

## RAILWAY SHUNTING SERVICE CONTRACT

### BETWEEN

**Terminali Italia S.r.l.**, a sole shareholder company subject to management and coordination by RFI S.p.A., Gruppo Ferrovie dello Stato Italiane S.p.A., registered office address Piazza della Croce Rossa 1, 00161 – Rome, share capital EUR 7,345,686.00 fully paid up, registered with the Rome Companies' Registry (Court of Rome), TIN and VAT No 06204310962 – REA (Economic and Administrative Index) No 1206926, represented for the purposes of this agreement by Giuseppe Acquaro, acting in the capacity of pro-tempore Authorised Representative, domiciled for the present purposes at the company's registered office address ( **TMI**),

### AND

\_\_\_\_\_ (TIN/VAT No \_\_\_\_\_),  
registered office address \_\_\_\_\_,  
represented for the purposes of this agreement by \_\_\_\_\_ acting  
in the capacity of \_\_\_\_\_  
(the 'RU')

### Whereas:

- Directive 2012/34/EU of 21 November, transposed into Italian law by Legislative Decree No 112/2015 of 15 July, given further definition by Commission Implementing Regulation (EU) 2017/2177 of 22 November, introduced the concepts of *service facility* and *operator of service facility*, defining the latter as '*any public or private entity responsible for managing one or more service facilities or supplying one or more services to railway undertakings ...*'
- Under Article 13 of Legislative Decree No 112/2015, operators of service facilities must grant, under equitable, non-discriminatory and transparent conditions, the right to access to service facilities and the services provided at these facilities.
- Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety, transposed into Italian law by Legislative Decree No 50 of 14 May 2019, provided for development and improvement of the safety of the EU railway system, also improving market access for the provision of railway services.
- TMI is a company fully controlled by and subject to management and coordination by Rete Ferroviaria Italiana, Gruppo Ferrovie dello Stato Italiane, set up with the object of management of intermodal transport facilities for combined rail transport, providing loading-unloading activities and handling of intermodal transport units ('Handling'), and, where applicable, rail shunting services and other ancillary activities required for operating the combined transport system, such as management of technical stopovers and the repair of intermodal transport units.
- TMI offers rail shunting services at the Bari Lamasinata, Bologna Interporto, Marzaglia and Verona Quadrante Europa service facilities.
- Resolution No 130/2019 of the Italian Transport Authority (ART) laid down the regulatory measures required for ensuring the cost-effectiveness and efficiency of the railway shunting services provided in certain service facilities.
- Applicant RUs must hold a safety certificate or single safety certificate issued under the relevant regulations.

### The Parties now therefore agree as follows:

Terminali Italia S.r.l - Gruppo Ferrovie dello Stato Italiane  
Sole shareholder company subject to management and coordination by Rete Ferroviaria Italiana S.p.A.  
Registered with the Rome Companies' Registry  
TIN and VAT No 06204310962 – Economic and Administrative Registry (REA) No 1206926  
Share Capital EUR 7,345,686.00 fully paid up  
Registered office: Piazza della Croce Rossa, 1 - 00161 Rome  
Tel. + 39 06 44102569/+39 045.8624411, Fax +39 06 44103871/ +39 045 0458082173  
Website [www.terminaliitalia.it](http://www.terminaliitalia.it)  
certified email (PEC): [direzione@pec.terminaliitalia.it](mailto:direzione@pec.terminaliitalia.it)





## ARTICLE 1

### Recitals and annexes

1. The recitals and annexes form an integral and substantive part of this Contract.
2. The following are annexes to this Contract:
  - a) Identity document of the signatory for the RU;
  - b) Chamber of commerce record for the RU;
  - c) Note RFI-DPR/A0011/P/2013/0008493 of 20/11/2013 and amendments;
  - d) Excerpt from Scheduling Document for the facilities used by Customer;
  - e) Organisational Document for the facilities used by the Customer;
  - f) List of Contact Persons at facilities used by the Customer;
  - g) List of Customer Contact Persons at facilities used;
  - h) Consultation procedure for compensation of loss or damage.

## ARTICLE 2

### Definitions

For the purposes of the present document, the following definitions will apply:

