



सत्यमेव जयते

Government of India

Concession Agreement

between

Railway Administration, Government of India

and

[insert]

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CONCESSION AGREEMENT

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This Concession Agreement for operation of Container Trains on IR network (the “**Agreement**”) made on this the [insert] day of [insert], [insert].

BY AND BETWEEN

1. **THE PRESIDENT OF INDIA** acting through Railway Administration, Northern 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 “**Concessionaire**”, 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 of container traffic and introducing competition in railway container transport services in India, Ministry of Railways, Government of India decided to grant eligible parties the right to require the Railway Administration to haul their Container trains on Indian Railway network for movement of both Export and Import Traffic (as defined hereafter) as well as Domestic Traffic (as defined hereafter), subject to various terms and conditions.
- (B) In pursuance of this decision, Ministry of Railways 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, a registration fee (as set out by Ministry of Railways pursuant to its letter no 2002/TT-III/15/39 dated 09.01.2006) prescribed for different categories of routes on which the interested party/parties intends to run its Container trains.
- (D) The Concessionaire, being a [private/public] limited company incorporated under the Companies Act, 1956/body corporate established under the [insert],/ citizen of India residing at [insert] submitted a written request to Ministry of Railways (along with the prescribed fees of Rs. [insert] crore, in accordance with the requirements set out in Recital C above), conveying its intention to run Container trains on Category [insert] 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 Container trains on Indian Railways network.
- (E) Pursuant to evaluation of the written request and the supporting documents received from the Concessionaire in relation thereto, Ministry of Railways accepted the request of the Concessionaire and vide letter no. [insert] dated [insert] granted to the Concessionaire its ‘In Principle’ approval (hereinafter called “IPA”) to offer its Container trains for movement on [insert details of the category], subject to the Concessionaire entering into this Concession Agreement with Railway Administration prior to commencement of any Container train operations.

- (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 Concessionaire to offer its Container trains for movement to Railway Administration in Category 1 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:

“Agreement” means this Concession Agreement entered into between Railway Administration and the Concessionaire along with its Annexures as amended from time to time;

“Alternate Route” shall have the meaning ascribed to the term in Article 7.2 hereunder;

“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 Containers;

“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;

“Category 1” means the entire Rail Network in relation to both Exim Traffic and Domestic Traffic;

“Category 2” means in relation to:

- A. Exim Traffic, the entire Rail Network which connects the J.N.Port, Mumbai Port to any location, excluding any location in and/or reached via the NCR; and
- B. Domestic Traffic, the entire Rail Network excluding any traffic which originates and also terminates at a location on or reached via the NCR Route. For the avoidance of doubt this shall not restrict any Domestic Traffic where only either of the originating or terminating location are located on or reached via the NCR Route;

“Category 3” means in relation to:

- A. Exim Traffic, the entire Rail Network which connects the ports of Pipavav, Mundra, Chennai, Ennore, Vizag, Kochi to any location; and
- B. Domestic Traffic, the entire Rail Network excluding any traffic which originates and also terminates at a location on or reached via the NCR Route. For the avoidance of doubt this shall not restrict any Domestic Traffic where only either of the originating or terminating location are located on or reached via the NCR Route;

“Category 4” means in relation to:

- A. Exim Traffic, the entire Rail Network which connects ports like Kandla, New Mangalore, Tuticorin, Haldia, Kolkata, Paradip and Mormugao to any location; and
- B. Domestic Traffic, the entire Rail Network excluding any traffic which originates and also terminates at a location on or reached via the NCR Route. For the avoidance of doubt this shall not restrict any Domestic Traffic where only either of the originating or terminating location are located on or reached via the NCR Route;

Illustration: For example, in relation to Categories 2, 3 and 4, Domestic Traffic would not be restricted on the following routes:

- (i) Delhi-Chennai: Since Chennai is neither located on, nor reached via the NCR, Domestic Traffic between Delhi and Chennai is permitted, despite Delhi being located in the NCR.
- (ii) Jaipur-Bhopal: Since neither Jaipur nor Bhopal is located on or reached via the NCR Route, Domestic Traffic between Jaipur and Bhopal is permitted, despite this route traversing through NCR Route.

Explanation: For the avoidance of doubt, it is clarified that the coverage of ports under Categories 2, 3 and 4 shall be restricted only to the ports mentioned under these categories and inclusion of new ports in the respective categories shall be notified by the Railway Administration from time to time.

“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 Concessionaire 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 Operations Date” or **“COD”** means the day falling on the second anniversary of the date of this Agreement or date from which the Concessionaire commences its Container

train operations, whichever is earlier;

For avoidance of doubt, in case the date of commercial operations is prior to the date of execution of this Agreement, the Commercial Operations Date shall be the date hereof.

