भारत सरकार GOVERNMENT OF INDIA
रेल मंत्रालय MINISTRY OF RAILWAYS
(रेलवे बोर्ड RAILWAY BOARD)

No. 2010/TC(FM)/25/7. **New Delhi – 110 001, dated 30.04.2014**

General Managers,
All Indian Railways.

Sub: Automobile Freight Train operator (AFTO) Scheme – Agreement to be signed between AFTO and Railway Administration.

The policy guidelines on "**AUTOMOBILE FREIGHT TRAIN OPERATOR (AFTO) Scheme**" were issued under FM Circular No. 2 of 2013 vide Railway Board's letter No. 2010/TC(FM)/25/4 dated 22.02.2013. As per provision contained in para 14.0 of this circular, AFTO shall sign an agreement with Railway Administration. In this connection, a specimen copy of agreement to be executed between AFTO and Indian Railway under the "Automobile Freight Train Operator (AFTO) Scheme" has been uploaded on Indian Railway's web site http://www.indianrailways.gov.in/railwayboard/uploads/directorate/traffic_comm/Frght_Mktg_2k14/FM_07_2014.pdf which may be downloaded for record.

This issues with the approval of Mechanical, Traffic Transportation, Legal Directorate and with the concurrence of Finance Directorate of the Ministry of Railways.

The receipt of this letter may please be acknowledged.

(Rita Raj)
Director Freight Marketing

DA : As above.

No. 2010/TC(FM)/25/7. **New Delhi – 110 001, dated 30.04.2014**

Copy to:

FA&CAO, All Indian Railways.
DAI (Railways) with 36 spares.

for Financial Commissioner/Railways.

No. 2010/TC(FM)/25/7. **New Delhi – 110 001, dated 30.04.2014**

Copy forwarded for information and necessary action to :

Chief Operations Managers, All Indian Railways
Chief Commercial Managers, All Indian Railways
Chief Mechanical Engineers, All Indian Railways
Managing Director, Konkan Railway Corporation, Belapur Bhavan, Plot No. 6, Sector-11, CBD Belapur, Navi Mumbai – 400014.
Director General, RDSO, Manak Nagar, Lucknow.
Director General, Railway Staff College, Vadodara.
Director, Indian Railways Institute of Transport Management (IRITM), Manak Nagar, Lucknow.
Managing Director, DFCCIL, Pragati Maidan, New Delhi.

(Rita Raj)
Director Freight Marketing

No. 2010/TC(FM)/25/7. **New Delhi – 110 001, dated 30. 04.2014**

Copy for information to:

CRB, FC, MT, ME, MM, MS, ML and Secretary Railway Board, New Delhi.
AM(T), AM(C), Adv.(Rates), Adv.(F), Adv.(Inf.), Adv.(Vig.), EDTT(M), EDTT(S), EDTT(F), ED(PLG.), EDT(PPP), EDF(C), EDV(T), DTT(Cord.), OSD(CRB), OSD(MT) and JDTC(R)/Railway Board.

(Rita Raj)
Director Freight Marketing



सत्यमेव जयते

Government of India

Agreement

between

Railway Administration, Government of India

and

[insert]

Automobile Freight Train Operator (AFTO)

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AGREEMENT

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This Agreement for operation of Automobile Freight Train (AFT) on IR network (the "**Agreement**") made on this the [insert] day of [insert], [insert].

BY AND BETWEEN

1. **THE PRESIDENT OF INDIA** acting through Chief Commercial Manager, Freight Marketing, Zonal Railway (hereinafter referred to as "**Railway Administration**" which expression shall, unless repugnant to the context, be deemed to include its successors and assigns) of the one part; and

2. [insert], a company incorporated under the Companies Act, 1956, having its registered office at [insert]/citizen of India] (hereinafter referred to as the **"AFTO"**, which expression shall, unless repugnant to the context, be deemed to include its successors and permitted assigns) of the other part.

WHEREAS

(A) With a view to increasing railway's share in transportation of automobile traffic in special purpose wagons thereby increasing Automobile Traffic, Ministry of Railways, Government of India decided to grant eligible parties the right to require the Railway Administration to haul their Automobile Freight Train (AFT) on Indian Railway network for movement of Automobiles under Automobile Freight Train Operator (AFTO) Scheme as the case may be, subject to various terms and conditions. This policy provides an opportunity to logistics service providers, Road Transporters or manufacturers to invest in wagons and use advantages of rail transport to tie up with the end users and market the train services owned by them for rail transportation of automobiles to create a win-win situation for railways and themselves.

(B) In pursuance of this decision, Ministry of Railways (MOR) invited proposals from the interested parties, setting out therein entry conditions including but not limited to requirements relating to the interested party's legal status, experience, financial capacity and access to rail facilities.

(C) As part of the invitation for proposals, the interested parties were required to deposit, along with their written request, an application fee equal to **1** % of the registration fee (as set out by Ministry of Railways pursuant to its Freight Marketing Circular No. 2 of 2013 dated 22.02.2013) prescribed for automobile categories for which the interested party/parties intends to run its Automobile Freight Train under AFTO Scheme.

(D) The "AFTO", being a registered company in India incorporated under the Companies Act, 1956 or a subsidiary company as defined in para 3.5 of the policy circulated vide Freight Marketing Circular No. 2 of 2013 dated 22.02.2013 submitted a written request to Ministry of Railways along with an application fee of Rs. [insert] equivalent to 1 % of the prescribed registration fee, in accordance with the requirements set out in Recital C above), conveying its intention to run **Automobile Freight Train** provided in the scheme **(Automobile Freight Train Operator)** and provided the requisite information and supporting details as sought by Ministry of Railways and further agreed to abide by the terms and conditions laid down in the policy for movement of **Automobile Freight Train (AFT)** on Indian Railways network.

(E) Pursuant to evaluation of the written request and the supporting documents received from the AFTO with the application fee in relation thereto, Ministry of Railways accepted the request of the AFTO and vide letter no. [insert] dated [insert] granted to the AFTO its 'In Principle' approval (hereinafter called "IPA") to offer its Automobile Freight Train for movement on Indian railways with [insert] number of rakes of [insert] type of wagons along with [insert] brake vans.

(F) The Parties now wish to enter into this Agreement to set out in detail their mutual relationship and the terms and conditions, which shall govern the right of the AFTO to offer its **Automobile Freight Train** for movement to Railway Administration and the obligation of Railway Administration to move the trains.

NOW THEREFORE, in consideration of the respective covenants and agreements set forth in this Agreement, the sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties hereby agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

1.1.1 The following words and expressions beginning with capital letters and defined in this Agreement shall, unless the context otherwise requires, have the meaning ascribed thereto herein:

'AFT' means Automobile Freight Train, a privately owned train for transportation of identified commodities.

"AFTO" means Automobile Freight Train Operator and refers to the parties who invest in procurement of rakes and arrange traffic for loading/unloading in the Automobile Freight Train (AFT), owned by them after obtaining necessary permission from the MOR under Automobile Freight Train Operator (AFTO) Scheme.

"Agreement" means this Agreement entered into between Railway Administration and the AFTO along with its Annexures as amended from time to time;

"Applicable Law" means all laws, including rules, directions, guidelines, regulations and notifications made thereunder and having the force of law, and judgments, decrees, injunctions, writs and orders of any court of record, as may be in force and effect in India during the subsistence of this Agreement;

"Applicable Permits" means all clearances, licences, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the performance of this agreement;

"Block Rake" means an undisturbed train formation largely with or without commodities to be transported;

"Brake Van" means a guard's van with brakes and other equipments and attached normally at the end of the train;

"Break –down" means a system failure leading to temporary cessation of traffic operations;

"Change in Law" means the occurrence of any of the following after the date hereof

(a) The enactment of any new Indian law;

(b) Repeal, modification or re-enactment of any existing Indian law;

(c) The commencement of any Indian law which has not entered into effect until the date of application; or

(d) A change in the interpretation or application of any Indian law by a judgment of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of application.

For the avoidance of doubt it is hereby expressly clarified that any change in any tax or tax related laws, including change in any tax rates, levy, cess shall not amount to a Change in Law for the purposes of this Agreement and the AFTO may, in its discretion, pass on the impact thereof to its customers.

"Change of Control" with respect to an Entity means any transaction or series of related transactions that result in (i) any other Entity acquiring or taking Control of that Entity; or (ii) the Entities(s) who were in Control of that Entity prior to such transaction or transactions no longer having such Control in that Entity following such transaction or transactions;

"Control" shall mean holding, directly or indirectly (whether in India or abroad) more than 50% of the voting stock or other voting interest of any Entity or the ability to control the composition of a majority of its Board of Directors and the terms **"Controlling"** and **"Controlled"** shall be construed accordingly;

"Commercial and Operating rules" means the prevailing rules and their amendments issued from time to time as per the Commercial and Operating Manual, Tariffs, Schedule, Code and Instruction issued by Railways or Railway Board.

"Commercial Operations Date" or **"COD"** means the day falling on date from which the AFTO commences its train operations; in case of procurement of wagons of already approved design.

"Default" shall have the meaning ascribed to the term in Article 17.1.1 hereunder;

"Notice of Termination" shall have the meaning ascribed to the term in Article 17.2.2 hereunder;

"Train" means the aggregation of the AFTO's Wagons (with or without any commodity);

"Wagons" means Special Purpose Wagons or High Capacity Wagons procured by way of purchase or lease by the AFTO for the purposes of this agreement;

"Depreciated Replacement Value" means the amount arrived at after adjusting the depreciated book value of an asset by the variation occurring between the date of purchase and the date of settlement hereunder;

"Design Loan" (of Railway Wagon) means the fee paid by the AFTO to the wagon designer or its Authorised Agency for the use of wagon design.

"Dispute" shall have the meaning ascribed to the term in Article 18.1 hereunder;

"Emergency" means an emergency declared by the President of India under Article 352 and Article 360 of the Constitution of India or a direction by the GOI affecting the normal movement of traffic in case of declared or undeclared war, military exercise, drought, epidemic, earthquake, cyclone and any other disaster or situation of like nature;

"Emergency Use" shall have the meaning ascribed to the term in Article 5.14.1 hereunder;

"Encumbrance" means any mortgage, right of way, pledge, equitable interest, prior assignment, conditional sales contract, hypothecation, right of others, security interest, title retention agreement, voting trust agreement, interest, option, lien, charge, easement, or other similar condition, commitment, restriction or limitation of any nature whatsoever, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership. The word "Encumber" shall be construed accordingly;

"Entity" or "Person" means any person, body corporate, trust, partnership firm or other association of persons/individuals whether registered or not;

"FOIS" means the 'Freight Operation Information System';

"Forwarding Note" means the document to be furnished to Railway Administration for carriage of goods as specified in the Railway Act;

"**Force Majeure**" shall mean events as described in Articles 15.2, 15.3 and 15.4 hereunder

"Free Waiting Time" means the time from arrival of a locomotive in the Private Terminal to its dispatch, and which does not attract any detention charges;

"Good Industry Practice" means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the AFTO or Railway Administration, as the case may be, in accordance with this Agreement, Applicable Laws and Applicable Permits in a reliable, safe, economical and efficient manner;

"**GOI**" means the Government of India;

"Goods Tariff" means a Ministry of Railways notification containing rules and regulations and tariff charged by Railway Administration from the AFTO for haulage of goods;

"Governmental Instrumentality" or "**Government Authority**" means the GOI and any state or local government in India and any political subdivision thereof;

'IR' means Indian Railways, Railway Administration

"Idle Wagons" shall have the meaning ascribed to the term in Article 5.13.1 hereunder;

"Indent for Locomotive" shall have the meaning ascribed to the term in Article 6.2.1 hereunder;

"Intensive Train Examination" means a mandatory examination of the rake after a run of the prescribed Kilometrage/period as specified by Railway Administration;

"IPA" shall have the meaning ascribed to the term in the Recital (E) of the agreement;

"Locomotive Detention Charges" means charges liable to be levied in the event of detention of locomotive beyond free time;

'Logistics Service' means a business of providing one or more services of rail/road/Sea/Air transport, warehousing, cold chain services, port terminal service, Inland container depot, third party or fourth party logistics.

"Maintainer" mean the Chief Mechanical Engineer of the Zonal Railway in which, for the time being, the rakes owned by the AFTO are based.

"Maintenance Requirements" shall have the meaning set forth in Article 5.16;

"Material Adverse Effect" means any act or event which materially effects the ability of either Party to perform any of their respective obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

"MOR" means Ministry of Railway;

"OHE" means Overhead Equipment;

"Private siding" A siding constructed to serve a Government Department, a factory, mill, industry, mine or other private party and not belonging to Railway Administration.

"Private Freight Terminal (PFT)" A privately owned terminal developed by a private individual under the provisions of Freight Marketing Circular No. 14 of 2010 issued vide Board's letter No. 2008/TC(FM)/14/2 dated 31.05.2010 or Freight Marketing Circular No. 5 of 2012 issued vide Railway Board's letter No. 2011/TC(FM)/14/14 dated 23.04.2012.