- a. **Transport Regulatory Authority – ART (or Authority):** The Italian Transport Regulatory Authority established under Legislative Decree No 201/2011 of 6 December, converted with amendments by Law No 214/2011 of 22 December.
- b. **District Assembly (Assemblea Comprensoriale):** permanent body made up of all the district operators, laying down the District Railway Shunting Regulations (Regolamento Comprensoriale della Manovra Ferroviaria).
- c. **Self-supply:** production by a company of goods and services for its own use, or for the use of its parent company and its subsidiaries, under Articles 7 and 9 of Law No 287/1990 of 10 October.
- d. **Main line:** through tracks within the meaning with Article 4 of the Train Running Regulations;
- e. **Railway district:** all infrastructure belonging to a port, an interport or an industrial/business area, consisting of the service facilities, the other interconnected facilities and one or more railway stations or facilities providing an interface with the railway network, as well as relevant linking railway infrastructure.
- f. **Fee, rate and/or price:** amounts payable by the RU for the use of services provided by TMI.
- g. **Recipient of freight:** owner of freight at destination.
- h. **Operating provisions:** provisions governing railway safety and applying national safety regulations.
- i. **Scheduling Document:** (former measure 12.2(a) of Appendix A of Resolution No 130/2019) document drawn up and updated by the shunting service operator together with service applicants, the IM and any other facility operators. The document lays down train arrival and departure times and all of the operations to be performed after the arrival of the trains or before their departure, including the start/end of the shunting service, as well the shunting timetable, persons responsible and scheduled trainset unloading/loading windows.
- j. **Organisational Document:** document signed by the Shunting Manager, the Customer and the IM, describing the Shunting Operator's organisation at each facility.
- k. **Goods receipt:** document in which the Customer confirms proper performance of the service, based on which the service provider will issue its invoice. For Customers using SAP, this is an IT reference that certifies completed delivery of the goods and/or receipt of the service by recording it in the system together with the relevant cost.
- l. **Infrastructure Manager (IM)** or Rete Ferroviaria Italiana S.p.A. (RFI): the party within the meaning of Article 3(1)(b) of Legislative Decree No 112/2015 and amendments.
- m. **Service Manager:** party charged with management of one or more of the services provided for under Article 13 of Directive 2012/34/EU and amendments, transposed into Italian Law by Legislative Decree No 112/2015 and amendments, notwithstanding instances of self-supply within the facilities.
- n. **Terminal Manager:** the service facility operator managing shunting and handling activities at the terminal.
- o. **Single Manager:** the shunting service operator, where appointed by the district operators, offering the railway shunting service on the market and, where relevant, operating it in within the railway district. The Single Manager has exclusive rights over shunting activities within the district for the benefit of more than one district operator, notwithstanding provisions on self-supply and self-production.
- p. **Handling:** terminal operations consisting of handling, loading and unloading of ITUs to/from road and/or rail vehicles and in railyards.



- q. **Service facility:** the installation, including ground area, building and equipment, which has been specially arranged, as a whole or in part, to allow the supply of one or more services referred to in Article 13(2), (9) and (11) of Legislative Decree No 112/2015, including maritime port infrastructures connected to rail services.
- r. **Railway facility:** the installation, including ground area, buildings and equipment, used by TMI for ensuring arrival and departure of trains and, as necessary, train formation and stopover operations.
- s. **Siding-connected Facility:** facility owned by parties other than the IM where industrial or logistical activities are carried out, including ports and industrial development areas, connected with railway infrastructure by sidings.
- t. **Interconnected Facility:** facility where industrial or logistical activities are carried out, including ports and industrial development areas, interconnected directly or indirectly with railway infrastructure by one or more tracks, including siding-connected facilities, as defined by Article 3(1)(ss) of Legislative Decree No 112/2015.
- u. **Railway Undertaking:** any licensed public or private undertaking, the principal business of which is to provide services for the transport of goods and/or passengers by rail with a requirement that the undertaking ensure traction; this also includes undertakings which provide traction only.
- v. **6a form:** paper or electronic MAD form (annex 6(a) of note RFI-DPR/A0011/P/2013/0008493 of 20/11/2013) used by the RU to certify the time when outgoing/incoming material is made available for the shunting operation.
- w. **6b form:** paper or electronic 'RU delivery' form (annex 6(b) of note RFI-DPR/A0011/P/2013/0008493 of 20/11/2013) used by the Shunting Operator to certify the time when delivery of material has been made to the RU for outgoing material and the time of delivery to the manager of the destination area of incoming material.
- x. **MTO (multimodal transport operator):** any party taking over a given cargo at a given location (albeit other than a port, airport or railway station) and undertaking to transport it to the place of destination (which, once again, need not be a port, airport or station). Whether the MTO performs the transport with its own means or has it performed by others, it must warrant for the proper performance of transport and is liable for any loss or damage suffered by the goods from the time of taking over until the time of delivery.
- y. **National safety regulations:** any national regulations and standards containing railway safety obligations applicable to one or more infrastructure managers and more than one railway undertaking.
- z. **District Operator:** public or private party owning portions of the railway district in which both shunting and goods handling activities (loading, unloading, transshipment) are performed. Owners of areas conferring or contracting their use to other parties can assign the exercise of the rights and obligations arising from the District Regulations to them.
- aa. **Shunting Service Operator (SSO):** operator of a service facility providing railway shunting services.
- bb. **Appointed Shunting Service Operator (ASSO):** party, where appointed by the Single Manager, assigned to operate the railway shunting service within the Single Manager's railway area.
- cc. **Network Statement:** a document containing the main characteristics of the railway lines and facilities allocated to RFI and governing relations with all parties requesting capacity and services.
- dd. **Self-supply of services:** where a railway undertaking itself provides a rail service on the site of an operator of a service facility, on condition that access to/use of the facility by the railway undertaking for self-supply of services is legally and technically feasible – without negatively affecting the safety of operations – and that the operator of the service facility in question agrees to such self-supply.
- ee. **Collection and delivery point or track:** the section of track in a railway facility where the Consignor makes freight available for transport or returns the empty wagons, or the Carrier delivers freight after transport or makes the empty wagons available for loading.
- ff. **District Representative:** party appointed to represent the district operators in their relations with the Infrastructure Manager and the Transport Regulatory Authority. Where a party other than the District Operators is appointed as the Single Manager, the Representative will act in the name and on behalf of the District Operators in any railway shunting activities and oversee procedures for appointing the Single Manager. Specifically, the District Representative represents the above-mentioned Operators in their relations with the Single Manager and the Transport Regulatory Authority.
- gg. **District Railway Shunting Regulations:** document governing procedures for appointing the Single Manager or the Appointed Service Operator and procedures for taking joint organisational and planning decisions for railway shunting. The document also governs the rights and obligations of the Single Manager, the District Operators and any Shunting Operators.