“Container” means an article of transport equipment specially designed to facilitate the carriage of goods by one or more modes of transport without intermediate re-loading and handled as a unit load;

“Concessionaire” shall have the meaning ascribed to the term in the preamble of this Agreement;

“Concessionaire Default” shall have the meaning ascribed to the term in Article 17.1.1 hereunder;

“Concessionaire Notice of Termination” shall have the meaning ascribed to the term in Article 17.2.2 hereunder;

“Concessionaire’s Train” means the aggregation of the Concessionaire’s Wagons (with or without any containers);

“Concessionaire’s Wagons” or **“Wagons”** means railway wagons or flats, procured by any way including by way of purchase, lease or hire by the Concessionaire 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 in WPI between the date of purchase and the date of settlement hereunder;

“Design Loan” (of Railway Wagon) means the fee paid by the Concessionaire 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;

“Domestic Traffic” means Container trains carrying traffic other than Export and Import Traffic within India;

“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 5.5.1 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;

“Export and Import Traffic” or **“Exim Traffic”** means carriage of maritime Containers/goods where (i) in case of export, the origin of such Container/goods is from any location within India and the final destination is at a location outside India and (ii) in case of import, the origin of such Container/goods is from any location outside India and the final destination is at a location within India. For the avoidance of doubt, a Concessionaire’s Train carrying Exim Traffic may also carry Domestic Traffic but the provisions relating to Domestic Traffic shall apply in so far as Domestic Traffic is concerned;

“Financing Documents” means the documents executed by the Concessionaire with the Lenders including all amendments or modifications thereto for meeting all or any part of the capital costs of establishing a Rail Terminal, and/or procuring Wagons and/or containers and other rolling stock, from time to time;

“Financing Event of Default” means occurrence of a material breach of the terms and conditions of the Financing Documents or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

“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 Rail 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 Concessionaire 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 Concessionaire for haulage of goods and containers;

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

“Idle Use” shall have the meaning ascribed to the term in Article 5.4.2 hereunder;

“Idle Wagons” shall have the meaning ascribed to the term in Article 5.4.1 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;

“Interchange Point” means the point at which the Concessionaire’s Trains will be transferred between the Concessionaire and the Railway Administration;

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

“Lenders” mean the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Documents and who hold first charge on *pari passu* basis on the assets, rights, title and interests of the Concessionaire;

“Lenders' Representative” means the Person or Entity duly authorised by the Lenders to act for and on behalf of the Lenders with regard to matters arising out of or in relation to this Agreement, and includes its successors, assigns and substitutes;

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

“Maintenance Requirements” shall have the meaning set forth in Article 5.7.1;

“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;

“NCR” means National Capital Region;

“NCR Route” means the Rail Network between Mumbai and NCR via Kota-Ratlam;

“OHE” means Overhead Equipment;

“Other Concessionaires” means any other Person(s) or Entity/ies with whom a substantially similar Concession Agreement has been executed by any Rail Administration;

“Private Siding” means a siding laid out to serve factory, mill or other industrial premises including an inland container depot or Rail Terminal to handle trains and not belonging to any Railway Administration;

“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 Concession 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 mean a location with siding and facilities to handle container trains, including inland container depots, port rail terminals, Railway goods sheds where container operations are feasible and other privately owned rail terminals;

“Railway Administration Event of Default” shall have the meaning ascribed to the term in Article 17.2.1 hereunder;

“Railway Administration Notice of Intent to Terminate” shall have the meaning ascribed to the term in Article 17.1.2 hereunder;

“Railway Administration Notice of Termination” shall have the meaning ascribed to the term in Article 17.1.2 hereunder;

“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 Rail Terminal at which the train terminates;

“Rail Head” means a serving railway station;

“RDSO” means the Research, Designs and Standards Organisation 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 Concessionaire to Ministry of Railways for becoming eligible to operate container trains;

“Stabling Charges” shall have the meaning ascribed to the terms in Article 7.6.1 hereunder;

“Substitution Agreement” shall mean the agreement to be entered into between Railway Administration, Concessionaire and the Lenders, substantially similar in the form set forth in **Annexure I**;

“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);

“Transferee” shall have the meaning ascribed to the term in Article 12.1.1 hereunder;

“Weekly Advance Schedule” shall have the meaning ascribed to the term in Article 7.3.1 hereunder;

“Weekly Advance Scheduling Notice” shall have the meaning ascribed to the term in Article 7.3.1 hereunder;

“WPI” means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month;

“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 Concessionaire 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.
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ARTICLE 2
REPRESENTATIONS AND WARRANTIES OF THE PARTIES

2.1 Representations and Warranties by the Concessionaire

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

- (a) It (Concessionaire) is a 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 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;
- (c) The obligations of the Concessionaire under this Agreement constitute legally valid, binding and enforceable obligations against the Concessionaire in accordance with the terms hereof;
- (d) No proceedings against the Concessionaire are pending or threatened, 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;
- (e) 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;
- (f) 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;
- (g) 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;
- (h) 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;
- (i) 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;
- (j) 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;
- (k) [the existing promoters/Consortium Members] together with their Associates hold not less than 51% (fifty-one percent) of its issued and paid up Equity of the Concessionaire as on the date of this Agreement and shall continue to hold not less than 51% of such equity till

completion of 1(one) year of commercial operation and the respective holding of each consortium member conforms to the representation made by the Consortium and accepted by the Ministry of Railways as part of the application and that no member of the consortium shall hold less than 10% (ten percent) of such equity till completion of one year of commercial rail operation by the Concessionaire except as provided in Article 12.1.1 and has advised the Railway Administration accordingly;

