

ETIHAD RAIL FREIGHT

STANDARD HAULAGE TERMS

These STANDARD HAULAGE TERMS (as updated from time to time) shall apply to all services provided by Etihad Rail Freight - Sole Proprietorship LLC.

A copy of the latest STANDARD HAULAGE TERMS is available at etihadrail.ae or on request.

1. DEFINITIONS AND INTERPRETATION

1.1 The following words and expressions will have the meanings ascribed to them below:

AED means UAE Dirham, the legal currency of the UAE.

Affected Party has the meaning given to it in Section 24.2(a) (*Notification of Force Majeure Event*).

Affiliates means any Customer Affiliate and any ER Freight Affiliate.

Agreement has the meaning given to it in the Conditions of Contract.

Appropriate Technical and Organisational Measures has the meaning given to it in the Data Protection Legislation.

BACS means Banker's Automated Clearing Services.

Business Day means:

- (a) any day which is a Monday to Friday (inclusive) and is not otherwise an officially announced public or religious holiday in Abu Dhabi and/or Dubai, UAE; or
- (b) for the purposes of Section 31 (*Notices*) only, any day which is a Monday to Friday (inclusive) and is not otherwise an officially announced public or religious holiday in the country of the recipient.

Cancellation Charges has the meaning given to it in Section 10.11 (*Fees and Payments*).

Cancellation Procedures has the meaning given to it in Exhibit D (*Contract Particulars*).

Change means:

- (a) where the ER Freight Services involve the transportation of Freight, an amendment to the specification of Freight;
- (b) a request for ER Freight to transport a Consignment to a destination other than a Destination Point;
- (c) a request for ER Freight to transport goods or materials other than the Freight and/or a Container; or
- (d) any other variation to the ER Freight Services.

Change in Law means the coming into effect after the Effective Date of:

- (a) any Law enacted, adopted or introduced;
- (b) any modification or repeal of any existing Law;
- (c) any applicable judgement or decision of a relevant court of law or other competent authority; or
- (d) a change in application or interpretation or enforcement of any Law by a relevant court of law or competent authority,

which Law, modification or judgment is binding on the Parties and affects one or both Party's performance of the Agreement (but excluding any Law, modification or judgment which has

been published prior to the Effective Date in substantially the same form or with substantially the same effect as the relevant Law finally takes when it takes legal effect).

Change Request has the meaning given to it in Section 12.1(a) (*Change Request*).

Change Response has the meaning given to it in Section 12.1(c) (*Change Request*).

Claim means any claim, suit, action or other legal proceeding brought by any party.

CHAPS means Clearing House Automated Payment System.

Commencement Date has the meaning given to it in the Conditions of Contract.

Conditions of Contract means the terms and conditions agreed between ER Freight and the Customer in respect of performance of the ER Freight Services and in which these Standard Haulage Terms are incorporated by reference.

Confidential Information has the meaning given to it in Section 27.1 (*Confidentiality*).

Consequential Loss means, in relation to a breach of the Agreement:

- (a) any indirect or consequential loss; or
- (b) any loss of production, loss of profit, loss of revenue, loss of contract resulting from such breach, whether or not the Party committing the breach knew (or ought to have known) that such loss would be likely to be suffered as a result of such breach.

Consignee means the person (who may or may not be the Customer) to whom ER Freight delivers a Consignment.

Consignment means:

- (a) where the ER Freight Services involve the transportation of Freight, Freight in bulk sent at any one time in one load by or for the account of the Customer from one location to another location; or
- (b) where the ER Freight Services involve the transportation of Containers, any Container(s) (that may or may not contain Freight and, where containing Freight, including the Freight) sent at one time in one load by or for the account of the Customer from one location to another location.

Container means any empty or loaded shipping container, used for the transportation of Freight, which is usually but not limited to 20 feet, 40 feet, or 45 feet long, 8 feet wide and 8 feet 6 inches or 9 feet 6 inches high, flat racks, platforms, bolsters, refrigerated containers (each a **Reefer Container**), and tanks, as well as any equipment affixed thereto (including, without limitation, generator sets (each a **Genset**)), with the International Standardization Organization recommended lifting arrangements and which is consistent with the safety requirements of the Convention for Safe Containers (CSC) and in the Agreement includes a Customer Container, ER Freight Container and/or a Shipping Line Container.

Control means:

- (a) the possession, directly or indirectly, of the power to vote fifty per cent (50%) or more of the voting stock (other than directors qualifying shares or other *de minimis* holdings required by Law to be held by other Person(s)) of such Person;

- (b) ownership, directly or indirectly, of fifty per cent (50%) or more of the equity interests (other than directors qualifying shares or other *de minimis* holdings required by Law to be held by other Person(s)) in such Person; or
- (c) having, directly or indirectly, the ability to direct or procure the direction of the management and policies of such Person, whether through the ownership of shares, by contract or otherwise,

and **Controlled** shall be construed accordingly.

Cure Period has the meaning given to it in Section 18.1(a) (*Termination on Default*).

Customer Affiliate means any Person which, directly or indirectly, Controls the Customer, is Controlled by the Customer, or is under common Control with the Customer.

Customer Container means a Container provided by the Customer for transportation on the ER Freight Transportation pursuant to the Agreement.

Customer Event of Default means each of the events and circumstances set out at Section 17.1 (*Events of Default*).

Customer Facilities means each of the facilities and associated equipment set out in Exhibit E (*Customer Obligations*) and/or the Conditions of Contract.

Customer Obligations means each of the obligations of the Customer set out at:

- (a) Section 4.1 (*The Customer's Obligations and Rights*); and
- (b) Exhibit E (*Customer Obligations*).

Customer Party means the Customer, any Customer Affiliate and any officer, representative, director, employee, subcontractor and agent of the Customer, a Customer Affiliate and/or a customer of the Customer, save that ER Freight and the ER Freight Parties shall be excluded, and "**Customer Parties**" shall be construed accordingly.

Customer Representative and **Account Manager for Customer** means the people appointed by the Customer to represent the Customer as detailed in Exhibit A (*Particular Conditions*), as may be updated by the Customer to ER Freight in writing from time to time.

Customer Standard Operating Procedure means the standard operating procedure that may be agreed between ER Freight and the Customer in respect of the delivery of the ER Freight Services as may be amended by the Parties from time to time in accordance with Section 32.4(b) (*Amendments, Waivers and Consent*) and which is incorporated by reference in Exhibit C (*Scope of Services*).

Dangerous Goods means any goods categorised as "dangerous goods" by Law, the International Maritime Dangerous Goods Code and/or the Agreement Concerning the International Carriage of Dangerous Goods by Rail (RID) and/or the Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR), from time to time.

Data Protection Legislation means:

- (a) all applicable data protection and privacy legislation in force from time to time in the UAE, including UAE Federal Decree-Law No. 44 of 2021 and UAE Federal Decree-Law No. 45 of 2021;

- (b) to the extent that the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of Personal Data;
- (c) to the extent the European Union General Data Protection Regulation ((EU) 2016/679) applies, the law of the European Union or any member state of the European Union to which ER Freight or the Customer is subject, which relates to the protection of Personal Data; and
- (d) all other legislation and regulatory requirements in force from time to time which apply to a Party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by any relevant regulatory authority and applicable to a Party.

Default Interest means the rate which is five per cent (5%) above the Emirates Interbank Offered Rate (EIBOR) published by the Central Bank of the UAE from time to time.

Default Notice has the meaning given to it in Section 18.1(a) (*Termination on Default*).

Defaulting Party has the meaning given to it in Section 18.1(a) (*Termination on Default*).

Destination Point(s) means the agreed geographical location(s) to which a Consignment is to be transported by ER Freight, as defined in Exhibit C (*Scope of Services*).

Dispute has the meaning given to it in the Conditions of Contract.

Effective Date has the meaning given to it in the Conditions of Contract.

Emirate means any one of the constituent emirates of the United Arab Emirates which comprise Abu Dhabi, Ajman, Dubai, Fujairah, Ras Al Khaimah, Sharjah and Umm Al Quwain (as the context so requires).

ER Freight Affiliate means any Person which, directly or indirectly, Controls ER Freight, is Controlled by ER Freight, or is under common Control with ER Freight.

ER Freight Container means a Container provided by ER Freight.

ER Freight Event of Default means each of the events and circumstances set out at Section 17.2 (*Events of Default*).

ER Freight Facilities means each of the facilities to be made available to the Customer in accordance with Annex 1 (*ER Freight Facilities*) of Exhibit C (*Scope of Services*) pursuant to the ER Freight Services.

ER Freight Party means ER Freight, any ER Freight Affiliate and any officer, representative, director, employee, subcontractor and agent of ER Freight and/or an ER Freight Affiliate, save that the Customer and the Customer Parties shall be excluded, and “**ER Freight Parties**” shall be construed accordingly.

ER Freight Representative and Key Account Manager means the people appointed by ER Freight to represent ER Freight as detailed in Exhibit A (*Particular Conditions*), as may be updated by ER Freight to the Customer in writing from time to time.

ER Freight Services means the services to be provided by ER Freight as specified in Exhibit C (*Scope of Services*).

ER Freight Services Failure means, in respect of any consecutive twelve (12) month period during the Term, ER Freight fails, due solely to its own acts or omissions, to meet the Service Levels.

ER Freight Standard Operating Procedure means ER Freight's operating standards and standard operating procedures for providing the ER Freight Services, as may be updated by ER Freight from time to time.

ER Freight Transportation means the transportation equipment to be provided by ER Freight to transport any Consignment.

Event of Default means any of a Customer Event of Default or an ER Freight Event of Default as the context so requires.

Expiry Date has the meaning given to it in the Conditions of Contract.

Federal Railway means the railway in the UAE which is owned and/or operated and/or maintained by Etihad Rail Company PJSC and/or its Affiliates.

Fees means the fees payable by the Customer pursuant to Exhibit B (*Pricing*) together with any other sum payable by the Customer to ER Freight pursuant to the Agreement.

Final Determination has the meaning given to such term at Section 21.3(a) (*Payment*).

Force Majeure Event means any circumstance not within the reasonable control, directly or indirectly, of the Affected Party, but only if and to the extent that:

- (a) such circumstance, despite the exercise of best efforts by the Affected Party to mitigate any Material Adverse Effect, cannot be prevented, avoided or removed by such Party;
- (b) such circumstance prevents the Affected Party from performing its obligations under the Agreement, and the Affected Party has taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of such event on the Affected Party's ability to perform its obligations and has used its best efforts to mitigate the consequences thereof;
- (c) such circumstance is not the direct or indirect result of the breach or failure by the Affected Party of any of its obligations under the Agreement; and
- (d) the Affected Party notifies the Non-Affected Party in accordance with Section 24.2 (*Notification of Force Majeure Event*),

and which may include, but is not limited to, exceptional events or circumstances such as the following:

- (i) war, civil war or hostilities (whether declared or undeclared), invasion, armed conflict, military embargo, or act of a foreign enemy, or the serious threat of any of the same;
- (ii) nuclear, chemical or biological contamination or sonic boom, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly (unless the same is the result of the act or omission of the Party claiming the Force Majeure Event);
- (iii) pressure waves caused by devices travelling at supersonic speeds;

- (iv) any expropriation, sequestration, seizure, nationalisation, or requisition of a material part of the assets of the Affected Party by any competent authority;
- (v) rebellion, revolution, civil commotion, insurrection, riot, terrorism, mob violence, sabotage, cyber-attack, or piracy;
- (vi) confiscation or requisition of state;
- (vii) strike, sabotage, any labour or trade dispute, industrial action, or lockouts (other than, in each case, by the Party seeking to rely on Section 24 (*Force Majeure*) or by an Affiliate of that Party);
- (viii) plague or epidemic which prevents more than 70% of a Party's personnel from physically attending their usual place of work and such personnel are unable to perform their work remotely;
- (ix) any act of God including lightning, earthquake, hurricane, typhoon, tornado, tsunami, drought, landslide, volcanic activity, fire, cyclone, or flood; and
- (x) sandstorms, to the extent that it interrupts performance of the ER Freight Services for more than five (5) consecutive days in any one Operating Year.