- hh. **TMI and RU Contact Persons:** persons chosen by TMI and the RU to consult for the purpose of managing complaints procedures for delays and service disruptions under Article 8 of this Contract.
- ii. **RU Shunting Contact Person:** person appointed by the RU to consult with TMI's Shunting Contact Person for managing day-to-day operations, as detailed in Annex f).
- jj. **TMI Shunting Contact Person:** person appointed by TMI to consult with the RU's Shunting Contact Person for managing day-to-day operations, as detailed in Annex f).
- kk. **Provisions of Service Record:** document issued at each service facility by the relevant peripheral units of the Infrastructure Manager.
- ll. **Contract Managers:** individuals appointed by the respective Parties charged with operational management of the Contract.
- mm. **Services rendered statement:** monthly statement of shunting services provided by Terminali Italia.
- nn. **Railway shunting service:** transfers of trainsets, including the formation/breakdown operations for train terminalisation, from the reception tracks of the arrivals and departures lines to tracks in service facilities and/or siding-connected areas and vice versa.
- oo. **Ancillary shunting service:** ancillary services performed within the arrivals and departures lines, the station's secondary tracks and within the service facilities and siding-connected areas (coupling and uncoupling locomotives, regularisation of tail signals, train formation and breakdown, vehicle discarding, vehicle movement);
- pp. **Safety Management System (SFS):** organisation and measures adopted by a railway operator (RFI, the RU, a shunting company, etc.) to maintain and improve the current level of safety, including using a monitoring system to measure the level of implementation of rules.
- qq. **Shunting slot:** time generally needed to perform a shunting operation, from start to end. Shunting slots for planned activities are laid down in the Scheduling Document in accordance with measure 12.2 of Resolution No 130/2019 of the Italian Transport Authority (ART). Shunting slots for unscheduled activities are allocated by the shunting service operator based on the organisation of the facility.
- rr. **Terminal slot:** time required for performing unloading and/or loading a trainset (handling). Time limits for terminal slots for scheduled activities are laid down in the Scheduling Document in accordance with measure 12.2 of Resolution No 130/2019 of the Italian Transport Authority (ART). Terminal slots for unscheduled activities are allocated by the shunting service operator based on the organisation of the facility.
- ss. **Freight Terminal:** all facilities designed for freight transport connected to the railway networks within the scope of the service facilities under Article 13(2)(b), (c), (d) and (g) of Legislative Decree No 112/2015.
- tt. **Train:** any means of traction with vehicles (wagons) travelling from one service site (facility) to another or departing a service site to perform a service on the line and return to that site.
- uu. **ITU:** Intermodal Transport Units such as swap bodies, semi-trailers, containers, tankers, etc. equipped for rail transport with coupling system for handling with mobile cranes and/or gantry cranes.

### ARTICLE 3

#### Subject matter of Contract

TMI undertakes to the RU to perform the Railway Shunting Services for the RU's trains arriving at/departing station(s) under the conditions and using the procedures provided for in this Contract and its annexes.

### ARTICLE 4

#### Procedures for performing the service

Provision of services under this Contract will be performed using the procedures described in the Scheduling Document for the facility.

### ARTICLE 5

#### TMI's obligations

1. TMI undertakes to analyse all requests for Rail Shunting Services based on the relevant provisions of Resolution No 130/2019 of the Italian Transport Authority (ART) and Implementing Regulation No 2177/2017 and amendments, on access to service facilities.
2. TMI undertakes to provide the Rail Shunting Services for volumes notified in accordance with the Scheduling Document for the individual facility, annexed to this Contract.

### ARTICLE 6

#### RU's obligations

- 1 The RU undertakes to comply with its undertakings under this Contract and its annexes.



- 2 The RU, as holder of the Safety Certificate under Legislative Decree No 50/2017, is responsible for its own part of the system as governed by the rules and technical standards under the said legislative decree. The RU therefore undertakes to check the state of the departing trains, being the sole guarantor before TMI and third parties that the trains are safe and in working order.
- 3 The RU further undertakes to comply with the provisions of Note RFI-DPR/A0011/P/2013/0008493 of 20/11/2013 and amendments issued by the IM to ensure correct operation of the Shunting Service.
- 4 The RU undertakes to notify TMI by the deadlines set out in Article 8 below of any cancellation of the contracted Shunting Slots.