- (l) [each Consortium Member] is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested Railway Administration to enter into this Agreement with the Concessionaire pursuant to the Letter of Acceptance, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement and has advised the Railway Administration accordingly;
- (m) 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 Concessionaire; and
- (n) 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 its letter dated 09.1.2006.
- (o) The Concessionaire is familiar with the business of container transport by rail on Indian Railway network, its future prospects, the risks involved and has conducted its own diligence and analysis of the container freight business in its present condition.
- (p) 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 container 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 Concessionaire 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 Concessionaire, 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 container trains to the best of its knowledge and belief, true and accurate in all material respects;
- (h) Upon the Concessionaire 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 Concessionaire, 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 container trains on Indian Railways Network and no statutory or other warranties as to the business or financial viability of the operation of container 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 CONCESSION

3.1 Concession

- 3.1.1 Subject to the terms and conditions contained in this Agreement, the Railway Administration hereby grants to the Concessionaire, throughout the duration of this agreement, a non-exclusive right to require the Railway Administration to haul the Concessionaire's Trains carrying Exim Traffic and /or Domestic Traffic on Category [insert] routes (hereinafter, the "Concession") and the Concessionaire hereby understands and accepts the Concession and further undertakes to perform services and functions in relation thereto in accordance with the terms and conditions of this Agreement.
- 3.1.2 For the avoidance of doubt, it is hereby expressly clarified that the Concessionaire shall not have the right to require Railway Administration to haul any of the Concessionaire's Trains whatsoever pursuant to this Agreement, till such time as the Concessionaire establishes/ensures access to Rail Terminals and maintains the same in accordance with the provisions of Article 4.1 and acquires prescribed/laid down minimum number of Wagons including brake vans to form a Block Rake for the commencement of operations and for transportation of containers in accordance with this Agreement.
- 3.1.3 In addition to the right to require Railway Administration to haul Concessionaire's Trains as described in Article 3.1.1 above subject to applicable laws, the rights of the Concessionaire shall include the following:
- 3.1.3.1 The right to undertake the business of collecting, storing and loading onto Wagons, consignments of goods from any third party;
- 3.1.3.2 The right to determine, charge, collect, retain and appropriate all the fees that it charges from the consigners;
- 3.1.3.3 The right to obtain access to Rail Terminals and develop, own, operate and maintain Rail Terminals, including inland container depots;
- 3.1.3.4 The right to procure and own/lease Wagons and containers.

3.2 A Extending Operations to New Routes/Categories

The Concessionaire may, with prior written consent of Railway Administration, add any or all other categories of routes for operation of its container trains by paying the prescribed Registration Fee or the differential thereof.

3.2 Non Exclusive Concession

- 3.2.1 The Parties hereby expressly acknowledge and agree that the aforesaid Concession is on a non-exclusive basis and that Railway Administration expressly reserves the right to give to any third party, on terms and conditions no more favourable than those offered to the Concessionaire, a right similar to the Concession to require Railway Administration to haul such third party Container Trains on Category [insert] routes,

3.3 Conditions for haulage of Notified Commodities

- 3.3.1 The Railway Administration shall haul the Concessionaire Trains on the payment of prevalent haulage charges and conditions laid down in Article 10 of this Agreement.

3.3.2 Notwithstanding anything contained in Article 3.3.1 or elsewhere in this Agreement, the Central Government shall have the right to specify certain commodities, which ordinarily move in railway wagons in trainload as notified commodities, which may be subjected to different tariff and conditions for haulage. Provided further that the tariff so specified for notified commodities shall not exceed the freight rate as per the prevalent freight tariff schedule with chargeable weight, as for the trainload of railway wagons, generally used for their carriage.

3.4 Right to Encumber

3.4.1 The Parties hereby expressly acknowledge and agree that nothing in this Agreement shall prohibit or in any way preclude the ability or right of the Concessionaire to Encumber its interest, in favour of its Lenders, any Rail Terminals owned by the Concessionaire or held by it on lease or licence, the Concessionaire's Wagons, this Agreement including but not limited to the Grant provided hereunder or any other asset owned by the Concessionaire and forming part of its rolling stock, provided that no property which has been leased/licensed by Railway Administration to the Concessionaire shall be Encumbered by the Concessionaire at any time during the term of this Agreement.

3.4.2 The Parties hereby agree that in the event of a Financing Event of Default as notified by the Lender's Representative, the Lenders shall have the right (subject to Financing Documents) to substitute the Concessionaire under this Agreement (in accordance with the Substitution Agreement) with any Person or Entity (the "**Lenders' Nominee**"), in accordance with the Substitution Agreement.

3.4.3 Application of Railway schemes to Concessionaires

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

3.4.4 Any and all commercial rules like that contained in Commercial Manual, as amended from time to time and as applicable to other freight traffic moving on Indian Railways shall apply to the Container traffic, except rules specially covered in this Agreement in a non-discriminatory manner amongst similarly placed entities,.

3.5 Substitution Agreement

The Substitution Agreement shall be executed by the Railway Administration, Concessionaire and the Lenders, substantially in the form set forth in **Annexure I** at or around the time of execution of the Financing Documents.

