the Train O&M Provider, at the behest of the Concessionaire, to and from the nearest Hand Over Point as more fully described in the Train O&M Agreement for the Permitted Purpose;
- 2.1.24. **"Core Network"** means that part of rail network (excluding the Branch Line and other branch lines, and including the Access Route) that is Transnet's primary network, designated by Transnet as such, from time to time, in its sole discretion;
- 2.1.25. **"Core Network Operator"** means TFR;
- 2.1.26. **"Dangerous Goods"** means Goods, including those Goods defined as a Hazardous Substance, which have the potential to cause harm to persons, property or the environment or the potential to cause pollution or degradation of the environment as contemplated in the National Environmental Management Act 107 of 1998 ("NEMA") including such goods as defined by the South African Bureau of Standard 0228 and the International Maritime Dangerous Goods ("IMDG") Code;
- 2.1.27. **"Douglas Rail Line"** means *the railway line and Rail Reserve classified as a branch line by Transnet running from and between Douglas Station and the Branch Line Termination Point, comprising approximately 85 route kilometres, as more fully described in Appendix A (Route Plan – Douglas to Belmont Rail Line). The Douglas Rail Line excludes the Belmont Station and any Transnet railway line (and attendant rail reserve) or portion thereof which is classified as Core Network by Transnet as at Signature Date of the Concession Agreement;*
- 2.1.28. **"ECC"** has the meaning as described in clause 8.3.1.1 of this Agreement;
- 2.1.29. **"Environmental Harm"** means the consequence of any activity on the environment, (including air, water, soil, micro-organisms, plant and animal life, aesthetic and cultural properties, land, surface land and sub-surface

land) in the form of either contamination, pollution or impairment of the environment, but shall not include harm to any person or persons;

2.1.30. **“Environmental Law”** means any Applicable Requirement which relates to or is for the purpose of protecting the environment (including air, water, soil, micro-organisms, plant and animal life, aesthetic and cultural properties, land, surface land and sub-surface land) or a part of the environment, or otherwise regulates Environmental Harm;

2.1.31. **“Erstwhile Private Siding Agreement”** means the Private Siding Agreement between the Private Siding Operator and TFR as more fully described in clause 7.1 of this Agreement;

2.1.32. **“Exchange Yard”** means the yard lines in Beaconsfield;

2.1.33. **“Goods”** means the commodities that have to be transported subject to the terms set out in this Agreement;

2.1.34. **“Hand-over Point”** means:-

2.1.34.1. in relation to the Concessionaire an agreed place (as determined by the routes) at a siding, station or marshalling yard, exchange yard or an area where the customer will place empty or loaded Wagons to be Hauled and to which place the customer will return empty/or loaded Wagons to the Concessionaire for collection by the Train O&M Provider;

2.1.34.2. in relation to the Core Network Operator, an agreed place (as determined by the routes) at a siding, station or marshalling yard, exchange yard or an area, including, an area on the Access Route, where the Concessionaire will place empty or loaded Wagons to be Hauled and to which place the Core Network Operator will return empty/or loaded Wagons to the Concessionaire for collection, it being recorded that such hand-over point as at Signature Date is the Exchange Yard;

2.1.35. **“Haul”** means the Haulage of the Wagons on rail from and between the point of placing and the Hand-over Point (and vice versa) in accordance with the time tables set out in the relevant service design appendix/schedule as attached to the Train O&M Agreement, and **“Hauling”/“Haulage”** has a corresponding meaning;

2.1.36. **“Hazardous Substance”** means any Goods that have been designated as a Group I, II, III or IV hazardous substance or grouped hazardous substance by the Relevant Minister in terms of the Hazardous Substances Act 15 of 1973



as well as a substance listed in the South African Bureau of Standard document no. 0228, 0223, 0226, SANS 10405;

- 2.1.37. **"Incident"** "means an unplanned event which under different circumstances could have resulted in an Accident";
- 2.1.38. **"Infrastructure Services"** means *the railway infrastructure services on the Branch Line necessary to support and enable the operation of Rolling Stock, including programmed (or planned) and unprogrammed (or unplanned) maintenance, upgrading or refurbishing works to the Permanent Way or Branch Line Stations;*
- 2.1.39. **"Integrated Train Plan"** means the train plan as determined from time to time by TFR for the integrated operation of the Core Network;
- 2.1.40. **"Interface"** means the area, point or location, either physical or organisational, where the Parties' respective activities meet and have the potential to affect one another;
- 2.1.41. **"Liaison Committee"** means the Committee, to be established by the Parties in accordance with the provisions of this Agreement;
- 2.1.42. **"Marshalling"** means the process of assembling or building Trains by connecting a Wagon or Wagons to a locomotive or locomotives into Train loads as planned for transit, or disassembling full Train loads;
- 2.1.43. **"Marshalling Yard"** means a depot or rail yard or such other place used for Marshalling;
- 2.1.44. **"Network"** means "a system of railway infrastructure elements comprising track, civil infrastructure, train control and signalling systems and where applicable electric infrastructure which constitutes running lines, and any part of the following on which those elements are situated:-
- 2.1.44.1. Railway yards;
  - 2.1.44.2. Marshalling Yards;
  - 2.1.44.3. Sidings and Private Sidings;
  - 2.1.44.4. Freight terminals;
  - 2.1.44.5. Depots; or
  - 2.1.44.6. Stations; and
- any other matter that may be prescribed";
- 2.1.45. **"Network Operator"** means "the person or persons who have ultimate accountability for one or more of the following:-
- 2.1.45.1. The safety of a Network or part thereof including the proper design, construction, Maintenance and integrity of the Network;
  - 2.1.45.2. Ensuring compliance of Rolling Stock with the applicable standards of the Network; or
  - 2.1.45.3. For the authorising and directing of the safe movement of Rolling Stock on the Network";

- 2.1.46. "**Occurrence**" means "any Accident or Incident, including a railway Occurrence, which is must be managed by the Operator in accordance with its Safety Management System";
- 2.1.47. "**Operations And Safety Requirements**" means the Operational And Safety Requirements set out in the safe working procedures, safety instructions, general operating instructions, Train Working Rules and General Appendix (Part 1) by TFR from time to time and in accordance with SANS 3000-2-5 (Technical Requirements for Engineering and Operational Standards: Operational Principles for Safe Movement on Rail), including, but not limited to the Standards stipulated in the Appendices of this Agreement;
- 2.1.48. "**Operator**" means a Network Operator, Train Operator, Station Operator or a combination of two or three of them" and for purpose of this Agreement Train Operator includes the Train O&M Provider the Branch Line Train Operator;
- 2.1.49. "**Parties**" means TFR, the Train O&M Provider, Private Siding Operator and the Concessionaire collectively, and "**Party**" means any of the Parties;
- 2.1.50. "**Permanent Way**" means *the railway track of the Branch Line, comprising the earthwork formation, ballast, sleepers, rails, fastenings and other property necessarily forming part of the permanent way, together with the land on which such ballast, sleepers, rails and fastenings are laid and includes a reference to: –*
- 2.1.50.1. *any level crossing, bridges, tunnels, culverts, retaining walls or other structures used for the support of, or otherwise in connection with, the permanent way;*
  - 2.1.50.2. *any walls, fences or other structures bounding the railway or bounding any adjacent property;*
  - 2.1.50.3. *any road(s) servicing the railway track; and*
  - 2.1.50.4. *any Marshalling Yard used exclusively for the Branch Line is located;*
- 2.1.51. "**Permitted Purpose**" means the purposes for which Core Network Track Access is granted by TFR to the Concessionaire to deliver and collect Wagons at the Hand-Over Point;
- 2.1.52. "**Personnel**" means, depending on the context, the train drivers, train assistants, train control officers, safety Personnel, and other persons employed or contracted to operate trains in the provision of all Rail Freight Services of either the Concessionaire, the Train O&M Provider or TFR;
- 2.1.53. "**Planning and Integration Services**" means the planning and integration of trains on rail to destinations and services related thereto for movement of Trains on the Access Route or Branch Line or in the Private Siding as the case may be;

- 2.1.54. **"Private Siding"** means a siding, which is a railway line in private use and/or ownership which is connected to Transnet's railway line by means of a Turnout and includes, without limitation any shunting yard, marshalling yard, or Exchange Yard or any section of a railway line which, either directly or indirectly, provides Access to Transnet's railway lines, the Branch Line or any municipal and/or provincial lines and any premises owned/leased/or in respect of which a person has a right of use;
- 2.1.55. **"Private Siding Maintenance"** means maintenance services to be executed by the Private Siding Operator in respect of the Private Siding infrastructure required in terms of the relevant standards necessary to support and enable the safe operation of Rolling Stock in the Private Siding including programmed (or planned) and unprogrammed (or unplanned) maintenance, upgrading or refurbishing works to any part of the Private Siding infrastructure;
- 2.1.56. **"Quarter"** means a three calendar month period commencing on 1 January, 1 April, 1 July and 1 October, provided that the initial Quarter shall commence on the date of signature hereof and shall end on the earliest of 31 March, 30 June, 30 September and 31 December thereafter;
- 2.1.57. **"Rail Freight Service"** means the railway freight transport services including Base Freight Service Requirements (as defined in the Concession Agreement between the Concessionaire and Transnet) to be offered to third parties by the Concessionaire [and conducted by the Concessionaire] on the basis that: –
- 2.1.57.1. haulage in respect of the Branch Line and the Access Route is executed by the Train O&M Provider on behalf of and at the instance of the Concessionaire in terms of the agreement between the Train O&M Provider and the Concessionaire; and
  - 2.1.57.2. haulage in respect of the Core Network, to a point of destination, or from a point of origin on the Core Network is executed by Transnet (in its TFR division) on such terms as may be agreed from time to time between the Concessionaire and Transnet (in its TFR division);
- 2.1.58. **"Rail Infrastructure"** means *the assets and facilities used to provide Infrastructure Services and include, but are not limited to, the Permanent Way and the Branch Line Stations;*
- 2.1.59. **"Rail Operation(s)"** means the process of planning or any related administrative function for scheduling and moving of Trains for whatever purpose and includes Train Services, Access Services, Access Route Maintenance, Infrastructure Services, Rolling Stock Maintenance, Private Siding Maintenance and Planning and Integration Services;