"Railway Act" means the Railway Act, 1989;

"Railway Administration" means the General Manager of a Zonal Railway having jurisdiction under the Railway Act, 1989 except that for the purposes of Dispute Resolution, Railway Administration shall mean the relevant Railway Administration, which has executed this Agreement;

"Rail Network" means the entire broad-gauge network of the Government Railways and shall include such railway network where the Railway Administration has a right to operate;

"Rail Terminal" Shall means a public terminal owned by Railways to handle trains;

"Railway Receipt (RR)" means the receipt issued by Railway Administration on acceptance of goods and which entitles the consignee to take delivery of the goods at the Private Terminal at which the train terminates;

"Rail Head" means a serving railway station;

"RDSO" means the Research, Designs and Standards Organization under Ministry of Railways;

"Red Tariff" means a Ministry of Railway's notification containing rules and regulations for carriage of hazardous and dangerous goods;

"Registration Fee" means the amount of fee referred to in Recital D above and paid by the AFTO to Ministry of Railways for becoming eligible to operate AFT trains;

'ROH' means routine overhauling of wagons;

"Stabling Charges" shall have the meaning ascribed to the terms in Article 7.14.1 hereunder;

"Take off Point" means a connection drawn from the existing railway line/network to provide rail access to a terminal for operation of trains;

"Third Party Consignment Claims" shall have the meaning ascribed to the term in Article 13.3.1 hereunder;

"TMS" means Terminal Management System of Freight Operation Information System (FOIS);

"Wagon Leasing Company (WLC)" means a leasing company engaged in the business of procuring railway wagons and making them available to other business entities authorized to deploy such wagons for operation over IR network in accordance with the extant policy of MOR.

"Year" shall mean a period of 12 consecutive months;

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

(a) References to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;

(b) Reference to a "person" and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;

(c) The table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or

interpretation of this Agreement;

(d) The words "include" and "including" are to be construed without limitation and shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases;

(e) References to "construction" include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and "construct" shall be construed accordingly;

(f) Any reference to any period of time shall mean a reference to that according to Indian Standard Time;

(g) Any reference to day shall mean a reference to a calendar day as per the Gregorian calendar;

(h) References to a "business day" shall be construed as a reference to a day (other than a Sunday) on which banks in India are generally open for business;

(i) Any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;

(j) Any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;

(k) The words importing singular shall include plural and vice versa;

(l) References to any gender shall include the other and the neutral gender;

(m) "lakh" means a hundred thousand (100,000) and "crore" means ten million (10,000,000);

(n) References to the "winding-up", "dissolution", "insolvency", or "reorganisation" of a person or entity shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction applicable to such person or entity is incorporated or any jurisdiction in which such person or entity carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;

(o) Any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub- parts shall not operate so as to increase liabilities or obligations of the Railway Administration hereunder or pursuant hereto in any manner whatsoever;

(p) Any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party in this behalf and not otherwise;

(q) Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;

(r) References to Recitals, Articles, Clauses, Sub-clauses or sub-parts in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and sub-parts of or to this Agreement;

(s) The damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty; and

(t) Any and all capitalised terms used, but not defined, herein shall have the meaning ascribed to the term under the Railways Act, if any.

1.2.2 Unless expressly provided otherwise in this Agreement, any documentation required to be provided or furnished by the AFTO to the Railway Administration shall be provided free of cost and in three copies, and if the Railway Administration is required to return any such documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

1.3 Measurements and Arithmetic Conventions

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

1.4 Priority of Agreements and Errors/Discrepancies

1.4.1 This Agreement, and all other Agreements and documents forming part of this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof shall, in the event of any conflict between them, be in the following order:

(a) This Agreement; and

(b) All other agreements and documents forming part hereof;

i.e. this agreement shall prevail over the agreements and documents forming part hereof .

1.4.2 In case of ambiguities or discrepancies within this Agreement, the following shall apply:

(a) Between two or more Articles of this Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail over those in other Articles; and

(b) Between any value written in numerals and that in words, the latter shall prevail.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES OF THE PARTIES

2.1 Representations and Warranties by the AFTO

2.1.1 The AFTO hereby represents and warrants to, and for the benefit of, Railway Administration that as on the date hereof:

(a) It (AFTO) is a (PSU, JV, public company) limited by shares validly incorporated under the laws of India and has been properly constituted and is in continuous existence since incorporation;

(b) It has a net worth of minimum Rs. 20 crore/ annual turnover of minimum Rs. 30 crore as on 31st March of last financial year.

(c) In case the applicant is a subsidiary company, experience and net worth of the holding company, owning more than 50% equity in the subsidiary company, may be reckoned for the purpose of 2.1.1(b) above. However, in such cases, the applicant company should have a minimum of 25% of the prescribed net worth of Rs. 20 crore.

(d) It has not been declared sick under Sick Industrial Companies (Special Provision Act'1985).

(e) It has the power and authority and has taken all actions necessary to execute and deliver validly and to exercise its rights and perform its obligations validly under this Agreement;

(f) The obligations of the AFTO under this Agreement constitute legally valid, binding and enforceable obligations against the AFTO in accordance with the terms hereof;

(g) No proceedings against the AFTO are pending, and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

(h) No sums in cash or kind, have been paid or promised to, or accepted by any person or will be paid to, or accepted by, any person or on its behalf by way of fees, commission or otherwise to induce Railway Administration to enter into this Agreement, or to keep this Agreement in continuance, except as provided for in this Agreement;

(i) It is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising hereunder including any obligation, liability or responsibility hereunder;

(j) The information furnished in the application and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;

(k) The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association [or those of any member of the Consortium] or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;

(l) It has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Authority which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

(m) It has paid all charges surcharges, fees, cess, duties, taxes etc. as payable on the basis of notification issued by the Central and State Governments from time to time.

(n) It has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;

(o) It has not withheld from Ministry of Railways/Railway Administration, any material information or material document, whose non-disclosure would have a material adverse effect or would have adversely affected the evaluation or acceptance of the application submitted by the AFTO; and

(p) It satisfies and shall, throughout the Term, continue to satisfy any and all of the entry requirements and eligibility criteria laid down by Railway Administration in Freight Marketing Circular No. 2 of 2013 dated 22.02.2013(AFTO Scheme) as the case may be.

(q) The AFTO is familiar with the business of AFT on Indian Railway network, its future prospects; the risks involved and have conducted its own diligence and analysis of the AFT business in its present condition.

(r) Save and except what is stated herein, neither the Railway Administration nor the Government of India or any of their agents, attorneys, representatives, officers or employee(s) have made any representations or warranties regarding the operation of AFT trains on Indian Railways network.

2.2 Representations and Warranties by Railway Administration

2.2.1 Railway Administration hereby represents and warrants to and for the benefit of the AFTO that on the date hereof:

(a) It has the right, power and authority and has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;

(b) It has not intentionally withheld from the AFTO, any material information or material document, whose non-disclosure would have a material adverse effect;

(c) The obligations of Railway Administration under this Agreement will be legally valid, binding and enforceable obligations against Railway Administration in accordance with the terms hereof;

(d) There are no actions, suits or proceedings pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the default or breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform its obligations under this Agreement;

(e) It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on Railway Administration's ability to perform its obligations under this Agreement;

(f) It has complied with Applicable Laws in all material respects;

(g) All information provided by it in the policy guidelines inviting proposals for operation of AFT trains to the best of its knowledge and belief, true and accurate in all material respects;

(h) Upon the AFTO paying the Fee and performing the covenants herein, it shall not at any time during the term hereof, interfere with peaceful enjoyment of the rights the AFTO, in accordance with the provisions of this Agreement.

(i) Save and except the representations and warranties stated in this Agreement, the Railway Administration makes no other representation or warranties with regard to the business, financial viability of the business of the operation of AFT trains on Indian Railways Network

and no statutory or other warranties as to the business or financial viability of the operation of AFT trains on Indian Railway Network shall be implied.

2.3 Disclosure

2.3.1 If, at any time after the date hereof, any event or circumstance comes to the attention of either Party that renders any of its abovementioned representations or warranties untrue or incorrect, then such Party shall immediately notify the other Party of the same. Provided however, such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect or adversely affect or release any obligation of either Party under this Agreement or amount to a waiver of any rights or remedies that the other Party may enjoy in relation to such breach, whether under this Agreement or otherwise;

2.3.2 No provision contained in this Article, nor elsewhere in this Agreement, shall operate so as to exclude any liability of one of the parties in respect of a fraudulent misrepresentation made by that Party to the other, or to restrict or exclude any remedy which the other party may have in respect of such misrepresentation.

ARTICLE 3

SCOPE OF AGREEMENT

3.1 Agreement

3.1.1 The AFTO has to procure full rake composition as notified by IR with 4% additional wagons as maintenance spare and a brake van per rake.

3.1.2 Subject to the terms and conditions contained in this Agreement, the Railway Administration hereby grants to the AFTO, throughout the duration of this agreement, a non-exclusive right to require the Railway Administration to haul the AFTO's Trains, as provided in the AFTO Scheme and the AFTO hereby understands and accepts this and further undertakes to perform services and functions in relation thereto in accordance with the terms and conditions of this Agreement.

3.1.3 For the avoidance of doubt, it is hereby expressly clarified that the AFTO shall not have the right to require Railway Administration to haul any of the AFTO's Trains whatsoever pursuant to this Agreement, till such time as the AFTO establishes/ensures access to Private or Rail Terminals and maintains the same in accordance with the provisions of Article 4.1 and acquires prescribed/laid down minimum number of Wagons in units of rake with 4% wagons as maintenance spares including brake vans to form a Block Rake for the commencement of operations and for transportation of AFT in accordance with this Agreement. As per the policy, the AFTO has to procure a minimum of 3 rakes under AFTO Scheme as per provisions contained in para 5.1of the AFTO policy 02 of 2013, failing which Railway Administration reserves the right to terminate the agreement.

3.1.4 In addition to the right to require Railway Administration to haul AFTO's Trains as described in Article 3.1.1 above subject to applicable laws, the rights of the AFTO shall include the following:

3.1.4.1 The right to determine, charge, collect, retain and appropriate all the fees that it charges from the consigners;

3.1.4.2 The right to obtain access to Private Terminals and develop, own, operate and maintain private terminal as per extant policy for handling automobiles;

3.1.4.3 The right to procure own or lease Wagons from WLC.

3.2 Non Exclusive Agreement

3.2.1 Granting of permission to an AFTO shall not restrict Indian Railways for transportation of such traffic in wagon procured/arranged by IR under any other scheme or will not give any kind of sole right to run such wagons exclusively but such wagons can be procured and run by other operators also, on terms and conditions no more favorable than those offered to the AFTO.

3.3 Application of Railway schemes to AFTOs:

3.3.1 The existing incentives/schemes extended to rail customers or that may be introduced in future shall not ipso facto apply to the AFTOs. Upon request of the AFTO(s), Railway administration may consider extending such schemes to the AFTO to the extent possible in a non-discriminatory manner.

3.3.2 All commercial rules as amended from time to time and as applicable to freight traffic moving on Indian Railways shall apply to the AFT traffic, except rules specially covered in this Agreement in a non-discriminatory manner amongst similarly placed entities.

3.4 Period of Agreement

3.4.1 The term of this Agreement shall be for a period of 20 years starting from the Commercial Operations Date.

3.4.2 The term of this agreement can be extendable subject to the performance of the operator till expiry of the codal life of the wagons subject to a maximum Period of 35 years. In case the AFTO is desirous of seeking such extension it shall apply to the Railway Administration not later than 3 years prior to the culmination of the Concession Period. The Railway will communicate its decision regarding approval of extension to the AFTO. In the event the Railway Administration rejects the request for extension, it shall record its reasons in writing for the refusal and communicate to the AFTO before expiry of the agreement.

3.5 If the AFTO intends to induct additional rakes the same may be permitted by Railways without payment of any additional registration fee. Conversely if he wants to withdraw any number of rakes he will be permitted to do so without any refund of registration fee subject to maintaining of minimum 3 rakes.

ARTICLE 4

RAIL ACCESS AND TERMINALS

4.1 Access to Rail Terminals

4.1.1 The AFTO hereby expressly acknowledges and agrees that it shall be the AFTO's sole responsibility and obligation under this Agreement to develop his own terminal or tie up with private sidings/ private freight terminals as per extant rule for loading/unloading of traffic moved in AFT. In case of tie up with other private terminals, the AFTO shall submit a letter to this effect regarding the tie up with the private terminal operator for such movement to the concerned zonal railways. However, AFT can also be operated from any railway owned terminal to any railway owned terminal on Indian Railways provided suitable handling facility is available and on payment of terminal access charges as prescribed by IR from time to time.