3.6 Concession Period

3.6.1 The term of this Agreement shall be for a period of 20 years starting from the Commercial Operations Date (the "**Concession Period**")

3.6.2 Subject to Article 3.6.3 below, extension of the Concession Period for a period of 10 (ten) years may be granted by Railway Administration on the same terms and conditions as set forth herein. In case the Concessionaire 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. In the event the Railway Administration does not convey either its acceptance or rejection of the request for extension within 6 months from the receipt of the application, it shall be presumed that the Railway Administration has granted an extension of the

Concession Period, provided that in the event the Railway Administration refuses to grant such extension, it shall record its reasons in writing for the refusal.

- 3.6.3 The Concessionaire agrees to pay the fee, as may be decided by Railway Administration, for extension of the Agreement Period for a further period of 10 years, provided that the fee for extension shall not exceed one half the amount of Registration Fee paid prior to execution of this Agreement.

ARTICLE 4

RAIL ACCESS AND TERMINALS

4.1 Access to Rail Terminals

- 4.1.1 The Concessionaire hereby expressly acknowledges and agrees that it shall be the Concessionaire's sole responsibility and obligation under this Agreement to procure the requisite approval/authority for the Concessionaire's Train and/or a Railway Administration locomotive to enter into, be upon and utilize the origin and destination Rail Terminal(s) and expressly acknowledges and agrees that Railway Administration shall be under no obligation to haul any of the Concessionaire's Trains unless the Concessionaire'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 Concessionaire fails to operate its Container Trains in accordance with the requirements of this Agreement within three (3) years from the date of award of the IPA, 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 Concessionaire shall stand forfeited.

4.2 Rail Facilities in Rail Terminals

- 4.2.1 The Concessionaire hereby covenants that each Rail Terminal, other than a Railway owned Terminal, that is used by the Concessionaire as the Rail Terminal from where the Concessionaire's Trains and/or a Railway Administration locomotive either originate or terminate shall conform to the following:
- (i) Each Rail Terminal shall have rail facilities for handling Concessionaire Trains along with locomotive in conformity with siding rules prescribed by Railway Administration from time to time.
 - (ii) Be equipped with a RDSO approved in-motion weigh bridge of prescribed standards for weighing of Wagons with and without containers of the Concessionaire's Train.
 - (iii) Undertake regular calibration and certification of the weigh bridges as per Applicable Laws.
 - (iv) Conform with the Applicable Law and any and all statutory requirements specified by any Government Authority.
 - (v) 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.

4.3 Weighing of Wagons

- 4.3.1 The Concessionaire shall declare the weight of each Wagon/container prior to departure of the Concessionaire's Train. For the avoidance of doubt the Parties hereby expressly acknowledge and agree that the ultimate responsibility for the correct/accurate weighing of the container Wagons lies with the Concessionaire 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 Concessionaire to accurately weigh the Wagons/container. In the event a discrepancy of more than 1% is found on re-weighment of any Wagon/container by the Railway Administration, the Concessionaire shall be liable to pay additional charges by way of agreed liquidated damages for such discrepancy

as specified by the Railway Administration from time to time for various types of Wagons/containers. Provided however, no liquidated damages shall be payable if the weight of the container continues to be within the same slab.

4.4 New Rail Terminals

4.4.1 Cost of Rail Terminal and Rail Siding

The cost of designing, constructing, operating and maintaining a Rail Terminal and the rail facilities [both inside and outside the Concessionaire's premises/up till the Take-Off Point] shall be borne by the Concessionaire subject to the provisions of the siding rules notified by Railway Administration from time to time. Provided, however, no rail track shall be laid by the Concessionaire unless the design for such 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 Rail Terminal and/or for laying any track, in accordance with the provisions of Article 4, shall be the responsibility and obligation of the Concessionaire, 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 Concessionaire 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.

Without prejudice to the foregoing, the Parties acknowledge that in the event any railway land is surplus and available, the Concessionaire may, for the sole purpose of establishing a Rail Terminal or for laying any rail track, to connect to the nearest Rail Head, apply for use of the same on lease and license basis on such terms and conditions as may be laid down by Railway Administration from time to time. Provided that, in allotting such land, Railway Administration shall not discriminate among the Concessionaires and agrees to establish a non-discriminatory framework for this purpose. For the avoidance of doubt, it is clarified that a separate agreement on terms and conditions as may be applicable to the Parties shall be entered into between the Concessionaire and Railway Administration or its designated authority in case railway land is made available to the Concessionaire.

4.4.3 Inspection

Notwithstanding anything to the contrary contained in this Agreement, no new Rail Terminal shall commence any commercial operation pursuant to this Agreement till such time as the same has been inspected by Railway Administration or its designated authority for compliance with Railway Administration's requirements, and the Concessionaire hereby covenants and undertakes to provide Railway Administration and its representatives adequate access, for such period as Railway Administration may deem fit, to the Rail Terminal and all other documents as Railway Administration may require to carry out its inspection as per Good Industry Practice. Provided that the inspection by Railway Administration shall be completed within 15 (fifteen) days of a notice received from the Concessionaire in this behalf.