- 2.1.60. **"Rail Reserve"** means that portion of land set aside as the rail reserve in respect of the Permanent Way and for each of the Branch Line stations, as set out in Appendix A (to the Concession Agreement) (Route Plan (Branch Line Route and Branch Line Stations));
- 2.1.61. **"Railway Services"** means the Infrastructure Services and the Rail Freight Service;
- 2.1.62. **"Rail Worthy"** means that the rail infrastructure of the Network, necessary to support and enable the operation of Rolling Stock is technically sound to ensure safe and efficient train movements;
- 2.1.63. **"Regulations"** means regulations issued from time to time in terms of the RSR Act;
- 2.1.64. **"Relevant Authority"** means the Safety Regulator or any governmental department, commission, board, body, bureau, agency, authority, instrumentality, administration body at national, provincial or local level, having jurisdiction over the Parties, the Railway Network or any portion thereof or any matter addressed in this Agreement (as applicable);
- 2.1.65. **"Restricted Purposes"** means the purpose for which the Concessionaire has granted TFR Access to the Branch Line, being to:-
- a) enable TFR to respond to a railway Occurrence in emergency and unforeseen circumstances that have or are likely to cause service disruptions on the Core Network and/or any other part of the Branch Line Network not operated by the Concessionaire;
  - b) enable TFR use the Branch Line as an alternative route in the event of derailments, occupations and line closures of the Core Network;
  - c) enable TFR to efficiently move its Rolling Stock past blockages on the Core Network;
  - d) enable TFR to deliver maintenance material as per and in the event of an agreement in respect of such maintenance material to be delivered or to enable TFR to Access the Branch Line in respect of any other specific agreement and/or arrangement; or
  - e) as further agreed to between the Parties on such track access and interface arrangements as may be concluded between the Parties, taking into account the respective operating schedules and safety requirements of the Concessionaire and TFR;
- 2.1.66. **"RIC"** has the meaning as described in clause 8.3.1 of this Agreement
- 2.1.67. **"Rolling Stock"** means "a vehicle that is able to operate on a railway, irrespective of its capability of independent motion";
- 2.1.68. **"Rolling Stock Maintenance"** means all functions required from the relevant Train Operator to keep its Rolling Stock in a Train Worthy condition, for Train Services or train movements as the case may be;

- 2.1.69. "**RSR Act**" means the National Railway Safety Regulator Act, No. 16 of 2002, as amended, including any and all regulations promulgated pursuant thereto from time to time, and/or any notices published or issued pursuant thereto from time to time;
- 2.1.70. "**RSR Standards**" means National Railway Safety Regulator Standards;
- 2.1.71. "**Safety Management System**" means "a formal framework for integrating safety into day-to-day railway operations and includes safety goals and performance targets, risk assessment, responsibilities and authorities, rules and procedures, monitoring and evaluation processes and any other matter prescribed";
- 2.1.72. "**Safety Management System Report**" means "a written submission, made by an applicant, in support of a safety permit application that describes the applicant's Safety Management System and may include any other matters prescribed";
- 2.1.73. "**Safety Permit**" means a permit required in terms of section 22 of the RSR Act as issued by the chief executive officer of the Safety Regulator in terms of sections 23 and 24 of the RSR Act;
- 2.1.74. "**Safety Regulator**" or "**RSR**" means the National Railway Safety Regulator established in terms of the RSR Act;
- 2.1.75. "**SANS 3000**" means the series of Standards of the South African National Standard for Railway Safety Management as issued by Standards South Africa, a division of the South African Bureau of Standards and as amended from time to time by the Safety Regulator;
- 2.1.76. "**Scheduled Slots**" means Train Slots set out in the Integrated Train Plan during which the Concessionaire shall be entitled to Access the Access Route;
- 2.1.77. "**Siding Track Access**" means the right granted by a private siding operator to the Concessionaire to Access its siding to undertake shunting activities therein;
- 2.1.78. "**Signature Date**" means the date on which the Agreement is signed by the Parties, and if signed on different dates, the last of such dates;
- 2.1.79. "**Shunting**" means the movement of a locomotive, motor powered vehicle or vehicles, or of a locomotive or motor powered vehicle with vehicles attached, to, from or on a running line or siding within certain prescribed limits;
- 2.1.80. "**South Africa**" means the Republic of South Africa;
- 2.1.81. "**Station**" means a place on a running line where Trains are scheduled to stop, with an official in charge, whether or not a Train control officer is in duty there, or a facility for passengers to enter or leave a Train, including a railway passenger terminal and a passenger halt and may include facilities for passenger modal transfer and commercial activities forming part of the

station and also includes any other place that may be prescribed, but excludes that part of the network running through a station;

- 2.1.82. **"Station Operator"** means a person in control of a Station, and in management of a Station;
- 2.1.83. **"Telecommunications Services"** means the Train telecommunications and train control services required by the Concessionaire to enable it to operate Trains safely over the Access Route;
- 2.1.84. **"TFR"** means Transnet Freight Rail (TFR) an operating division of Transnet;
- 2.1.85. **"Train"** means a locomotive(s), or motor-powered vehicle, with marker attached, standing still or passing over a running line or siding, or any vehicle or vehicles, with marker attached, coupled to a locomotive or motor vehicle, at a stand, or drawn or propelled over a running line or siding;
- 2.1.86. **"Train Control Systems"**, subject to the Concession Agreement, means all train control and authorisation systems in relation to the Branch Line, as at Signature Date including, but not limited to, communication and signalling systems;
- 2.1.87. **"Train Operator"** means, depending the context either the Branch Line Train Operator, the Private Siding Operator or TFR;
- 2.1.88. **"Train O&M Agreement"** means *the train operations and management agreement concluded, or to be concluded between the Concessionaire and the Train O&M Provider for the provision of the Train O&M Services to the Concessionaire by the Train O&M Provider, which is an Ancillary Agreement annexed as Schedule 3 Part 3 to the Concession Agreement (Ancillary Agreements – Train Operations and Management Agreement)*;
- 2.1.89. **"Train O&M Provider"** means *the operating division of TFR, known as the Branch Line Operations and Management unit (BLOM)*;
- 2.1.90. **"Train O&M Services"** means *the train operations and management services to be provided by the Train O&M Provider to the Concessionaire under the Train O&M Agreement, for the provision of services including: –*
- 2.1.90.1. *train operations and planning management services; and*
- 2.1.90.2. *traction, haulage and train control services;*  
*on and in respect of the Branch Line and Access Route;*
- 2.1.91. **"Train Worthy"** means Rolling Stock that is technically sound, complies with the Transnet Operating Instructions and generally meets the applicable standards of the Transnet Network including prescribed conditions/restrictions and vehicle loads that conform to loading specifications and Certified as such by appropriately qualified Personnel accredited by the Regulator;
- 2.1.92. **"Transnet"** means Transnet SOC Ltd and any operating division thereof, as may be applicable from time to time;

- 2.1.93. "**Transnet Freight Rail NCC**" means Transnet Freight Rail's National Command Centre situated in Johannesburg, which is responsible for the design, planning and resourcing of the Integrated Train Plan as well as the monitoring and reporting of Railway Occurrences on a daily basis;
- 2.1.94. "**Turnout**" means the place or places where the Private Siding and any siding or extension branches off from the Branch Line;
- 2.1.95. "**Wagon**" means a rail vehicle (whether empty or loaded) designed to transport Goods, whether owned or leased by, or otherwise made available for use by, an Operator;
- 2.2. Any reference in this Agreement to: –
- 2.2.1. "**Business hours**" shall be construed as being the hours between 07h30 and 16h00 on any Business Day. Any reference to time shall be based upon South African Standard Time;
- 2.2.2. "**days**" shall be construed as calendar days;
- 2.2.3. "**day(s)**", "**month(s)**" or "**year(s)**" shall be construed as Gregorian calendar "day(s)", "month(s)" or "year(s)";
- 2.2.4. "**Month**" means the period from 00h01 on the first day of a calendar month to 24h00 on the last day of such calendar month;
- 2.2.5. "**laws**" means all constitutions; statutes; regulations; by-laws; codes; ordinances; decrees; rules; judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, rulings or awards; policies; voluntary restraints; guidelines; directives; compliance notices; abatement notices; agreements with, requirements of or instructions by any Governmental Body; and the common law, and "**law**" shall have a similar meaning; and
- 2.2.6. "**person**" means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality.
- 2.3. The words "**include**" and "**including**" mean "include without limitation" and "including without limitation". The use of the words "**include**" and "**including**" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 2.4. Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in this or elsewhere in this Agreement, shall be given effect to as if it were a substantive provision in the body of the Agreement.
- 2.5. Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.
- 2.6. Unless otherwise provided, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.

- 2.7. A reference to any statutory enactment shall be construed as a reference to that enactment as at the Signature Date and as amended or substituted from time to time.
- 2.8. Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a Business Day, the next succeeding Business Day.
- 2.9. If the due date for performance of any obligation in terms of this Agreement is a day which is not a Business Day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately preceding Business Day.
- 2.10. Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 2.11. The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply.
- 2.12. No provision of this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a Party to this Agreement.
- 2.13. The use of any expression in this Agreement covering a process available under South African law, such as winding-up, shall, if either of the Parties to this Agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.
- 2.14. Any reference in this Agreement to "**this Agreement**" or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document, as amended, varied novated or supplemented from time to time.
- 2.15. In this Agreement the words "**clause**" or "**clauses**" and "**appendix**" or "**appendices**" refer to clauses of and annexures to this Agreement.

### **3. COMMENCEMENT AND DURATION**

- 3.1. This Agreement is at all times subject to the duration of the Concession Agreement and in the event of the termination of the Concession Agreement this Agreement will automatically terminate and be of no force and effect.
- 3.2. This Agreement shall take effect on the Signature Date.

### **4. OBJECTIVE**

- 4.1. The objective of this Agreement is to manage and co-ordinate the planning and execution of safe Rail Operations on the Core Network and Branch Line Network which includes the Private Siding(s) adjoining the Branch Line.



4.2. Without derogating from the obligations of any Parties under the Concession Agreement or any of the ancillary agreements thereto, the Train Operator and the Network Operators shall conduct Rail Operations on the respective Networks in accordance with the provisions of this Agreement as well as all Applicable requirements, including, but not limited to the requirements as contained in Appendices B, C, D and E of this Agreement and any applicable Operation And Safety Requirements.

## **5. RELATIONSHIP WITH TRACK ACCESS AGREEMENT**

5.1. This Agreement shall be read together with the Track Access Agreement contemplated in the Concession Agreement and, where this Agreement and the Track Access Agreement contain different provisions, both Agreements shall be carried out and implemented and that only in the event of a conflict between the provisions of this Agreement and the Track Access Agreement in relation to safety issues shall the provisions of this Agreement prevail and be duly implemented.

## **6. PARTIES COMMON RESPONSIBILITIES**

### **6.1. Underlying Principles**

6.1.1. The Parties acknowledge that due to the close interaction required between them in relation to operations, a good working relationship is necessary in order to achieve the successful implementation of this Agreement. Accordingly the Parties commit to:-

6.1.1.1. ensure that there is regular communication between the Parties with regards to the implementation of this Agreement;

6.1.1.2. act reasonably and in good faith towards each other in the exercise of their respective rights and in the performance of their respective obligations in terms of this Agreement;

6.1.1.3. ensure that mutual co-operation exists amongst their respective employees involved in the implementation of this Agreement.