The AFTO hereby expressly acknowledges and agrees that it shall be the AFTO's sole responsibility and obligation under this Agreement to procure the requisite approval/authority for the AFT and/or a Railway Administration locomotive to enter into, be upon and utilize the origin and destination Rail Terminal(s) (Privately owned terminals at both the ends or Railway owned terminals) and expressly acknowledges and agrees that Railway Administration shall be under no obligation to haul any of the AFTO's Trains unless the AFTO's Train and Railway Administration locomotive are duly authorized/permitted to enter into, be upon and utilize both the origin and destination Rail Terminals.

4.1.2 The Parties hereby expressly acknowledge and agree that in the event the AFTO fails to operate its AFT Trains in accordance with the requirements of this Agreement i.e. within two years from the date of signing of the Agreement in case of the wagons of already approved designs and four years from the date of signing of the Agreement in case of the wagons of new designs, Railway Administration shall have the right , but not the obligation, to terminate this Agreement and the IPA forthwith pursuant to which the registration fee paid by the AFTO shall stand forfeited unless specific prior extension is given by MOR.

4.2 Rail Facilities in Private Terminals

4.2.1 The AFTO hereby covenants that each Private Terminal, that is used by the AFTO as the Private Terminal from where the AFTO's Trains and/or a Railway Administration locomotive either originate or terminate shall conform to the following:

4.2.1.1 Each Private Freight Terminal shall have rail facilities for handling AFTO's Trains along with locomotive in conformity with siding and PFT rules prescribed by Railway Administration from time to time.

4.2.1.2 Conform with the Applicable Law and any and all statutory requirements specified by any Government Authority.

4.2.1.3 Be equipped with TMS and such other facilities as may be required to interface with, and ensure transfer of data online to FOIS of Railway Administration and avail of e-payment facility.

4.3 Weighing of Wagons

4.3.1 The AFTO shall declare the weight of each Wagon prior to departure of the AFTO's Train. In the case of overloading punitive charges applicable for goods traffic, will be levied. For the avoidance of doubt the Parties hereby expressly acknowledge and agree that the ultimate responsibility for the correct/accurate weighing of the Wagons lies with the AFTO and that nothing in this Article 4.3.1 including a representative of the Railway Administration being present at the time of weighing shall absolve or in any way limit the obligation and liability of the AFTO to accurately weigh the Wagons.

4.4 New Private Freight Terminals

4.4.1 Cost of Private Freight Terminal and Rail Siding

The cost of designing, constructing, operating and maintaining a Private Freight Terminal and the rail facilities [both inside and outside the AFTO's premises/up till the Take-off Point] shall be borne by the AFTO subject to the provisions of the private siding policy notified by Railway Administration from time to time. Provided, however, no rail track has been previously approved by Railway Administration or such other authority as designated by Railway Administration, which approval shall not be unreasonably withheld.

4.4.2 Land

The Parties hereby agree that procuring any land and/or other related facilities required for establishing a Private Freight Terminal and/or for laying any track, in accordance with the provisions of Article 4, shall be the responsibility and obligation of the AFTO at its sole cost and expense. For the avoidance of doubt, it is hereby agreed that Railway Administration shall not be under any obligation to provide any land or other related facilities (other than the connection at the Take-Off Point) to the AFTO for setting up a Rail Terminal or for laying any rail track connecting a Rail Terminal to a Rail Head. Provided however, Railway Administration shall ensure connection of Railway Administration rail track to the rail siding if found technically feasible in accordance with Good Industry Practice.

4.4.3 Status of Private Terminals

The Parties hereby expressly acknowledge and agree that such a Private Terminal as may be established by the AFTO for the purpose of handling his own traffic to be carried in his own AFT, shall be treated in the same manner a Private Siding and all rules and regulations applicable to Private Sidings as notified by Railway Administration from time to time shall apply mutatis mutandis to such Rail Terminal. In case the terminal so established is used for other traffic, the provisions of Railway's policy on Private Freight Terminal will apply. For the avoidance of doubt, it is agreed that Railway Administration shall sign a standard prevalent siding agreement or the agreement for PFT for each such Rail Terminal with all AFTOs on a non-discriminatory and non-exclusive basis, and which agreement shall contain the required details of terminal design, access, operation and like matters. It is hereby agreed that such agreements shall agreements shall be governed by the extant rules and regulations and shall not be more restrictive than the provisions of this Concession.

ARTICLE 5

WAGONS

5.1 The Parties hereby acknowledge and agree that the AFTO shall procure by way of purchase and lease any and all Wagons including Brake Vans required by the AFTO for the purposes of operating, in accordance with the terms of this Agreement, the AFTO's Trains and that Railway Administration shall not, in any way, be responsible or obligated to provide to the AFTO any Wagons including Brake Vans and any other rolling stock (other than supply of the locomotive in accordance with the terms of this Agreement).

5.2 The AFTO shall carry on its train such wagons, which conform to Wagon capacity and the moving dimensions as may be notified / published by MOR for the purpose of Automobile Freight Train Operator (AFTO) Scheme.

5.3 Procurement of wagons for induction under Automobile Freight Train Operator (AFTO) Scheme will be allowed only with prior administrative approval of MOR. Wagons procured with out the prior approval of MOR will not be permitted to be inducted for operation. The AFTO will be permitted to commence operations as soon as first rake is inducted and will not need to wait for the induction of all the minimum three rakes to commence operations. However, the residual rakes should be inducted within a six month period.

5.4 The AFTO shall procure/operate wagons of RDSO approved IRS designs manufactured by a Indian Wagon Supplier holding valid G105 Certificate issued by RDSO or by an overseas supplier considered suitable by RDSO provided that all wagons procured by the Licensee must comply with the technical specifications and design prescribed by RDSO. In case a AFTO procures new wagons, using the design and drawings of RDSO design loan charges shall be payable by the operator to RDSO at rates as applicable at the time of manufacture of such wagon for use of such design & drawings of RDSO.

5.5 The Parties further agree that any Wagons or its parts, which are safety related, procured by the AFTO shall be subjected to inspection by RDSO or its authorised inspecting agency for which the AFTO shall pay due charges for such inspection. In case sourcing of wagons or such of its parts as are essential for safe operations is from RDSO approved suppliers, the inspection can also be carried out by any one of the inspection agencies nominated by the RDSO from time to time. In addition to inspection charges, design loan charges shall be levied and paid to Indian Railway or its authorized agencies, in case Wagon design belongs to Indian Railway or its authorized agencies. For the avoidance of doubt, it is agreed that these charges shall be levied on all AFTOs on a non-discriminatory basis.

5.6 The AFTO may procure new designs of wagon which have not been introduced earlier on Indian Railways network. In all such cases, the AFTO shall obtain RDSO's mandatory approval for new wagon design in terms of new wagon design policy of RDSO No. WD-02-WDA-2009 (latest version) prior to introduction of such wagons in service. The design ownership rights shall be regulated as per the new wagon design approval policy from time to time. As regards the aforementioned inspection by RDSO or its authorized inspecting agency, it is agreed that the AFTO shall be required to provide a notice to the Railway Administration seeking execution of the above aforementioned inspection. The Railway Administration shall, within the period falling between 45 days to 60 days after receipt of such notice from the AFTO and upon full payment of relevant charges (in advance), commence and complete such inspection.

5.7 AFTO shall be required to incorporate following warranty clause in their purchase contract with the wagon manufacturer (Vendor):

"The vendor of AFTO hereby covenants that it is a condition of the contract that all wagons furnished to the AFTO under this contract shall be of the highest grade, free of all defects and faults and of the best material, quality, manufacture and workmanship throughout and consistent

with the established and generally accepted standards for materials of the type ordered and in full conformity with the contract specification, drawing or sample if any and shall, if operable, operate properly:

The Vendor of AFTO also guarantees that the said wagons would continue to conform to the description and quality as aforesaid, for a period of minimum 30 months after their delivery or 24 months from the date of placement in service whichever shall be sooner, and this warranty shall survive notwithstanding the fact that the wagons may have been inspected, accepted and payment therefore made by the AFTO.

If during the aforesaid period, the said wagons be discovered not to conform to the description and quality aforesaid or have deteriorated, otherwise than by fair wear and tear, the decision of the AFTO in that behalf being final and conclusive then the AFTO will be entitled to reject, the wagons or such portions thereof as may be discovered not to conform to the said description and quality. On such rejection, the wagons will be at the vendor's risk. If the vendor so desires, the rejected goods may be taken over by him or his agents for disposal in such manner as he may deem fit within a period of 3 months from the date of such rejection. At the expiry of the period, no claim whatsoever shall lie against the AFTO in respect of the said wagons, which may be disposed of by the AFTO in such manner as he thinks fit. Without prejudice to the generality of the foregoing, all the provisions in the AFTO's standard condition of contract relating to the rejection of wagons, failure and termination shall apply.

The vendor shall, if required, replace the wagons or such portion thereof as have been rejected by the AFTO, free of cost, at the ultimate destination, or at the option of the AFTO, the vendor shall pay the AFTO, the value thereof at the contract price and such other expenditure and damage as may arise by reason of the breach of the conditions herein before specified. Nothing herein contained shall prejudice any other right of the AFTO in that behalf under this contract or otherwise."

A copy of the contract warranty clause shall be submitted by the AFTO to the Maintainer to ensure logging of warranty calls in the field. However, the AFTO shall coordinate compliance of warranty calls booked by the Maintainer with the builder and cost of all uncomplied warranty repairs shall be the liability of the AFTO.

5.8 AFTO can also take new or used wagons on lease from a Wagon Leasing Company as per policy. AFTO can also purchase or take on lease wagons procured under AFTO Scheme from another registered operator, in that particular category.

5.9 AFTO shall inform the MOR regarding details of placement of procurement order. Similarly the date of actual induction shall be advised by the applicant to MOR under advice to concerned zonal railway(s) indicating the loading and unloading terminals.

5.10 Each wagon procured by the AFTO shall be allotted a unique vehicle number and owner code allotted by the Authority. The licensee shall not alter/modify such unique identification number on his own. In case of change in ownership for any reason, the AFTO shall approach MOR for change of ownership code.

5.11 In the event of the AFTO acquiring wagons on lease from a wagon leasing company or purchases used wagons from another operator, such wagons shall be subjected to safety and fitness inspection by the Maintainer in accordance with rules/regulations / norms applicable to such type of wagons as issued by the MOR from time to time. Upon request by the Licensee, Maintainer shall carryout necessary repairs, at AFTO's cost, to render such wagons fit prior to introduction in service, provided that, if, prior to being acquired by the AFTO, such wagons remained under continuous and regular operation and maintenance by Indian Railways, initial inspection may be waived at the discretion of "the Maintainer". The time taken for inspection and repairs of such wagons by "the Maintainer" shall in any case not exceed 30 days from the date of application made by the AFTO for the same. At any time during the currency of this agreement, the Maintainer, if so warranted on age cum condition basis, may condemn any wagon owned by the AFTO after advising the AFTO

with detailed reasons for such a decision. For this purpose, the Codal life of wagons shall be as per norm fixed by the MOR which shall be non-discriminatory.

5.12 On receipt of documents about the induction of rake, a notification shall be issued by the zonal railway including all details regarding name of AFTO, COD, date of commencement of agreement period, number of rakes, wagon number.

5.13 Use of Idle Wagons

5.13.1 In the event any of the Wagons of the AFTO are lying idle ("**Idle Wagons**") in a rail terminal, Railway Administration shall levy a Stabling Charge as specified in paragraph 7.14.1 hereof if such Idle Wagons are idling on the Indian Railway network.

5.13.2 The Parties further agree that for any period where Railway Administration accepts and uses the AFTO's Wagons, such use shall be on mutually agreed terms and conditions.

5.14 Requisition in case of Emergency

5.14.1 In the event of an Emergency (as communicated by GOI, in writing through Railway Administration or otherwise, at its sole discretion), Railway Administration, shall have the right, to temporarily (for the duration of the emergency event and any effect thereof) assume control and make use of the Wagons of the AFTO by giving notice to that effect to the AFTO ("**Emergency Use**").

5.14.2 For any such Emergency Use, Railway Administration shall pay to the AFTO, a reasonable rent/charge to cover the cost of provisions and operation of the Wagon but not including the AFTO's return on such investment.

5.14.3 Railway Administration shall, within 7 (seven) days of cessation of the Emergency and any effect thereof, or such longer time-period as may be reasonable taking into account the nature of Emergency, return the Wagons to the AFTO forthwith.

5.15 Unscheduled repairs, Damages and accidents to Private wagons

5.15.1 If unscheduled repairs arise (eg damage of wagon body, centre sill, headstock or sole bar etc) due to the fault of the operator during loading/unloading, the cost of these special repairs will be charged to the private operator.

5.15.2 Similarly, if the wagon has to undergo special repairs on account of faulty manufacture and accidents due to the fault of the private operator, the cost of these special repairs will be charged to the private operator.

5.15.3 However, if damages to the wagons occur on account of fault of the Railways and special repairs arise out of that, the repairs shall be done at the cost of the Railways.