4.4.4 Status of Rail Terminals

The Parties hereby expressly acknowledge and agree that such a Rail Terminal as may be established by the Concessionaire shall be treated in the same manner as 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. For the avoidance of doubt, it is agreed that Railway Administration shall sign a standard prevalent siding agreement for each such Rail Terminal with all Concessionaires 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 be governed by the extant rules and regulations and shall not be more restrictive than the provisions of this Concession.

ARTICLE 5
WAGONS AND CONTAINERS

- 5.1 The Parties hereby acknowledge and agree that the Concessionaire shall procure in any manner including by way of purchase, lease or hire, any and all Wagons including Brake Vans and Containers required by the Concessionaire for the purposes of operating, in accordance with the terms of this Agreement, the Concessionaire's Trains and that Railway Administration shall not, in any way, be responsible or obligated to provide to the Concessionaire any Wagons including Brake Vans and/or Containers or any other rolling stock (other than supply of the locomotive in accordance with the terms of this Agreement). Provided however, till such time as the Concessionaire procures the required Brake Vans, Railway Administration may provide its own Brake Vans (provided they are available), on non-discriminatory basis, at a reasonable charge, notified by the Railway Administration from time to time.
- 5.2 The Concessionaire shall carry on its train such Containers, which conform to Wagon capacity and the moving dimensions as may be notified / published by MOR for universal application.
- 5.3 The Parties further agree that any Wagons or its parts, which are safety related, procured by the Concessionaire shall be subjected to inspection by RDSO or its authorised inspecting agency for which the Concessionaire 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 Concessionaires on a non-discriminatory basis. The Concessionaire may procure new designs of Wagon, provided however, such designs have prior approval of RDSO, which shall, *inter alia*, include necessary trials as may be specified by RDSO. It is further agreed that the Concessionaire shall pay all necessary charges for such approval and trials as specified by RDSO from time to time. As regards the aforementioned inspection by RDSO or its authorized inspecting agency, it is agreed that the Concessionaire 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 Concessionaire and upon full payment of relevant charges (in advance), commence and complete such inspection.

5.4 Use of Idle Wagons

- 5.4.1 In the event any of the Wagons of the Concessionaire are lying idle ("**Idle Wagons**"), the Concessionaire may offer to the Railway Administration or other Concessionaires, use of any such Idle Wagons for such period as the Concessionaire may deem fit. Provided however, the Parties acknowledge and agree that Railway Administration shall be under no obligation to accept such an offer of the Concessionaire for use of any Idle Wagons and may levy a Stabling Charge as specified in paragraph 7.6.1 hereof if such Idle Wagons are idling on the Indian Railway network.
- 5.4.2 The Parties further agree that for any period where Railway Administration accepts and uses the Concessionaire's Wagons pursuant to Article 5.4.1 above (such use referred to as "**Idle Use**"), such use shall be on mutually agreed terms and conditions.

5.5 Requisition in case of Emergency

- 5.5.1 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 Concessionaire by giving notice to that effect to the Concessionaire (“**Emergency Use**”).
- 5.5.2 For any such Emergency Use, Railway Administration shall pay to the Concessionaire, a reasonable rent/charge to cover the cost of provisions, maintenance and operation of the Wagon but not including the Concessionaire’s return on such investment.
- 5.5.3 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 Concessionaire forthwith.

5.6 Damage to Wagons, Containers and Goods

- 5.6.1 Any damage except usual wear and tear to any Concessionaire’s Wagons, Containers and/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 the Concessionaire shall, in all cases, be entitled to a reasonable compensation that would enable it to restore the damage to its Wagons.
- 5.6.2 In the event Railway assets, installations, etc, suffer damage due to negligence of the Concessionaire, the Concessionaire shall bear the cost of restoring the damaged assets, installation etc.

5.7 Maintenance Requirements

- 5.7.1 The Concessionaire shall at all times conform to the maintenance standards specified by the Railway Administration in accordance with Good Industry Practice for the Concessionaire’s Containers, rail related equipment and tracks.

5.8 Wagon maintenance by Railway Administration

- 5.8.1 The Concessionaire’s Wagons shall be maintained by the Railway Administration in accordance with the maintenance schedule notified by the Railway Administration. 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. The Concessionaire hereby agrees to provide and maintain or cause to be provided and maintained, the requisite Wagon examination facilities(as specified by railway Administration) inside the Rail Terminal and bear a one time capital cost for tools and plants as specified by Railway Administration and approved by RDSO or its authorized agencies for such examination. In this regard, the Concessionaire also agrees to maintain all such facilities including tools and plants always in good working condition at its own cost. The Railway Administration may from time to time modify the maintenance schedules and corresponding timelines.
- 5.8.2 The Parties hereby acknowledge and agree that wagon maintenance charges for maintenance by Railway administration of the Concessionaire’s Wagons shall be included in the Haulage Charges as notified from time to time. The extent of such maintenance charges that are a part of haulage charges and any charges therein shall be specified by Railway Administration so that in case the Wagons belong to another party or maintenance is done by other agency, at any

future date, the same can be separately accounted for. It is expressly agreed that the present Haulage Charges include 5% thereof by way of maintenance charges.