6.1.2. Each of the Parties, in their capacities as Network Operator, Station Operator, Train Operator and Private Siding Operator, shall be responsible for the operation of the Network and Rolling Stock under their management and control interfacing with one another under this Agreement in accordance with the requirements of SANS 3000 and any Applicable Requirements.

6.1.3. The Parties agree that the standards and procedures set out in the Operations And Safety Requirements shall at all times be strictly observed and applied.

6.1.4. In the event of any amendments to the requirements of SANS 3000 the

Parties shall consult with each other in order to align any policies, structures, and procedures, as soon as possible after being notified thereof and, if necessary, to conclude an addendum to this Agreement;

- 6.1.5. All Parties reserve the right of access for whatever purpose/reason to safety critical information of the other of them provided that such disclosures and information are adequately protected by way of written confidentiality undertakings, to the reasonable satisfaction of the Party making such disclosures.

## 6.2. Operations of Train & Rolling Stock, Standard and Procedures

- 6.2.1. The Train Operator shall operate its Trains strictly in accordance with the Operations And Safety Requirements pertaining to that particular Network, including, without limitation, in respect of: -
- a) Availability and suitability of routes;
  - b) Train performance parameters;
  - c) Indication of track speed limits;
  - d) Axle mass limits;
  - e) Commodity loading profiles and patterns, and stability;
  - f) Occurrence management, including contingency plans;
  - g) Personnel competence;
  - h) Effective communication;
  - i) Handling of Dangerous Goods;
  - j) Operations limitations and restrictions;
  - k) Compatibility;
  - l) Train compilation;
  - m) Personal Protective Equipment (PPE);
  - n) Abnormal loads; and
  - o) Special vehicles for dedicated freight.
- 6.2.2. The Train Operator accepts full responsibility for the safe operation of its Rolling Stock and any equipment used in relation thereto and the conduct of its Personnel in the provision of any Rail Operations.
- 6.2.3. The Train Operator warrants and undertakes to the other that, in relation to all aspects of their Interface and utilizing or traversing the Network and stations of the other Party that all Rolling Stock (including new Rolling Stock procured) operated by it and all components thereof shall be Train Worthy and meet the requirements of the specific Network.
- 6.2.4. The Train Operator shall obtain civil engineering certification from the relevant Network Operator's Infrastructure staff that the Trains or Rolling Stock may safely traverse the bridges and lines on the Branch Line as well as the Access Point and Access Route. Such certification is needed before

Access will be allowed by the relevant Network Operator.

- 6.2.5. The Train Operator shall within 72 (seventy two) hours of completion of any trip, submit a report to the Network Operator in relation to any observations and notations relating to that Network which may have a possible impact on safe conduct of any operations. Each Network Operator shall ensure that the Train Operator obtains a format of the trip report to be submitted.
- 6.2.6. All Occurrences on a Network shall be reported by the Train Operator immediately to the Relevant Network Operator and *vice versa*. The Network Operator and Train Operator shall report Occurrences to the RSR as required.
- 6.2.7. Any Operator who, as a consequence of its proximity to or involvement with an Occurrence and who obtains first knowledge of an Occurrence shall inform the other relevant Operators as soon as possible thereafter.
- 6.2.8. The Train Operator shall ensure that train drivers, train assistants or other staff or contractors utilised in the provision of Train Services have the necessary competence, road knowledge and/or capability to operate the Rolling Stock or undertake such other key responsibilities relating to the provision of Train Services and have not been found guilty of, tested positive, nor been suspected of substance abuse. Each Train Operator shall have agreements with its train crew Personnel which will allow a Network Operator to test from time to time for substance abuse, without the need to give advanced notice of such testing.
- 6.2.9. Access to the Network may be barred at the sole discretion of the Network Operator if any train crew Personnel have been found or are suspected of substance abuse.
- 6.2.10. The Train Operator shall have in operation for the duration of this Agreement a Safety Management System as required in terms of the RSR Act and Regulations.
- 6.2.11. The Train Operator must ensure that all Trains are equipped with effective means of communication to permit the Train Operator to execute its Train movements.

#### 6.3. Amendment to Operation And Safety Requirements of a Network

- 6.3.1. In the event of amendment to the Operations And Safety Requirements of a Network, such a Network Operator shall effect such an amendment in consultation with all other Parties to this Agreement in which consultation the Party shall indicate the necessity for the proposed amendment, the proposed time frame for the implementation of the proposed amendment and foreseen safety impact of such proposed amendment.

#### 6.4. Inspections

- 6.4.1. Any Network Operator shall be entitled, to inspect a Train Operator's Trains

in order to determine whether the Trains are Train Worthy prior to the other Party accessing the Network under the Network Operator's management and control.

- 6.4.2. Any Rolling Stock from a Train Operator traversing any part of a Network shall be subject to ad hoc inspections from the Network Operator to establish whether the Rolling Stock is meeting the Operations And Safety Requirements.
- 6.4.3. Should any of the Rolling Stock not be in a Train Worthy condition or in the event of the Rolling Stock not meeting the Standards of the Network the applicable Train Operator shall be informed, who shall immediately attend to the rectification of the defects.
- 6.4.4. In the event of a breakdown on a relevant Network of Rolling Stock of the relevant Train Operator, the Train Operator shall notify the Network Operator immediately, who shall be obliged to remedy the obstruction or delay that such a breakdown may or have caused. Should the Train Operator be unable to do so, the Network Operator may take any and all actions and precautions necessary to remedy the obstruction to comply with its obligations set out in the RSR Act.

#### 6.5. Personnel

- 6.5.1. All Parties shall ensure that its train Personnel shall adhere to and comply with all relevant Operations And Safety Requirements.
- 6.5.2. Each Party shall ensure that only competent and certified Personnel shall be utilized to operate the Trains under its control.
- 6.5.3. The Parties shall be responsible for road knowledge and train handling training of its own Personnel, in respect of Private Sidings, Stations, Access and Access Routes and all Networks. The Parties acknowledge and accept that road knowledge and train handling of Personnel forms an integral part of the certification of employees.
- 6.5.4. Each Network Operator shall provide to the Train Operator all the relevant operating notices, circulars and instructions issued by such a Network Operator in respect of all relevant sections of the Network.
- 6.5.5. Each Party shall assume responsibility for the supervision of its own Personnel and shall handle disciplinary steps internally. Should the Personnel of any Train Operator transgress on any part of a Network the other Party shall bring the matter to the attention of the Network Operator so that the necessary disciplinary steps can be taken against such Personnel. Where necessary, the Train Operator shall make available its employees to testify at the disciplinary hearing of such an employee.
- 6.5.6. All Parties shall ensure that their respective employees are equipped with the appropriate protective clothing and that such employees wear the

required protective clothing at all relevant times on any Network, Access Route, Private Sidings and station in compliance with applicable legislation.

#### 6.6. Hazardous Substances

- 6.6.1. The Parties shall diligently comply with its duties, functions and obligations under the Operations And Safety Requirements and all applicable laws in respect of the transport of Hazardous Substances.
- 6.6.2. The Parties undertakes to notify one another at least 3 (three) days in advance, where the first-mentioned Party is aware that any of its Rolling Stock are transporting Hazardous Substances.
- 6.6.3. The Parties shall provide training to their respective Personnel involved in the conveyance of Hazardous Substances.
- 6.6.4. Should any Party transport Hazardous Substances in its Rolling Stock, it shall adopt and implement the following measures: -
  - a) The relevant precautionary measures as required in SANS 10228;
  - b) Joint emergency planning and procedure;
  - c) Labels with HAZCHEM on Wagons and tankers;
  - d) Emergency numbers to call;
  - e) All legal requirements, protocols and safety standards shall be observed by the relevant role-players.

#### 6.7. Amendment to the Integrated Train Plan

- 6.7.1. When changes to Scheduled Slots as stipulated in the Integrated Train Plan are required, direct negotiation shall take place between the relevant Operators and the Transnet Freight Rail NCC.

#### 6.8. Speed Control

- 6.8.1. The Network Operator shall implement and monitor speed checks on its Network, as it deems appropriate with the aid of speed checking apparatus. The type of apparatus used shall be calibrated in accordance with the specifications of the manufacturer of the speed apparatus by competent laboratories.
- 6.8.2. The Train Operator shall adhere to and comply with speed limits imposed on the Network.

#### 6.9. Length of Trains

- 6.9.1. The Train Operator shall adhere at all times with the Applicable Requirements in respect of length of Trains as required in the Operations And Safety Requirements.

#### 6.10. Despatch and Receiving of Trains by Parties (Hand over procedures of Trains)

- 6.10.1. The Train Control Officer who receives or despatches Trains from one Network to another Network, shall ensure that the times at which Trains are received and dispatched as well as other prescribed Train information are

correctly recorded and communicated.

6.11. Technology and Equipment & Procurement of New Rolling Stock and Rail Infrastructure

6.11.1. The Parties shall consult one another before making any change in technology or equipment regarding any Rolling Stock or Rail Infrastructure, which shall affect or is likely to affect another Operator.

6.11.2. With respect to new Rolling Stock procured by the Train Operator after the Signature Date the Train Operator shall furnish the relevant Network Operator with a valid weighbridge certificate in relation to such Rolling Stock prior to the Train Operator being granted Access to the relevant Network.

6.12. Use of Communication Systems for Operational Purposes

6.12.1. All Parties shall make use of applicable compatible technology and communication systems as means of communication between the train driver and train control officers on the Network that they interface on. A voice logging facility shall be included in the communication system,

6.12.2. In respect of radio frequencies owned by or licensed to TFR, the other Operators shall ensure that all radio and telecommunication equipment is compatible therewith. TFR shall provide the radio and telecommunication equipment specifications to the other Operators and all spectrum of frequency programming will be done by TFR.

6.13. General Maintenance and Safety Requirements and Standards

6.13.1. Each Operator undertakes to abide by and comply with all reasonable conditions and requirements of the Operations And Safety Requirements pertaining to that Operator.

6.13.2. Each Network Operator undertakes for the duration of this Agreement to: -

6.13.2.1. maintain the Network Infrastructure in a good operating and safe working condition in accordance with the applicable Operations And Safety Requirements;

6.13.2.2. ensure that no pollution or waste originating from the cleaning of rail Wagons, or from the loading or off-loading that takes place on the Network is in violation of any Applicable Requirements, including without limitation, all Environmental Laws;

6.13.2.3. ensure that waste originating from the cleaning of rail Wagons from the loading or off-loading, including soil, weeds and plant overgrowth are removed regularly to ensure safe Rail Operations;

6.14. Security of Trains/Rolling Stock

6.14.1. The relevant Train Operator shall take responsibility for the safety and security of Trains and Rolling Stock whilst on either the Core Network or Branch Line Network.