5.15.4 In case where the private wagon has to be prematurely condemned:

(a) If it is on account of fault of the private operator, no compensation will be due to him.

(b) If it is on account of Indian Railways, the Railway will pay the operator compensation equal to the depreciated amount calculated for the residual years of service based on the codal life of the wagon. After this compensation is paid, the wagon will belong to the Railways and Railway will dispose off the wagon themselves.

5.15.5 Any damage except usual wear and tear to any AFTO's Wagons or any goods contained therein during any Idle Use or Emergency Use by Railway Administration shall, unless otherwise set out in this Agreement, be dealt with in accordance with provisions of the Railway Act. Provided that MOR shall, in all cases where such wagons are declared repairable by the Maintainer, shall restore the wagons to fit condition at MOR's cost. In case the wagon requires pre-mature condemnation on account of such damages, the AFTO shall be paid the depreciated cost of the wagon as

provisioned in Article 13.2.2.1(i). In the event of the AFTO accepting such compensation, the ownership of the condemned wagon shall rest with the MOR.

5.15.6 In the event Railway assets, installations, etc, suffer damage due to negligence of the AFTO, the AFTO shall bear the cost of restoring the damaged assets, installation etc.

5.16 **MaintenanceRequirements**

The AFTO shall at all times conform to the maintenance standards specified by the Railway Administration in accordance with Good Industry Practice for the AFTO's wagons, rail related equipment and tracks.

5.17 Wagon maintenance by Railway Administration

5.17.1 The AFTO's Wagons shall be maintained by the Railway Administration in accordance with the maintenance schedule notified by the Railway Administration at its own cost except in case as per para 5.15 above during the currency of the agreement. Such maintenance shall, inter alia, include intensive examination, routine overhaul ("**ROH**") and periodic overhaul ("**POH**"), the time schedule for which will be notified by the Railway Administration from time to time. Standard maintenance charges shall not cover the cost of design modifications including those arising out of design defects, provision of additional equipment, any rehabilitation/upgradations to wagons including those prescribed by MOR in a non-discriminatory manner or repair of damages other than normal wear and tear caused to wagons while in AFTO's custody. All spares and consumables, including wheel sets and axle bearings required for maintenance shall be arranged by the Maintainer except "Special uncommon component" required for the special wagons acquired by the AFTO. Irrespective of design, railway wheel sets with axle bearings shall not be designated as a special uncommon component for any type of wagon. In case of wagons which require "specialty components" for maintenance, MOR will list out such components required for the special purpose wagons procured by the AFTO with quantity. Such specialty components will either be procured by the AFTO and handed over at the nominated examination point(s) or be procured by the Railway and cost of the same will be recovered from the AFTO.

5.17.2 Railway Administration shall normally complete the intensive train examination within a period of 6 hours from the time the AFTO's Wagons (in empty Rake formation) are handed over by the AFTO for such examination. Provided however, that the minimum interval between two successive Rakes offered for intensive train examination shall be at least 6 hours. Alternatively, the Railway Administration may examine the AFTO's Wagons at suitable point enroute its destination where the facilities for such examination exists. It is hereby agreed by the Parties that the time stipulated for maintenance shall not be applicable vis-à-vis such AFTO's Wagons that are declared sick during the course of examination and are required to be detached from the AFTO's Train for sick line/ workshop attention.

5.18 Haulage Charges for Maintenance

5.18.1 The AFTO shall hand over empty Wagons, in rake formation, to Railway Administration for carrying out maintenance as per the schedule specified by the Railway Administration.

5.18.2 The haulage charges for moving the Wagons, in rake formation, from a Rail Terminal on Private Terminal to the workshop/maintenance depot/train examination point of the Railway Administration and back shall be borne by the Railway Administration.

5.18.3 Any wagons declared sick during the journey and detached from the rake may be subsequently hauled to the maintenance yard and after maintenance to the AFTs base station by IR at their cost.

ARTICLE 6

SUPPLY OF LOCOMOTIVE

6.1 Supply of Locomotive

6.1.1 Subject to any operational constraints, Railway Administration hereby undertakes and agrees to provide to the AFTO, in accordance with the terms set out in this Agreement, locomotives to haul the AFTO's Trains, on a non-discriminatory and non exclusive basis, provided however, the AFTO adheres to the scheduling process as set out hereunder.

6.2 Indent of locomotive

6.2.1 At least four (4) hours prior to the planned departure of AFTO's Train, the AFTO shall submit an indent (**"Indent for Locomotive"**) the timing of which shall be acknowledged by Railway Administration for supply of locomotive.

6.3 Cancellation/Lapse of Indent for Locomotive

6.3.1 The AFTO may, anytime prior to arrival of a locomotive (supplied by Railway Administration pursuant to receipt of a Indent for Locomotive sent by AFTO in accordance with Article 6.2.1 above), cancel its Indent by sending a notice to that effect to Railway Administration, provided however, the AFTO shall be liable to pay to Railway Administration indent cancellation charges equivalent to one (1) hour **Locomotive Detention Charges.** In the event, indent for cancellation of locomotive is received by Railway Administration after the loco is dispatched for the Terminal, the AFTO in addition to indent cancellation charges, shall also be liable to pay to Railway Administration such charges as may be prescribed by Railway Administration from time to time for the infructuous movement of locomotive both ways. Such charges, however, shall not exceed the charges levied for the movement of the locomotive for the distance from the nearest locomotive shed.

6.3.2 If after arrival of the locomotive at the Terminal from where the train is required to depart, or the Private Terminal where the train is required to terminate, as the case may be, the AFTO's Train, for whatsoever reason not attributable to Railway Administration, is not attached or detached and released (as the case may be), prior to expiry of the Free Waiting Time of two hours (entry to exit), the AFTO shall be liable to pay to Railway Administration, Locomotive Detention Charges for every hour (or part thereof) for which the locomotive is detained beyond the Free Waiting Time. Provided however, if a locomotive is detained for a period of more than eight (8) hours at any Rail or Private Terminal (either the Rail Terminal of origin or of termination, as the case may be), then, without prejudice to the AFTO's liability to pay to Railway Administration the Locomotive Detention Charges, Railway Administration shall have the right, but not the obligation, to withdraw and/remove the locomotive from such Private Terminal. In case Railway Administration withdraws and/or remove the locomotive from the Private Terminal after detention of 8 hours, the detention along with movement charges shall be levied without granting any free time.

In the event Railway Administration withdraws the locomotive in accordance with the provisions of this Article 6.3.2 then, without prejudice to the AFTO's liability to pay the Detention Charges to Railway Administration, the Indent for locomotive shall deemed to have lapsed, with no further effect.

6.3.3 Locomotive Detention Charges payable by the AFTO for detention of a locomotive beyond the Free Waiting Time shall be at the rates as prescribed for Diesel/Electric Train Engines by the Railway Administration from time to time.

6.3.4 The Parties agree that the provisions of Article 6.3.2 shall apply mutatis mutandis to the situation where the locomotive arrives at a Terminal where the train is scheduled to terminate, but is denied entry into such a Terminal for reasons attributable to the AFTO and /or the Terminal operator.

6.4 Railway Administration may at its sole discretion, at any future date during the currency of this Agreement, allow the AFTO on such terms and conditions as specified by Railway Administration, to own or secure through third-party lease and/or maintain RDSO approved locomotives at a Private terminal / Siding.

ARTICLE 7

RAIL TRANSIT OPERATIONS

7.1 Trains procured under Automobile Freight Train Operator (AFTO) Scheme will not be merged in the wagon pool of IR. Rakes comprising of such wagons will be identified as exclusively belonging to the AFTO who has procured them. Each rake will have separate identification with date of commercial commissioning.

7.2 Each rake shall be procured along with the Brake van. The Brake van will be added to the general pool of IR Brake vans, in exchange for the undertaking that IR will meet the operational requirement of providing brake vans to the AFTO trains.

7.3 The loading and unloading zonal railway shall maintain all records pertaining to details of loading/unloading, circuits on which service is being run, changes in circuits over a period of time, freight charged, lead in empty and loaded direction separately, commodity wise. The zonal railway shall also be responsible for operation of the agreement. Such MIS reports shall also be available in TMS.

7.4 The AFTO will have a tie up with the end-users for marketing and arranging traffic. As far as the Indian Railway's liability is concerned, the AFTO will be the Consignor and Consignee for the consignment for which Railway Receipts will be issued by railway commercial staff posted at the terminal.

7.5 In case of AFTO Scheme, the AFTO can either operate their trains between private terminals equipped to handle the traffic for which AFTO must have a tie up with such private terminals or own its private terminal / sidings for handling of such traffic or move from any rail terminal to any rail terminal on IR provided suitable handling facility is available subject to payment of terminal charges as prescribed by IR from time to time.

7.6 Indents for loading in such trains will be placed at the loading point/terminals for the destination point.

7.7 The rakes may be used by IR for traffic offered by customers other than the AFTO subject to a prior mutual written agreement between IR and such AFTO.

7.8 The AFTO may carry only the identified commodities in the train subject to conditions specified in the AFTO policy, goods tariff, red tariff, and under the provisions of the Act and any other instructions issued on the subject, by Ministry of Railways or IR from time to time.

7.9 The Parties acknowledge and agree that transportation of any of AFTO's trains pursuant to this Agreement shall be in Block Rakes. In the event an AFTO's Train operates with lesser number of Wagons than those prescribed in the Block Rakes ("**Non-Block Rake Trains**"), the freight charges for such Non-Block Rake Trains shall be recovered on the basis of the minimum composition of Block Rake as specified by Railway Administration from time to time. Provided, however, in the event an AFTO's train has less than half the Wagons required to constitute a Block Rake, the Railway Administration shall have the right without any obligation or liability, to refuse to haul the AFTO's Train comprising less than half a Block Rake.

7.10 Railway Administration hereby undertakes that any of the AFTO's Trains to be hauled by Railway Administration pursuant to this Agreement shall be booked by the shortest route possible (the "**Booked Route**") and the freight charges shall be determined with reference to such Booked Route. Provided however, in case of any accident or other operational exigencies on, or affecting, the Booked Routes Railway Administration shall, in its sole discretion, be entitled to transport the AFTO's Train by an alternative route ("**Alternate Route**"). For the avoidance of doubt, it is expressly agreed that the AFTO shall be liable to pay freight charges only for the Booked Route even when AFTO's Train is transported by an Alternate Route. Provided that in case the AFTO's Trains are carried by a longer route in pursuance of the Rationalisation Scheme of MOR (under section 71 of the Railway Act 1989), the AFTO shall be liable to pay charges accordingly.

7.11 Programme of AFTO's Trains

7.11.1 The AFTO shall, at least 7 (seven) days prior to any calendar week in which it proposes to operate any AFTO's Train, inform ("**Weekly Advance Scheduling Notice**") Railway Administration of the number of

AFTO's Trains, it requires to be moved, the proposed routes and the likely departure dates ("**Weekly Advance Schedule**").

7.11.2 Notwithstanding anything to the contrary, the AFTO shall, at least twenty four (24) hours prior to the day of programmed loading (excluding the day of loading itself) of a AFTO's Train, confirm to Railway Administration the departure schedule of such AFTO's Train, provided that such notices shall not in any way be binding and shall be only indicative of the AFTO's operations schedule for the following week / day.

7.11.3 To ensure a level playing field, IR shall move the trains of AFTO on the basis of "first come first served principle" without giving any undue preference to any other operators. Railway Administration shall also make all efforts to ensure minimum enroute detention to the AFTO trains and strive to achieve the average speed of freight trains on IR in respect of transit time of AFTO's trains.

7.11.4 Notwithstanding anything to the contrary contained in this Agreement, dispatch of locomotives and AFTO's Train(s) shall be subject to any operational exigencies and/or system restrictions.

7.12 Number of AFTO's Trains and Frequency

7.12.1 The Parties hereby expressly acknowledge and agree that, subject to any operational and capacity restrictions of Railway Administration, there shall be no restriction on the number and frequency of AFTO's Trains that the AFTO may require Railway Administration to haul pursuant to this Agreement.

7.13 Diversion of AFTO's Trains

7.13.1 The Parties hereby undertake and agree that the AFTO may request the Railway Administration to accept at any time after the departure of a AFTO's Train, the diversion/re-diversion of such AFTO's Train to any other Private Terminal as permitted to the AFTO, in accordance with the various terms and conditions (including but not limited to payment of haulage/freight charges and other charges) and procedures specified by Railway Administration from time to time subject to its operational exigencies and/or for system restrictions. It is clarified that the Railway Administration shall not be under a legal obligation to comply with such request.

7.14 Stabling of Trains

7.14.1 The Railway shall levy stabling charges as per the rates notified from time to time in case rolling stock belonging to the AFTO is stabled on account of the AFTO on IR network.