- 5.8.3 Railway Administration shall normally complete the intensive train examination within a period of 6 hours from the time the Concessionaire's Wagons (in empty Rake formation) are handed over by the Concessionaire 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 Concessionaire'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 Concessionaire's Wagons that are declared sick during the course of examination and are required to be detached from the Concessionaire's Train for sick line/ workshop attention.
- 5.8.4 In the event of the Railway Administration's inability to conform to the time schedule specified for intensive train examination, it shall pay to the Concessionaire for every 24 hours (but not part thereof) of delay (inclusive of initial 6 hours) so caused, an amount equal to the Stabling Charges payable for such period of delay.

5.9 Wagon maintenance by other entities

- 5.9.1 Subject to Article 5.8.1, the Concessionaire may undertake maintenance of the Concessionaire's Wagons through any other entity including the Concessionaire on such terms and conditions as specified by the Railway Administration from time to time provided, however, that the maintenance is carried out as per maintenance schedules and various stages of inspection as may be notified by Railway Administration and pre-departure certification of such Wagons shall be issued by the Railway Administration for which the prescribed charges as notified by Railway Administration from time to time shall be paid by the Concessionaire.

5.10 Haulage Charges for Maintenance

- 5.10.1 The Concessionaire shall hand over empty Concessionaire's Wagons, in rake formation, to Railway Administration for carrying out maintenance as per the schedule specified by the Railway Administration.
- 5.10.2 The haulage charges for moving the Wagons, in rake formation, from a Rail Terminal to the workshop/maintenance depot/train examination point of the Railway Administration and back shall be borne by the Railway Administration. Provided however that the scheduled haulage charges shall be payable by the Concessionaire in the event maintenance is carried out by an entity other than the Railway Administration and inspection is carried out by the Railway Administration at the location of maintenance.
- 5.10.3 In the event wagon maintenance is undertaken by the Concessionaire, or any other party (other than Railway Administration in accordance with the provisions of this Agreement) a proportionate rebate in haulage charges (equivalent to the built in maintenance charges) shall be given to the Concessionaire.

5.11 Safety, break-downs and accidents

- 5.11.1 The Railway Administration shall ensure safe conditions for movement of Concessionaire's Wagons. In the event of break-down or accidents due to negligence on part of the Railway Administration, it shall, at its own expense, carry out repairs and restoration in accordance with Good Industry Practice. Provided however, if the Railway Administration is unable to repair and/or restore the Wagons, then the Railway Administration shall purchase such damaged Wagons at the Depreciated Replacement Value.

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 Concessionaire, in accordance with the terms set out in this Agreement, locomotives to haul the Concessionaire's Trains, vis-à-vis Other Concessionaires only, on a non-discriminatory and non exclusive basis, provided however, the Concessionaire 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 Concessionaire's Train, the Concessionaire shall submit an indent ("**Indent for Locomotive**") the timing of which shall be acknowledged by Railway administration for supply of locomotive. For the avoidance of doubt, the existing incentive schemes if any or incentive schemes that may be introduced in future for supply of locomotives may be extended to the Concessionaire's Trains with suitable modifications such that it is applied in a non discriminatory manner among different concessionaires.

6.3 Cancellation/Lapse of Indent for Locomotive

6.3.1 The Concessionaire may, anytime prior to arrival of a locomotive (supplied by Railway Administration pursuant to receipt of a Indent for Locomotive sent by Concessionaire in accordance with Article 6.2.1 above), cancel its Indent by sending a notice to that effect to Railway Administration, provided however, the Concessionaire 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 Rail Terminal, the Concessionaire 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 Rail Terminal from where the train is required to depart, or the Rail Terminal where the train is required to terminate, as the case may be, the Concessionaire'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 Concessionaire 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 Terminal (either the Rail Terminal of origin or of termination, as the case may be), then, without prejudice to the Concessionaire'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 Rail Terminal. In case Railway Administration withdraws and/or remove the locomotive from the Rail 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 Concessionaire'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 Concessionaire 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. The Locomotive Detention Charges as on the date of execution of this agreement are provided in the **Annexure II**
- 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 Rail Terminal where the train is scheduled to terminate, but is denied entry into such Rail Terminal for reasons attributable to the Concessionaire and /or the Rail Terminal operator.

6.4 Railway Administration's Liability for Delayed Supply

- 6.4.1 Railway Administration shall, in the event of delayed supply of locomotive beyond 12 hours from the indented schedule time of departure of the Concessionaire's Train, be liable to give to the Concessionaire a one time rebate equal to two (2) percent of the haulage charges payable by the Concessionaire for the Booked Route. This rebate shall, however, not be admissible in contingencies such as interruption of traffic due to accidents or any other similar unavoidable reasons beyond the control of Railway Administration.
- 6.5 Railway Administration may at its sole discretion, at any future date during the currency of this Agreement, allow the Concessionaire on such terms and conditions as specified by Railway Administration, to own or secure through third-party lease and/or maintain RDSO approved locomotives.