## **ARTICLE 7**

### **Obligations to guarantee service quality levels**

1. The Scheduling Document is used to assess quality levels of shunting services. This document, in accordance with measure 12.2 of Resolution No 130/2019 of the Italian Transport Authority (ART), will be drawn up and signed by TMI (jointly with the service applicants, the IM, and any other facility operators) whenever there is a timetable change – and in any case before the service is launched – and will be updated whenever there are changes significantly affecting the organisation of the service facilities.
2. The Scheduling Document contains:
  - a. train arrival and departure times;
  - b. operations to be performed after arrival or before departure of trains;
  - c. start/end times of the shunting service and relevant areas of operational responsibility;
  - d. scheduled trainset (train vehicles) unloading/loading windows.
3. TMI will publish its service quality standards and related penalties on its website.
4. In accordance with measure 12.2 of Resolution No 130/2019 of the Italian Transport Authority (ART), Terminali Italia undertakes to ensure:
  - a) start of operations for entry of the train into the destination facility within a maximum period of 15 minutes:
    - from the scheduled time given in the Scheduling Document, if the train arrives at the destination station on time;
    - from the scheduled time given in the Scheduling Document, or, in the event of a delay, from the train's actual arrival time, provided that the delay at the destination station is no longer than:
      - 15 minutes at peak hours,
      - 30 minutes at ordinary hours,
      - 60 minutes at off-peak hours(These intervals for each facility are specified in the Scheduling Document);
    - from the scheduled time given in the Scheduling Document, in case of delays exceeding the above-mentioned limits but in any event such as to allow the train to be made available to the Shunting Service Operator by the scheduled start time of the service.Notwithstanding the shunting start/end times previously agreed and given in the Scheduling Document, the said 15 minutes will run from the time certified in the 6a form issued by the RU.
  - b) On the occasion of operations to remove the trainset from the facility and then place it in the station, TMI undertakes to guarantee the start of such operations in compliance with the times contained in the Scheduling Document. In such cases, the actual start time of shunting operations for placing the trainset in the station will be certified in the 6a form issued by the RU.
  - c) TMI undertakes to carry out shunting operations for shunting slots not included in the Scheduling Document but scheduled and agreed as part of operational management between the Parties within no more than 60 minutes from the time certified in the 6a form (MAD of material).
5. TMI undertakes to inform the RU in a timely manner in case of scheduled strikes, in any case warranting for the safety of any dangerous goods for the duration of such events.

## **ARTICLE 8**

### **Penalties**

1. In accordance with measure 12.2 of Resolution No 130/2019 of the Italian Transport Authority (ART), in case of noncompliance with the obligations under 7.4a, 7.4b and 7.4c above, TMI will pay the RU a sum equal to 10% of the fee for the Rail Shunting Service as per the published rates, by way of penalty.
2. TMI will not be liable to pay any amount whatsoever in the event of delayed arrival of rolling stock to be shunted at the station of destination in excess of the delays indicated in clause 7.4 a) and in the event of delays





in making the trainset available for removal from the facility, or where TMI can demonstrate that failure to perform the operations within the agreed times was due to causes beyond its control.