The AFTO shall be liable to pay to Railway Administration Stabling Charges, in the following event:

(i) In case the AFTO's Train suffers detention at the serving station for reasons attributable to the AFTO or when the AFTO either declines to accept Wagons inside the Private Terminal, scheduled to be the terminating Private Terminal or is not in a position to receive placement of subsequent Wagons.

Provided however that Stabling Charges shall be levied only where the detention of the AFTO's Train is for a period in excess of 4 hours.

7.14.2 Stabling Charges shall be payable at the rates notified by Railway Administration from time to time and the Parties acknowledge and agree that Railway Administration shall have the right but not the obligation to revise the Stabling Charges on an annual basis.

7.15 Demurrage/Detention Charges

7.16 If an AFTO rake is detained in a Railway terminal, beyond the permissible free time upto the time of release of the rakes, detention charges shall be levied at the rate of demurrage charges as notified by Railways from time to time.

7.16.1 No demurrage or detention charges shall be levied by Railway on privately owned wagons in a private terminal.

7.16.2 Detention charges once levied, shall not be waived off.

ARTICLE 8

OBLIGATIONS OF THE AFTO

8.1 Without prejudice to any other covenants and obligations as set out in this Agreement, the AFTO further undertakes and agrees, at its own cost and expense and in addition to, and not in derogation of, its obligations contained elsewhere in this Agreement, to:

8.1.1 Obtain and keep valid all such Applicable Permits (including renewals as may be required from time to time) required for the performance of its obligations under this Agreement, shall do nothing to vitiate the conditions of the Applicable Permits and their renewals and shall comply with all Applicable Laws and Applicable Permits;

8.1.2 Discharge all its obligations contained in this Agreement in accordance with Good Industry Practice;

8.1.3 Undertake loading and unloading operations at both the origin and destination Terminals

8.1.4 Ensure and procure that its Contractors/sub-contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the AFTO's obligations under this Agreement;

8.1.5 Support, cooperate with and facilitate Railway Administration in the effective and timely implementation and operation of the provisions of this Agreement;

8.1.6 Provide all relevant data and information to FOIS through an on line system, in accordance with the requirements of this Agreement;

8.1.7 Provide/procure access to Railway Administration staff at each Terminal from where the locomotive either originates or terminates at all reasonable hours;

8.1.8 Draw and maintain adequate insurance cover throughout the term of this Agreement for the Private Terminal and the AFTO's Wagons from an insurance company licenced by the Insurance Regulatory and Development Authority. Without prejudice to the generality of the foregoing, the AFTO shall procure adequate insurance to cover against (i) any loss, damage or destruction of the AFTO's Wagons and/or Terminal; (ii) AFTO's general liability arising out of this Agreement to the extent it is commercially insurable; (iii) any other insurance that may be necessary to protect against any Force Majeure Events that are commercially insurable; and (iv) such other insurance as may be customary in accordance with Good Industry Practice. In this regard, the AFTO shall, from time to time, provide to Railway Administration copies of all insurance policies obtained by the AFTO in accordance with the terms of this Agreement;

8.1.9 Make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in order to ensure performance of its obligations under this Agreement;

8.1.10 Neither do nor permit to be done any act (or commission or omission), deed or thing, which may in any manner be violative of any of the provisions of this Agreement or in any manner prejudice the performance by the AFTO of any of its covenants or obligations contained herein;

8.1.11 Bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the AFTO under this Agreement;

8.1.12 Settle at its sole cost and expense, all claims arising out of traffic booked by the AFTO.

8.1.13 Maintain accurate, up-to-date and complete records relating to it's AFT train operations.

8.1.14 Hand over AFTO's Wagons to Railway Administration, or any approved substitute thereof, for maintenance in accordance with the maintenance schedule laid down by Railway Administration from time to time.

8.1.15 Upon receipt of a request in this regard, allow, any time and from time to time, representatives of Railway Administration to enter upon its premises whether at a Private Terminal or other office premises (including registered office) to inspect any and all documents pertaining to any AFT train related operations and to provide all necessary support and assistance as may be required by Railway Administration in this regard.

8.1.16 Ensure access to and acceptance of AFTO's Trains into each of the Terminals from where it's Trains are originating and terminating prior to the dispatch of it's Trains.

8.1.17 Provide suitable locking device and/or any other similar standard device for sealing of wagons of AFT to ensure security of goods during transit.

8.1.18 The AFTO shall promptly inform Railway Administration of any Material Adverse Effect in its financial conditions and of any litigation threatened or initiated.

8.1.19 To do all such other acts, deeds and things as are necessary or incidental to the performance of AFTO's obligations under the Agreement.

8.2 Employment of foreign nationals:

The AFTO acknowledges, agrees and undertakes that employment of foreign personnel by the AFTO and/or its contractors and their sub-contractors shall be subject to permission of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and obligation to apply for and obtain the same shall and will always be of the AFTO and notwithstanding to the contrary contained in this agreement, refusal of or inability to obtain any such permits and approvals by the AFTO or any of its contractors or sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the AFTO from the performance and discharge of its obligations and liabilities under this Agreement.

ARTICLE 9

OBLIGATIONS OF RAILWAY ADMINISTRATION

9.1 The Parties expressly acknowledge and agree that Railway Administration shall be responsible for planning and coordinating the movement of AFT train services on the approved circuits in India. Railway Administration shall, on receiving a request from the AFTO provide to the AFTO a FOIS terminal with "read only" access to enable the AFTO to access information on movement and operation of rolling stock owned by AFTO. Provided, however, the cost of establishing, operating and maintaining such FOIS terminal shall be borne by the AFTO.

9.2 Without prejudice to any other obligations and covenants of Railway Administration contained in this Agreement, Railway Administration also agrees and undertakes to provide all reasonable assistance to the AFTO in operating, in accordance with the terms of this Agreement, the AFTO's Trains and, agrees to:

9.2.1 Ensure a level playing field. IR shall move the trains of AFTO on the basis of "first come first served principle" without giving any undue preference to any other operators. Railway Administration shall also make all efforts to ensure minimum enroute detention to the AFTO trains and strive to achieve the average speed of freight trains on IR in respect of transit time of AFTO's trains.

9.2.2 Ensure fitness of track, locomotives, signaling and communication system and OHE for smooth operation of the AFTO's Trains;

9.2.3 Upon receiving a request from the AFTO, make available, from time to time, all relevant circulars, notifications and like documents to the AFTO pertaining to the performance of this Agreement or the rights and obligations of the Parties hereto;

9.2.4 Undertake maintenance of AFTO's Wagons according to the schedule and hand over the Wagons back to the AFTO within the prescribed time schedule;

9.2.4.1 Railway Administration will assist to facilitate the movement of AFTO's Trains to the extent possible for access of the AFTO's Trains on "any network" in India not owned by Railway Administration on non discriminatory basis; and

9.2.4.2 Railway Administration shall depute its personnel to issue Railway Receipt (RR) and for other documentation.

9.3 Any dispute arising out of the fitness of rail infrastructure or wagon maintenance shall be adjudged in relation to the practices being followed for other types of traffic moving on Railway Administration's network.

9.4 In case the Terminals from where the locomotive or AFTO's Train originate and terminate, fall between two Railway Zones, the concerned Railway Administration would ensure that other non-signatory Railway Administration performs/discharges the functions/obligations of the signatory Railway Administration to the extent they fall within the jurisdiction of the non-signatory Railway Administration.

ARTICLE 10

FREIGHT PAYABLE

10.1 The AFTO hereby acknowledges and agrees to pay to Railway Administration, exclusive of any and all taxes (including any service tax), cess, levies, charges and duties, freight charges for haulage by Railway Administration of the AFTO's Trains at such rates as prescribed by Railway Administration from time to time and applicable uniformly on a non-discriminatory basis (**"Freight Charges"**). For the avoidance of doubt, the Parties acknowledge and agree that it shall be the responsibility and obligation of the AFTO to pay any and all taxes (including any service tax), cess, levies, duties and charges for, or in relation to, haulage by Railway Administration of the AFTO's Trains, this Agreement and any and all services rendered by Railway Administration pursuant hereto.

10.2 For each loading of a rake, haulage rate in the loaded direction and the empty direction as applicable at the time of booking would be charged.

10.3 In case the AFTO sells his wagons to another AFTO or end user or WLC after complying with provisions of article 12 of the agreement the AFTO shall inform the Railway Administration and MOR one month in advance so that proper notification can be issued by the concerned zonal railway and changes regarding the ownership of wagons can be made in TMS.

10.4 All payments after signing of agreement shall be made through e-payment including Freight etc.

10.5 AFTO shall be responsible to pay all charges and surcharges, fees, cess, duties, taxes etc. as payable on the basis of notification issued by the Central and State Governments from time to time.

10.6 One time haulage charges as prescribed by railway administration will be paid by the AFTO for the first movement of the rake from the manufacturing unit to the loading point.

10.7 Even if one wagon is loaded, the full rake shall be charged as loaded.

10.8 The freight will be charged for the composition of train load as notified by Indian railways from time to time. Other charges pertaining to carriage and handling of AFT shall be applicable as notified from time to time.

10.9 In the event of the load on a wagon exceeding the prescribed limits, the following shall apply:-

10.9.1 If the overloading doesn't adversely affect safe operations with suitable speed restrictions, an additional charge (over and above the Freight Charges) as prescribed by Railway Administration from time to time be payable by the AFTO to Railway Administration.

10.9.2 If the overloading adversely affects the safe operation, in addition to additional charge (over and above the Freight Charges) as prescribed by Railway Administration from time to time be payable by the AFTO to Railway Administration, the wagon may be off loaded or wagon be detached at the AFTO's risk and cost.

10.10 Remittance of Freight Charges

10.10.1 The Freight Charges payable by the AFTO to Railway Administration shall be paid through e-payment prior to dispatch of AFTO's Train. Railway Administration shall introduce a system of Electronic Clearance at the earliest for remittance of Freight charges.

10.10.2 In the event of non-payment of Freight Charges prior to dispatch of any AFTO's Train, AFTO's Trains shall not ordinarily be detained for dispatch and such train shall be booked as 'TO PAY" and a 'to- pay' surcharge, as prescribed by the Railway Administration from time to time, shall be levied on the Freight Charges.

10.10.3 In case the AFTO fails to pay such Freight Charges at the destination within seven (7) working days on arrival at the destination, the Railway Administration shall be under no obligation to haul any of the AFTO's Trains till such time outstanding Freight charges have been paid.

10.10.4 In the event the AFTO does not clear the outstanding dues within a period of 30 days from the arrival of AFTO's Train at destination, the Railway Administration shall have the right to take possession of the AFTO's Wagons and consignment to recover its dues with interest at prevailing rate and thereafter the Railway Administration may, at its discretion terminate the Agreement.

10.11 AFTO's Right To Charge

10.11.1 Notwithstanding anything to the contrary contained in this Agreement, Railway Administration recognizes that the AFTO shall be entitled to levy and recover charges from its customers/users for services provided by the AFTO to its customers like rail haulage, terminal handling, ground rent on a market determined basis and Railway Administration further undertakes not to exercise any control over such levy or collection of any such charges.

ARTICLE 11

DOCUMENTATION

11.1 Forwarding Note

11.1.1 The AFTO shall submit a Forwarding Note to Railway Administration for booking of wagons to be transported by Railway Administration on the AFTO's Train. The AFTO hereby undertakes and covenants that such a Forwarding Note shall contain all prescribed details required for booking wagons and shall be complete, accurate and true in all respects with no material omissions or inaccuracies.

11.2 Railway Receipt

11.2.1 Based on the Forwarding Note submitted by the AFTO and upon payment of Freight Charges, the Railway Administration shall issue a Railway Receipt in acceptance of the wagons tendered by AFTO for dispatch. The RR shall be issued without undue delay and not later than the day following the completion of loading operation. Provided however, that an AFTO's train shall not be detained for dispatch in case of delay in issue of Railway Receipt.

11.2.2 The provision of railway staff to be posted in the Private Terminal and its cost shall be governed by the provisions of extant rules as notified by Railway Administration from time to time.

11.2.3 Any other documentation requirement by Railway Administration will be specified in advance and sufficient notice will be provided to the AFTO to organize the same.

ARTICLE 12

ASSIGNMENT AND TRANSFER

12.1 Assignment/Transfer

12.1.1 Notwithstanding anything to the contrary contained in this Agreement, the AFTO shall not transfer and/or assign this Agreement, before the completion of 1 (one) year from the Commercial Operation Date, to any third party except if the same is done in favour of a direct/indirect subsidiary or holding company (as defined in the Companies Act 1956).

12.1.2 The AFTO may transfer and/or assign the agreement to any third party after one (1) year after the commencement of commercial operations of the AFTO's Trains, however subject to the condition that such transfer shall be effected only pursuant to an approval from the MOR, which may only reject the transfer or assignment if it believes that such transfer would be prejudicial to national security or public interest.