ARTICLE 7

RAIL TRANSIT OPERATIONS

- 7.1 The Parties acknowledge and agree that transportation of any of Concessionaire's trains pursuant to this Agreement shall be in Block Rakes. In the event a Concessionaire's Train operates with lesser number of Wagons/Containers than those prescribed in the Block Rakes ("**Non-Block Rake Trains**"), the haulage 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 a Concessionaire'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 Concessionaire's Train comprising less than half a Block Rake. Without prejudice to the generality of the foregoing, the Parties hereby expressly acknowledge and agree that the Railway Administration may at its sole discretion extend the facility of two point rakes for Container Trains during specified periods and on specified routes.
- 7.2 Railway Administration hereby undertakes that any of the Concessionaire'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 haulage 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 Concessionaire's Train by an alternative route ("**Alternate Route**"). For the avoidance of doubt, it is expressly agreed that the Concessionaire shall be liable to pay haulage charges only for the Booked Route even when Concessionaire's Train is transported by an Alternate Route. Provided that in case the Concessionaire'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 Concessionaire shall be liable to pay charges accordingly.
- 7.3 **Programme of Concessionaire's Trains**
- 7.3.1 The Concessionaire shall, at least 7 (seven) days prior to any calendar week in which it proposes to operate any Concessionaire's Train, inform ("**Weekly Advance Scheduling Notice**") Railway Administration of the number of Concessionaire's Trains, it requires to be moved, the proposed routes and the likely departure dates ("**Weekly Advance Schedule**").
- 7.3.2 Notwithstanding anything to the contrary, the Concessionaire shall, at least twenty four (24) hours prior to the day of programmed loading (excluding the day of loading itself) of a Concessionaire's Train, confirm to Railway Administration the departure schedule of such Concessionaire's Train, provided that such notices shall not in any way be binding and shall be only indicative of the Concessionaire's operations schedule for the following week / day.
- 7.3.3 Railway Administration shall maintain a level playing field among all Concessionaires and shall devise and implement a transparent and non-discriminatory system for dispatch of Concessionaire's Trains on a first come first served basis.
- 7.3.4 Notwithstanding anything to the contrary contained in this Agreement, dispatch of locomotives and Concessionaire's Train(s) shall be subject to any operational exigencies and/or system restrictions.
- 7.3.5 Railway Administration shall make all efforts to ensure minimum enroute detention of the Concessionaire's Trains.
- 7.4 **Number of Concessionaire's Trains and Frequency**

7.4.1 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 Concessionaire's Trains that the Concessionaire may require Railway Administration to haul pursuant to this Agreement.

7.5 Diversion of Concessionaire's Trains

7.5.1 The Parties hereby undertake and agree that the Concessionaire may request the Railway Administration to accept, at any time after the departure of a Concessionaire's Train, the diversion/re-diversion of such Concessionaire's Train to any other Rail Terminal, in accordance with the various terms and conditions (including but not limited to payment of haulage 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.

7.6 Stabling of Trains

7.6.1 The Concessionaire shall be liable to pay to Railway Administration Stabling Charges, in the following events :

- (i) In case the Concessionaire's Train suffers detention at the serving station for reasons attributable to the Concessionaire or when the Concessionaire either declines to accept Wagons inside the Rail Terminal, scheduled to be the terminating Rail Terminal or is not in a position to receive placement of subsequent Wagons; or
- (ii) In case of non acceptance of trains inside any port by the port authority concerned; or
- (iii) At any of the stations en route due to any reason attributable to the Concessionaire.

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

7.6.2 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; provided that any increase in charges in any Financial Year during the term of this Agreement, shall not exceed 10% (ten percent) of the charges payable in the preceding year. The Stabling Charges as on the date of execution of this agreement are provided in the **Annexure III**.

ARTICLE 8
OBLIGATIONS OF THE CONCESSIONAIRE

- 8.1 Without prejudice to any other covenants and obligations as set out in this Agreement, the Concessionaire 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:
- (i) 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;
 - (ii) Discharge all its obligations contained in this Agreement in accordance with Good Industry Practice;
 - (iii) Undertake loading and unloading operations at both the origin and destination Rail Terminals
 - (iv) Perform and fulfill its obligations under the Financing Documents;
 - (v) 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 Concessionaire's obligations under this Agreement;
 - (vi) Support, cooperate with and facilitate Railway Administration in the effective and timely implementation and operation of the provisions of this Agreement;
 - (vii) Provide all relevant data and information to FOIS through an on line system, in accordance with the requirements of this Agreement;
 - (viii) Provide/procure access to Railway Administration staff at each Rail Terminal from where the locomotive either originates or terminates at all reasonable hours;
 - (ix) Draw and maintain adequate insurance cover throughout the term of this Agreement for the Rail Terminal and the Concessionaire's Wagons from an insurance company licenced by the Insurance Regulatory and Development Authority. Without prejudice to the generality of the foregoing, the Concessionaire shall procure adequate insurance to cover against (i) any loss, damage or destruction of the Concessionaire's Wagons and/or Rail Terminal; (ii) Concessionaire'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 Concessionaire shall, from time to time, provide to Railway Administration copies of all insurance policies obtained by the Concessionaire in accordance with the terms of this Agreement;
 - (x) 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;
 - (xi) 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 Concessionaire of any of its covenants or obligations contained herein;
 - (xii) Bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement;