Freight means the goods, consistent with those described in Exhibit C (*Scope of Services*), that are (or are to be) transported by ER Freight under the Agreement.

Good Industry Practice means the exercise of the degree of skill, care and international operating practice which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking as the relevant Party to the Agreement.

Governmental Authority means the government of Abu Dhabi and the federal government of the UAE, and any ministry, agency, court, judicial committee, regulatory or other authority of the foregoing, and **Governmental Authorities** shall be construed accordingly.

Handed Back means the point at which a Consignment is delivered by ER Freight (or an ER Freight Party) as further described in the ER Freight Standard Operating Procedure.

Handed Over means the point at which a Consignment is taken over by ER Freight (or an ER Freight Party) as further described in the ER Freight Standard Operating Procedure.

Improvement Notice has the meaning given to it in Section 14.2 (*Performance Management*).

Indemnified Party means a Party who benefits from an indemnity granted in its favour pursuant to Section 21 (*Indemnities*).

Indemnifying Party means a Party who grants an indemnity in accordance with the provisions in Section 21 (*Indemnities*).

Insolvency Event means:

- (a) where a claim is made against, or a debt is due to be paid by a Party and such Party is unable (or is deemed by any applicable Law or court to be unable) or admits inability to pay its debts as they fall due;

- (b) to the extent possible under the applicable Laws of its jurisdiction of incorporation, a moratorium (or a similar procedure) is agreed, declared or comes into force in respect of any indebtedness with any financial institutions of a Party;
- (c) a Party enters into liquidation or becomes insolvent or bankrupt or a restructuring is approved over such Party according to the applicable Laws of the jurisdiction of incorporation, as amended;
- (d) any corporate action or legal proceedings or other procedure or step is taken (other than where such action, proceedings, procedure or steps are frivolous or vexatious) in relation to:
 - (i) the general suspension of payments with any financial institutions, a moratorium of the indebtedness with any financial institutions, a petition is presented or an order is made for the winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of either Party other than:
 - (A) a solvent liquidation; or
 - (B) a reorganisation (not being a voluntary arrangement, scheme of arrangement or otherwise in any jurisdiction which would have an analogous or equivalent effect);
 - (ii) a composition, compromise, assignment or arrangement with any financial institution creditor of a Party which has or could reasonably be expected to have a Material Adverse Effect; or
 - (iii) the appointment of a liquidator (other than in respect of a solvent liquidation of a Party), receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of a Party or any of their assets; and
- (e) any procedure or step is taken in any jurisdiction which would have an analogous or equivalent effect to those set out in paragraphs (a) to (d) of this definition of Insolvency Event.

Insured Party has the meaning given to it in Section 13.3(a) (*Insurance*).

Law means any legislation and any other law, decree, statute, act, resolution, treaty, directive, edict, proclamation, bylaw, decision, regulation, standard, rule, order, instruction or notice (in each case whether issued by a federal authority or local authority in any Emirate and whether published or unpublished) having the force of law in any Emirate or the UAE, and any rule of court or interpretation by any relevant authority in any Emirate or the UAE.

Loss means, with respect to any Person, any loss, assessment, judgment, damage, penalty, fine, liability, and reasonable out of pocket expenses of whatever kind (including reasonable attorneys' fees (if recoverable at law)) incurred or suffered by such Person, but excluding any Consequential Loss or other special or punitive damages.

Material Adverse Effect means any event or circumstances which has or could reasonably be expected to have a material adverse effect on:

- (a) the ability of either Party to perform and comply with its material obligations under the Agreement;

- (b) the business, financial condition or assets of either Party to the extent that this materially adversely affects its ability to comply with its obligations under the Agreement; or
- (c) the validity, legality, effectiveness or unenforceability of any material provisions of the Agreement.

Non-Affected Party has the meaning given to it in Section 24.2(a) (*Notification of Force Majeure Event*).

Non-Defaulting Party has the meaning given to it in Section 18.1(a) (*Termination on Default*).

Operating Standards means:

- (a) the ER Freight Standard Operating Procedure; and
- (b) if applicable, the Customer Standard Operating Procedure.

Operating Year means, in relation to:

- (a) the first year of the Term, the period from and including the Commencement Date to 31 December, inclusive;
- (b) each year other than the first year and last year of the Term, a calendar year; and
- (c) the last year of the Term, the period from 1 January of that year up to and including the Expiry Date, inclusive.

Person means any individual, corporation, joint stock company, limited liability company, partnership, joint venture, association, trust, unincorporated organisation, relevant authority, or other entity, and **Persons** shall be construed accordingly.

Personal Data has the meaning given to it in the Data Protection Legislation.

Private Siding means a railway or siding not owned by or leased to ER Freight or an ER Freight Affiliate.

Processing has the meaning given to it in the Data Protection Legislation.

Prohibited Cargo means any goods the carriage of which is prohibited by Law or those included in the list of prohibited cargo as set out in Exhibit F (*Prohibited Cargo List*).

Receiving Party has the meaning given to it in Section 12.1(a) (*Change Request*).

Remedial Period has the meaning given to it in Section 14.2(b) (*Performance Management*).

Requesting Party has the meaning given to it in Section 12.1(a) (*Change Request*).

Sanctioned Countries means any countries, regions, territories or governments subject to comprehensive, economic or trade sanctions administered by the government of the UAE, United Nations Security Council, European Union council and/or Commission, His Majesty's Treasury United Kingdom, the US Department of Treasury and the US Department of State, to the extent applicable to the Parties, and **Sanctioned Country** shall be construed accordingly.

Sanctions means sanctions administered or enforced by the Sanctions Authority, as may be updated from time to time, and to the extent applicable to the Parties.

Sanctions Authority means the any governmental, judicial, or regulatory authority that administers, enforces, or has jurisdiction over economic or trade sanctions, including but not limited to:

- (a) the government of the UAE,
- (b) the United Nations (UN) security council,
- (c) the European Union council and/or commission,
- (d) His majesty's treasury United Kingdom,
- (e) The US Department of Treasury and the US Department of State; and
- (f) any other governmental authority with sanctions jurisdiction over a Party and its Affiliates (or any part of their respective business or operations),

Sanctions List means any of the lists issued or maintained by a Sanctions Authority designating or identifying individuals or entities that are subject to Sanctions, in each case as amended, supplemented or substituted from time to time.

Sanctionable Practice means any prohibited payments (including any corrupt practice), fraudulent practice, coercive practice, collusive practice or obstructive practice, as those terms are defined and interpreted in accordance with the World Bank anti-corruption guidelines.

Sanctions Target means a person or entity that is:

- (a) either listed on, or owned or controlled by (whether directly or indirectly) or acting on behalf of a person listed on, a Sanctions List;
- (b) resident, domiciled or located in, or incorporated or organised under the laws of, a Sanctioned Country; or
- (c) otherwise identified by a Sanctions Authority as being subject to Sanctions.

Services and Obligations means the Customer Obligations and/or the ER Freight Services.

Service Levels, Service Level Agreement, or SLAs means the service levels agreed between the Parties as specified in Exhibit I (*Service Level Agreement*).

Shipping Line Container means a Container provided by a third party shipping company.

Starting Point(s) means the agreed geographical location(s) at which a Consignment is to be made available by the Customer to ER Freight, as defined in Exhibit C (*Scope of Services*).

Subcontract means any subcontract between a Party and one or more Persons for the performance by such Person of any part of such Party's obligations under the Agreement.

Tariff means the price of the ER Freight Services as specified in Exhibit B (*Pricing*).

Take-or-Pay means that the ER Freight Services are being provided on the basis that the Customer shall pay ER Freight an amount equal to at least the value of the Minimum Annual Volume each year. For greater certainty, even if, for example, the Customer reduces the quantity of ER Freight Services purchased or is otherwise unable to procure sufficient volumes to utilize the entire Minimum Annual Volume, the Customer is obliged to pay the same amount as if it had utilized the entire Minimum Annual Volume in such year.

Term has the meaning given to it in the Conditions of Contract.

UAE means the United Arab Emirates.

UAE Civil Code means UAE Federal Law No. 5 of 1985 relating to the law of civil transactions.

UAE VAT means value added tax or similar charges in respect of transactions involving the sale or provision of goods and/or services and payable to any Governmental Authority in the UAE in accordance with the VAT Law.

UAECPI means the UAE consumer price index, as published by the Statistics Centre – Abu Dhabi and, if the index ceases to be published (or representative), such substantively similar new, revised or substitute index as identified by an internationally recognised audit and accounting firm selected by ER Freight.

VAT Law means applicable Law of the UAE in relation to value added tax, including Federal Decree-Law No. 8 of 2017 on Value Added Tax.

Warning Notice has the meaning given to it in Section 14.3 (*Performance Management*).

1.2 Interpretation

The following rules will apply to the interpretation of the Agreement:

- (a) references to any **law** are to that law as amended, modified or replaced from time to time;
- (b) a provision of law (unless expressly stated otherwise) includes a reference to that provision as extended, applied, amended or re-enacted and includes any subordinate legislation;
- (c) a **month** shall mean a period starting on one day in a month and ending on the numerically corresponding day in the next month, except that, in respect of any single month or the last month in any period of months, if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last day in that calendar month;
- (d) a calendar period is a reference to the Gregorian calendar;
- (e) the singular includes the plural and vice versa;
- (f) references to any gender include every gender;
- (g) clause, section and paragraph headings are for ease of reference only and will not affect the interpretation of the Agreement;
- (h) reference to the Parties include their respective successors in title and/or respective permitted assigns;
- (i) references to **Recitals, Clauses, Sections, Exhibits** and **Paragraphs**, and any subdivisions thereof, are to the Recitals, Clauses, Sections, Exhibits and Paragraphs in the Agreement. References to Clauses are a reference to clauses within the Conditions of Contract, reference to Sections are a reference to sections within these Standard Haulage Terms, and references to Paragraphs are a reference to paragraphs within the Exhibits. The Exhibits form an integral part of the Agreement. Reference in the

Agreement to any other agreement will include a reference to that other agreement's schedules and/or appendices and annexes;

- (j) any reference in this document to the **Agreement**, or to any other agreement or document, respectively, includes a reference to the Agreement or such other agreement or document, as amended, restated, varied, supplemented, assigned or replaced from time to time in accordance with its terms;
- (k) unless a contrary indication appears, a reference in the Agreement to time of day is a reference to Abu Dhabi time;
- (l) a currency is a reference to the lawful currency for the time being of the relevant country;
- (m) the terms **include**, **including** and **in particular** will be construed without limitation;
- (n) an **amendment** includes a supplement, restatement or re-enactment and **amend** and **amended** (or any of their derivative forms) will be construed accordingly;
- (o) the term **assets** include present and future properties, revenues and rights of every description;
- (p) the terms **in writing** or **written** means any method of reproducing words in a legible and non-transitory form, and, for the avoidance of doubt, does not include email, except if reproduced and signed by its author(s);
- (q) any reference to the word **determined** will (unless the contrary intention appears) mean a determination in accordance with Clause 6 (*Dispute Resolution*) of the Conditions of Contract;
- (r) any reference to an **obligation** of any Person under the Agreement or any other agreement or document shall be construed as a reference to an obligation expressed to be assumed by, or imposed on it, under the Agreement or, as the case may be, that other agreement or document (and **due**, **owing**, **payable** and **receivable** shall be similarly construed);
- (s) the term **indexed** shall be construed in relation to any amount at any time as a reference to such amount increased from time to time by the proportionate increase since the execution of the Agreement in UAECPi;
- (t) wherever in the Agreement provision is made for the giving or issuing of any notice, consent, approval, opinion, certificate or determination by any Person, then unless otherwise specified, such notice, consent, approval, opinion, certificate or determination will be in writing and the words **notify**, **certify**, **determine**, **approve** or **reject** will be construed accordingly; and
- (u) the term **tonne** or **tonnes** relates to metric tonnes.