12.2 Change of Control

12.2.1 There shall be no Change of Control of the AFTO through transfer of the direct or indirect legal or beneficial ownership or control of any equity or other contractual arrangement before the completion of one (1) year from the commencement of commercial operations of the AFTO's Trains pursuant to this Agreement, whereafter there may be a Change of Control, subject however to the condition that such Change of Control shall be effected only after an approval from the Railway Administration, which may only reject such Change of Control from a national security or public interest perspective.

12.2.2 Notwithstanding anything to the contrary contained in this Agreement, the AFTO agrees and acknowledges that:

(i) all acquisitions of equity by an acquirer either by himself or with any person acting in concert, directly or indirectly by transfer of the direct or indirect legal or beneficial ownership or control of any equity, in aggregate of not less than 15% of the total equity of the AFTO, or

(ii) acquisition of any control directly or indirectly of the Board of Directors of the AFTO by any person either by himself or together with any person or persons acting in concert with him

shall be subject to prior approval of the Railway Administration from a national security and public interest perspective and the decision of the Railway administration in this behalf shall be final, conclusive and binding on the AFTO and undertakes that it shall not give effect to any such acquisition of equity or control of the Board of Directors of the AFTO without such prior approval of the Railway Administration. For the avoidance of doubt, it is expressly agreed that approval of the Railway Administration hereunder shall be limited to national security and public interest perspective, and the Railway Administration shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Railway Administration shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the AFTO from any liability or obligation under this Agreement.

For the purposes of this Article 12.2.2:

(a) the expression "acquirer", "control" and "person acting in concert" shall have the meaning ascribed thereto in the Security and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997 or any statutory re-enactment thereof as in force as on the date of acquisition of equity, or the control of the Board of Directors, as the case may be, of the AFTO;

(b) the indirect transfer or control of legal or beneficial ownership of equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or

companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the AFTO; and

(c) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in India or abroad) the equity of the AFTO, not less than half of the directors on the Board of Directors of the AFTO or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of not less than 15% (fifteen per cent) of the equity of the AFTO shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the AFTO.

ARTICLE 13

RAILWAY ADMINISTRATION'S LIABILITY AND SETTLEMENT OF CLAIMS

13.1 Custody of AFTO's Trains and Demarcation of Liability

13.1.1 Notwithstanding anything to the contrary contained in this Article 13, the Parties hereby agree that, unless otherwise mutually agreed between the Parties, the custody of the AFTO's Trains, if any, shall be deemed transfer from the AFTO to the Railway Administration at the interchange point which shall be mutually agreed upon and indicated and notified to all concerned. For the avoidance of doubt, unless otherwise agreed upon, the Interchange Point shall be the point where the rail line situated on the premises of the Private Terminal/Siding and the rail line situated on the premises of Railway Administration meet.

13.1.2 The Parties hereby acknowledge and agree that Railway Administration liability for claims, damages, shortage, etc shall not extend beyond the point of Interchange, unless it is due to failure or negligence of Railway Administration

13.2 Transit Loss

Subject to the provisions of Article 13.1 above, Railway Administration shall be liable for any loss, damage or destruction to any wagon or any goods in Railway Administration custody in accordance with the provisions of the Railways Act.

13.2.1 **Goods**

13.2.1.1 For determining the liability in case of an inward loaded rake all seals would be jointly examined by Railway Administration staff and AFTO's staff immediately on arrival and similarly for outward traffic, before the departure of the AFT, all seals will be jointly examined. In case the Railway Administration delivers wagons at the destination with the seals intact, Railway Administration shall not be liable for any claim in respect of such wagons. For the avoidance of doubt, it is agreed that a AFT shall not be detained for dispatch in case of delay in joint inspection prior to departure and that the joint inspection upon arrival at the destination Terminal shall be conducted expeditiously.

13.2.1.2 The extent of the monetary limit of the Railway Administration in respect of the consignments of AFTO shall be governed by Section 103 of Railways Act.

13.2.2 **Wagons**

13.2.2.1 Unless otherwise prescribed in the Railways Act, in the event any AFTO's Wagon is damaged except usual wear and tear while in its custody, Railway Administration shall have the following liabilities:

Railway Administration shall use all reasonable efforts to repair, within a reasonable time frame (which shall be intimated to the AFTO within two working days after inspection of the damaged Wagons), any AFTO's Wagons damaged to the condition prior to occurrence of damage.

(i) If Railway Administration is either unable to repair any such damaged AFTO's Wagon within a reasonable time or decides, in its sole discretion, that any AFTO's Wagon is damaged beyond repair, the liability of Railway Administration for such damaged AFTO's Wagon shall not exceed the Depreciated Replacement Value of that AFTO's Wagon subject to adjustment of any insurance proceeds received by the AFTO towards any damaged wagon. For the avoidance of doubt, it is expressly agreed that pursuant to payment of the aforesaid amount, the AFTO's damaged Wagon/scrap shall vest with the Railway administration.

(ii) In case any of the AFTO's Wagon in the custody of the Railways Administration is untraceable for 30 (thirty) days or more, the AFTO shall give notice to this effect to the Railway Administration provided however, such notice shall be served within a period of

7 (seven) days from the time AFTO should have reasonably come to know of such disappearance of the said wagon. The liability of Railway Administration for such missing wagon shall not exceed the Depreciated Replacement Value of that AFTO's Wagon subject to adjustment of any insurance proceeds received by the AFTO towards any missing wagon. For the avoidance of doubt, it is expressly agreed that pursuant to payment of the aforesaid amount, the missing wagon, if found shall vest with the Railway Administration.

(iii) Claims in respect of wagons damaged beyond repair shall be supported with a certificate issued by the Maintainer to this effect. The AFTO shall have the option of either retaining such permanently damaged wagon without claim or preferring claim for compensation in terms of clause 13.2.2.1(i) of the Agreement, in which case the ownership of damaged wagon will rest with the MOR.

13.3 Settlement of Claims of Third Parties

13.3.1 Notwithstanding anything to the contrary contained in this Agreement, the Parties hereby expressly acknowledge and agree that Railway Administration shall at any time, not be liable to any third party for any loss of any consignment booked for transport by such third party with the AFTO ("**Third Party Consignment Claims**") and any Third Party Consignment Claims shall be settled by the AFTO at its sole cost and expense.

13.3.2 The AFTO hereby agrees and undertakes to indemnify and keep indemnified and otherwise save harmless throughout the Agreement Period, Railway Administration, its agents and employees, workers, contractors, sub-contractors and other representatives from and against any and all claims, demands made by any third parties against Railway Administration, its employees, workers, contractors, sub-contractor and other agents and representatives for, or in relation to, any Third Party Consignment Claims.

13.4 Procedure for Reimbursement of Claims

13.4.1 While AFTO's wagons are in the Railway Administration's custody, the AFTO shall submit claims to Railway Administration. All such claims shall be scrutinized and settled in accordance with the provisions of Section 93 and 103 of the Railways Act, 1989. The time limit from the filing of such claims and the rights and obligations of the Railway Administration shall also be as prescribed in the Railways Act, 1989, as amended from time to time.

ARTICLE 14

CHANGE IN RAIL TECHNOLOGY AND NETWORK

14.1 The AFTO expressly agrees that if Railway Administration makes any modification in technology, specifications or network in pursuance of plans for modernisation of the rail system, it may be required by Railway Administration to make necessary modifications in its Wagons, equipments and routing in a reasonable manner and within a reasonable period and the AFTO hereby undertakes and agrees to make, at its sole cost and expense, any such modifications to its Wagon, equipments and routing in a reasonable manner and within a reasonable period of time. For the avoidance of doubt, the AFTO will have no claim for damages or compensation on account of such modifications.

ARTICLE 15

FORCE MAJEURE

15.1 Force Majeure

As used in this Agreement, the expression "Force Majeure" or "Force Majeure Event" shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, other than non-availability of funds or on account thereof, to the extent it affects the performance by the Party claiming the benefit of such Force Majeure (the "Affected Party") of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party and not brought about at the instance of, the Party claiming to be affected by such events; and (ii) has Material Adverse Effect on the Affected Party, except for the payment of monies due under this Agreement or any applicable Law.

15.2 Non-Political Event

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

(a) Act of God, epidemic or plague, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion;

(b) Strikes or boycotts other than those involving the Railway Administration and the AFTO, leading to disruption of rail transit services;

(c) Strikes or boycotts involving the Railway Administration if such strikes interrupt train services;

(d) Train accidents/collisions for whatsoever reason so caused, leading to disruption in the movement of rail traffic;

(e) Any judgment or order of any court of competent jurisdiction made against the AFTO in any proceedings for reasons other than (i) failure of the AFTO to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement or (iv) exercise of any of its rights under this Agreement by the Railway Administration;

(f) The discovery of geological conditions, toxic contamination or archaeological remains on the site that could not reasonably have been expected to be discovered through a site inspection; or

(g) Any event or circumstances of a nature analogous to any of the foregoing.

15.3 Indirect Political Event

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

(a) An act of war or act of enemy (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;

(b) Industry-wide or state-wide strikes or industrial action (other than any strikes or boycotts mentioned in Article 15.2 above);

(c) Any civil commotion, boycott or political agitation, which prevents running of train services; or

(d) Any event or circumstances of a nature analogous to any of the foregoing.

15.4 Political Event

A political event shall mean one or more of the following acts or events by or on account of any Government Authority pertaining to only Central Government in India:

(a) Change in Law resulting in the AFTO being unable to exercise its rights under this Agreement or materially impairing the ability of the AFTO to utilize the Project Assets in the manner or for the purpose contemplated under this Agreement;

(b) Expropriation or compulsory acquisition of any Project Assets or rights of the AFTO;

(c) Unlawful or unauthorized or without jurisdiction, revocation of or refusal to renew or grant without valid cause, any clearance, licence, permit, authorization, no objection certificate, consent, approval or exemption required by the AFTO to perform its respective obligations under this Agreement and the Project Agreements, provided that such delay, modification, denial, refusal or revocation did not result from the AFTO's inability or failure to comply with any or more conditions relating to concession, maintenance or renewal of such clearance, licence, authorization, no objection certificate, exemption, consent, approval or permit; or

(d) Any event or circumstance of a nature analogous to any of the foregoing.

For avoidance of doubt it is hereby expressly agreed that any change in taxes, levy, cess or increase in other costs, including operating costs, shall not amount to a Force Majeure Event for the purposes of this Agreement.

15.5 Duty to Report Force Majeure Event

Upon occurrence of a Force Majeure Event, the Affected Party shall by written notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of the:

a) Nature and extent of each Force Majeure Event which is the subject of any claim for relief with evidence in support thereof;

b) Estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;

c) Measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and

d) Any other information relevant to the Affected Party's claim.

The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event not later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information and such other information as the other Party may reasonably request the Affected Party to provide.

15.6 Effect of Force Majeure Event on the Concession

At any time after the Commercial Operations Date, if any Force Majeure Event occurs:

1) Before the expiry of this Agreement, the Agreement Period and the dates set forth in the Agreement shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists;

2) The Parties shall bear their respective costs, losses and/or damages during the subsistence of the Force Majeure Event and neither Party shall be required to pay to the other Party any costs, losses and/or damages thereof;

3) Save and except as expressly provided in this Agreement, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

15.7 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a written termination notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of its intention to do so and grant at least 15 (fifteen) days time to the other Party to make a representation, and may after the expiry of 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

15.8 Dispute Resolution

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

15.9 Exemptions from Performance of Obligations

If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be exempted from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

a) The suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;

b) The Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and

c) When the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

15.10 Termination Payment for Force Majeure Event

15.10.1 If this Agreement is terminated pursuant to Article 15.7 on account of a Non-Political Event, the AFTO shall not be entitled for any compensation of any kind what so ever from the Railway Administration.

15.10.2 Subject to Article 15.10.4, if this Agreement is terminated pursuant to Article 15.7 on account of an Indirect Political Event, Railway Administration shall make a termination payment to the AFTO in an amount equal to the Registration Fee paid by AFTO and in the event the AFTO offers for sale its wagons to the Railway Administration, the Depreciated Replacement Value of Wagons.

15.10.3 Subject to Article 15.10.4, if this Agreement is terminated pursuant to Article 15.7 on account of a Political Event, Railway Administration shall pay to the AFTO a termination payment to the AFTO in an amount that would be payable under Article 17.3.2 as if it were a Railway Administration default.

15.10.4 Notwithstanding anything to the contrary contained in this Article 15, if this Agreement is extended beyond the Agreement Period and is thereafter terminated pursuant to Article 15.7, then (i) if the Railway Administration has not charged any registration fee for extension of the Agreement Period, no compensation whatsoever shall be payable by the Railway Administration to the Concession for such termination; and (ii) if the railway Administration has charged the AFTO any registration fees for extension of the Agreement Period, the Railway Administration shall pay to the AFTO compensation in accordance with the provisions contained in Article 15.10.1, Article 15.10.2 or Article 15.10.3, as the case may be, for such termination. Provided however, for the purpose of calculating the compensation, fee paid by the AFTO for extension of the Agreement Period shall be taken into account and not the registration fee paid by the AFTO for the initial Agreement Period itself.