## **7. PRIVATE SIDING OPERATOR**

### **7.1. Introduction**

It is recorded that: -

- 7.1.1. the Private Siding Operator is the Operator of a Private Siding, which is connected to the Branch Line at the Turnout;
- 7.1.2. the Private Siding Operator is in possession of a valid Safety Permit;
- 7.1.3. the Private Siding Operator had concluded a private siding agreement, prior to this Agreement, with TFR to regulate various rights of Access and use of the Private Siding by TFR for Wagon collection and delivery and/or shunting purposes;
- 7.1.4. Interface matters arising from such Access and use between TFR, as network and train operator, and the Private Siding Operator were governed in terms of the Erstwhile Private Siding Agreement as required by the RSR Act.
- 7.1.5. in terms of the Concession Agreement, the Concessionaire, together with TFR will be a Network Operator on the Douglas Rail Line;
- 7.1.6. the Concessionaire will provide Train O&M Services on the Douglas Rail Line through the Train O&M Provider;
- 7.1.7. as a consequence of the Concession Agreement the Private Siding Operator will Interface with the following Operators who have Access to the Private Siding:-
  - 7.1.7.1. the Concessionaire;;
  - 7.1.7.2. TFR; and
  - 7.1.7.3. the Train O&M Provider.
- 7.1.8. this clause 7 governs the safe working procedures and Interfaces which the Private Siding Operator will have with the other Operators on the Douglas Rail Line.

### **7.2. Private Siding Maintenance**

- 7.2.1. The Private Siding Operator is at all times responsible for the Private Siding Maintenance so as to:-
  - 7.2.1.1. ensure that the Private Siding complies at all relevant times with any Applicable Requirements;
  - 7.2.1.2. ensure the safe passage of Rolling Stock and persons who are working on or in the vicinity of the Private Siding and as such the Private Siding Operator shall ensure that the area on both sides of the Private Siding within the minimum distance stipulated in the Horizontal Clearance Diagram, Appendix F, is free at all times of any buildings, goods or material of any nature whatsoever;
  - 7.2.1.3. ensure that no pollution or waste originating from the cleaning of rail Wagons, or from the loading or off-loading that takes place in the

Private Siding or on the area adjacent thereto is in violation of any Applicable Requirements, including without limitation, all Environmental Laws;

- 7.2.1.4. ensure that waste originating from the cleaning of Wagons from the loading or off-loading thereof, including soil, weeds and plant overgrowth are removed regularly to ensure safe Train movements;
- 7.2.1.5. ensure that, if the loading site adjacent to the Private Siding is also leased by the Private Siding Operator, the Private Siding will form part of the environmental management plan for the loading site (if so required under any Applicable Requirements) and be subject to the same requirements, audits and penalties applicable to the loading site;
- 7.2.1.6. ensure that no Goods or waste build-up is allowed between the railway lines (tracks) of the Private Siding;
- 7.2.1.7. ensure that if the Private Siding Operator sub-contracts the maintenance or any other obligation in respect of the Private Siding as contemplated in this Agreement, such sub-contractor is bound to and adheres to the terms and conditions of this Agreement.

### 7.3. Private Siding Safety Permit

- 7.3.1. The Private Siding Operator is at all times responsible to:-
  - 7.3.1.1. ensure that it retains the relevant Safety Permit;
  - 7.3.1.2. notify the other Parties in writing of any change of ownership, right of use or lease of the Private Siding or loading site adjacent to the Private Siding;
  - 7.3.1.3. notify the other Parties promptly, but not later than 3 (three) Business Days from the date of receipt of notice of the revocation, suspension or amendment, if the Regulator revokes, suspends, or amends the Safety Permit in any way in terms of section 26 of the RSR Act;
  - 7.3.1.4. notify the other promptly, but not later than 3 (three) Business Days, after the Private Siding Operator has surrendered its Safety Permit to the Regulator in terms of section 26 of the RSR Act.

### 7.4. General Compliance

- 7.4.1. Without limiting the general applicability of clause 6.1.2 of this Agreement, the Private Siding Operator is at all times responsible to:-
  - 7.4.1.1. ensure that it adheres at all relevant times to and complies with all Applicable Requirements, including without limitation:-
    - a) Applicable Requirements in respect of level crossings, namely where the Private Siding crosses a public street or road; and



b) the provisions of the Occupational Health and Safety Act No. 85 of 1993 or the Mine Health and Safety Act 29 of 1996 whichever is applicable.

7.4.2. The Private Siding, is for purposes of the Occupational Health and Safety Act, No. 85 of 1993, a workplace and shall be deemed at all times to be under the complete control of the Private Siding Operator;

7.4.3. The Private Siding Operator shall do whatever is required in terms of any Applicable Requirements to ensure that no members of the public or any unauthorised persons gain access to the siding, which shall include without limitation the installation of all reasonably required security structures and measures for such purpose;

7.4.4. The Private Siding Operator shall not later than 30 (thirty) Days after the Signature Date prepare and implement the necessary systems, procedures and processes, which shall make the necessary provisions for safe Railway Operations in accordance with the SANS 3000 Standard which standard shall be complied with for the duration of this Agreement.

7.5. Safe operating procedures in the Private Siding

7.5.1. The Private Siding Operator undertakes to abide by and comply with all safe operating procedures as set out in the Operations And Safety Requirements and, without limiting the generality of the aforementioned, specifically comply with the standard as set out in the *Engineering Instruction: Safety Precautions and Sidings and Stations in terms of the Electrical Safety Instructions CEE-GI.026*, if applicable, also contained in Appendix C of this Agreement;

7.5.2. The Private Siding Operator shall appoint a representative, which representative's name and contact details shall be provided to the other Operators, which shall see to the necessary safety precautions in respect electrical safety as required in the *Engineering Instruction: Safety Precautions and Sidings and Stations in terms of the Electrical Safety Instructions CEE-GI.026*, during all relevant times and, without limiting the generality of the aforementioned, especially during loading and off-loading in the Private Siding;

7.5.3. When Shunting operations needs to commence or when Shunting operations ceases all relevant Operators shall notify the representative appointed in terms of clause 7.5.1 timeously who will supervise such Shunting and/or loading/off-loading operations;

7.5.4. The notification as required in clause 7.5.3 shall be given at a reasonable time beforehand in writing, which notification needs to be acknowledged in writing by the representative;

7.5.5. Standard operating procedures for the management of safety in respect of safe Rail Operations in the Private Siding will be developed and agreed to by all relevant Parties. To this end:-

7.5.5.1. TFR, the Concessionaire and the Train O&M Provider undertake to issue rules, instructions and procedures to its employees concerning the Shunting procedures in the Private Siding, extracted from the standard operating procedures agreed to between the Parties; and

7.5.5.2. The Private Siding Operator undertakes to issue rules, instructions and procedures to its employees/sub-contractors on the shunting procedures in the Private Siding, extracted from the agreed on standard operating procedures.

7.5.6. It is the responsibility of each Party to ensure that its appointed employees/subcontractors do not deviate from the issued and agreed upon rules, instructions and procedures relevant to the Shunting operations;

7.5.7. Except where agreed otherwise, no amendments may be effected to any standard operating procedures relating to safe Shunting operations without the agreement of all Parties concerned.

#### 7.6. Occurrence in the Private Siding

7.6.1. In the event of an Occurrence at the Private Siding, the Private Siding Operator shall provide Access over the Private Siding free of charge to such emergency trains as may be required by the Concessionaire, the Train O&M Provider or TFR, as the case may be, for purposes of repairing the Private Siding, if requested by the Private Siding Operator, and to enable the Concessionaire or TFR to remove damaged tractive power and/or Rolling Stock;

7.6.2. In the event of an Occurrence at the Private Siding, the Private Siding Operator shall be liable for the reasonable costs (which will include the cost of the running of the emergency train, labour and material used) incurred by the Concessionaire, the Train O&M Provider or TFR, as the case may be, in repairing the Private Siding, if specifically requested by the Private Siding Operator, and/or removing damaged tractive power and/or Rolling Stock where such damage is caused by the Private Siding Operator. The Concessionaire, the Train O&M Provider or TFR will submit a written quote for acceptance to the Private Siding Operator prior to commencement of such repairs;

7.6.3. Under no circumstances shall the Private Siding Operator be permitted to re-rail derailed Rolling Stock;

- 7.6.4. All Parties agree to inform one another of any Occurrence or deviations relevant to the Shunting of Trains or Rolling Stock in the Private Siding that may affect one another;
- 7.6.5. Without derogating from the obligations that each Operator has in terms of clause 8 of this Agreement (*Occurrence Management*), all relevant Parties shall be obliged to assist the Private Siding Operator in the investigation or enquiries into Occurrences or any deviations from the set procedures relating to the Private Siding.
- 7.7. Third Party Access to the Private Siding
- 7.7.1. If the Private Siding Operator grants permission for the use of the Private Siding to any third party for the purpose of providing Access from their premises over the Private Siding in order for the Concessionaire, TFR or the Train O&M Provider, as the case may be, to place or remove Wagons in the Private Siding for the benefit of such third party, such permission shall only be valid once the Private Siding Operator has given notice in writing of such permission and the Concessionaire, TFR or the Train O&M Provider have agreed to render such services to such third party.
- 7.7.2. This will include written proof acceptable to the Concessionaire, TFR or the Train O&M Provider that such third party/parties has/have bound itself/themselves irrevocably to the terms and conditions of this Agreement. Notwithstanding the aforesaid, the fact that the Private Siding or any portion thereof may be used by a third party other than the Private Siding Operator, shall in no way relieve the Private Siding Operator of any obligation or liability as set out in this Agreement.
- 7.8. Additional Rights and Obligations of the Concessionaire
- The Concessionaire shall have the additional rights and obligations as set out in this clause 7.8 as Network Operator of the Douglas Rail Line.
- 7.8.1. The Concessionaire shall have the right at any time to inspect the Private Siding (subject to prior written notification and, if requested by the Private Siding Operator, a representative of the Private Siding Operator must be present) so as to ensure that the Private Siding Operator is complying with the obligations imposed upon it in terms of this Agreement.
- 7.8.2. Should the Concessionaire resolve, after the inspection of the Private Siding, that it is necessary for repairs, maintenance, changes or additions to be effected to the Private Siding in order to ensure that it is in a good and safe operating condition as set forth in the Operations And Safety Requirements or any Applicable Requirements, the Concessionaire shall inform the Private Siding Operator thereof in writing and the Private Siding Operator shall forthwith thereafter be obliged to comply with such requirements at the Private Siding Operator's cost.