2. EXCLUSIVE PROVIDER

The Customer agrees and confirms that for the Term of the Agreement, ER Freight shall be the sole exclusive provider to the Customer of rail haulage services from any Starting Point to the Destination Point(s).

3. ER FREIGHT OBLIGATIONS AND RIGHTS

- 3.1 ER Freight shall during the Term and in consideration of payment of the Fees perform the ER Freight Services.
- 3.2 ER Freight shall:
- (a) be responsible for the operation and maintenance of the ER Freight Facilities;
 - (b) provide the ER Freight Services with reasonable skill and care and in accordance with:
 - (i) the terms and conditions of the Agreement;
 - (ii) the Operating Standards;
 - (iii) Good Industry Practice; and
 - (iv) applicable Law;
 - (c) provide the equipment specified in Exhibit C (*Scope of Services*), if any.
- 3.3 The Customer acknowledges that other than as expressly set out in the Agreement, ER Freight shall have no obligation to provide and/or procure any fixed, minimum and/or guaranteed volume of ER Freight Services pursuant to the Agreement and nothing within the Agreement or implied by custom, practice or otherwise shall be construed as giving rise to any such commitment.
- 3.4 The Customer acknowledges that ER Freight shall not be responsible for customs clearance of any Consignments.
- 3.5 The Parties agree that any testing, ramp-up or other “soft launch” of the ER Freight Services remain subject to all of the terms of this Agreement (and in particular payment for ER Freight Services rendered in accordance with Exhibit B (*Pricing*)) unless otherwise agreed in writing.
- 3.6 For national security purposes, regulatory compliance, traffic safety, operational viability, or in the public interest, ER Freight retains the right at its sole discretion, or if directed by relevant public authorities, to:
- (i) Suspend, delay or modify ER Freight Services on certain routes or for specific shipments;
 - (ii) Exclude, reject, or impose additional conditions on the carriage of certain consignments, including but not limited to hazardous materials, time-sensitive goods, or cargo requiring special handling;
 - (iii) Prioritise certain consignments over others, including but not limited to government-directed shipments, emergency supplies, or cargo deemed essential for national infrastructure and public welfare; or
 - (iv) Modify service schedules, routing, or loading arrangements to ensure safe, efficient, and compliant operations.
- 3.7 In the event ER Freight exercises its rights under Section 3.6, it shall not be liable for any resulting delays, losses, or damages incurred by the Customer or third parties. The Customer remains liable for any Fees due for services already rendered and shall not be entitled to any refunds, waivers, or penalties due to such operational adjustments.

4. THE CUSTOMER'S OBLIGATIONS AND RIGHTS

4.1 The Customer shall during the Term:

- (a) comply with its obligations set out at Exhibit C (*Scope of Services*);
- (b) if Exhibit C (*Scope of Services*) does not provide that ER Freight is responsible for loading and/or unloading the ER Freight Transportation, load the each Consignment on to the ER Freight Transportation at the relevant Starting Point in accordance with the Operating Standards;
- (c) comply with all published conditions, rules and directions of the relevant port or terminal operator applicable to any access, use or operations in connection with the ER Freight Services, including (without limitation) DP World's conditions for the Jebel Ali Rail Terminal and Abu Dhabi Ports' conditions for Khalifa Port Rail Terminal, as amended from time to time. The Customer is responsible for ensuring that its compliance with all applicable safety, security, induction, access, and operating requirements required by the relevant port operator. Customer indemnifies ER Freight for any fines, penalties, access restrictions, or schedule impacts caused by Customer's non-compliance with port/terminal rules;
- (d) if Exhibit C (*Scope of Services*) states that ER Freight is responsible for loading and/or unloading the ER Freight Transportation, make each Consignment accessible to ER Freight at the relevant Starting Point in accordance with the Operating Standards; and
- (e) pay the Fees as and when invoiced by ER Freight in accordance with the Agreement.

4.2 The Customer shall undertake and comply with the Customer Obligations with reasonable skill and care and at all times in accordance with:

- (a) the terms and conditions of the Agreement;
- (b) the Operating Standards;
- (c) Good Industry Practice; and
- (d) applicable Law.

4.3 The Customer shall ensure each Consignment to be transported by ER Freight under the Agreement shall, at all times, comply with the parameters set out in Exhibit C (*Scope of Services*).

4.4 If the Customer or the Consignee (or any of their respective employees, subcontractors and/or agents) loads, reloads or unloads any Consignment on to or from the ER Freight Transportation, then the Customer shall:

- (a) procure that such Consignment is loaded, reloaded or unloaded in a manner which complies with all applicable Law and the Operating Standards including the Customer's applicable loading procedures;
- (b) procure that such Consignment is loaded, reloaded or unloaded evenly (with the weight distributed evenly) and that the ER Freight Transportation is not overloaded;

- (c) procure that such Consignment is loaded, reloaded or unloaded in a manner which will not cause any injury or damage to any property or person during transportation of the Consignment or any delay in transportation; and
 - (d) ensure that such Consignment is loaded, reloaded or unloaded expeditiously, in sufficient time to enable ER Freight to perform the Agreement and so as not to delay the use of ER Freight equipment (including the ER Freight Transportation) elsewhere by ER Freight and meet the deadlines in the Operating Standards.
- 4.5 ER Freight shall have the right to carry out a visual inspection of any Consignment loaded by or on behalf of the Customer or the Consignee (or any of their respective employees, subcontractors and/or agents) and/or any Consignment which ER Freight is to transport. Any such visual inspection shall not relieve the Customer of any of its obligations under the Agreement or at Law in relation to loading or packaging of, or otherwise relating to such Consignment and shall not be deemed to be acceptance by ER Freight that the Customer has complied with such obligations. ER Freight shall have the right to refuse carriage of any Consignment to the extent they are not, in ER Freight's reasonable opinion, securely loaded or otherwise suitable for transport.
- 4.6 ER Freight's employees, subcontractors and/or agents shall have no authority to give assistance beyond that agreed in writing by ER Freight, and ER Freight shall not be liable for any loss or damage howsoever caused (including if caused by negligence) by the giving of any other assistance.

5. REPRESENTATIONS AND WARRANTIES

- 5.1 Each Party represents and warrants to the other Party that:
- (a) it is a corporate entity duly incorporated and validly existing under the laws of the country of its formation;
 - (b) it has not been induced to enter into the Agreement by a statement, promise, representation or misrepresentation (if established) not contained within the Agreement and whether or not made innocently or negligently by the other Party;
 - (c) no insolvency action has been commenced, taken or threatened in writing with respect to it or any part of its assets;
 - (d) it has the power and authority to own its assets and carry on its business as contemplated by the Agreement;
 - (e) the obligations expressed to be assumed by it in the Agreement are legal, valid, binding and enforceable;
 - (f) it has the requisite power and authority to enter into, perform and deliver, and has obtained all necessary corporate approvals and taken all necessary action to authorise its entry into, performance and delivery of, the Agreement and the transactions contemplated hereby;
 - (g) neither it, nor any of its officers, directors, employees or any other person acting on behalf of it, is engaging, has committed or is engaged in any Sanctionable Practice, with respect to, in the case of the Customer, the Customer Obligations and, in the case of ER Freight, the ER Freight Services, or any transaction contemplated by the Agreement; and

- (h) no limit on its powers or authority will be exceeded as a result of giving of indemnities contemplated by the Agreement.
- 5.2 To the extent that contrary to the warranty given in Section 5.1(b), any statements, promises, representations or misrepresentations are shown to have been given, the recipient of such statements, promises, representations or misrepresentations unconditionally waives any claims, rights or remedies which it might otherwise have had in relation to them. Nothing in Section 5.1(b) shall exclude or restrict any liability which a Party would otherwise have to the other in respect of any statements, promises or representations made fraudulently by that Party.
- 5.3 The Customer represents and warrants to ER Freight that:
 - (a) no labour disputes, strikes, slowdowns or work stoppages which may reasonably be expected prevent, materially hinder or materially delay its ability to comply with its obligations under the Agreement, are currently or, to the best of its knowledge and belief (having made due and careful enquiry), have been threatened against it;
 - (b) either it is the legal owner of the Freight or that it has the authority of the legal owner(s) and/or all Persons having an interest in the Freight to enter into the Agreement and to accept the terms and conditions in the Agreement for the transport of the Freight;
 - (c) the description and particulars relating to the Freight set out in Exhibit C (*Scope of Services*) are complete, true and accurate in all respects and that the Freight shall, at all times, comply with such description and particulars; and
 - (d) any information provided in respect of a Consignment is complete, true and accurate in all respects and that the Consignment shall, at all times, comply with such information.
- 5.4 The express terms of the Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by Law.

6. REPRESENTATIVES

- 6.1 The ER Freight Representative shall be the principal contact point for the Customer for any issues relating to the performance of its obligations under the Agreement. ER Freight must maintain an ER Freight Representative and an ER Freight Deputy Representative at all times and notify the Customer as soon as reasonably possible of the name and contact details of any replacement or temporary replacement of the ER Freight Representative or ER Freight Deputy Representative from time to time by giving notice to the Customer of that person's name and contact details.
- 6.2 The Customer Representative shall be the principal contact point for ER Freight for any issues relating to the performance of its obligations under the Agreement. The Customer must maintain a Customer Representative and Customer Deputy Representative at all times and notify ER Freight as soon as reasonably possible of the name and contact details of any replacement or temporary replacement of the Customer Representative or the Customer Deputy Representative from time to time by giving notice to ER Freight of that person's name and contact details.

- 6.3 Subject to Section 6.4 and Section 6.5 below, any instructions, directions or queries issued by a Party's Representative must be issued to the other Party in writing. Neither Party is obliged to comply with or respond to instructions, directions or queries from the other Party which are not:
- (a) issued by the other Party's Representative; and
 - (b) in writing.
- 6.4 The ER Freight Representative may delegate any part of its authorities as it thinks fit and without derogation from its responsibilities under the Agreement, acting reasonably, to representatives within its management team to facilitate the day-to-day administration of the Agreement and the ER Freight Services; *provided that* ER Freight will give written notice of such delegation of authority to the Customer specifying:
- (a) the name of the delegate;
 - (b) the extent of, and any limitations on, the delegate's authority; and
 - (c) the duration of the delegation, if limited.
- 6.5 The Customer Representative may delegate any part of its authorities as it thinks fit and without derogation from its responsibilities under the Agreement, acting reasonably, to representatives within its management team to facilitate the day-to-day administration of the Agreement and the Customer Obligations; *provided that* the Customer will give written notice of such delegation of authority to ER Freight specifying:
- (a) the name of the delegate;
 - (b) the extent of, and any limitations on, the delegate's authority; and
 - (c) the duration of the delegation, if limited.
- 6.6 The Parties will cooperate with any delegate appointed in accordance with Sections 6.4 or 6.5.
- 6.7 All notifications and approvals to be issued under the Agreement may be issued by and to the Party's Representatives (or their delegates, subject to Sections 6.4 and 6.5) and each Party's Representatives (and their delegates, subject to Sections 6.4 and 6.5) will be deemed to have authority to issue and receive the relevant notifications and approvals.

7. THE CONSIGNMENT

- 7.1 The Customer shall give ER Freight such details for each Consignment as ER Freight may require from time to time. The Customer will issue ER Freight with adequate forwarding instructions for each Consignment. The Customer shall procure that each Consignment shall be clearly and properly addressed and labelled in accordance with ER Freight's requirements. If the Customer should change any aspect of a Consignment after advising ER Freight of the information required in this Section 7.1, then the Customer shall as soon as practicable notify ER Freight of such changes (and in any event shall notify ER Freight by no later than the deadline stated in the Operating Standards).
- 7.2 ER Freight shall sign a document prepared by the Customer (or the relevant Customer Party) acknowledging receipt of a Consignment, however, any such document shall not evidence the condition, correctness or declared nature, quantity or weight of such Consignment at the time it is received by ER Freight.