15.11 Change in Law

15.11.1 The Parties expressly agree that in the event of Change in Law, the only relief available to the parties under this Agreement shall be as set forth in this Article 15.

ARTICLE 16

INDEMNITY

16.1 General indemnity

16.1.1 The AFTO will indemnify, defend, save and hold harmless Railway Administration and its officers, servants, agents, Government Authority and Government owned and/or controlled entities/enterprises, ("Railway Administration Indemnified Persons") against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by or on behalf of the AFTO of any of its obligations under this Agreement or any related agreement, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach of this Agreement on the part of Railway Administration Indemnified Persons.

16.1.2 Subject to the provisions of Railways Act and rules made there under, Railway Administration will indemnify, defend, save and hold harmless the AFTO against any and all suits, proceedings, actions, demands and third party claims on account of any injury or death arising out of breach by Railway Administration of any of its obligations under this Agreement or any related agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the AFTO, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the AFTO and the Railway Administration shall not be liable to indemnify the AFTO for any such claims.

16.2 Indemnity by the AFTO

16.2.1 Without limiting the generality of Article 16.1.1 above, the AFTO shall fully indemnify, hold harmless and defend Railway Administration and Railway Administration Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

16.2.1.1 Failure of the AFTO to comply with Applicable Laws and Applicable Permits;

16.2.1.2 Payment of taxes required to be made by the AFTO in respect of the income or other taxes of the AFTO's contractors, suppliers and representatives; or

16.2.1.3 Non-payment of amounts due as a result of materials or services furnished to the AFTO or any of its contractors which are payable by the AFTO or any of its contractors.

16.2.2 Without limiting the generality of the provisions of this Article 16.1.1, the AFTO shall fully indemnify, hold harmless and defend Railway Administration Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which Railway Administration Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the AFTO or by the AFTO's Contractors in performing the AFTO's obligations hereunder. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the AFTO shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the materials, information, design or process, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the AFTO shall promptly make every reasonable effort to secure for Railway Administration a licence, at no cost to Railway Administration, authorising continued use of the infringing work. If the AFTO is unable to secure such licence within a reasonable time, the AFTO shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

16.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article (the "**Indemnified Party**"), it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

16.4 Defense of claims

16.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 16, the Indemnifying Party shall be entitled, at its option, to assume and control in the defense of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defense.

16.4.2 The Indemnified Party shall not settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnifying Party unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

16.4.3 If the Indemnified Party has exercised its rights under this Article 16.4.1 , the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

16.4.4 For the avoidance of doubt, it is hereby expressly clarified that in the event the Indemnifying Party exercises its rights under Article 16.4.1, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the reasonable fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

16.4.4.1 the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or

16.4.4.2 the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defense of such action; or

16.4.4.3 the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defense of such action and shall have been so notified by the Indemnified Party; or

16.4.4.4 the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:

(i) that there may be specific defenses available to it which are different from or additional to those available to the Indemnifying Party; or

(ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-parts (b), (c) or (d) of this Article 16.4.4 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defense of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

16.5 No consequential claims

Notwithstanding anything to the contrary contained in this Agreement, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of any special, indirect, incidental or consequential nature, including loss of profit or business arising out of or in connection with this agreement, except as expressly provided herein.

16.6 Survival on Termination

The provisions of this Article16 shall survive termination or expiry of this Agreement.

ARTICLE 17

TERMINATION

17.1 Termination for AFTO Default

17.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the AFTO fails to cure the default within a cure period of 180 (One Hundred Eighty) days, the AFTO shall be deemed to be in default of this Agreement (a "**AFTO Default**"), unless the default has occurred solely as a result of any breach of this Agreement by Railway Administration or due to Force Majeure. The defaults referred to herein shall include:

(a) the AFTO abandons or manifests intention to abandon its obligations without the prior written consent of Railway Administration;

(b) the AFTO fails to operate its AFT Trains in accordance with the requirements of this Agreement within two years in case of already approved design wagons or four years for new design wagons from the date of award of the IPA as the case may be unless specific prior extension is given by MOR;

(c) the AFTO is in breach of the Maintenance Requirements;

(d) the AFTO has failed to make any payment to Railway Administration pursuant to this Agreement;

(e) the AFTO repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;

(f) the AFTO has transferred its rights in breach of the provisions of this Agreement;

(g) an execution levied on any of the assets of the AFTO has caused a Material Adverse Effect;

(h) the AFTO is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the AFTO or for the whole or material part of its assets;

(i) the AFTO has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of Railway Administration, a Material Adverse Effect;

(j) a resolution for winding up of the AFTO is passed, or any petition for winding up of the AFTO is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the AFTO is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the AFTO are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the AFTO under this Agreement ; and provided that:

(i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and ;

(ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and has a credit worthiness at least as good as that of the AFTO as at the date hereof; and

(k) the AFTO commits a material default in complying with any provision of this Agreement.

17.1.2 Without prejudice to any other rights or remedies which Railway Administration may have under this Agreement or otherwise, upon occurrence of a Default, Railway Administration shall be entitled to terminate this Agreement by issuing a Termination Notice to the AFTO("**Railway Administration Notice of Termination**"); provided that before issuing the Termination Notice, Railway Administration shall by a written notice inform the AFTO of its intention to issue such Termination Notice and grant 30 (thirty) days to the AFTO to make a representation ("**Railway Administration Notice of Intent to Terminate")** , and may after the expiry of such 30 (thirty) days, whether or not it is in receipt of such representation, issue the Termination Notice in writing.

17.1.3 In case AFTO wants to terminate the agreement before the expiry of the agreement period, he has an option to do so with three months advance notice. In such circumstance, he will also have an option to sell his rakes to another AFTO provided the buyer has a valid registration to run that commodity for which the rake has been inducted. The AFTO can also sell his rake to end user or WLC. Such rakes purchased by end user or WLC shall be governed by respective policies of IR. However, in such case no refund of registration fee, or no residual value of the wagons will be admissible.

17.1.4 In case the AFTO does not follow the rules laid down by Railways for safety of the goods carried or of railway property or any rules laid down by MOR for movement of AFT, the permission of AFTO can be terminated by giving one months notice without any liability of Indian Railways and he may also be liable to be penalized in accordance with the Indian Railways Act'1989. In such case, registration fee shall not be refunded to the AFTO nor IR will pay any residual value of the wagon, though he will be entitled to dispose off the rake(s) as per the provisions of 17.1.3 given above.

17.2 **Termination for Railway Administration Default**

17.2.1 In the event that any of the defaults specified below shall have occurred, and Railway Administration fails to cure such default within a Cure Period of 180 (One Hundred Eighty) days or such longer period as has been expressly provided in this Agreement, Railway Administration shall be deemed to be in default of this Agreement (the "**Railway Administration Default**") unless the default has occurred as a result of any breach of this Agreement by the AFTO or due to Force Majeure. The defaults referred to herein shall include:

(a) Railway Administration commits a material default in complying with any of the material provisions of this Agreement;

(b) Railway Administration has failed to make any payment to the AFTO within three months of the due date of such payment; or

(c) Railway Administration repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

17.2.2 Without prejudice to any other right or remedy which the AFTO may have under this Agreement, upon occurrence of Railway Administration Default, the AFTO shall, be entitled to terminate this Agreement by issuing a Termination Notice to Railway Administration **("AFTO Notice of Termination")**; provided that before issuing the Termination Notice, the AFTO shall by a written notice inform Railway Administration of its intention to issue the Termination Notice and grant 30 (Thirty) days to Railway Administration to make a representation, and may after the expiry of such 30 (Thirty) days of whether or not it is in receipt of such representation, issue the Termination Notice.

17.3 Termination Payment

17.3.1 If this Agreement is terminated pursuant to a AFTO Default, the AFTO shall not be entitled to any compensation whatsoever from the Authority on account of such termination. The AFTO shall have the right to sell or otherwise dispose of the AFT, in any manner that the AFTO deems fit; provided that the AFTO shall be liable to pay Stabling Charges, in accordance with Sections

7.14.1 and 7.14.2 and any other payment due to the Authority. The Authority may exercise lien on the lien on the AFTO's Wagons in case of default of payments by Licensee.

17.3.2 If this Agreement is terminated pursuant to an Authority Default, the AFTO shall have the right to sell or otherwise dispose off the AFT, in any manner that the AFTO deems fit. It is also provided that if the AFTO so desires, it may sell the wagons of the Licensee procured under the AFTO Scheme to the Authority, at the Depreciated Replacement Value of the AFT Wagons.

17.3.3 It is also expressly acknowledged that in case of default of any payment id sue to Railway Administration, the Railway Administration may exercise lien on the consignment loaded in the AFTO's wagons to recover its dues.

17.4 Other rights and obligations of Railway Administration

17.4.1 Notwithstanding anything to the contrary contained in this Agreement, the Parties hereby expressly acknowledge and agree that in the event this Agreements is terminated, for whatsoever reason (other than Railway Administration Default), prior to the AFTO achieving Commercial Operation Date, no termination payment whatsoever shall be due or payable by the Railway Administration to the AFTO.

17.5 Survival of rights

17.5.1 Notwithstanding anything to the contrary contained in this Agreement, any termination of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money, damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 18
DISPUTE RESOLUTION

18.1 Any Dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between Railway Administration and the AFTO, and so notified in writing by either Party to the other Party (the "Dispute") shall in the first instance, be attempted to be resolved amicably.

18.2 Railway Administration and the AFTO agree to use their best efforts for resolving all disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

18.3 In case of any dispute in interpretation of the policy, the decision of MOR will be final and binding.

18.4 Conciliation

In the event of any Dispute between the Parties, either Party may require such Dispute to be referred to the Railway Administration and the Chairman of the Board of Directors of the AFTO for an amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Article 18.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Article 18.5

18.5 Arbitration

18.5.1 Any Dispute in implementation of this agreement, which is not resolved amicably as provided in Article s 18.1, 18.2, 18.3 and 18.4 shall be finally decided by reference to arbitration by a Board of Arbitrators, appointed pursuant to this Article 18.5. Such arbitration shall beheld in accordance with the Rules of Arbitration of the International Centre for Alternate Dispute Resolution, New Delhi (the "**Rules**") or such other rules as may be mutually agreed by the Parties and shall be subject to the provisions of The Arbitration and Conciliation Act, 1996. The venue of such arbitration shall be New Delhi, India and the language of the arbitration proceedings shall be English.

18.5.2 There shall be a Board of three arbitrators of whom each party shall select one and the third arbitrator shall be selected by the two arbitrators so selected, and in the event of a disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.

18.5.3 The arbitrators shall make a reasoned award (the "**Award**"). Any Award made in any arbitration held pursuant to this Article 18.5 shall be final and binding on the Parties as from the date it is made, and the AFTO and the Railway Administration agree and undertake to carry out such Award without delay.

18.5.4 The AFTO and the Railway Administration agree that an Award may be enforced against the AFTO and/or Railway Administration, as the case may be and their respective assets wherever situated.

18.5.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

18.6 For resolving disputes on issues pertaining to claims for damages, freight charges, the AFTO may seek redressal by resorting to the relevant provisions of the Railway Claims Tribunal or Railway Rates Tribunal as the case may be.

ARTICLE 19
MISCELLANEOUS

19.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and subject to provisions contained in Article 18, the courts at Delhi shall have jurisdiction over matters arising out of or relating to this Agreement.

19.2 Waiver of immunity

Subject to as may otherwise be provided under the Railway Act, each party:

(a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

(b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (other than provided by Railway Act as amended from time to time) from such proceedings shall be claimed by or on behalf of the party with respect to assets;

(c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction, except present or future premises of the mission as defined in the Vienna Convention on Diplomatic Relations, Consular premises, military property or assets, premises and offices of the constitutional authorities and national heritages;

(d) consents generally in respect of the enforcement of any judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

19.3 **Waiver**

19.3.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:-

(a) Shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

(b) Shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

(c) Shall not affect the validity or enforceability of this Agreement in any manner.

19.3.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation there under nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

19.4 Exclusion of implied warranties etc.

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

19.5 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed

to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn.

19.6 Severability

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

19.7 No partnership

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, nor to impose any partnership obligation nor liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

19.8 Third Parties

This Agreement is intended solely for the benefit of the Parties and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

19.9 Successors and Assigns

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

19.10 Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

(a) in the case of the AFTO, be given by facsimile and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the AFTO may from time to time designate by notice to the Railway Administration:

[Insert]

(b) in the **case of the Railway Administration, be given by facsimile and by letter delivered by hand and be addressed to the General Manager of the Railway Administration with a copy delivered to the Railway Administration** Representative or such other person as the Railway Administration may from time to time designate by notice to the AFTO;

(c) Any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered.