- 7.8.3. If the Concessionaire, after an inspection is of the opinion that safety will be compromised, it may suspend with immediate effect all operations to and from the Private Siding.
- 7.8.4. Should the Private Siding Operator, after 7 (seven) days, or such longer period as agreed to between the Parties, fail to comply with the request from the Concessionaire as contemplated in clause 7.8.2, the Concessionaire shall be entitled to remove its Rolling Stock from the Private Siding and suspend all operations to and from the Private Siding.
- 7.8.5. When the Concessionaire deem it necessary, and acting reasonably, in consultation with the Private Siding Operator:-
- a) for the safe and effective handling of its Rolling Stock that a suitable shunting yard, marshalling yard, Exchange Yard, additional track or any change or addition should be effected to the Private Siding; or
  - b) to use electrical tractive power for the handling of traffic on or over the Private Siding;
- the works shall be performed according to the Concessionaire's own standards and upon such terms and conditions as may have been agreed upon between the Parties which shall include the manner and detail of the alterations and the costs of financing thereof.

#### 7.9. Indemnities and Insurance

- 7.9.1. The Private Siding Operator hereby indemnifies and holds the Concessionaire, TFR and the Train O&M Provider harmless against all actions, claims, injuries, loss or damage of whatsoever nature and howsoever arising which may be suffered by the Concessionaire, TFR or the Train O&M Provider or any third party and which arise from the existence or use or Rail Operations by the Concessionaire, TFR or the Train O&M Provider to and from the Private Siding and shall, without limitation, include any collision or Occurrence which may occur at any place where the Private Siding crosses a public street or road, provided that this indemnity shall not apply in any case where the event that gives rise to any such action, claim, injury, loss or damage is attributable to the negligence or wilful misconduct of the Concessionaire, TFR or the Train O&M Provider or its officials or employees.
- 7.9.2. The Private Siding Operator shall, if so required by the Concessionaire, TFR or the Train O&M Provider, obtain and maintain at its own expense, liability insurance for such amount as assessed by the Concessionaire, TFR or the Train O&M Provider from time to time for any one Occurrence and in the aggregate in respect of any act or omission of the Private Siding Operator and/or its employees and/or its duly authorised representatives in the performance or non-performance or defective performance of its duties in

terms of this Agreement causing death, bodily injury or illness to persons or loss of or damage to property. In particular, but without limiting the generality of the foregoing, such insurance shall include sufficient insurance cover as determined in terms of clause 7.9.4 below in respect of all and any such bodily injury, death or damage to Rolling Stock that arises out of or in connection with the Private Siding from time to time.

7.9.3. The Private Siding Operator shall at all times comply with all the terms and conditions of any policy of insurance effected in terms of clause 7.9.2 and shall implement the requirements thereof, and in particular (without limiting the generality of the foregoing and notwithstanding anything to the contrary in this Agreement), the Private Siding Operator shall:-

7.9.3.1. notify the Concessionaire, TFR or the Train O&M Provider, as the case may be, promptly of the happening of an Occurrence in terms of this Agreement or any event which may give rise to a claim under any such policy of insurance;

7.9.3.2. supply upon demand to the Concessionaire, TFR or the Train O&M Provider sufficient documentary proof of the policy of insurance as contemplated in terms of this clause 7.9; and

7.9.3.3. render to the Concessionaire, TFR or the Train O&M Provider and/or the insurer whatever assistance may be necessary or required in connection with or arising out of any claims.

7.9.4. The Private Siding Operator shall, at its own cost and expense, appoint a loss or risk surveyor of a reputable insurance company to conduct a survey and in particular of the Private Siding, in order to determine the maximum possible loss or damage which the Private Siding Operator may cause to property or assets, or cause the death of and/or injury to persons or livestock along the route, including but not limited to damage to Rolling Stock and/or the risk of the spreading of fire through its operations in order to fulfil its obligations in terms of this Agreement.

## **8. FURTHER OBLIGATIONS OF THE STATION OPERATOR**

8.1. It is recorded that:-

8.1.1. the Concessionaire and BLOM, has access to the Station operated by the Station Operator;

8.1.2. the Station Operator is at all times responsible for the maintenance of all infrastructure relating to the Station and the operations at the Station Operator's own cost and expense;

8.1.3. The Concessionaire is responsible for the maintenance of the Branch line up to and including the point of Turnout to the Station.

- 8.2. The Station is for purposes of the Occupational Health and Safety Act 85 of 1993 a workplace and shall be deemed at all times to be under the complete control of the Station Operator.
- 8.3. In order to ensure the safe passage of any Rolling Stock and persons who are working on or in the vicinity of the Station, the Station Operator shall ensure that all relevant areas of the Station are free at all times of any obstructive buildings, goods or materials of any nature whatsoever.
- 8.4. The Station Operator shall do whatever is required in terms of any applicable legislation and Relevant Authorities directives to ensure that no member of the public or any unauthorised persons gain access to any operational area other than areas normally required for members of the public to have access to for purpose of utilising a station, which shall include without limitation the installation of all reasonably required security structures and measures for such purpose.
- 8.5. The Station Operator undertakes; for the duration of this Agreement to:-
- 8.5.1. Maintain the Station in a good operating and safe working condition in accordance with the Operations And Safety Requirements and that it complies fully with all such Operations And Safety Requirements during all operations of the Station;
  - 8.5.2. Ensure that no pollution or waste originating from the operations of the Station or on the area adjacent thereto is in violation of any Laws, including, without limitation, all Environmental Laws;
  - 8.5.3. Ensure that waste originating from the cleaning of Wagons from the loading or off-loading operation, including soil, weeds and plant overgrowth are removed regularly to ensure safe operations;
  - 8.5.4. Notify the Concessionaire in writing of any change of ownership, right of use or lease of the Station or loading site (if applicable) adjacent to the Station;
  - 8.5.5. Ensure that it obtains and retains a valid and relevant Safety Permit;
  - 8.5.6. Notify the Concessionaire promptly and not later than three (3) Business Days from the date of receipt of notice of revocation, suspension or amendment, if the Safety Regulator revokes, suspends or amends the Safety Permit in any way;
  - 8.5.7. Notify the Concessionaire promptly, but not later than three (3) Business Days after the Station Operator has surrendered its Safety Permit to the Regulator;
  - 8.5.8. Ensure that no goods or waste build-up is allowed between the railway lines of the Station;
  - 8.5.9. Ensure that it adheres at all relevant times to and complies with all applicable Laws;
  - 8.5.10. Ensure that if the Station Operator sub-contracts the maintenance or the Operations of the Station, that such sub-contractor is bound to and adheres

to the terms and conditions of this Agreement. Such a sub-contract Agreement shall not, in any way, absolve the Station Operator from fully complying with its obligations as provided in this Agreement.

8.6. In the event of an Occurrence or derailment occurring at the Station, the Station Operator:-

8.6.1. Shall provide any and all assistance and access as may be required by the Concessionaire and/or TFR for purpose of repairing the Station, if requested by the Station Operator and to enable the Concessionaire and/or TFR to remove the damaged Railway Infrastructure and/or Rolling Stock;

8.6.2. Shall be liable for the reasonable costs of reparations of the Station and/or removing of damaged Rail Infrastructure and/or Rolling Stock where such damage is caused by the Station Operator which costs shall include the cost of running an emergency train, labour and material used.

8.7. The Station Operator shall ensure that, where applicable the Station Operator appoints a responsible person(s) in order to fulfil the Station Operator's responsibilities and duties as described in the relevant Operational And Safety Requirements who shall oversee and supervise all operations of the Station.

8.8. The Concessionaire shall have the right at any time, to inspect (subject to prior written notification from the Concessionaire and, if so requested by the Station Operator, a representative of the Station Operator must be present) so as to ensure that the Station Operator is complying with the obligations imposed upon it in terms of the Agreement.

8.9. Should the Concessionaire resolve after inspection of the Station, that it is necessary for repairs, maintenance, changes or additions to be effected to the Station in order to ensure that it is in a good and safe operating condition as set forth in the Operations And Safety Requirements, the Concessionaire shall inform the Station Operator thereof in writing and the Station Operator shall forthwith thereafter be obliged to comply with the Concessionaire's requirements at the costs of the Station Operator to ensure such safe and good operating conditions.

## **9. OCCURRENCE MANAGEMENT**

### **9.1. Contingency / Emergency Plans**

9.1.1. Contingency/Emergency Plans shall be compiled, implemented and reviewed between the Parties not less than once a year;

9.1.2. In order to ensure Contingency/Emergency readiness, regional, practical simulation and desktop exercises shall be executed at least once a year;

9.1.3. Through these exercises emergency procedures requiring better planning and execution will be identified and corrective measures shall be jointly implemented;

9.1.4. Each Party shall appoint a representative to implement the contingency

planning process.

## 9.2. Reporting

9.2.1. All Occurrences shall be reported immediately to each relevant Party's head office and the RSR.

9.2.2. When an Occurrence occur, the following procedure shall be followed:-

9.2.2.1. Any employee of an Operator who notices an incident/accident must report it to the relevant operating officer of that Operator immediately;

9.2.2.2. All Occurrences should be registered and regular updates given to the relevant operations office of that Operator and shall be reported to the Head office of that Operator as well;

9.2.2.3. When an Occurrence occurs on the Network of another Operator; that Party in question shall notify the Operator as expeditiously as possible;

9.2.2.4. All Relevant Operators shall report any Occurrence to the Department of Labour and the RSR.

## 9.3. Media press releases

9.3.1. If it is necessary to issue a media release at the scene of an Occurrence or pursuant to the happening thereof, the rail incident commander ("RIC"), in collaboration with the designated spokesperson of that Operator(s) shall follow the following procedures:-

9.3.1.1. The RIC shall set up a media post close to the emergency control centre ("ECC") where the Occurrence occurred and ensure that clearance and emergency teams regularly report to the rail incident commander who shall inform the relevant media spokesperson accordingly;

9.3.1.2. The relevant media spokesperson shall collect all the necessary information and obtain approval from the RIC and the appointed legal service spokesperson and each relevant Operators head office before information is made available to the media;

## 9.4. On Site Management

### 9.4.1. Clearance/emergency teams

9.4.1.1. Clearance/emergency teams shall be identified in the specific contingency emergency plans;

9.4.1.2. The relevant Network Operator shall be responsible for arranging the clearance/emergency teams unless otherwise agreed to between all relevant Parties;

9.4.1.3. The Train Operator shall at all times be responsible for:-

- a) Alternative transport;
- b) Establishing of a trauma centre;



- c) List of particulars of injured and or deceased persons;
- d) List of hospitals where injured persons are taken.

#### 9.4.2. Responsibilities

9.4.2.1. The RIC shall be appointed by the relevant Network Operator who shall have the responsibility to contact the representative of the relevant Train Operator;

9.4.2.2. The Parties shall assist each other with the clearing up process in terms of the agreed Contingency Plan;

#### 9.4.3. Access to the Scene of an Occurrence

9.4.3.1. Access to the scene of an Occurrence shall be managed by the RIC assisted, if required, by security services, with particular reference to crowd control.

#### 9.4.4. Hazardous Substances

9.4.4.1. In the case of an Occurrence where Hazardous Substances are involved, the Network Operator shall attend to clearing operations and the rehabilitation of the environment. Particulars of the hazardous substances shall be reported to the RSR and each relevant Operators head office.