- 7.3 The Customer shall ensure that each Consignment:
- (a) will be and at all times whilst in the custody or control of ER Freight remain safe and fit to be transported; and
 - (b) will not cause death or personal injury to any person or damage to any property or other consignment during transportation.
- 7.4 The Customer confirms that, other than as agreed in writing between it and ER Freight, there are and will be no special requirements for the transport of a Consignment. Accordingly, ER Freight shall have no liability for any deterioration or loss of or damage to a Consignment resulting from any such special requirement not so agreed in writing. If the Customer notifies ER Freight of any such special requirement, ER Freight shall have no obligation to transport such Consignment, unless it agrees to do so in writing. If ER Freight agrees to carry any Consignment for which there is a special requirement it may charge the Customer additional sums.
- 8. PROHIBITED CARGO AND DANGEROUS GOODS**
- 8.1 ER Freight shall have no obligation to accept Prohibited Cargo for carriage.
- 8.2 ER Freight shall have no liability for any loss or damage (including where arising as a result of negligence) in respect of any Dangerous Goods unless:
- (a) prior to loading, ER Freight has received in writing precise and correct identification of the Freight; and
 - (b) ER Freight has agreed in writing to accept the same for carriage including any specific terms for such carriage.
- 8.3 If ER Freight accepts any Dangerous Goods for carriage, the Customer shall (and shall procure that any consignor or shipper shall) ensure the Freight is safely packaged and labelled with the precise and correct identity of the relevant substances and/or articles and all other relevant information as specified by any statutory or regulatory requirements from time to time. The Customer shall (and shall procure that any consignor or shipper shall) comply with any other reasonable requirements issued by ER Freight from time to time regarding carriage of Dangerous Goods.
- 8.4 If Section 8.3 is not complied with and notwithstanding a Consignment having been accepted, ER Freight may refuse to provide ER Freight Services, or where ER Freight Services have commenced, may unload such Consignment at a convenient location and notify the Customer of the location of the unloaded Consignment. In such circumstances, all costs incurred by ER Freight shall be to the Customer's account and shall be recovered as a debt due from the Customer.
- 8.5 If ER Freight accepts any Dangerous Goods for haulage, it does so subject to the requirements of Good Industry Practice and the provisions of any applicable Law governing the handling and transportation of Dangerous Goods.
- 8.6 Where:
- (a) Dangerous Goods are:
 - (i) delivered to ER Freight without ER Freight's written consent;

- (ii) not distinctly marked to indicate their nature and character; and/or
- (iii) in ER Freight's reasonable opinion, liable to become dangerous, flammable or damaging; or

(b) Prohibited Cargo is delivered to ER Freight,

ER Freight may destroy, dispose of, abandon, or render them harmless, with the cost of any such action required to be taken by ER Freight to do so being reimbursed by the Customer to ER Freight, without compensation to the Customer and without prejudice to ER Freight's right to be paid the Fees.

8.7 Where the Customer fails to:

- (a) collect Dangerous Goods within twenty-four (24) hours of delivery by ER Freight; or
- (b) in the event that ER Freight issues a notification to the Customer under Section 8.4, provide the information require to comply with Section 8.3 or collect the Dangerous Goods within twenty-four (24) hours of the receipt of such notification,

the Customer acknowledges and accepts that ER Freight will notify the appropriate authorities and comply with all directions consequent upon that notification, at the Customer's cost.

9. STANDARDS

The Operating Standards shall be in accordance with Good Industry Practice and comply with applicable Law.

10. FEES AND PAYMENT

- 10.1 The Customer shall pay to ER Freight the Fees in accordance with Exhibit B (*Pricing*) or where applicable the terms set out in the Conditions of Contract.
- 10.2 Once per week, ER Freight shall submit to the Customer an invoice setting out the amount payable under the Tariff in respect of all ER Freight Services planned to be delivered during the previous week, prepared pursuant to the ER Freight Standard Operating Procedure.
- 10.3 All Fees shall be paid by the Customer to ER Freight in AED in cleared funds within fourteen (14) Business Days of the date of the relevant invoice, and shall be grossed up to account for any UAE VAT or other tax or duty payable by ER Freight for the performance of the Services. All remittances shall include a reference to the relevant invoice (including its number). Payment shall be made by wire transfer to the bank account expressly nominated on the relevant invoice or as otherwise advised by ER Freight from time to time.
- 10.4 All Fees and/or payments payable pursuant to the Agreement are exclusive of UAE VAT and any other tax, duty or fee imposed from time to time by any Governmental Authority, and are subject to the addition of UAE VAT and any other tax, duty or fee at the appropriate rate.
- 10.5 Default Interest will accrue daily on any amount outstanding under the Agreement from the date that an amount becomes due and payable until the date of settlement in full; *provided that* Default Interest on withheld or disputed payments will not become payable, unless and until such Dispute will have been resolved in accordance with the terms of the Agreement. ER Freight shall be entitled to such interest without formal notice.

- 10.6 Any Dispute in relation to ER Freight's assessment of the Fees will be settled or determined in accordance with Clause 6 (*Dispute Resolution*) of the Conditions of Contract. ER Freight's assessment with respect to the Fees shall apply until the Dispute has been settled or determined in accordance with this Section 10.6.
- 10.7 All payments to be made by the Customer to ER Freight under the Agreement shall be made in full without any set-off, restriction or condition and without any deduction for or on account of any counterclaim or dispute unless such deduction has been agreed in advance in writing by ER Freight.
- 10.8 If:
- (a) the Customer fails to make any Consignment available for collection and/or loading in accordance with the Operating Standards; or
 - (b) the Consignee fails to take delivery of any Consignment immediately on arrival at the relevant Destination Point; or
 - (c) the Customer breaches its obligations under Section 4.4(d) (*The Customer's Obligations and Rights*),
- then ER Freight may charge the Customer additional charges.
- 10.9 Subject to Section 10.10 below, and except as otherwise provided in this Agreement, ER Freight will not vary the Tariff without the prior consent of the Customer, except where the cost to ER Freight of providing the ER Freight Services increases as a consequence of (i) a Change in Law, (ii) annual variation of UAE CPI, (iii) a variation in the manner or rate of taxation or (iv) as a result of decision by any Governmental Authority.
- 10.10 The Parties acknowledge and agree that at annual intervals the Tariff shall be adjusted in accordance with the formula set out in Section 10.12 & 10.13 below and as at Exhibit B (*Pricing*).
- 10.11 Without prejudice to other rights and remedies of ER Freight and subject to the Operating Standards in relation to order and confirmation procedures or as otherwise agreed by the Parties in writing, if at any time after the confirmation of order is issued by ER Freight (in accordance with the Operating Standards) the Customer seeks to cancel any (or all) of the ER Freight Services confirmed in the confirmation of order, it shall be liable to pay to ER Freight such sums as may be calculated in accordance with the the Cancellation Procedures (the **Cancellation Charges**). The Parties acknowledge and agree the Cancellation Charges represent a genuine pre-estimate of the losses which ER Freight would incur in the event of a cancellation of the ER Freight Services and should not be construed as a penalty.

Unless otherwise agreed in writing between the Parties, the following Cancellation Charges shall be payable to ER Freight by the Customer:

In this context, "departure" means the scheduled train departure as per ER Freight weekly plan.

Time before scheduled departure	Cancellation Charge (% of Fees for the Freight Services)
Before train scheduling every Thursday at 11:00 Gulf Standard Time	Free

More than 48 hours and up to 72 hours before departure	50%
More than 24 hours and up to 48 hours before departure	65%
24 hours or less before departure	85%

- 10.12 The Parties agree that from the commencement of the second Operating Year and each Operating Year thereafter, the Fees set out in Exhibit B (*Pricing*) shall be adjusted upwards annually by a sum equivalent to the higher of (i) seventy percent (70%) of any annual increase of the UAECPI (or other reputable index selected by ER Freight, acting reasonably) and (ii) 1.25%, compounded annually, to account for inflation, or in accordance with such other formula for indexation as may be agreed in writing between the Parties.
- 10.13 Each time the diesel fuel index maintained by UAE Fuel Price Follow-up Committee of the Ministry of Energy & Infrastructure (and currently published online at <https://www.instagram.com/emarat.official>) or any successor index changes month-to-month, the Tariff for the immediately following month will be revised by 30% of the change on a cumulative basis (considering the diesel component as accounting for approximately 30% of the total Tariff). The Tariff applicable on the Commencement Date shall take into account all cumulative adjustments to the Tariff pursuant to this clause between the Effective Date and the Commencement Date. Tariff adjustments resulting from the operation of this clause will be invoiced separately from the Tariff payable under this Agreement.

Example:

Fuel index formula - Monthly

$$RN = RO + (RO * ((FN - FO) / FO) * .30)$$

RN: New Tariff

RO: Current Tariff as per this Agreement

FN: New Fuel Rate

FO: Old Fuel Rate

FO* - The Old Fuel Rate to be considered for the monthly calculation should be the prior month's rate, and is baselined on the Effective Date

11. LIEN

11.1 ER Freight shall have:

- (a) a particular lien on all and each part of a Consignment; and
- (b) a general lien on all and each part of a Consignment in ER Freight's possession for all sums due to ER Freight from the Customer, whether under the Agreement or otherwise.

11.2 ER Freight may exercise its lien on its own behalf or as agent for any assignee of its invoices at any time and at any place at its sole discretion whether or not sums have become payable in accordance with Section 10 (*Fees and Payment*) and whether or not the contractual carriage has been completed and the Agreement shall continue to apply during the period of exercise of such lien.

12. CHANGES

12.1 Change Request

- (a) A Party (the **Requesting Party**) may at any time request a Change by handing over to other Party (the **Receiving Party**) a written request setting out details of the Changes required by the Requesting Party in accordance with this Section 12.1 (Changes) (a **Change Request**).
- (b) The Requesting Party shall provide in the Change Request sufficient detail of the Change being requested for the Receiving Party to be able to compile an estimated impact of the Change Request.
- (c) If the Requesting Party submits a Change Request, the Receiving Party shall submit a response (**Change Response**) as soon as possible and in any event no later than two (2) months after receipt of the Change Request, including:
 - (i) whether the Change Request will, or is expected to, cause a breach under the Agreement or affect the Receiving Party's ability to perform its Services and Obligations under the Agreement;
 - (ii) any necessary Changes to the Services and Obligations resulting from the Change Request;
 - (iii) whether any amendments are required to the terms of the Agreement as a consequence of the Change Request;
 - (iv) whether the implementation of the Change Request will directly result in an increase in the cost of performing its Services and Obligations under the Agreement for the Receiving Party;
 - (v) any governmental or internal consents that will be required to implement the Change Request; and
 - (vi) the proposed manner of acceptance of carrying out the alterations to the Services and Obligations to be affected by the Change Request.
- (d) As soon as the Requesting Party receives the Change Response pursuant to Section 12.1(c) (*Change Request*), the ER Freight Representative and the Customer Representative shall meet to discuss its contents and shall seek to agree the terms on which the Change Request will be implemented.
- (e) If the ER Freight Representative and the Customer Representative are unable to agree on the implementation of the Change Request (including the financial impact of the Change Request) in accordance with Section 12.1(d) (*Change Request*) above, the Change Request shall be deemed withdrawn, unless the Parties agree otherwise.
- (f) In the event the Requesting Party withdraws a Change Request or the Change Request is deemed to be withdrawn in accordance with Section 12.1(c) (*Change Request*) above then; *provided that* the Receiving Party has complied with its Services and Obligations in this Section 12 (*Changes*) the Requesting Party shall reimburse the Receiving Party its reasonable direct external costs (e.g. consultant or other third party fees) incurred by the Receiving Party in responding to the Change Request.

12.2 Services and Obligations to Continue During Consideration Process

The submission of any proposed Change, any document submitted pursuant to this Section 12 (*Changes*), any approval or refusal by the Receiving Party or the submission of comments or objections by the Receiving Party will not relieve the Parties in any way from any of its Services and Obligations, liabilities and responsibilities under the Agreement during the consideration process.