19.11 Agreement to Override other Agreements; Conflicts

19.11.1 This Agreement supersedes all previous agreements or arrangements between the Parties, including any memoranda of understanding entered into in respect of the contents hereof and represents the entire understanding between the Parties in relation thereto.

19.11.2 In the event of a conflict between the terms of this Agreement and those contained in the IPA, the terms of this Agreement shall prevail.

19.12 Consequential or Special Loss

19.12.1 The Parties hereby expressly undertake and agree that neither Party shall be liable for any incidental, indirect, special or consequential damages (including loss of profits, business or

revenue) that the other Party may suffer pursuant to or under this Agreement regardless of whether such liability arises in tort, contract, breach of warranty, indemnification or otherwise.

19.13 Stamp Duty and Registration Charges

19.13.1 Any stamp duty and registration charges if any payable in respect of this Agreement shall be borne by the AFTO.

19.14 Review of Agreement

19.14.1 The Parties hereby acknowledge that there may be infrastructural, technological and procedural changes on the Railway Administration's rail system, from time to time, resulting in changes in the Railway Administration's operational framework for movement of AFTO's Trains, which may require appropriate review of this Agreement.

19.14.2 The Parties hereby agree that in the event any such infrastructural, technological and/or procedural changes are envisaged on the Railway Administration's rail system, both the AFTO and the Railway Administration's shall meet, in good faith, to review the terms and conditions of this Agreement and to agree on such changes as may be required to this Agreement so as to give effect to any such proposed infrastructural, technological and procedural changes on the Railway Administrator's rail system.

19.14.3 Notwithstanding the aforesaid, the Parties hereby agree to meet, in good faith, every 5 (Five) years during the term of this Agreement to undertake a review of this Agreement and to mutually agree on any amendments required.

19.15 Language

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

19.16 Counterparts

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.

IN WITNESS WHEREOF this Agreement has been executed by the duly authorized representatives of the Parties hereto on the day and year first above written.

For and on behalf of the President of India through Railway Administration, by General Manager, Northern Railway [insert] WITNESS: 1. _____ 2. _____	For and on behalf of [insert] WITNESS: 1. _____ 2. _____

Annexure-I

Rates Circular No.13 of 2012

GOVERNMENT OF INDIA(BHARAT SARKAR)
MINISTRY OF RAILWAYS(RAIL MANTRALAYA)
RAILWAY BOARD(RAIL BHAVAN

No.TC-I/2002/214/5 **New Delhi, Dt. 21 .05.2012**

General Managers(Comml.)
General Managers(Optg)
All Zonal Railways

Sub: All India Engine Hour Cost(AIEHC) for recovery of Siding and Shunting Charges

Ref: Board's letter No.TC-I/2002/214/5 dt.24.05.2011(Rates Circular No.19 of 2011)

Ministry of Railways have decided to revise the All India Engine Hour Costs circulated vide Board's above mentioned letter. The revised rates will be effective from 1st July 2012.

2.0 Revised Rates

Type of locomotive/engine	Cost per hour	
	Broad Gauge(BG)	Meter Gauge(MG)
Diesel locomotive		
Shunting Engine	Rs.4590/-	Rs.6780/-
Train Engine	Rs.7950/-	Rs.13010/-
Electric locomotive		
Train Engine	Rs.9160/-	----

3.0 Costs to be recovered for steam locos wherever in use over Indian Railways shall be identical to that of Diesel Engines indicated above.

4.0 These revised costs will remain in force until further orders.

5.0 Rounding off of shunting period would continue to be done as per instructions laid down in Board's letter No.TC-I/95/8/8 dt.25.7.1996.

6.0 Action may please be taken to give due notice to the siding owners before introduction of revised Siding and Shunting Charges.

7.0 The afore-mentioned instructions will also be applicable for Indo-Nepal Traffic.

8.0 This issues in consultation with Traffic Transportation Directorate and with the concurrence of Finance Directorate of Ministry of Railways.

(Aashima Mehrotra)
Joint Director, Traffic Comml.(Rates)
Railway Board

No.TC-I/2002/214/5 **New Delhi, Dt. 21 .05.2012**

Copy to:

1. **FA&CAOs**, All Zonal Railways
2. **Dy.C&AG(Rlys),** Room No.222, Rail Bhavan, New Delhi.

***for* Financial Commissioner, Railways**

No.TC-I/2002/214/5 **New Delhi, Dt. 21 .05.2012**

Copy to:

1. Managing Director, CRIS, Chanakyapuri, New Delhi-21.
2. Chief Admn. Officer, FOIS, N. Rly., Camp: CRIS, Chanakyapuri, New Delhi-21.
3. Managing Director, KRCL, Belapur Bhavan, Sector-11, CBD Belapur, Navi Mumbai-400614.
4. Director General, Railway Staff College, Vadodara
5. General Secy., IRCA, New Delhi.
6. Director, IRITM, Campus: Hardoi Bye-pass Road, Vill-Kanausi, P.O.-Manaknagar, Lucknow-226011
7. Secretary, RRT, 5, Dr. P.V. Cherian Crescent Road, Egmore, Chennai-600105.
8. Director General(Rail Movement), Mil Rail(Railway Board Cell), Addl. Dte. Gen. of Movements, General Staff Branch, Army H.Q., Sena Bhavan, New Delhi-1100011.
9. Chief Commissioner of Railway Safety, Lucknow.
10. Chairman, Madras Port Trust, Rajaji Salai, Chennai-600001.
11. Chairman, Calcutta Port Trust, 15- Strand Road, Kolkata – 700001
12. Chairman, Mumbai Port Trust, S.V. Marg, Mumbai – 400038
13. Chairman, Vishakhapatnam Port Trust, Vishakhapatnam - 530035.

(Aashima Mehrotra)
Joint Director, Traffic Comml.(Rates)
Railway Board

Copy for information:

CRB, MT, FC, Railway Board

AM(C), AM(T), AM(C&IS), Adv(F), Adv(R), Adv(Infra), Adv(Safety), Adv(TT/M), Adv(CC), Adv(FM), EDPG, EDFM, EDPM, ED(T&C), EDTT(M), EDTT(S), EDTT(F), EDFC, EDVT, ED(S&E), ED(Plg), ED(PPP), ED(PP), DTC(G), DPM, Dir(T&C), DFM, DFC, DDTC(R), DDTT(NB) Railway Board

TC(R), TC(CR), F(C), Safety Branches, Railway Board

Annexure-II

Rates Circular No.97 of 2006

Government of India
Ministry of Railways
Railway Board

Rate Circular No. 97

No.TC-I/98/201/4 **New Delhi, Dt.18.11.2006**

General Managers(Commercial)
General Managers(Operating)
All Indian Railways.

Sub: Levy of stabling charge/demurrage charge on privately/jointly owned wagons
Ref: Board's letter even number dt.11.8.1999

In supersession of all earlier instructions on the subject, it has been decided to revise the instructions regarding levy of stabling charge/demurrage charge on privately/jointly owned wagons. Accordingly, revised guidelines on the subject are as follows:

2.0 **Guidelines for levy of Stabling charge on privately owned stock**

2.1 Stabling charge is levied for detention of privately owned stock at a railway premise in any of the following circumstance:
- when party is unable to receive such stock in their siding
- when party declines to accept such stock in their siding

2.2 Privately owned wagons includes wagons procured under "Own Your Wagon Scheme(Category-C)", , Defence owned stock, wagons owned by container operators, etc.

2.3 Rate of Stabling charge will be Rs.200/- per wagon per day or part of a day, from the time of arrival to the time of removal.

2.4 The rate of stabling charge will be uniform for all types of wagons (either BG/MG or 4-wheeled/6 wheeled/8 wheeled/12 wheeled etc.).

2.5 When privately owned stock is detained in the private siding or in a railway siding meant for handling such stock, no Stabling/Demurrage charge will be levied.

3.0 **Guidelines for levy of demurrage charge on wagons procured under "Own Your Wagon Scheme (Category-A & B)" or jointly owned wagons**

3.1 WAGONS PROCURED UNDER "OWN YOUR WAGON SCHEME (CATEGORY-A & B)" or UNDER "WAGON INVESTMENT SCHEME(WIS)"
In the case of wagons procured under "Own Your Wagon Scheme (Category-A & B)" or under "Wagon Investment Scheme(WIS)", extant free time & demurrage rules as applicable for detention of railway owned stock by normal rail users (i.e.

other than steel plants) will be applicable.

3.2 JOINTLY OWNED WAGONS
In the case of jointly owned wagons, extant free time & demurrage rules as applicable for detention of railway owned stock by normal rail users (i.e. other than steel plants) will be applicable. However, demurrage charge will be levied @ 50% of the rate of demurrage charge as applicable to normal Rail users (i.e. other than steel plants).

4.0 These instructions will be effective **w.e.f.01.12.2006.**

5.0 This issues with the concurrence of the Finance and Traffic Transportation Directorates in the Ministry of Railways.

(Navin Kumar Parsuramka)
Director Traffic Commercial (Rates)
Railway Board

No.TC-I/98/201/4 **New Delhi, Dt.18.11.2006**

Copy to:

1. **Dy. C&AG(Rlys),** Room No.222, Rail Bhavan, New Delhi.
2. **FA&CAOs,** All Indian Railways.

For Financial Commissioner(Rlys)

No.TC-I/98/201/4 **New Delhi, Dt.18.11.2006**

Copy to:

1. Managing Director, CRIS, Chankyapuri, New Delhi-21
2. Chief Administrative Officer, FOIS, N. Rly., Camp: CRIS, Chankyapuri, New Delhi-21
3. Managing Director, Konkan Railway Corporation, Belapur Bhavan, Sector-11, CBD Belapur, New Mumbai-400614
4. Director General, Railway Staff College, Vadodara
5. General Secretary, IRCA, New Delhi.
6. Director, Indian Railway Institute of Transport Management, campus: Hardoi Bye-pass Road, Village-Kanausi, P.O. : Manaknagar, Lucknow-226011.
7. Secretary, Railway Rates Tribunal, 5, Dr. P.V. Cherian Crecent Road, Egmore, Chennai-600105.
8. Director General(Rail Movement), Mil Rail (Railway Board Cell), Addl. Dte. Gen. of Movements, General Staff Branch, Army H.Q., Sena Bhavan, New Delhi-110011.
9. Chief Commissioner of Railway Safety, Lucknow.

(Navin Kumar Parsuramka)
Joint Director Traffic Commercial (Rates)
Railway Board

Copy for information:
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TC(R), TC(CR), F(C), Safety Branches, Railway Board.

Corrigendum to Rates Circular No.97 of 2006

Government of India
Ministry of Railways
(Railway Board)

No.TC-I/98/201/4 **New Delhi, dt.17.01.2008**

GM(Comml.)
All Indian Railways

Sub: Revision in rate of Stabling Charge
Ref: Board's letter of even number dt.18.11.2006 (Rates Circular No.97 of 2006)

Sanction is accorded to replace the existing Para 2.3 of Rates Circular No.97 of 2006 by the following:

"2.3 Rate of Stabling charge will be Rs.300/- per wagon per day or part of a day, from the time of arrival to the time of removal."

These instructions will come into force **w.e.f.1.2.2008.**

This is issued with the concurrence of the Finance Directorate of Ministry of Railways.

(N.K. Parsuramka)
Director Traffic Comml.(Rates)
Railway Board

No.TC-I/98/201/4 **New Delhi, dt.17.01.2008**

Copy to:
1. FA&CAOs, All Indian Railways
2. Dy.C&AG(Rlys), Room No.222, Rail Bhavan, New Delhi.

For Financial Commissioner

Corrigendum to Rates Circular No.97 of 2006

No.TC-I/98/201/4 **New Delhi, dt.17.01.2008**

Copy to:

1. Managing Director, CRIS, Chanakyapuri, New Delhi-21.
2. Chief Admn. Officer, FOIS, N. Rly., Camp: CRIS, Chanakyapuri, New Delhi-21.
3. Managing Director, KRCL, Belapur Bhavan, Sector-11, CBD Belapur, Navi Mumbai-400614.
4. Director General, Railway Staff College, Vadodara
5. General Secy., IRCA, New Delhi.
6. Director, IRITM, Campus: Hardoi Bye-pass Road, Vill-Kanausi, P.O.-Manaknagar, Lucknow-226011
7. Secretary, RRT, 5, Dr. P.V. Cherian Crescent Road, Egmore, Chennai-600105.
8. Director General (Rail Movement), Milrail (Railway Board Cell), Addl. Dte. Gen. of Movements, General Staff Branch, Army H.Q., Sena Bhavan, New Delhi-1100011.
9. Chief Commissioner of Railway Safety, Lucknow.
10. Managing Director, Pipavav Rail Corporation Ltd., Jeevan Tara Building, 1st floor, Gate No.4, Sansad Marg, New Delhi-110001

(N.K. Parsuramka)
Director Traffic Comml.(Rates)
Railway Board

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TC(R), TC(CR), F(C), TT-III(F), Safety Branches, Railway Board