#### 9.4.5. Provision of emergency trains, cranes, trolleys and other emergency vehicles

9.4.5.1. All emergency Trains, cranes, trolleys and other emergency vehicles shall be provided by the Network Operator, unless the Train Operator has suitable or alternative equipment readily available for the safe and efficient clearance at the scene of the Occurrence.

#### 9.4.6. Inspection of Rolling Stock and Infrastructure after an Occurrence

9.4.6.1. If a Train/Rolling Stock has been involved in collision or derailment a detailed inspection of the Rolling Stock must be conducted;

### 9.5. Off Site Management

#### 9.5.1. List of Occurrences to be reported and format

9.5.1.1. The requirements as laid down in SANS 3000-1-1 shall be adhered to and reported to the RSR; and

9.5.1.2. The lists of Occurrences and emergency situations that shall be reported to the relevant Operators are the type of Occurrences and emergency situations as laid down in clause 10010 of TFR's General Appendix Part 1.

#### 9.5.2. Informal Meetings

9.5.2.1. Where major Occurrences endangering human life, or where major damage is done to assets or the environment, delegated

members of the relevant Operators shall meet to determine the causes of action, and to generally manage and conduct the necessary investigation process.

9.6. Investigation Reports

- 9.6.1. At the interface where an Occurrence has occurred, a joint investigation shall be held and such an investigation report shall be made available to all Parties.
- 9.6.2. An investigation shall be aimed at determining the root causes with a view to making recommendations to prevent any recurrence of such similar incident/accident and to improve and sustain safe Operations.
- 9.6.3. TFR will provide the administrative support for the investigation if an Occurrence occurred on the Core Network and the Concessionaire will provide the administrative report in respect of an Occurrence on the Branch Line Network.
- 9.6.4. A preliminary report specifying the background, history and possible cause of the Occurrence must be forwarded within 12 hours by the Party conducting the investigation to the head office of the other Party(s).
- 9.6.5. Occurrence Reports must contain the following information:-

Cover Page

- 9.6.5.1. Report Number;
- 9.6.5.2. Train number and type of Trains;
- 9.6.5.3. Type of Occurrence;
- 9.6.5.4. Place;
- 9.6.5.5. Date and Time;
- 9.6.5.6. Terms of Reference;
- 9.6.5.7. Abstract indicating the background and summary of the Occurrence;

Body of Report

- 9.6.5.8. Investigation Team;
- 9.6.5.9. List of names of the Board of Inquiry;
- 9.6.5.10. Dates and locations where the investigation took place;
- 9.6.5.11. Factual Information;
- 9.6.5.12. Name of Operators;
- 9.6.5.13. Type of Occurrence;
- 9.6.5.14. Location;
- 9.6.5.15. Geographical layout;
- 9.6.5.16. Date and time of Occurrence;
- 9.6.5.17. Time the Occurrence was reported;
- 9.6.5.18. Time the comparison was made;
- 9.6.5.19. Weather and visibility;

- 9.6.5.20. Injuries;
- 9.6.5.21. Damage to property;
- 9.6.5.22. Train types and numbers and/or Rolling Stock/Shunting Operations;
- 9.6.5.23. Locomotive Numbers and types;
- 9.6.5.24. Train Composition and loads;
- 9.6.5.25. Origin and destination;
- 9.6.5.26. Names of Personnel involved in Occurrence and where stationed;
- 9.6.5.27. Hours on duty of Personnel involved;
- 9.6.5.28. Tests done for substance abuse;
- 9.6.5.29. Methods of trains working/control system;
- 9.6.5.30. Condition of Rolling Stock and Infrastructure;
- 9.6.5.31. Statement of relevant documentation/token withdrawn;
- 9.6.5.32. List of witnesses;
- 9.6.5.33. Witness statement and evidence;
- 9.6.5.34. Sketches, photographs, pictures;
- 9.6.5.35. Pictures of clearing operation;
- 9.6.5.36. Any other known factual information;
- 9.6.5.37. Analysis of facts;
- 9.6.5.38. Cause;
- 9.6.5.39. Assess risks of Occurrence;
- 9.6.5.40. Irregularities;
- 9.6.5.41. Findings pertaining to Occurrence caused by human involvement, technical and operational;
- 9.6.5.42. Findings on institutional causes of Occurrence;
- 9.6.5.43. Other;
- 9.6.5.44. Recommendations;
- 9.6.5.45. Interim Actions taken.

#### 9.7. Debriefing

- 9.7.1. On completion of the clearance operations and after the site activities including the operations have been signed off as safe by the responsible Operators, an evaluation will be made by all Parties involved in order to identify shortcomings in the Contingency/emergency plans and such plans will be adjusted accordingly.

#### 9.8. Alternative Routes

- 9.8.1. During abnormal circumstances all relevant Parties shall agree on any required alternative route.

## **10. LIAISON MEETINGS**

- 10.1. The Parties undertake to hold meetings at least bi-annually at such times and venues as shall be agreed on and each Party shall ensure that they are represented at such meetings.
- 10.2. Any proposed change, amendment or alteration to this Agreement or any aspect governed in this Agreement shall be submitted for consideration at the meeting contemplated in the paragraph above, together with an explanation regarding the effect which the proposed change, amendment or alteration would have on the operations governed in this Agreement.
- 10.3. Ad hoc meetings may be scheduled by any Party to this Agreement where a meeting in respect of any subject relevant to this Agreement needs consideration within a time frame not provided for above.
- 10.4. Terms of Reference for Liaison Meetings

- 10.4.1. The Parties shall compile an agenda for the meetings referred to in clause 9.1 above which shall *inter alia* include the following aspects:-
- 10.4.1.1. Rolling Stock;
  - 10.4.1.2. Track, and Civil Infrastructure;
  - 10.4.1.3. Stations;
  - 10.4.1.4. Electrical;
  - 10.4.1.5. Train Control;
  - 10.4.1.6. Operations;
  - 10.4.1.7. Reaction time during emergency maintenance and service disruptions in relation to safety related matters; and
  - 10.4.1.8. Occurrence Management, including Contingency / emergency plans.

## **11. VIS MAJOR**

- 11.1. If a Party is prevented in whole or in part from carrying out its obligations under this Agreement (other than an obligation to pay monies which are due and payable) as a result of vis major, it will promptly notify the other Party accordingly. The notice must: -
- 11.1.1. specify the obligations it cannot perform;
  - 11.1.2. fully describe the event of vis major;
  - 11.1.3. estimate the time during which the vis major will continue; and
  - 11.1.4. specify the measures proposed to be adopted to remedy or abate the vis major.
- 11.2. Following this notice, and while the vis major continues, the obligations which cannot be performed (other than an obligation to pay monies which are due and payable) because of the vis major will, subject to clause 11.6 below, be suspended.
- 11.3. The Party that is prevented from carrying out its obligations under this Agreement

as a result of vis major will remedy the vis major to the extent reasonably practicable and resume performance of its obligations as soon as is reasonably possible.

11.4. The Party that is prevented from carrying out its obligations under this Agreement as a result of vis major will take all reasonable and practicable action to mitigate any loss suffered by a Party as a result of its failure to carry out its obligations under this Agreement.

11.5. The Parties are not required under clause 11.3 or 11.4 to settle any labour dispute against its will or to test the validity or refrain from testing the validity of any law, order, rule or regulation.

11.6. If a Party is prevented from carrying out its obligations under this Agreement as a result of vis major for a period of 12 (twelve) months the other Party may terminate this Agreement in respect of that Party by giving 60 (sixty) days' notice to the Party claiming vis major without prejudice to any of the rights of either Party accrued before the date of termination as well as the rights and obligations towards the other Parties which are not affected by the subsistence of the vis major.

11.7. For the purposes of this Agreement vis major relates to any act, event or circumstance or any combination of acts, events or circumstances, which:-

- a) is beyond the reasonable control of the affected Party; and
- b) is without fault or negligence on the part of the affected Party or its contractors and is not the result of a breach by the affected Party of any of its obligations under this Agreement or applicable law; and
- c) was not foreseeable, or if foreseeable, could not have been (including by reasonable anticipation) avoided or the effects of which could not have been overcome or mitigated by the affected Party or its contractors, acting in accordance with reasonable and prudent standards,

which may include acts or omissions of any government, government agency, provincial or local authority or similar authority, any laws or regulations having the force of law, civil strife, riots, insurrection, sabotage, acts of war or public enemy, legal and illegal strikes, lockouts, flood, storm or fire, but does not include, except to the extent that they result directly from a vis major event: (a) late delivery or interruption in the delivery of machinery, equipment, materials, spare parts or consumables (including fuel); or (b) wear and tear, flaws, breakdown in or degradation of, any equipment or machinery.

## **12. BREACH**

12.1. Subject to clause 12.2 below should either of the Parties commit a breach of a material term of this Agreement, then the other Party ("**non-defaulting Party**") shall be entitled to give the defaulting Party an initial warning notice to remedy such breach within 60 (sixty) days of receipt of such notice and, if the defaulting Party fails

to comply with the notice, the non-defaulting Party shall be entitled, but not obliged, without prejudice to any other rights or remedies which it may have, including the right to claim damages:-

12.1.1. terminate this Agreement; or

12.1.2. claim specific performance.

12.2. The non-defaulting Party shall not be entitled to exercise the rights granted to it in terms of clause 12 until such time as the non-defaulting Party shall first have given the defaulting Party an initial warning notice as contemplated in clause 12.1 above and the defaulting Party shall have failed to comply therewith within a period of 60 (sixty) Days reckoned from the date upon which the defaulting Party received such notice.

12.3. The non-defaulting Party may issue a second and final warning notice following the persistence or recurrence of that breach in the period of 30 (thirty) days after the initial warning notice, stating that if that breach persists or recurs within a period of 10 (ten) days after the final warning notice then the non-defaulting Party may terminate this Agreement on 5 (five) days' notice to the defaulting Party.

12.4. This Agreement may be terminated forthwith by either of the Parties if the other is subject to an order or process relating to the provisions of business rescue as stipulated in the Companies Act 71 of 2008, or if the Party is liquidated, whether provisional or final.

12.5. The termination of this Agreement in terms of this clause shall have the effect of terminating the Parties' respective rights and obligations save for the rights of either Party that have already accrued prior to the event giving rise to the termination.

### **13. DISPUTE RESOLUTION**

#### **13.1. Referable Disputes**

The provisions of this clause 13 shall, save where expressly provided otherwise, apply to any dispute arising in relation to or in connection with any aspect of this Agreement between the Parties.

#### **13.2. Internal Referrals**

13.2.1. If a dispute arises in relation to any aspect of this Agreement, the Parties to the dispute shall attempt in good faith to come to an agreement in relation to the disputed matter, in accordance with the following informal process: –

13.2.1.1. all disputes shall first be referred to the representative(s) of that Party (or his alternates) for resolution;

13.2.1.2. if the Parties have been unable to resolve the dispute within 10 (ten) Business Days of referral to the persons specified in clause 13.2.1.1, any of those Parties may refer the dispute

for a decision by the respective Chief Executive Officers of the Parties or in the case of Transnet, the chief executive of its Freight Rail division.