12.3 Agreement amended

Upon agreement to or a determination of a Change under this Section 12 (*Changes*), the relevant provisions of the Agreement will apply to the Services and Obligations as amended and including any Change, and all undertakings of both Parties concerning the Services contained in the Agreement will apply to the carrying out of any such Services as amended including any Change, unless otherwise agreed.

13. INSURANCE

13.1 The Customer shall subscribe and/or maintain the insurances specified in Exhibit G (*Insurances*).

13.2 At ER Freight's request, the Customer shall provide current certificates of insurance in order to prove that insurance coverage as required pursuant to Exhibit G (*Insurances*) is in effect.

13.3 Following the occurrence of any event or circumstance which:

- (a) gives rise to a Loss which is or might reasonably be considered to be recoverable pursuant to the insurance maintained by a Party (the **Insured Party**) under the Agreement; and
- (b) does or might reasonably be expected to give rise to an obligation by that Insured Party to indemnify the other Party pursuant to Section 21.1 (*Indemnity by ER Freight*) and 21.2 (*Indemnity by the Customer*) (as the case may be),

the Insured Party shall use all reasonable endeavours and take all steps as may be reasonably required in connection with recovering such Loss under the insurance, in order to facilitate the recovery by the other Party of the amount for which it is entitled to be indemnified.

14. PERFORMANCE MANAGEMENT

14.1 The Parties agree the Service Levels shall be used to measure:

- (a) ER Freight's performance of the ER Freight Services; and
- (b) the Customer's performance of the Customer Obligations.

14.2 If a Party has failed to materially comply with any Service Levels, the other Party may give written notice (an **Improvement Notice**) setting out:

- (a) the matter or matters giving rise to such notice and specifying the measures required to remedy such failure (if such failure is capable of remedy); and/or
- (b) such action as is necessary to prevent similar failures in the future and the reasonable timescale within which the other Party shall remedy the failure (the **Remedial Period**).

- 14.3 If, on the service of an Improvement Notice, the Party in receipt of the Improvement Notice fails to remedy the failure within the Remedial Period, then the other Party may serve a written warning notice (a **Warning Notice**). The Warning Notice shall set out the matter or matters giving rise to such notice. Upon receipt of a Warning Notice, the recipient Party shall propose a written programme specifying in detail the manner and timescales in which it proposes to remedy the relevant failure including relief to the non-defaulting party in relation to its rights, Services and Obligations under the Agreement.

15. TITLE AND RISK

- 15.1 Title to all Consignments hauled under the Agreement shall remain at all times with the Customer (or the Customer Party) and shall not pass to ER Freight at any point during the provision of ER Freight Services.
- 15.2 Risk in a Consignment shall:
- (a) subject to Section 22 (*Limitation of Liability*), pass from the Customer (or the Customer Party) to ER Freight at the time the Consignment is Handed Over to ER Freight at the relevant Starting Point; and
 - (b) pass from ER Freight to the Customer (or the Customer Party) at the time the Consignment is Handed Back by ER Freight at the relevant Destination Point.

16. SUSPENSION

- 16.1 ER Freight may, exercising its reasonable discretion, suspend some or all of the ER Freight Services upon a Customer Event of Default.
- 16.2 During any period of suspension pursuant to Section 16.1 (*Suspension*):
- (a) ER Freight's obligations and liability under the Service Levels shall cease to apply;
 - (b) the Customer shall continue to be liable for payment of the Fees in accordance with Section 10 (*Fees and Payment*) and Exhibit B (*Pricing*); and
 - (c) the Customer shall be liable for any committed costs and resources ER Freight incurs as a direct result of the ER Freight Services being suspended and which it is unable to reallocate or recover (having used reasonable endeavours to do so).
- 16.3 Any suspension pursuant to Section 16.1 (*Suspension*) shall continue unless and until the Customer fully remedies the Customer Event of Default or the Agreement is terminated pursuant to Section 18.1.

17. EVENTS OF DEFAULT

- 17.1 The following are Customer Events of Default:
- (a) the Customer fails to make any payment in respect of an undisputed amount for a period of thirty (30) days after the date on which the Customer receives notice from ER Freight that the payment is overdue;
 - (b) the Customer fails to remedy major issues/matters referred to in a Warning Notice issued by ER Freight pursuant to Section 14.3 (*Performance Management*) within a

further sixty (60) days (or other such period as the Parties may agree is appropriate to the relevant failure);

- (c) any Customer Party commits a material breach of its obligations under the Agreement, a material breach being one which:
 - (i) results in material financial loss to ER Freight; or
 - (ii) results in material disruption to the operation of any of the ER Freight Facilities and/or the Federal Railway,

and the Customer fails to address this breach within sixty (60) days of having received notice from ER Freight of such breach; *provided that*, if the Customer was acting within the scope of its obligations under the Agreement, any such material financial loss or any such material disruption shall not constitute an event of default;

- (d) an Insolvency Event occurs in respect of the Customer; or
- (e) the Customer assigns any of its rights or obligations under the Agreement in breach of Section 25.1 (*Assignment, Novation and Charge*).

17.2 The following are ER Freight Events of Default:

- (a) there is an ER Freight Services Failure;
- (b) ER Freight fails to remedy the major issues/matters referred to in a Warning Notice issued by Customer pursuant to Section 14.3 (*Performance Management*) within such further timeframe as is set out under the Service Levels (or other such period as the Parties may agree is appropriate to the relevant failure);
- (c) ER Freight commits a material breach of its obligations under the Agreement, a material breach being one which:
 - (i) results in material financial loss to the Customer; or
 - (ii) results in material disruption to the operations of the Customer;

and ER Freight fails to address this breach within sixty (60) days of having received notice from the Customer of such breach; *provided that*, if ER Freight was acting within the scope of its obligations under the Agreement, any such material financial loss or any such material disruption shall not constitute an event of default;

- (d) an Insolvency Event occurs in respect of ER Freight; or
- (e) ER Freight assigns any of its rights or obligations under the Agreement in breach of Section 25.1 (*Assignment, Novation and Charge*).

17.3 The following are no-fault events of default:

- (a) any other events allowing a Party to terminate the Agreement in accordance with any other terms of the Agreement; and/or
- (b) immediate termination, upon the issue of an order of termination by the courts of the Emirate of Abu Dhabi or as otherwise required under the UAE Civil Code.

18. TERMINATION**18.1 Termination on Default**

Upon the occurrence of a continuing Event of Default, the following procedure shall apply:

- (a) The non-defaulting Party (the **Non-Defaulting Party**) may, but shall not be obliged to, give notice in writing (the **Default Notice**) to the other Party (the **Defaulting Party**), specifying in reasonable detail the Event of Default and requiring the Defaulting Party to remedy any such default, if capable of remedy, within thirty (30) Business Days of its receipt of such Default Notice or such longer period as the Parties may mutually agree (the **Cure Period**).
- (b) The Defaulting Party shall be entitled to notify the Non-Defaulting Party in writing within ten (10) Business Days after receipt of a Default Notice whether it disagrees with the alleged Event of Default. If the Defaulting Party fails to give such notice to the Non-Defaulting Party within such period, the Defaulting Party shall be deemed to have accepted the contents of the Default Notice.
- (c) If the Defaulting Party does give notice of any disagreement to the Non-Defaulting Party in accordance with Section 18.1(b) (*Termination on Default*) above, the ER Freight Representative and the Customer Representative shall meet and shall through reasoned discussion and in good faith attempt to resolve such disagreement by negotiation during a period of not less than fifteen (15) Business Days starting on the date the Non-Defaulting Party receives such notice. If the ER Freight Representative and the Customer Representative are unable to resolve the disagreement within such period (or such longer period as the Parties may agree) then either Party may refer such disagreement to the Dispute Committee in accordance with Clause 6 (*Dispute Resolution*) of the Conditions of Contract. The Cure Period shall be extended by an equal number of days taken by the ER Freight Representative and the Customer Representative to discuss the Default Notice or for so long as the Default Notice is subject to Dispute.
- (d) Subject to Section 18.1(c) (*Termination on Default*) above and the Event of Default being capable of remedy, the Parties shall consult as to what steps shall be taken with a view to:
 - (i) mitigating the consequences of; and
 - (ii) curing such Event of Default within the Cure Period.

For the avoidance of doubt, the Events of Default in Sections 17.1(d) (*Events of Default*) and 17.1(e) (*Events of Default*) as well as Sections 17.2(d) (*Events of Default*) and 17.2(e) (*Events of Default*) are not capable of cure.

- 18.2 At the expiry of the Cure Period (as amended if applicable pursuant to Section 18.1(c) (*Termination on Default*) above), if the Event of Default has not been remedied and the Parties have not agreed to extend the Cure Period, the Non-Defaulting Party may, in its sole and absolute discretion, terminate the Agreement with immediate effect by giving written notice to the Defaulting Party and without needing to obtain an order of termination by the courts of the Emirate of Abu Dhabi. If the Event of Default is not capable of remedy, the termination shall be immediate upon the Defaulting Party receiving the Default Notice.

18.3 Termination for convenience and otherwise under the Agreement

- (a) ER Freight may, in addition to any other power it may have, at any time by thirty (30) days' notice to the Customer and without the need for a court order terminate the Agreement for convenience. In such circumstances, ER Freight shall be entitled to payment of a fair and reasonable sum for the ER Freight Services delivered up to the date of termination.
- (b) To the extent any provision of the Agreement, including Section 24.1(c) (*Consequences of Force Majeure*), provides that the Agreement may be terminated on the occurrence of an event giving rise to termination, the Party whose right to terminate the Agreement has arisen may issue a written notice to the other Party immediately terminating the Agreement.

18.4 Termination by Law

The Agreement shall be terminated, with immediate effect, upon the issue of an order of termination by the courts of the Emirate of Abu Dhabi or as otherwise permitted under the UAE Civil Code.

18.5 Termination without Prejudice to Rights and Remedies

Termination of the Agreement shall be without prejudice to the rights and remedies of either Party which may have accrued up to the date of termination.

19. CONSEQUENCES OF TERMINATION

In the event of termination as a result of an Event of Default:

- (a) the Defaulting Party shall indemnify and hold harmless Non-Defaulting Party from and against; and
- (b) the Non-Defaulting Party shall be entitled to recover from the Defaulting Party, any Loss incurred by the Non-Defaulting Party arising out of, or in any way in connection with, the termination of the Agreement including but not limited to:
 - (i) the cost to the Non-Defaulting Party of terminating any Subcontracts entered into by it for the purpose of performing its obligations under the Agreement; *plus*
 - (ii) any legal fees reasonably incurred by the Non-Defaulting Party as a result of the termination of the Agreement; *plus*
 - (iii) when ER Freight is the Non-Defaulting Party:
 - (i) in the event that ER Freight has procured external financing to fund its obligations under the Agreement (including the construction of the ER Freight Facilities), the financing costs incurred pursuant to such financing arrangements; *plus*
 - (ii) the total capital expenditure paid by ER Freight up to and including the date of termination which has been incurred wholly or primarily for the Customer; *plus*
 - (iii) any Fees due to ER Freight for ER Freight Services performed up to and including the date of termination.

20. END OF TERM OBLIGATIONS

- 20.1 At least six (6) months prior to the expiry of the Agreement or immediately on the earlier termination of the Agreement, the Parties shall meet to determine what Services and Obligations shall be assumed by each Party in relation to the expiry or termination of the Agreement and/or to discuss the possibility to renew the Agreement and terms and conditions that could be applicable for such renewal.
- 20.2 The Parties shall determine:
- (a) in circumstances where the Agreement is terminated prior to the end of the Term, the plan for implementing the rights, Services and Obligations as anticipated by Section 20.1 (*End of Term Obligations*); or
 - (b) in circumstances where the Agreement expires at the end of the Term, whether (at ER Freight's total discretion) the Agreement should be extended and the basis for the continued performance of the Services and Obligations under the Agreement, including any amendments or capital investments required to enable the Parties to continue to meet their Services and Obligations under the Agreement.
- 20.3 For the avoidance of doubt, in the event any Consignment has been loaded onto the ER Freight Transportation on or prior to the Expiry Date, ER Freight shall perform and complete the ER Freight Services in respect of such Consignment in accordance with the instructions of the Customer and the terms and conditions of the Agreement shall continue to apply thereto.