3. The Parties hereby agree that any penalties for delays attributable to TMI in performance of the Shunting Service will be payable only after the following formal steps have been taken:
  - a) lodging of a written and reasoned complaint by the RU no later than one working day after the event, to be sent by certified email to the address [produzione@pec.terminaliitalia.it](mailto:produzione@pec.terminaliitalia.it), with a copy to the TMI Contact Person (as given in Annex f). The complaint must also contain the name of the RU Contact Person (as given in Annex g) for the purposes of analysing the event, together with the certified email address to be used by TMI for any further communications on the matter.
  - b) Within three working days of receiving the complaint under point a) above, the TMI Contact Person will contact the RU Contact Person to analyse and agree on the dynamics of the events and the circumstances that led to the relevant service disruption.
  - c) A report on the delay will be drawn up as described in point f) below, based on the findings of joint analysis under point b) above. This report by the Parties will take account of the current operational situation, including by way of example but not limited to: delays in arriving trains, running of extra trains, level of occupation of tracks on the main line and in terminals, unavailability of shunting locomotives for reasons not attributable to TMI, etc.
  - d) Any causes of the delays giving rise to complaints not attributable to TMI's own activities must be clearly described in the report under point c).
  - e) Where delays for trains arriving in the station exceed the time limits established for the intervals under Article 7.4, the report specified in point c) must mention this fact.
  - f) Once its contents have been agreed between the respective Contact Persons, the report under point c) above will be drawn up and signed by the TMI Contact Person and then forwarded to the RU Contact Person by certified email within 10 working days from the date of receipt of the certified email (PEC) under point a). After receiving the report, the RU Contact Person will return a signed copy within two working days, also by certified email (PEC), to the TMI Contact Person.
  - g) If the RU Contact Person does not agree with the contents and/or conclusions of the report under point c), they must provide a suitable explanation for their disagreement by certified email within two working days, focussing specifically on the aspects on which agreement could not be reached. If the TMI Contact Person does not agree with these submissions, the two Contact Persons will draw up a declaration of non-agreement within the next two working days, making clear their respective positions.
4. The Parties hereby acknowledge and agree that, in addition to the provisions for in Article 8.2 above, TMI cannot be held liable for delays or cancellations due to causes not directly attributable to it under Articles 8.3.d and 8.3.e above. In such cases, TMI will not be liable to make any payment whatsoever.
5. The Parties further acknowledge and agree that TMI cannot in any event be held responsible for delays or cancellations where these are the responsibility of third parties (including, for example, the traction railway company or the Infrastructure Manager, etc.) or in cases of where 'force majeure' has been demonstrated, regardless of TMI's operational capacity (by way of example but not limited to: natural disasters, military conflicts, riots and/or street demonstrations, national or local strikes or company strikes, traffic or of siding-connected track stoppages, etc.).
6. The Parties hereby acknowledge and agree that TMI will be liable to pay a penalty fee to the RU only for delays and/or cancellations in cases where the report on the delay under paragraph 3.c above states that the relevant cause is directly attributable to TMI's activities, or where TMI does not take the steps provided for under paragraph 3.b above within the stated time limits.
7. The Parties further acknowledge and agree that payment of penalties for delays and/or cancellations the causes of which have been recognised by the Parties, in the manner set out above, as engaging TMI's liability shall be made by debit note to be sent by certified email (PEC) to [amministrazione@pec.terminaliitalia.it](mailto:amministrazione@pec.terminaliitalia.it), together with the report under paragraph 3.c above, signed by the Parties. If the report by the RU is not sent using the procedures and within the time limits specified in paragraph 3.f above, TMI will not pay the debit note.
8. Where delays and/or cancellations occur and it emerges from the analysis of the causes carried out by TMI that responsibility is attributable to the RU or to one of its suppliers or principals, TMI will lodge a complaint regarding the events by certified email (PEC), reserving the right to request the RU to reimburse any additional costs incurred (for example: extra services by TMI personnel or third parties due to the delay, direct and/or indirect costs due to penalties for delays and/or cancellations and charged to TMI by other RUs, etc.).
9. Under Article 9(8) of Implementing Regulation (EU) 2017/2177<sup>1</sup> where the RU:

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<sup>1</sup> if an 'applicant' intends not to make use of a service, 'it shall inform the operator concerned without undue delay'.



- a) fails to inform TMI at least 24 hours in advance that it intends not to make use of a service because a train will not run, for reasons not attributable to it, the RU shall be required to pay a penalty equal to 10% of the Shunting Services contracted and not used, calculated based on the Economic Conditions published on the company website;
- b) wishes to suspend a service – for reasons other than railway infrastructure issues – for a period of more than four consecutive weeks, it must provide TMI with at least 30 working days' advance notice, stating the cause and/or reason for the suspension and the date on which the service will be resumed. Should the Customer fail to give notice or give late notice, TMI will be entitled to re-allocate unused service slots to other operators on a permanent basis, the RU having no claim whatsoever against TMI.
- c) Should a service be suspended for a period of more than six consecutive weeks, notwithstanding the RU's obligation to duly notify the event, TMI will be entitled to re-allocate unused service slots to other operators on a permanent basis, the RU having no claim whatsoever against TMI.
- d) Whenever the RU does not use the relevant services, TMI will be entitled to make temporary use of shunting slots in operational management.

## **ARTICLE 9**

### **Working timetable**

1. The working timetable will be as specified in the Scheduling Document under Article 7 above.
2. Notwithstanding the cases provided for in the Scheduling Document for individual facilities, the shunting service will not be provided on public holidays: 1 January, 6 January, Easter Sunday and Monday, 25 April, 1 May, 2 June, 15 August, 1 November, 8 December, 25 and 26 December.
3. Notwithstanding the provisions of points 9.1 and 9.2 above, any other periods when services are not provided will be notified by TMI to the RU at least 24 hours in advance.
4. In case of urgent need, the RU can use the certified email address [produzione@pec.terminalitalia.it](mailto:produzione@pec.terminalitalia.it), giving at least three days' advance notice, to request shunting services for times not provided for in the Scheduling Document. In such cases, TMI will assess the feasibility of the request and reply by certified email (PEC) within one working day of receiving the request. If the request is judged feasible, the RU hereby undertakes to pay TMI a surcharge equal to 75% of the price of the service requested as specified in the Economic Conditions published on the TMI website, for each individual service.