13.2.2. In attempting to resolve the dispute in accordance with the provisions of this clause 13.2, the Parties shall (and shall ensure that their employees and representatives shall) use reasonable endeavours to resolve any matter or issue without delay by negotiations or any other informal procedures which the relevant representatives may adopt. Those attempts shall be conducted in good faith in an effort to resolve the matter or issue without necessity of formal proceedings.

13.2.3. Any matter or issue which has not been resolved by the representatives contemplated in clause 13.2.1.2 within 15 (fifteen) Business Days of the dispute being referred to them (or any longer period agreed between those Parties) or in respect of which either Party has refused to participate in the informal procedures contemplated in this clause 13.2.3, shall be treated as a dispute in respect of which informal resolution has failed.

13.3. Performance to Continue

13.3.1. No reference of any dispute to any resolution process in terms of this clause 13 shall relieve any Party from any liability for the due and punctual performance of its obligations under this Agreement.

13.4. Litigation

13.4.1. If informal resolution of any dispute has failed, then the dispute may be referred to litigation in the courts by any Party to the dispute.

13.4.2. No Party is limited in any proceedings before the court to the information, evidence or arguments used in the informal attempts to resolve the dispute.

13.5. Arbitration

13.5.1. Notwithstanding the provisions of clause 13.4 (Litigation), if informal resolution of any dispute has failed and that dispute does not fall to be determined in accordance with clause 13.6 (Interlocutory Proceedings) or clause 13.7 (*Fast-track Dispute Resolution*), then as an alternative to referring that dispute to litigation, the Parties may, at the request of either Party, agree to refer that dispute to arbitration.

13.5.2. The rules to be applicable to any arbitration that may be agreed to by the Parties pursuant to clause 13.5.1 shall be such rules as the Parties may agree, and failing agreement thereon, either Party shall be entitled to refer such dispute to arbitration in accordance with the rules for commercial arbitrations of the Arbitration Foundation of Southern

Africa ("AFSA") or its successor body, for arbitration by an arbitrator appointed in accordance with the AFSA rules, on the basis that: –

- 13.5.2.1. the arbitrator's decision shall be final and binding on the Parties;
- 13.5.2.2. the arbitration shall be held in Johannesburg, Gauteng;
- 13.5.2.3. the arbitration shall be conducted in the English language; and
- 13.5.2.4. the arbitration shall be subject to the procedural and substantive laws of the Republic of South Africa where the AFSA rules are silent.

13.6. Interlocutory Proceedings

- 13.6.1. Notwithstanding the previous provisions of this clause 13 any Party shall have the right to seek appropriate interdictory relief or an order of specific performance against any other in an appropriate court having jurisdiction in South Africa.

13.7. Fast-track Dispute Resolution

- 13.7.1. Disputes expressly referred for determination pursuant to this clause 13.7 shall be determined by the relevant Independent Expert as defined in clause 13.7.2.
- 13.7.2. **"Independent Expert"** means: –
  - 13.7.2.1. an accountant of not less than 10 (ten) years professional experience, preferably in project finance, agreed to by the Parties, and failing agreement nominated (at the request of either Party) by the President for the time being of the South African Institute of Chartered Accountants from the ranks of accountants suitably qualified as provided above, if the dispute or issue(s) to be resolved relates primarily to a financial matter;
  - 13.7.2.2. an attorney or advocate of not less than 10 (ten) years professional experience, preferably in project finance, agreed to by the Parties, and failing agreement nominated (at the request of either Party) by the President for the time being of the Law Society of the Northern Provinces from the ranks of attorneys suitably qualified as provided above, if the dispute or issue(s) to be resolved relates primarily to a legal matter;
  - 13.7.2.3. an environmental assessment practitioner of not less than 10 (ten) years professional experience agreed to by the Parties, and failing agreement nominated (at the request of either Party) by the President for the time being of the [South



African Council for National Scientific Professions], if the dispute or issue(s) to be resolved relates primarily to an environmental matter.

13.7.2.4. an engineer of not less than 10 (ten) years professional experience, preferably in design build and operate projects, agreed to by the Parties, and failing agreement nominated (at the request of either Party) by the President for the time being of the Engineering Council of South Africa from the ranks of engineers suitably qualified as provided above, if the dispute or issue(s) to be resolved relates to primarily to an engineering matter.

- 13.7.3. Prior to the appointment of an Independent Expert in terms of clause 13.7.2 the Parties may, in the absence of any dispute and from time to time, identify and agree for one or more of the categories of Independent Experts, a panel of Independent Experts, on account of expertise and likely cost or fee rate.,
- 13.7.4. Within 5 (five) Business Days after a dispute has been referred by either Party to the appropriate Independent Expert, the Independent Expert shall require those Parties to submit in writing their respective arguments. The Independent Expert shall, in his/her absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.
- 13.7.5. It shall be entirely within the power and competence of the Independent Expert to decide upon any matters related to the proper preparation of the dispute for hearing and in that regard the Independent Expert shall direct the relevant Parties accordingly.
- 13.7.6. The Independent Expert shall set the date for the hearing, choose the venue for the hearing and determine all matters regarding any aspect of the hearing. Moreover, the Independent Expert may decide whether at the hearing the relevant Parties are to give oral evidence or confine themselves to presenting their cases in writing or by some other appropriate procedure. In this regard, the Independent Expert must be guided by considerations of fairness, the cost-effective resolution of the dispute, and the need to resolve the dispute quickly.
- 13.7.7. The Independent Expert shall provide all Parties to the dispute with his written decision on the dispute, within 20 (twenty) Business Days of the referral (or such other period as the Parties may agree after the referral). The Independent Expert shall give his/her reasons for the award, if so requested by any of the Parties thereto.

- 13.7.8. The costs of any referral including the costs of the Independent Expert and any venue used for any hearing(s) shall be borne as the Independent Expert shall specify or, if not specified, equally by all Parties. Each Party shall bear its own costs arising out of the referral, including its legal costs and the costs and expenses of any witnesses.
- 13.7.9. The Independent Expert shall act impartially and may take the initiative in ascertaining the facts and the Law. The Independent Expert need not strictly observe the principles of Law and may decide the matter submitted to him/her in accordance with what he/she considers equitable in the circumstances.
- 13.7.10. Should the need arise for any Party to seek interim or temporary relief before the adjudication is finalised, that Party may apply to the Independent Expert to grant such interlocutory order or give the required temporary relief and the Independent Expert shall have the same power to do so as if the matter were one heard by a judge in the High Court of South Africa, save that if by Law such power or order cannot be exercised or given by an Independent Expert then, and then only, should the Parties refer such matter to such High Court.
- 13.7.11. The proceedings shall be confidential and all information, data or documentation disclosed or delivered by any Party to the Independent Expert in consequence of or in connection with his/her appointment as Independent Expert shall be treated as confidential. Neither the Parties nor the Independent Expert shall, save as permitted by clause 14 (*Confidentiality*) of this Agreement, disclose to any person any such information, data or documentation unless the Parties otherwise agree in writing, and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Independent Expert's work.
- 13.7.12. The Independent Expert is not liable for anything done or omitted in the discharge or purported discharge of his/her functions as Independent Expert, unless the act or omission is grossly negligent or in bad faith. Any employee or agent of the Independent Expert is similarly protected from liability.
- 13.7.13. Should any Party fail to co-operate with the Independent Expert with the result that in the view of the Independent Expert such default or omission prejudices the adjudication process, then the Independent Expert may, in his/her discretion, either: -

- 13.7.13.1. give that Party written notice that unless it remedies the default or omission within a given time, it will forfeit the right to continue to participate in the adjudication; or
- 13.7.13.2. warn the Party in writing that its default or omission may make it liable to a punitive order of costs irrespective of whether it succeeds in the adjudication or not.
- 13.7.14. The Independent Expert shall be deemed not to be an arbitrator but shall render his/her decision as an expert and the provisions of any Law relating to arbitration shall not apply to the Independent Expert or his/her determination or the procedure by which he/she reaches his/her determination. The Independent Expert's decision shall be final and binding on the Parties.
- 13.7.15. If any Party, or both Parties, contend there to have been fraud or manifest error, bias or failure by the Independent Expert to properly apply his/her mind, that Party, or Parties, shall be entitled to refer that contention for resolution by litigation (pursuant to clause 13.4), interlocutory proceedings (pursuant to clause 13.5) or by arbitration if the Parties so agree (pursuant to clause 13.6), provided that the notice of referral of the relevant contention(s) is delivered within five (5) Business Days of the handing down of such decision by the Independent Expert.
- 13.8. Associated Contract Dispute
  - i. It is recorded that this Agreement is entered into between the Parties subsequent to the Conclusion of the Concession Agreement;
  - ii. The Concessionaire and Transnet agreed in the Concession Agreement, to which this agreement is ancillary, that disputes should not be duplicated in the event of disputes between the Concessionaire, Transnet and any Associated Party which relates to substantially the same circumstances as any dispute or which raises issues which are substantially the same as issues raised in any dispute where the Concessionaire, Transnet or any Associated Party are involved;
  - iii. In order to make provision for the aspect of an Associated Contract Dispute, the Parties in this Agreement, agree as is set out in this clause 13.8.
- 13.8.1. For the purposes of this clause 13.8, the following terms are according the meanings ascribed to them, namely: –
  - 13.8.1.1. "**Associated Contract Dispute**" means –
    - a) any dispute or difference between Transnet or the Concessionaire, arising out of one or more of the Ancillary Agreements to the Concession Agreement to which the Concessionaire is a party and Transnet

(whether through one or more of its operating divisions)  
is also a party; and

- b) any dispute or difference between the Concessionaire and a material subcontractor(s); which (i) arises out of substantially the same circumstances as any dispute or which raises issues which are substantially the same as issues raised in any dispute and (ii) in respect of which a notice is given by the Concessionaire or Transnet requiring reference of the dispute to fast-track dispute resolution procedure (pursuant to clause 13.7) or to arbitration if the Parties so agree (pursuant to clause 13.6);

13.8.1.2. **"Associated Party"** means –

- a) any counter-party to an Ancillary Agreement which is neither Transnet nor the Concessionaire;
- b) any material subcontractor of the Concessionaire;

13.8.2. A notice of an Associated Contract Dispute ("**Notice of Associated Contract Dispute**") shall be served on the relevant Party contemporaneously with either the consensual referral of any dispute for resolution in terms of clause 13.5 (*Arbitration*) or referral to expert determination in terms of clause 13.7 ("**Notice of Referral to Arbitration/Expert Determination**") served by that Party on the other Party, or within 3 (three) Business Days of receipt of a Notice of Referral to Arbitration/Expert Determination from either Party as the case may be, so that it may be determined in the same proceedings as any dispute referred to arbitration under clause 13.5 (*Arbitration*) or the fast -track dispute resolution procedure under clause 13.7 (*Fast-track Dispute Resolution*).