21. INDEMNITIES**21.1 Indemnity by ER Freight**

- (a) ER Freight shall be liable for and shall indemnify the Customer against any Claims made against, or Loss suffered by, the Customer in respect of:
 - (i) loss or damage to property or facilities entrusted to ER Freight, other than Freight and Containers;
 - (ii) bodily injury or death incurred by any Person; and
 - (iii) any Claims brought by a third party against the Customer, other than those related to Freight and Containers,

to the extent such Claims or Loss: (a) arise solely as a result of ER Freight failing to comply with the terms of the Agreement and not as a consequence of some act, neglect, wilful default, fraud or breach of the Agreement on the part of the Customer; and (b) are evidenced by the Customer to the reasonable satisfaction of ER Freight, *save to the extent that such Claim or Loss is recoverable (or which, but for any default by the Customer, excess, or insurer's insolvency, would have been recoverable)* by the Customer under any policy required to be procured and maintained by the Agreement.

- (b) ER Freight's liability to the Customer arising under any indemnity in the Agreement shall be without prejudice to any other right or remedy available to the Customer under the Agreement.

21.2 Indemnity by the Customer

- (a) The Customer shall be liable for and shall indemnify ER Freight against any Claims made against, or Loss suffered by, ER Freight in respect of:
- (i) the loss or damage to any property, facilities or other assets of ER Freight, an ER Freight Party and/or any other Person;
 - (ii) bodily injury or death incurred by any Person; and
 - (iii) any Claim brought by a third party against ER Freight;
- to the extent such Claims or Loss: (a) arise as a result of the Customer's performance of any of its obligations under the Agreement, its failure to perform such obligations, or its default or negligence and not as a consequence of some act, neglect, wilful default or breach of the Agreement on the part of ER Freight; and (b) are evidenced by ER Freight to the reasonable satisfaction of the Customer.
- (b) The Customer shall indemnify and hold harmless ER Freight and every ER Freight Party from all Losses or Claims incurred by ER Freight or any ER Freight Party in respect of:
- (i) any Customer Party's breach of the Agreement;
 - (ii) where the ER Freight Services involve the transportation of Containers, any loss of or damage to Freight;
 - (iii) the carriage of Prohibited Cargo;
 - (iv) the carriage of Dangerous Goods:
 - (A) that ER Freight has not expressly accepted for carriage in writing in accordance with Section 8.2 (*Prohibited Cargo and Dangerous Goods*);
 - (B) in respect of which the Customer has not complied with its obligations under Section 8.3 (*Prohibited Cargo and Dangerous Goods*); or
 - (C) where damage, bodily injury or death is caused by the Dangerous Goods; or
 - (v) breach of statutory obligations,
- to the extent such Claims or Loss arise out of the performance or non-performance by the Customer or a Customer Party of the Customer's obligations under the Agreement or of the negligence or default of the Customer or any Customer Party.
- (c) In the event there is a dispute as to the cause of a Claim or Loss arising out of or in connection with Section 4 (*The Customer's Obligations and Rights*), the Customer shall be required to establish to the reasonable satisfaction of ER Freight that the cause of the Claim or Loss is other than the Consignment not being:
- (i) adequately and properly packaged; or
 - (ii) Prohibited Cargo; or
 - (iii) safe and fit to be transported.

Where no cause of a Claim or Loss can be established to the reasonable satisfaction of ER Freight, the Customer shall be deemed to be in breach of Section 4 (*The Customer's Obligations and Rights*).

- (d) The Customer shall not be responsible or be obliged to indemnify ER Freight or an ER Freight Party (as the case may be) under Sections 21.2(a) (*Indemnity by the Customer*) and 21.2(b) (*Indemnity by the Customer*) for Claims or Losses:
 - (i) which arise as a result of breach by ER Freight of its obligations;
 - (ii) to the extent caused by the gross negligence, wilful misconduct, fraud or breach of applicable Law of an ER Freight Party; or
 - (iii) caused by the Customer acting on the instructions of ER Freight, where ER Freight has been made aware that acting on such instructions would give rise to a loss or claim under this Section 21.2 (*Indemnity by the Customer*).
- (e) The Customer's liability to ER Freight arising under any indemnity in the Agreement shall be without prejudice to any other right or remedy available to ER Freight under the Agreement.

21.3 Indemnification Claims Management Procedures

(a) Payment

- (i) The liability of the Indemnifying Party to make payment to the Indemnified Party for any Claim or Loss under the Agreement shall be finally determined upon any of the following events (each a **Final Determination**):
 - (i) the settlement of the Claim or Loss by the Indemnified Party with the prior written consent of the Indemnifying Party;
 - (ii) a final decision or arbitral award with respect to the Claim or Loss by the appropriate court of competent jurisdiction or arbitral tribunal of competent jurisdiction and expiration of applicable appeal periods, unless such decision or award is appealed; or
 - (iii) if appealed, a final non-appealable decision of a court of last resort with respect to such Claim or Loss.
- (ii) the Indemnifying Party shall be required to make any payment within fifteen (15) Business Days after the Final Determination of such Claim or Loss.

(b) Procedures

- (i) Each of the Customer and ER Freight shall notify the other Party in writing of the occurrence of any event which has resulted in, or which may lead to, a Claim or Loss in respect of which it is entitled to be indemnified under the Agreement as soon as such Party becomes aware of such event.
- (ii) Such notification shall include a fully detailed claim, which includes full supporting particulars and substantiation of the event or circumstance and the basis of the claim.
- (iii) The Indemnifying Party may, at its option and at its expense, contest, defend or reasonably instruct the Indemnified Party with respect to, the defence of

any Claim (including appeals against any non-final decision, judgment or award) with respect to any Loss for which it is or may be obligated to indemnify the Indemnified Party under the Agreement.

- (iv) If the Indemnifying Party reasonably instructs the Indemnified Party with respect to the contest and defence of any Claim against the Indemnified Party in accordance with Section 21.3(b)(iii) (*Procedures*) and the Indemnified Party elects, by giving written notice to the Indemnifying Party within twenty-eight (28) days of having received written notice of such Claim, that it does not wish to contest or defend, or permit the Indemnifying Party to control, such Claim in accordance with Section 21.3(b)(iii) (*Procedures*), the Indemnified Party will be deemed to have immediately waived the benefit of the relevant indemnity under the Agreement with respect to such Claim or Loss.
- (v) No party entitled to indemnification shall settle or compromise any Claim in respect of which it is entitled to be indemnified by the other Party without the prior written consent of the Party obliged to provide indemnification, which consent shall not be unreasonably withheld or delayed.
- (vi) Neither Party shall be entitled to make any claim pursuant to the Agreement or otherwise in respect of any Claim or Loss unless it has notified the other Party of its entitlement to such Claim or Loss within two (2) months of first having coming aware of such Claim or Loss.

22. LIMITATION OF LIABILITY

22.1 Exclusions

Notwithstanding anything to the contrary in the Agreement, nothing shall limit or exclude the liability of either Party for:

- (a) death or personal injury resulting from negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) any other act or omission, liability for which cannot be limited or excluded by applicable Law or the governing law of the Agreement; or
- (d) Loss or damage arising as a result of an act or omission of such Party acting recklessly or with the intent to cause such Loss or damage.

22.2 Cap on Liability

Notwithstanding anything contained elsewhere in the Agreement, each Party's aggregate liability under the Agreement shall not exceed the Cap on Liability.

22.3 Indirect Loss

- (a) In no event shall any Party, its officers, employees or agents be liable to any other Party (on the basis of breach of contract, indemnity, warranty or tort, including negligence and strict or absolute liability, or breach of statutory duty or otherwise) for any matter arising out of or in connection with the Agreement in respect of any Consequential Loss suffered by such other Party.
- (b) For the avoidance of doubt, the following shall not constitute Consequential Loss:

- (i) the cost to either Party of terminating any Subcontracts entered into by it for the purpose of performing its obligations under the Agreement ;
- (ii) any legal fees reasonably incurred by either Party as a result of the termination of the Agreement; and
- (iii) where ER Freight is the Indemnified Party:
 - (i) in the event that ER Freight has procured external financing to fund its obligations under the Agreement (including the construction of the ER Freight Facilities), the financing costs incurred pursuant to such financing arrangements;
 - (ii) the total capital expenditure paid by ER Freight up to and including the date of termination which has been incurred wholly or primarily for the Customer; and
 - (iii) any Fees due to ER Freight for ER Freight Services performed up to and including the date of termination.

23. LOSS OF OR DAMAGE TO FREIGHT AND CONTAINERS

- 23.1 The Customer shall promptly (and in any event within two (2) days) notify the ER Freight Representative of any damage to any Consignment at the point of delivery. Failure to notify any damage shall be deemed prima facie evidence that the Consignment was delivered in good condition.
- 23.2 Notwithstanding Section 15 (*Title and Risk*), ER Freight shall have no obligation to reimburse any Fees, and it shall not have any liability for any loss of or damage to Freight and/or Containers which arises from any of the following:
 - (a) inherent liability to wastage in bulk or weight, latent defect or inherent defect, vice or natural deterioration of the Freight and/or Containers;
 - (b) any act or omission of the Customer, any Customer Party or the Consignee (or any of their employees, subcontractors and/or agents);
 - (c) any Force Majeure Event; or
 - (d) any loss of or damage to the Freight and/or Containers which occurs at any time before the same is Handed Over to ER Freight at the relevant Starting Point or Handed Back by ER Freight at the Destination Point.
- 23.3 ER Freight shall have no liability for any loss or damage to the Freight and/or a Container caused by the manner in which the same are loaded or unloaded by a Person other than ER Freight or any ER Freight Party.
- 23.4 ER Freight shall be entitled to, and the Customer shall as a pre-condition to the acceptance of any liability by ER Freight, as soon as reasonably practicable, provide objective proof to the satisfaction of ER Freight acting reasonably of the actual value or reduction in value (as the case may be as calculated excluding any VAT (if applicable)) of any Freight and/or Container, which is the subject of any loss or damage.

- 23.5 As a pre-condition to any liability, the Customer shall promptly submit to the ER Freight Representative objective proof of: (i) the occurrence and nature of the loss or damage; and (ii) the actual value or reduction in value (exclusive of VAT) in accordance with Section 23.4.
- 23.6 Objective proof includes contemporaneous documents and physical evidence, which may include: (i) commercial invoice and, where applicable, purchase order, bill of lading, packing list or other sale documents; (ii) independent surveyor's report (reasonably acceptable to ER Freight) with photographs/video taken at or near delivery or discovery; (iii) chain-of-custody/handover records evidencing Handed Over and Handed Back events per the Operating Standards; (iv) relevant weight tickets, temperature/telemetry logs and seal/condition reports; and (v) evidence of mitigation (including salvage) and details of insurance and recoveries.
- 23.7 ER Freight may reasonably request additional information, which the Customer shall provide without undue delay. Failure to supply sufficient objective proof entitles ER Freight to reject the claim.

24. FORCE MAJEURE

24.1 Consequences of Force Majeure

Subject to Section 24.4 (*Mitigation*) below, to the extent that the Affected Party complies with Section 24.2 (*Notification of Force Majeure Event*) below the following relief will be available:

- (a) any delay or non-performance caused by a Force Majeure Event will not amount to an Event of Default under the Agreement;
- (b) the Parties will be relieved from performing their respective Services and Obligations under the Agreement to the extent they are prevented from doing so as a result of a Force Majeure Event; and
- (c) if a Force Majeure Event continues for more than twelve (12) consecutive months, either Party may terminate the Agreement by providing written notice to the other Party.

For the avoidance of doubt, a Force Majeure Event does not excuse delay in payment for any undisputed amounts owed under the Agreement.