## **ARTICLE 10**

### **Term of contract - termination - immediate termination - temporary suspension of service**

1. This Contract will run until the change of timetable in December of the year following the date of its signature or of the same year if signed before 30 June. The Contract will be tacitly renewed on its expiry date for further periods of 12 months each, except where termination is notified by certified email (PEC) to the counterparty at least 120 days prior to the expiry date.
2. The RU can terminate the Contract before its normal expiry date by sending notice by certified email (PEC) at least 120 days prior to the termination date. In the event of early termination of the Contract by the RU with less than 120 days' advance notice, the RU will be obliged to pay TMI, by way of penalty, all fees due on scheduled shunting services for a period of 120 days from the date when early termination notice was sent or until the expiry of the Contract if the remaining duration of the Contract is less than 120 days.
3. TMI will be entitled to terminate the Contract forthwith (Article 1456 of the Italian Civil Code) in the following cases:
  - a) the RU declares bankruptcy, enters an arrangement with creditors or is subject to other insolvency proceedings;
  - b) the RU ceases its business activity;
  - c) TMI is no longer authorised to provide the services or absence of the conditions required for providing the services in the facilities and/or districts where TMI provides the service under this Contract;
  - d) termination on any grounds of the infrastructure utilisation agreement concluded between the RU and the IM;
  - e) breach of Articles 16, 17.2 and 19.2.
4. In case of failure to pay even a single invoice issued by TMI, where the invoice has not been disputed or has been improperly disputed by the RU, TMI will send notice to comply by certified email (PEC)/or registered mail with recorded delivery to the RU in accordance with Article 1454 of the Italian Civil Code. This Contract will be deemed terminated 20 working days after receipt of such notice if the RU has not justified or remedied non-performance.



5. In addition to the cases provided for under Article 11.8 below, the Contract will be deemed automatically suspended without penalty where TMI, for reasons beyond its control, cannot provide the tracks necessary for the performance of the service due to ordinary/extraordinary track or yard maintenance and in the event of track renovation or relaying work. Any such suspensions of the service will be promptly notified to the RU.

## **ARTICLE 11**

### **Fees and payment**

1. The fees payable by the RU to TMI for the provision of Railway Shunting Services are published on the TMI website in accordance with Resolution No 130/2019 of the Italian Transport Authority (ART).
2. Shunting Services requested for extraordinary needs are dealt with under Article 9.4.
3. TMI undertakes to send the RU a Statement of Services Rendered within the first 15 days of the month following the month of service.
4. RU undertakes to share and approve the Statement of Services Rendered by TMI, sending the Goods Receipt number by the end of the month following the month of service. Any remarks on the Statement of Services Rendered under 11.3 above must be submitted by the RU within 15 days of its receipt. Any disputes regarding content must be settled no later than 10 days from the date of receipt of such remarks. Failure by the RU to reply within 15 days from the date of receipt of the Statement of Services Rendered will be deemed acceptance of the statement by the RU.
5. TMI will send the RU an invoice for the services rendered on receipt of the Goods Receipt number referred to in the previous paragraph.
6. Invoices must be paid by the RU by bank transfer to the current account given in the invoice, within 60 (sixty) days from the relevant invoice date. This 60 (sixty) day term is hereby expressly agreed between the Parties under Article 4(3), first sentence, of Legislative Decree No 231/2002, amended by Legislative Decree No 192/2012.
7. In the event of late payment, default interest will be charged as specified in Article 5(1), second sentence, of Legislative Decree No 231/2002, amended by Legislative Decree No 192/2012 and amendments.
8. If payment of fees is overdue by more than 60 (sixty) days, TMI – notwithstanding its right to avail of immediate termination under Article 8.3 of this Contract – will be entitled to suspend (until payment has been made under Article 1460 of the Italian Civil Code) performance of the services covered by the Contract, notwithstanding its right to be paid the amount due for the services performed and the applicable interest on late payment.
9. Terminali Italia reserves the right, depending on regularity of payments and the RU's assessed financial reliability, to require the RU to pledge a guarantee issued by a TMI-approved financial or insurance institution for an amount equal to two months' payments, calculated based on the assumed/stated value of the level of traffic expected. In such cases, the RU undertakes to present the guarantee to Terminali Italia within two months of being requested to do so, otherwise provision of services will be suspended. To check financial reliability ratings, TMI will make use of third-party databases, with online access allowing different levels of periodical verification of the RU's financial and legal situation. In particular cases and where significant amounts are involved, TMI will also rely on the assistance of Ferrovie dello Stato Italiane's Credit Management Office, part of its Central Finance, Investor Relations, Insurance and Assets Department, as well as that the Fercredit company.
10. RUs will be exempted from providing a guarantee, even in the absence of a financial reliability rating, where they have concluded a shunting contract with Terminali Italia for at least one service year immediately prior to the year in question and where all invoices have been paid regularly. RUs will also be exempted from providing a guarantee where its amount, calculated as detailed above, is less than or equal to EUR 1,000.00.
11. The provision of separate services based on individual requests will not affect the uniqueness of the contractual relationship and therefore the express acknowledgement that TMI will be entitled to avail of its rights under Articles 1460 and 2761 of the Italian Civil Code, including for services other than those for which the unpaid fees are due.
12. Noncompliance with the agreed terms of payment for one or more services will result in charging of default interest at the statutory rate, as well as possible suspension of provision of the services in case of non-payment by any subsequently agreed deadlines.
13. Any offsetting of accounts between the Parties, in accordance with Article 1241 of the Italian Civil Code, will be subject to conclusion of a prior signed agreement between the Parties, no form of unilateral compensation being permitted. In any event, the Parties hereby acknowledge and accept that disputed invoices cannot be offset.