13.8.3. The provisions of clause 13.5 (*Arbitration*) and the fast -track dispute resolution procedure under clause 13.7 (*Fast-track Dispute Resolution*) shall, where an Associated Contract Dispute arises, be modified accordingly.

13.8.4. Where Transnet refers a dispute and the Concessionaire considers it to be an Associated Contract Dispute, the Concessionaire shall timeously notify the appropriate Associated Party (ies) of the Associated Contract Dispute within a reasonable time prior to any proceedings contemplated by the Concessionaire and Transnet, which notice shall be given in terms of clause 16 (*Notices and Domicilia*) of this Agreement.

13.8.5. In the event that an Associated Contract Dispute is referred to the same arbitration or expert determination proceeding as another

dispute, references to "Parties shall be construed as including a reference to the relevant Associated Party and references to "dispute" shall be construed as including a reference to the related Associated Dispute.

- 13.8.6. The arbitrator and the Independent Expert in the relevant dispute resolution procedure shall have the same powers in relation to the Associated Contract Dispute as he/she has in relation to the primary dispute.

#### **14. CONFIDENTIALITY**

- 14.1. For purposes of this clause 14, "**Confidential Information**" means any information which is agreed upon by the Parties at the time of conclusion of this Agreement or before it is provided to the recipient Party if regarded to be commercially sensitive, including any and all applicable intellectual property relevant to that Party.
- 14.2. Each Party shall keep all Confidential Information of the other Party confidential while this Agreement remains in force for an indefinite period after it terminates for any reason. Each Party shall also use reasonable endeavours to prevent its employees, agents and contractors from making any disclosure to any person of any Confidential Information of the other Party while this Agreement remains in force and for an indefinite period after it terminates for any reason.
- 14.3. Clause 14.2 shall not apply to: -
- 14.3.1. any disclosure of information that is reasonably required by persons engaged in the performance of the restricted Party's obligations under this Agreement;
  - 14.3.2. any matter which a Party can reasonably demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this clause 14;
  - 14.3.3. any disclosure as part of any attempt to resolve a dispute in accordance with clause 13 (*Dispute Resolution*);
  - 14.3.4. any disclosure which is required by any Law, or the rules of any stock exchange or governmental or regulatory authority having the force of law;
  - 14.3.5. any disclosure of information that is already lawfully in the possession of the receiving Party prior its disclosure by the disclosing Party;
  - 14.3.6. any provision of information to the advisors of the receiving Party, or to any funders or potential funders, but in the latter case, only to the extent reasonably necessary to enable a decision to be taken on whether that potential funder will become a funder; or
  - 14.3.7. any disclosure of information by Transnet to any Responsible Authority.

14.4. The disclosures permitted under clauses 14.3.6; 14.3.7 and 14.3.8 may only be made subject to obtaining appropriate confidentiality restrictions consistent with the provisions of this clause 13 from the intended recipients

## **15. APPLICABLE LAW AND JURISDICTION**

15.1. This Agreement will in all respects be governed by and construed under the laws of the Republic of South Africa.

15.2. Subject to the provisions of this Agreement, the Parties hereto hereby consent and submit to the non-exclusive jurisdiction of the Southern Gauteng (Johannesburg) Division of the High Court of the Republic of South Africa in any dispute arising from or in connection with this Agreement. The Parties agree that any costs awarded will be recoverable in accordance with the High Court tariff, determined on an attorney-and-own-client scale.

## **16. PARTIES REPRESENTATIVES**

16.1. Each shall for the duration of this Agreement appoint an individual whose identity shall be notified to the other Parties to act as the duly authorised representative of that Party for all purposes connected with this Agreement. Each Party shall notify the other in writing forthwith upon the replacement at any time of the representative and such replacement shall not be effective until notice has been given.

16.2. The representative may delegate any of his functions from time to time to a person or persons the identity of who shall be notified to the other Parties and references in this Agreement to the relevant Party's representative shall be construed to include such persons.

16.3. Any notice, instruction or information required to be given by or made to that Party shall only be valid if given by or delivered to the relevant representative.

## **17. NOTICES AND DOMICILIA**

17.1. The Parties select as their respective *domicilia citandi et executandi* the following physical addresses, and for the purposes of giving or sending any notice provided for or required under this Agreement, the said physical addresses as well as the following facsimile numbers: -

<b><u>Name</u></b>	<b><u>Physical Address</u></b>	<b><u>Facsimile</u></b>
Transnet Freight Rail		

Marked for the attention of: [•], with a copy to [•]

<b><u>Name</u></b>	<b><u>Physical Address</u></b>	<b><u>Facsimile</u></b>
<b>Concessionaire</b>		

Marked for the attention of: [•]

<b><u>Name</u></b>	<b><u>Physical Address</u></b>	<b><u>Facsimile</u></b>
<b>Train O&amp;M Provider</b>		

Marked for the attention of: [•], with a copy to [•]

<b><u>Name</u></b>	<b><u>Physical Address</u></b>	<b><u>Facsimile</u></b>
<b>Private Siding Operator</b>		

Marked for the attention of: [•], with a copy to [•]

provided that a Party may change its *domicilium* or its address for the purposes of notices to any other physical address or facsimile number by written notice to the other Parties to that effect. Such change of address will be effective 5 (five) Business Days after receipt of the notice of the change.

17.2. All notices to be given in terms of this Agreement will be given in writing, in English, and will: -

- 17.2.1. be delivered by hand or sent by facsimile;
- 17.2.2. if delivered by hand during business hours, be presumed to have been received on the date of delivery. Any notice delivered after business hours or on a day which is not a Business Day will be presumed to have been received on the following Business Day; and
- 17.2.3. if sent by facsimile during business hours, be presumed to have been received on the date of successful transmission of the facsimile. Any facsimile sent after business hours or on a day which is not a Business Day will be presumed to have been received on the following Business Day.

17.3. Notwithstanding the above, any notice given in writing in English, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause.

17.4. The Parties record that whilst they may correspond via e-mail during the currency of this Agreement for operational reasons, no formal notice required in terms of this Agreement, or any amendment of or variation to this Agreement may be given or concluded via e-mail.

## **18. SUPPORT CLAUSE**

18.1. Subject to 18.2 each party (the "**First Party**") undertakes to co-operate with the other (the "**Second/Third/Fourth Party/Fifth Party**") in order to facilitate the performance of this Agreement and in particular will: –

- 18.1.1. use reasonable endeavours to avoid unnecessary complaints, disputes and claims against or with the Second/Third/Fourth/Fifth Party;
- 18.1.2. comply with the provisions of the Dispute Resolution in clause 13 (*Dispute Resolution*) in relation to any such complaints, disputes and claims;
- 18.1.3. not interfere with the rights of the Second/Third/Fourth/Fifth Party in performing its obligations under this Agreement, nor in any other way hinder or prevent the Second/Third/Fourth/Fifth Party from performing those obligations or from enjoying the benefits of its rights;
- 18.1.4. assist the Second/Third/Fourth/Fifth Party in performing those obligations, so far as is reasonably practicable; and
- 18.1.5. take reasonable steps to mitigate any foreseeable losses and liabilities of the Second/Third/Fourth/Fifth Party which are likely to arise out of any failure by the First Party to take any of the steps referred to in clauses 18.1.1 to 18.1.4 (inclusive).

18.2. Nothing in clause 18.1 shall: –

- 18.2.1. interfere with the right of each of the Parties to arrange its affairs in whatever manner it considers fit in order to perform its obligations under this Agreement including any statutory obligation that Party may have; or
- 18.2.2. oblige either Party to incur any additional cost or expense, or suffer any loss of profit; or
- 18.2.3. relieve either Party from any obligation contained in this Agreement or from any obligation to pay any debt due and payable under this Agreement.

## **19. GENERAL**

19.1. This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on



either of the Parties.

- 19.2. No addition to or variation, deletion, or agreed cancellation of any and all clauses or provisions of this Agreement will be of any force or effect unless in writing and signed by the Parties.
- 19.3. No waiver of any of the terms and conditions of this Agreement will be binding or effectual for any purpose unless in writing and signed by the Party giving the same. Any such waiver will be effective only in the specific instance and for the purpose given. Failure or delay on the part of either Party in exercising any right, power or privilege hereunder will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 19.4. All provisions and the various clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions and clauses of this Agreement shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.
- 19.5. Neither this Agreement nor any part, share or interest herein nor any rights or obligations hereunder may be ceded, delegated or assigned by any Party without the prior written consent of the other Parties.
- 19.6. Any consent or approval required to be given by either Party in terms of this Agreement will, unless specifically otherwise stated, not be unreasonably withheld.
- 19.7. This Agreement shall inure for the benefit of and be binding upon the successors and permitted assigns of the Parties or either of them.
- 19.8. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.
- 19.9. Each of the Parties shall pay their own costs of or incidental to the drafting, negotiation and preparation of this Agreement.

## **20. SIGNATURE**

- 20.1. This Agreement is signed by the Parties on the dates and at the places indicated below.
- 20.2. The persons signing this Agreement in a representative capacity warrant their authority to do so.
- 20.3. The Parties record that it is not required for this Agreement to be valid and

enforceable that a Party shall initial the pages of this Agreement and/or have its signature of this Agreement verified by a witness.

Signed at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

**Witnesses:**

1. \_\_\_\_\_  
for and on behalf of **Concessionaire (Proprietary) Limited**

2. \_\_\_\_\_ **FULL NAME:** .....

**DESIGNATION:** .....

Signed at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

**Witnesses:**

1. \_\_\_\_\_  
for and on behalf of **Transnet Freight Rail**

2. \_\_\_\_\_ **FULL NAME:** .....

**DESIGNATION:** .....

Signed at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

**Witnesses:**

1. \_\_\_\_\_

for and on behalf of **the Train O&M Provider**

2. \_\_\_\_\_ **FULL NAME:** .....

**DESIGNATION:** .....

**Signed at** \_\_\_\_\_ **on this** \_\_\_\_\_ **day of** \_\_\_\_\_ **20**\_\_.

**Witnesses:**

1. \_\_\_\_\_  
\_\_\_\_\_ for and on behalf of **Private Siding Owner**

3. \_\_\_\_\_ **FULL NAME:** .....

**DESIGNATION:** .....

**Signed at** \_\_\_\_\_ **on this** \_\_\_\_\_ **day of** \_\_\_\_\_ **20**\_\_.

**Witnesses:**

1. \_\_\_\_\_  
\_\_\_\_\_ for and on behalf of **Station Operator**

4. \_\_\_\_\_ **FULL NAME:** .....