24.2 Notification of Force Majeure Event

- (a) As soon as reasonably practicable and in any event within five (5) Business Days of a Party becoming aware of the occurrence of a Force Majeure Event, a Party which is prevented from performing its Services and Obligations under the Agreement (the **Affected Party**) must notify the other Party (the **Non-Affected Party**) in writing of the occurrence of the Force Majeure Event.
- (b) A notice given in accordance with Section 24.2(a) above shall specify the Services and Obligations the performance of which is or will be prevented.
- (c) A Force Majeure Event will not affect the obligation of a Party (whether they are the Affected Party or not) to make any payment due under the Agreement.

24.3 Notification of Cessation of Force Majeure Event

- (a) The Affected Party will notify the Non-Affected Party without undue delay if:

- (i) it has established any other material information related to the Force Majeure Event and shall provide to the Non-Affected Party details of such information which are new and which render the previously provided information materially inaccurate or misleading; and
 - (ii) the Force Majeure Event has terminated, has ceased to influence the performance of its Services and Obligations under the Agreement or an alternate solution to allow the continued performance of the Services and Obligations has been arranged by the Affected Party.
- (b) Following receipt of such notice from the Affected Party, the Agreement shall continue under the conditions which existed immediately prior to the occurrence of the Force Majeure Event.

24.4 Mitigation

- (a) If the Customer's ability to perform its obligations under the Agreement are affected by a Force Majeure Event, the Customer shall use its best efforts (but without incurring material additional costs) to mitigate the effects of such Force Majeure Event at its own cost.
- (b) If ER Freight's ability to perform its obligations under the Agreement are affected by a Force Majeure Event, ER Freight will use its best efforts (but without incurring material additional costs) to mitigate the effects of such Force Majeure Event at its own cost.

25. ASSIGNMENT, NOVATION AND CHARGE AND SUBCONTRACTING

25.1 Assignment, Novation and Charge

- (a) ER Freight may assign, novate or otherwise charge the Agreement or transfer or assign any of its rights, claims, interest, benefits or obligations under the Agreement and any of its future rights, claims, interests and benefits or obligations to any ER Freight Affiliate or any entity established by ER Freight to operate the ER Freight Facilities and/or Federal Railway or to a company established and licenced by the Government of Abu Dhabi to own and/or operate the ER Freight Facilities and/or the Federal Railway and assets of ER Freight and/or to a lender and/or their nominees, provide that such Person is, in the reasonable opinion of ER Freight, qualified to operate the Federal Railway and to provide the ER Freight Services, without the consent of the Customer.
- (b) Other than as permitted in Section 25.1(a) above, neither Party may assign, novate or otherwise charge the Agreement under any circumstances or transfer or assign any of its rights, claims, interest, benefits or obligations under the Agreement to any third party without the prior written consent of the other Party.

25.2 Subcontracting

- (a) Subject to Section 25.2(b) below, each Party shall be entitled to appoint and retain any of its Affiliates and/or any other subcontractor to carry out its Services and Obligations under the Agreement.

- (b) Neither Party shall be relieved of any of its Services and Obligations, liabilities or responsibilities under the Agreement by reason of its Services and Obligations being carried out by an Affiliate or subcontractor thereof, nor will either Party be in any way liable to an Affiliate or subcontractor of the other Party or be in any way bound by the terms of a Subcontract of the other Party.
- (c) A Party that appoints an Affiliate or subcontractor shall be fully responsible for the acts, defaults and negligence of such Affiliate or subcontractor or the subcontractors, agents, servants, consultants and employees of such Affiliate or subcontractor as if they were the acts, defaults or negligence of that Party.
- (d) Neither the giving of consent by a Party to the identity of the Affiliate or subcontractor, nor the review or approval of the terms of the Subcontract (or of any amendment, modification, variation or waiver thereof), shall relieve the other Party of any of its Services and Obligations, liabilities or responsibilities under the Agreement nor render it in any way liable to any such Affiliate or subcontractor or in any way bound by the terms of such Subcontract.
- (e) ER Freight enters into the Agreement on behalf of itself and the ER Freight Parties, with the intent that, in addition to ER Freight, the ER Freight Parties concerned in the implementation and performance of the Agreement shall also be entitled to the benefit of the Agreement and shall be under no liability greater than or in addition to that of ER Freight under the Agreement.

26. CUSTOMER'S EQUIPMENT AND PRIVATE SIDINGS

- 26.1 The Customer shall ensure the Customer Facilities are available at the times and in the manner required pursuant to the Agreement.
- 26.2 The Customer shall be responsible for the procurement of the Customer Facilities set out in Exhibit E (*Customer Obligations*) (where applicable) and any associated equipment required by the Customer and/or ER Freight to comply with their Services and Obligations under the Agreement.
- 26.3 Where the Customer Facility and/or the Destination Point(s) are located at any Private Sidings (save where access to such Private Sidings is governed by a separate private sidings agreement to which ER Freight is a party) the Customer shall procure that ER Freight is provided with such access to such Customer Facility and/or the Destination Point(s) (as appropriate) and the Customer shall comply with this Section 26 (*Customer's Equipment And Private Sidings*) in respect of such Customer Facility and/or the Destination Point(s) (as appropriate) as if they were Customer Facilities.
- 26.4 The Customer shall ensure that:
 - (a) the Customer Facilities are registered with the appropriate Governmental Authorities and are safe and fit to run, are free from defects and comply with and are maintained in accordance with the Operating Standards;
 - (b) where the ER Freight Services include the transportation of a Consignment onto Private Sidings, that:

- (i) the Private Sidings are safe, free from defects and are kept in an appropriate condition for use as part of a railway network and comply with the Operating Standards;
 - (ii) the Private Sidings are connected to the Federal Railway enabling safe transfer onto the Federal Railway and do not allow risk to be imported onto the Federal Railway; and
 - (iii) ER Freight has the access to the Private Sidings and to the Federal Railway from the Private Sidings reasonably required by ER Freight to enable it to provide the ER Freight Services in accordance with the Agreement.
- 26.5 ER Freight may refuse to accept any Customer Facilities if it does not comply with Section 26.4(a) above. The Customer shall not rely upon ER Freight carrying out any checks upon the Customer Facilities and the Customer acknowledges that ER Freight relies upon the Customer Obligations under Section 26.4(a) above. To the extent ER Freight is expressly required under the Agreement to undertake an inspection of a Consignment in order to notify the Customer of any damage to the relevant Consignment, the Customer agrees such activities shall be on the basis of a brief visual inspection only and ER Freight shall have no liability for failing to report any damage not reasonably capable of discovery on a brief visual inspection.
- 26.6 ER Freight, its employees, agents, subcontractors and customers shall not acquire any interest (whether legal or equitable) in the Starting Point(s) and/or Destination Point(s) as a consequence of its performance of the ER Freight Services.
- 26.7 ER Freight may refuse to collect or deliver any Consignment if there is any breach of Sections 26.4(b)(i), 26.4(b)(ii) or 26.4(b)(iii) above. The Customer shall not rely upon ER Freight carrying out any checks upon Private Sidings and the Customer acknowledges that ER Freight relies upon the Customer Obligations in Sections 26.4(b)(i), 26.4(b)(ii) or 26.4(b)(iii) above.
- 26.8 Where the ER Freight Services include the transportation of a Consignment onto Private Sidings:
 - (a) subject to Section 22 (*Limitation of Liability*), if ER Freight damages any Private Sidings by its proven negligence it shall be liable for the reasonable repair costs of the same. ER Freight shall have no other liability arising from damage to Private Sidings even if caused by its negligence; and
 - (b) where any Consignment, the Customer Facilities or the Private Sidings are not the property of the Customer, the Customer shall procure that ER Freight has no liability for any loss or destruction of or damage to the same (whether caused by its negligence or otherwise) to any other Person owning or having an interest therein (including but not limited to any insurer of any such Person), in addition to the Customer's liability to ER Freight under the express terms of the Agreement and the Customer shall indemnify ER Freight from any claim to any such Person.

27. CONFIDENTIALITY

- 27.1 For the purposes of this Section 27, **Confidential Information** shall mean:
 - (a) the existence and contents of any discussions and negotiations between the Parties pertaining to the Agreement; and

- (b) all fiscal, commercial, financial, technical, operational or other information in whatever form (including information disclosed orally or electronically) pertaining to the Agreement, including:
 - (i) any information provided by either Party to the other Party prior to the Effective Date for the purposes of evaluating the transactions contemplated by the Agreement and/or in connection with the negotiations leading up to the execution of the Agreement; and
 - (ii) any information provided by an Affiliate of a Party to the other Party,but shall exclude information set out in Section 27.2 below.

27.2 Information is not Confidential Information if:

- (a) the information was possessed by the Party (or its respective Affiliate) to which such information is disclosed, in its own right before disclosure to it of such information, including any information possessed such Party prior to the Effective Date;
- (b) the information is in the public domain at the time of original disclosure or has subsequently become part of the public domain through no fault of the Party to which the disclosure was made;
- (c) the information was received without restriction on its disclosure by a Party from a third party that is not deriving such information from the Party that made the original disclosure; or
- (d) the Parties agree in writing that it is not confidential.

27.3 Subject to Section 27.4 below, each Party undertakes:

- (a) without prejudice to Section 28 (*Public Announcements*), to avoid public announcements in relation to the Confidential Information without explicit written consent of the other Party;
- (b) not to disclose the Confidential Information to any Person; and
- (c) to use the same degree of care it uses for its own Confidential Information of like kind, but to use no less than reasonable efforts to ensure Confidential Information is kept confidential.

27.4 Each Party may disclose Confidential Information:

- (a) to its directors, officers and employees who are required to have access to the Confidential Information in order to discharge their functions and contractual obligations under the Agreement;
- (b) to any Affiliate, provided such Affiliate agrees to abide by the obligations of such Party with respect to the Confidential Information;
- (c) to each agent, consultant, subcontractor or customer engaged by or on behalf of such Party or its Affiliates; *provided that* such agent, consultant, subcontractor or customer agrees in writing:
 - (i) to abide by the obligations of such Party with respect to Confidential Information, including any applicable third party obligations;

- (ii) to hold Confidential Information in confidence and use it only for the express purpose for which the Confidential Information was provided;
 - (iii) to treat the Confidential Information in the same manner as it if were a party to the Agreement; and
 - (iv) not to consent to the disclosure of Confidential Information except with the prior written consent of the other Party,
- and in any event shall not disclose Confidential Information to an agent, consultant, subcontractor or Customer that is a competitor or employee of a competitor of the other Party;
- (d) to the extent necessary to enforce the Agreement in proceedings (or defence to such proceedings) *provided that* the disclosing Party uses its reasonable commercial efforts to:
 - (i) disclose only that portion of the Confidential Information as is reasonably necessary for the disclosing Party's enforcement of the Agreement in such proceedings (or defence to such proceedings);
 - (ii) disclose only to those Persons reasonably necessary for the disclosing Party's enforcement of the Agreement in such proceedings (or defence to such proceedings); and
 - (iii) cooperate with the other Party to obtain a protective order or similar device to maintain the confidential status of the Confidential Information; or
 - (e) to the extent required by applicable Law (including any rule or regulation of any organised securities exchange, market or automated quotation system on which any of the disclosing Party's or its Affiliates' securities are listed or quoted), valid legal process, government, governmental department, agency or regulatory body; *provided that* the disclosing Party uses its reasonable efforts to:
 - (i) provide the other Party with prompt notice of such requirement in order to enable the non-disclosing Party to:
 - (i) seek an appropriate protective order or other remedy; or
 - (ii) consult with the disclosing Party with respect to taking steps to resist or narrow the scope of such request or requirement; and
 - (ii) disclose only that part of the Confidential Information as is required if such protective order or other remedy is not obtained.
- 27.5 Upon written request of the disclosing Party, the receiving Party will, to the extent reasonably practicable, return to the disclosing Party or destroy all documents containing Confidential Information provided (or otherwise made available) to it by or on behalf of the disclosing Party.
- 27.6 Without prejudice to the survival of any other Sections, the provisions of this Section 27 (Confidentiality) shall survive the termination of the Agreement.