## **ARTICLE 12**

### **Price adjustment**

1. The Parties acknowledge and agree that the amounts specified in the Economic Conditions, regardless of the term of validity of such conditions, will nonetheless be subject to adjustment as of 1 January each year based on the absolute variation in the ISTAT national consumer price index for working households ('FOI' index). Such variation will be measured year-on-year in the month of December.
2. Adjustments under point 1 above will be applied as from 1 January each year, unless otherwise specified in the applicable regulations.
3. Notwithstanding the provisions of paragraph 1 above, in the event of an increase in rates, these will be communicated by TMI to the RU by certified email, with advance notice of 120 days from the date on which the changes will come into force. Should the RU not reply within 30 days of receiving this certified email (PEC), this will be deemed tacit acceptance of the increase.

## **ARTICLE 13**

### **Safety Provisions**

1. TMI and the RU undertake, each for their own part of the railway system, to perform the services forming the subject matter of this Contract in accordance with European and national legislation on railway safety and with the national safety regulations laid down by the National Agency for the Safety of Railways and Road and Motorway Infrastructure (ANSFISA).
2. TMI and the RU further undertake to adopt all measures and precautions provided for or required under national legislation, as well as by any regulations and technical standards on protection of occupational health and safety and the environment.
3. TMI and the RU undertake to fully implement the provisions of Article 26 of Legislative Decree No 81/2008 on cooperation by drawing up the sole interference risk assessment document and to inform all interested parties of any risks created by its activities for the counterparty's employees and/or its partners/suppliers.
4. Specifically, the RU undertakes to notify in a timely manner any special precautions that need to be taken, depending on the circumstances in question, on the type of freight and anything else necessary for and/or conducive to the performance of this Contract.

## **ARTICLE 14**

### **Liability - insurance policy**

1. TMI will be liable to the RU or to third parties for all loss, damage or costs engaging its liability or that of its third-party suppliers, appointees and/or subcontractors during the Shunting Service.
2. For the purposes of establishing liability, TMI will accept no liability whatsoever based on presumptions of any nature. Therefore, liability for loss or damage can only be attributed to TMI in cases where the RU has presented indisputable proof that TMI has committed breaches of its contractual obligations from which loss and/or damage has arisen or that such loss and/or damage can be attributed to causes directly engaging TMI's liability.
3. For the purpose of attributing liability for loss and/or damage under point 2 above, the Parties hereby acknowledge and agree that the provisions of the attached consultation procedure (Annex h) will be implemented after each event.
4. TMI will accept no liability for any damage, loss or malfunction where such damage, loss or malfunction is attributable, in whole or in part, to third parties, to exceptional occurrences and/or to force majeure, including but not limited to adverse weather conditions, natural disasters, military conflicts, riots or street demonstrations. TMI will accept no liability for delays or cancellations due to the railway undertakings' activities in relation to train movements, or to the ordinary or extraordinary activities of the railway network manager.
5. The Parties agree that in the event of that the shared liability of TMI is established, except in cases of gross negligence or wilful misconduct, TMI will accept liability solely for loss or damage arising from malfunction, damage or loss affecting the freight and/or ITUs belonging to the RU that is its customer or to the latter's customers (direct loss or damage), and will refuse to accept liability for any further loss or damage whatsoever (loss of earnings/effects on business).

Specifically, TMI – in addition to direct damage to ITUs or wagons due to incorrect handling with shunting locomotives – will accept liability solely for loss or damage to the freight transported resulting from causes directly attributable to TMI.

The Parties furthermore agree that TMI will not compensate loss or damage classified as 'minor damage', in other words damage of a purely aesthetic nature that does not diminish the amount of freight that can be transported in ITUs or wagons and/or does not prevent them from performing their function.



In the event of loss or damage to goods, TMI will be liable to the RU in the cases and within the limits provided for in the COTIF-CIM regulations.

6. For the purpose of compensating loss or damage, TMI will call on the technical and financial services of one or more trusted insurers who, in accordance with the procedure under point 3 above, will act as its sole appointee(s) for handling claims by the injured party in the name of and on behalf of TMI. Under no circumstances, therefore, will TMI pay any sum whatsoever by way of compensation of loss or damage suffered by the RU directly to the injured party, excluding any form of compensation by offsetting against receivables under this Contract and any other business contracts between the Parties.
7. The RU will be liable to TMI or to third parties for all loss, damage or costs engaging its liability or that of its third-party suppliers, appointees and/or subcontractors (for example, maintenance of railway vehicles required following derailment).
8. The Parties hereby declare that they have taken out suitable third-party liability insurance policies valid at the date of signature of this Contract. The Parties furthermore declare that these policies will remain in effect for the entire term of the Contract, including any extensions, with a limit of liability of not less than €50,000,000 (fifty million euro) per event and per year. This policy must contain an obligation to indemnify the policyholder for any amount payable, due to third-party liability within the meaning of the applicable regulations, by way of compensation (principal, interest and costs) for loss or damage to third parties in relation to death, personal injury, loss of earnings and damage to tangible assets, arising from events for which it is responsible and/or from accidental events engaging its liability, occurring in relation to the performance of activities under this Contract.
9. The Parties mutually undertake to take out such policies with leading insurers with at least the following ratings: Moody's: Baa3, Standard & Poor's/Fitch: BBB-. Any deductibles and excesses will be shared in full between the policyholders.
10. The Parties mutually undertake to ensure that the policy includes a specific and unambiguous clause that the RU, TMI, the other companies of the Gruppo FS Italiane and their employees or agents are also to be considered third parties.

## **ARTICLE 15**

### **Notices and Contract Contact Persons**

1. The Parties hereby acknowledge and agree that the Contract Contact Persons named and notified by the Parties in Annexes f) and g) will be the persons to whom the Parties will grant all powers and rights in their respective companies for managing of all matters under this Contract.
2. The Contract Contact Persons will be responsible for coordinating and managing proper performance of contractual obligations and for relations with the Counterparty.
3. Any changes must be promptly notified to the Counterparty by certified email (PEC) and will be effective on receipt of the notice.

## **ARTICLE 16**

### **No assignment**

The Parties are expressly prohibited from assigning this Contract, in whole or in part. In the event of noncompliance with the prohibitions under this paragraph, this Contract will be deemed terminated in accordance with Article 1456 of the Italian Civil Code, notwithstanding the right of the compliant Party to sue for damages.

## **ARTICLE 17**

### **Code of Ethics**

1. The RU hereby declares that it has read Gruppo Ferrovie dello Stato Italiane's Code of Ethics published on the TMI website and is thoroughly familiar with its contents, undertaking – also on behalf of its directors, employees, independent contractors and sub-contractors and in accordance with Article 1381 of the Italian Civil Code – to strictly observe its principles.
2. In case breach of this undertaking, TMI will be entitled to terminate this Contract automatically under Article 1456 of the Italian Civil Code, by means of a unilateral declaration by TMI sent by registered letter with recorded delivery, without the need for advance or formal notice, in any event notwithstanding its right to compensation for any loss or damage suffered.

## **ARTICLE 18**

### **Personal data processing**



1. The Parties undertake to process personal data collected within the scope of and for purposes related to the conclusion and performance of this Contract in accordance the principles of lawfulness, fairness and transparency provided for under the applicable legislation on personal data the protection (Regulation (EU) 2016/679 and Legislative Decree No 196/2003 and amendments). Specifically, the Parties undertake to process personal data in accordance with the principle of data minimisation and to ensure their integrity and confidentiality.
2. The foregoing is notwithstanding each Party's obligation, as autonomous data controllers, to provide information on the processing of the personal data to any natural persons within its organisation or working for the Counterparty whose data are processed for the purposes specified in the first paragraph of this article, as well as to ensure that data subjects can exercise their rights. This obligation will be fulfilled by Terminali Italia by publication of the information in the personal data protection section of the official site [www.terminaliitalia.it](http://www.terminaliitalia.it) and by RU in accordance with its own procedures.
3. Each Party will be liable for any objections, actions or claims by data subjects and/or any other person and/or any authority made or brought against it in relation to noncompliance with the applicable legislation on personal data the protection (Regulation (EU) 2016/679 and Legislative Decree No 196/2003 and amendments).

#### **ARTICLE 19**

##### **Price transparency**

1. The Parties expressly and irrevocably:
  - declare that the conclusion of this Contract was not subject to third-party mediation;
  - declare that they have not paid or promised to pay to any person, either directly or through related companies or subsidiaries, monetary amounts and/or other consideration for intermediation or similar services in any way aimed at facilitating the conclusion of this Contract;
  - undertake not to pay to any person and on any grounds whatsoever monetary amounts aimed at facilitating and/or rendering less burdensome the performance and/or management of this Contract in relation to the obligations undertaken, nor to take any action having the same effect.
2. Should even a single one of the declarations made under the previous paragraph prove to be untruthful, or any of the Parties fail to fulfil their undertakings and obligations for the full term of this Contract, it will be deemed automatically terminated in accordance with Article 1456 of the Italian Civil Code, due to the fault or negligence of the Party in breach, which will therefore be bound to compensate all loss and damage arising from such termination and be struck off the list of approved counterparties, where relevant.

#### **ARTICLE 20**

##### **Official language - Jurisdiction**

1. The sole official language of this Contract and of all its appendices and annexes is Italian. Versions of the Contract translated into other languages, even where signed by the Parties, are intended for information purposes only. The Italian language version of the contract will prevail in the event of any discrepancies between the Italian version and a version in another language.
2. Any dispute or controversy between the Parties regarding interpretation, performance and termination of this Contract will be subject to the exclusive jurisdiction of the Court of Rome.

Date \_\_\_\_\_

**(RU Stamp and Signature)**

**Terminali Italia S.r.l.**

For the purposes of Articles 1341-1342 of the Civil Code, the parties declare that they have read and specifically approved the following articles: 2 Definitions; 5 TMP's obligations; 6 RU's obligations ; 7 Obligations to guarantee service quality levels; 8 Penalties; 9 Working timetable; 10 Term of contract - termination - immediate termination - temporary suspension of service; 14 Liability - insurance policy 16 No assignment; 17 Code of Ethics; 18 Personal data processing; 19 Price transparency; 20 Official language - Jurisdiction;



**(RU Stamp and Signature)**

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**Terminali Italia S.r.l.**

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