28. PUBLIC ANNOUNCEMENTS

- 28.1 Neither Party shall make any public disclosure or issue any press release in connection with the Agreement, including any Dispute arising out of or in connection with it, without the prior written consent of the other Party.
- 28.2 ER Freight may make public statements required for safety, incident response or regulatory compliance.

29. INTELLECTUAL PROPERTY

All intellectual property rights in the ER Freight Services provided by ER Freight (including any software supplied by ER Freight), all documents, drawings and information supplied by ER Freight to the Customer in connection with the Agreement as well as any raw data and information collected and shared during the performance of ER Freight Services remain the absolute property of ER Freight (or its licensors). Such documents, drawings, data and information will not be copied, disclosed or used by the Customer (or any Customer Party) (except for the purpose for which they were supplied) without the prior written consent of ER Freight. No licence or other right is granted by ER Freight to the Customer (or any Customer Party) with regard to the intellectual property of ER Freight, except as expressly set out in the Agreement and for the purpose of performing the ER Freight Services or as otherwise permitted at Law.

30. COMPLIANCE**30.1 Anti-Bribery and Compliance**

- (a) Each Party represents and warrants that it, and its officers, directors, employees, representatives and agents, shall comply with all applicable Laws in respect of anti-corruption including, but not limited to, those applicable in the UAE.
- (b) Each Party represents and warrants on a continuing basis to the other Party that:
- (i) neither it (nor any of its Affiliates) is subject of any Sanctions nor located, registered, headquartered or resident in a Sanctioned Country; and
 - (ii) without prejudice to the generality of Section 30.2(b)(i):
 - (D) neither it, nor any of its Affiliates:
 - (I) is contravening or has contravened any applicable Sanctions; or
 - (II) is operating in, or has had any dealings in, a Sanctioned Country; and
 - (E) neither it, nor any of its Affiliates, (nor any of their respective directors, officers, employees or agents) is:
 - (I) a Sanctions Target; or
 - (II) engaging, or has engaged, in any conduct, operations, transactions or dealings that could reasonably be expected to result in it becoming a Sanctions Target.

30.2 Data Protection

- (a) Each Party shall comply with its obligations under the Data Protection Legislation in respect of the Services and Obligations to be performed under this Agreement.
- (b) Each Party agrees in respect of any Personal Data supplied to it by the other Party (or any Affiliate of the other Party) that it shall:
 - (i) ensure that Appropriate Technical and Organisational Measures shall be taken against to protect against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data;
 - (ii) ensure that all personnel who have access to and/or Process Personal Data are obliged to keep the Personal Data confidential; and
 - (iii) comply with any reasonable request made by the other Party to ensure compliance with the measures contained in this Section 30.1(a) (*Data Protection*).

31. NOTICES

31.1 Any notice to be given by one Party to the other under, or in connection with, the Agreement shall be in writing and signed by or on behalf of the Party giving it. It shall be served by sending it by email to the address set out in Paragraph 3 (*Contact Details for Notices*) of Exhibit A (*Particular Conditions*), delivering it by hand, or sending it by pre-paid recorded delivery (return receipt requested) to the address set out in Paragraph 3 (*Contact Details for Notices*) of Exhibit A (*Particular Conditions*), and in each case, marked for the attention of the relevant Party (or as otherwise notified from time to time in accordance with the provisions of this Section 30). Any notice so served by email, hand or post will be deemed to have been duly given:

- (a) in the case of email, on the first to occur of:
 - (i) receipt by the sender or an email acknowledgement from the recipient's information system showing that the notice has been delivered to the email address stated in Paragraph 4 (*Contact Details for Notices*) of Exhibit A (*Particular Conditions*);
 - (ii) the time the notice enters an information system which is under the control of the recipient; and
 - (iii) the time the notice is first opened or read by an employee or officer of the recipient.
- (b) in the case of delivery by hand, on the first Business Day immediately following the date of delivery; and
- (c) in the case of pre-paid recorded delivery, on the first Business Day immediately following the date of delivery (as recorded), or, in case of refusal of receipt, upon such refusal.

31.2 Either Party may notify the other of a change to its name, relevant addressee, address or email addresses for the purposes of this Section 30, *provided that* such notice will only be effective on:

- (a) the date specified in the notice as the date on which the change is to take place; or
- (b) if no date is specified or the date specified is less than thirty (30) days after the date on which notice is given, the date following thirty (30) days after notice of any change has been given.

31.3 All notices under or in connection with the Agreement will be in the English language.

32. MISCELLANEOUS

32.1 Financing assistance

- (a) The Customer acknowledges that ER Freight may raise finances to fund the development of the ER Freight Facilities. In the event ER Freight seeks external financing in relation to the development of the ER Freight Facilities, the Customer shall, at ER Freight's cost, provide reasonable assistance to ER Freight in relation to arranging such financing. Such assistance shall include entering into direct agreements, acknowledgements of creation of security and providing legal opinions.
- (b) The Customer shall provide reasonable assistance to ER Freight in relation to finance, funding or related matters.

32.2 Lobbying

The Parties agree to use reasonable endeavours to liaise with Governmental Authorities during the Term for the introduction of:

- (a) subsidies for rail operations in the Emirates and the UAE in order to promote the adoption of rail transportation and to increase the competitiveness of rail transportation on short-distance domestic links; and
- (b) relevant legislation, policy and regulations for rail operations in the Emirates and the UAE and integration of the Law into Emirates and local customs codes, in particular in relation to customs bonding for the ER Freight Facilities.

32.3 Mitigation

When either Party claims any reimbursement or compensation under the Agreement, it will use its best efforts (but without incurring material additional costs) to mitigate the extent of any amount, claim or loss.

32.4 Amendments, Waivers and Consents

- (a) ER Freight may from time to time acting reasonably amend these Standard Haulage Terms by issuing a revised edition of such updated Standard Haulage Terms to the Customer. Such updated Standard Haulage Terms shall be incorporated into the Agreement in substitution for the earlier edition of the Standard Haulage Terms on receipt of such updated Standard Haulage Terms by the Customer.
- (b) Subject to Section 32.4(a) above, the Parties may, at any time, mutually agree to amend the Agreement. No amendment of the Agreement will be valid unless it is in

writing and signed by a duly authorised representative of the Parties (an **Amendment**). Notwithstanding the foregoing, the Parties agree that the Customer Standard Operating Procedure may be amended from time to time by agreement of the Parties demonstrated by each Parties' signature on the front page of the document, and that amendment of the ER Freight Standard Operating Procedure does not require an Amendment. If ER Freight Standard Operating Procedures conflicts with the Standard Haulage Terms, these Standard Haulage Terms shall prevail unless ER Freight expressly agrees in an Amendment.

- (c) Unless expressly agreed, no amendment will constitute a general waiver of any provision of the Agreement, nor will it affect any rights, Services and Obligations or liabilities under or pursuant to the Agreement which have already accrued up to the date of variation, and the rights, Services and Obligations of the Parties under or pursuant to the Agreement will remain in full force and effect, except and only to the extent they are so varied.
- (d) Unless expressly agreed otherwise, no failure or delay by either Party in exercising any right or remedy provided by any applicable Law or pursuant to the Agreement will impair such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent time and no single or partial exercise of any such right or remedy will preclude any other or further exercise of it or the exercise of any other right or remedy.

32.5 Severability

If any provision of the Agreement is determined to be invalid or unenforceable for any reason, the Parties will use their best efforts to negotiate an equitable adjustment to the Agreement with a view to achieving the original purpose and intent of the Agreement; *provided, however, that* the validity or enforceability of the remaining provisions of the Agreement, or any portions or applications thereof, will not be affected by the unenforceability or invalidity of any other provision of the Agreement, and any invalid or unenforceable provision will be deemed severed from the remainder of the Agreement.

32.6 Further Assurance

Each of the Parties agrees to perform (or procure the performance of) all further acts and things, and execute and deliver (or procure the execution and delivery of) such further documents, as may be required by Law applicable to the Parties or as may be necessary to implement and/or give effect to the Agreement and the transactions contemplated by it.

32.7 No Agency

Nothing in the Agreement is intended to, or shall be deemed to, create any partnership, joint venture, any other form of association or agency relationship (in each case, whether formal or informal) between the Parties.

32.8 Third Party Rights

- (a) Subject to Section 32.8(b), the Agreement is intended to be solely for the benefit of the Parties and is not intended to confer any benefits upon, or to create any rights in favour of, any third party and no third party shall have any rights under the UAE Civil Code to enforce any term of the Agreement.

- (b) Where the Agreement expressly provides that a third party may rely on or enforce a provision of the Agreement, or the agreement is assigned or novated to a third party in accordance with Sections 25.1(a) or 25.1(b), such third party may so rely on and/or enforce such provision.

32.9 Costs and Expenses

Each Party will bear its own costs and expenses incurred in connection with the preparation, negotiation, execution and performance of the Agreement.

ADDENDUM

EXHIBIT D
CONTRACT PARTICULARS

(applicable to the extent not agreed pursuant to the Conditions of Contract or an exhibit thereto)

Reference	Contract Particulars
"Cancellation Procedures"	The section(s) of the ER Freight Standard Operating Procedure which sets out parameters, rules and deadlines relating to cancellation of Block Trains.
Definition of "Cap on Liability"	1. ER Freight's liability under the Agreement shall be limited as follows: 1.1 in the event of loss of or damage to a Container owned by the Customer and solely to the extent that such loss of or damage was caused by an act or omission of ER Freight or an ER Freight Party, ER Freight's liability shall be limited to the lower of: (a) where it is possible to repair the Container, the direct costs incurred by the Customer to repair the Container; and (b) the open market replacement value of the Container; 1.2 in the event of loss of or damage to a Container leased by the Customer and solely to the extent that such loss of or damage was caused by an act or omission of ER Freight or an ER Freight Party, ER Freight's liability shall be limited to lower of: (a) where it is possible to repair the Container, the full amount (inclusive of applicable tax in the UAE) invoiced to the Customer by the relevant lessor in respect of such repair; and (b) the full amount (inclusive of applicable tax in the UAE) invoiced to the Customer by the relevant lessor to replace the Container, <i>provided that</i> ER Freight's liability under these Paragraphs 1.1 and 1.2 shall in no event exceed the open market replacement value up to AED 30,000 per container (inclusive of all applicable taxes in the UAE); and 1.3 without prejudice to Section 21.2(b)(ii) (<i>Indemnity by Customer</i>) of the Standard Haulage Terms, in respect of loss of or damage to Freight and solely to the extent that such loss of or damage to Freight was directly caused by loss of or damage to the Container in which the Freight was being

	transported and such loss of or damage to the Container was caused by an act or omission of ER Freight or an ER Freight Party, ER Freight's liability shall be limited to a sum not exceeding 8.33 SDR per kilo of gross weight of the lost or damaged Freight. 2. Subject to Paragraph 1 above, in respect of any other Loss: ER Freight's liability towards the Customer shall be limited to an aggregate limit of 25% of the total charges (excluding third party costs and disbursements) per calendar year. 3. The Parties may agree in writing to higher limits of liability on a case-by-case basis upon request by the Customer, and subject to payment by the Customer of ER Freight's additional fee (if applicable).
Section 10.2 (<i>Fees and Payment</i>) of the Standard Haulage Terms – ER Freight's CHAPS/BACS/wire transfer details	As advised by ER Freight in writing from time to time

EXHIBIT G
INSURANCE

(applicable to the extent not agreed pursuant to the Conditions of Contract or an exhibit thereto)

1. INSURANCE REQUIRED FROM THE CUSTOMER

The Customer shall, throughout the Term, effect and maintain in full force and effect and at its own cost and expense with a reputable insurance company, the following insurance policies:

- (a) Third Party Liability Insurance in respect of losses suffered by third parties in connection with the Customer's activities and those of any Customer Parties;
- (b) Insurance Cover for any Loss to ER Freight or any third party caused directly or indirectly by the Freight; and
- (c) any other insurance as required by any applicable Law.