- (xiii) Settle at its sole cost and expense, all claims arising out of traffic booked by the Concessionaire.
- (xiv) Maintain accurate, up-to-date and complete records relating to Concessionaire's Container train operations.
- (xv) Hand over Concessionaire'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.
- (xvi) 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 Rail Terminal or other office premises (including registered office)) to inspect any and all documents pertaining to any container train related operations and to provide all necessary support and assistance as may be required by Railway Administration in this regard.
- (xvii) Ensure access to and acceptance of Concessionaire's Trains into each of the Rail Terminals from where the Concessionaire's Trains are originating and terminating prior to the dispatch of Concessionaire's Trains.
- (xviii) Provide one time lock (OTL) or any other similar standard device for sealing of container to ensure security of goods during transit.
- (xix) The Concessionaire shall promptly inform Railway Administration of any Material Adverse Effect in its financial conditions and of any litigation threatened or initiated.
- (xx) To do all such other acts, deeds and things as are necessary or incidental to the performance of Concessionaire's obligations under the Agreement.

8.2 Employment of foreign nationals:

The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire 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 Concessionaire and notwithstanding to the contrary contained in this agreement, refusal of or inability to obtain any such permits and approvals by the Concessionaire or any of its contractors or sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Concessionaire 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 container train services in India. Railway Administration shall, on receiving a request from the Concessionaire provide to the Concessionaire a FOIS terminal to enable the Concessionaire to access information on movement and operation of rolling stock owned by Concessionaire. Provided, however, the cost of establishing, operating and maintaining such FOIS terminal including but not limited to the connectivity charges shall be borne by the Concessionaire and if required, reimbursed by the Concessionaire to the Railway Administration.
- 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 Concessionaire in operating, in accordance with the terms of this Agreement, the Concessionaire's Trains and, agrees to:
- (i) Maintain a level playing field for all Concessionaires who undertake container operations on Railway Administration's rail network and implement a transparent and non-discriminatory system for dispatch and movement of locomotives and Container Trains on its network;
 - (ii) Render all reasonable assistance to the Concessionaire to facilitate it for procuring Applicable Permits;
 - (iii) Ensure fitness of track, locomotives, signaling and communication system and OHE for smooth operation of the Concessionaire's Trains;
 - (iv) Upon receiving a request from the Concessionaire, make available, from time to time, all relevant circulars, notifications and like documents to the Concessionaire pertaining to the performance of this Agreement or the rights and obligations of the Parties hereto;
 - (v) Provide efficient services for transportation of Concessionaire's Train by ensuring that the Concessionaire's Trains are run through to destination without undue detention enroute. Scheduled paths, to the extent possible shall be nominated, for this purpose;
 - (vi) Undertake maintenance of Concessionaire's Wagons according to the schedule and hand over the Wagons back to the Concessionaire within the prescribed time schedule;
 - (vii) Railway Administration will assist to facilitate the movement of Concessionaire's Trains to the extent possible for access of the Concessionaire's Trains on "any network" in India not owned by Railway Administration on non discriminatory basis; and
 - (viii) 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 Rail Terminals from where the locomotive or Concessionaire's Train originate and terminate, fall between two Railway Zones, the signatory 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

HAULAGE CHARGES & CONCESSIONAIRE'S RIGHT TO CHARGE FREIGHT

10.1 The Concessionaire hereby acknowledges and agrees to pay to Railway Administration, exclusive of any and all taxes (including any service tax), cess, levies, charges and duties, charges for haulage by Railway Administration of the Concessionaire's Trains at such rates as prescribed by Railway Administration from time to time and applicable uniformly on a non-discriminatory basis ("**Haulage Charges**"), provided that the Haulage Charges shall not be ordinarily revised more than twice in an year, and any such revision in the haulage charges shall be notified with effect from the beginning of a month with at least 15 (fifteen) days notice to the Concessionaire. For the avoidance of doubt, the Parties acknowledge and agree that it shall be the responsibility and obligation of the Concessionaire 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 Concessionaire's Trains, this Agreement and any and all services rendered by Railway Administration pursuant hereto. The haulage charges as on the date of execution of this agreement are provided in the **Annexure IV**.

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

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

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

10.3 Remittance of Haulage Charges

10.3.1 The Haulage Charges payable by the Concessionaire to Railway Administration shall be paid prior to dispatch of Concessionaires Train. Railway Administration shall introduce a system of Electronic Clearance at the earliest for remittance of haulage charges.

10.3.2 In the event of non-payment of Haulage Charges prior to dispatch of any Concessionaire's Train, Concessionaire'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 Haulage Charges.

10.3.3 In case the Concessionaire fails to pay such Haulage 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 Concessionaire's Trains till such time outstanding haulage charges have been paid.

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

10.4 Concessionaire's Right To Charge

- 10.4.1 Notwithstanding anything to the contrary contained in this Agreement, Railway Administration recognises that the Concessionaire shall be entitled to levy and recover charges from its customers/users for services provided by the Concessionaire to its customers and Railway Administration further undertakes not to exercise any control over such levy or collection of any such charges.
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ARTICLE 11

DOCUMENTATION

11.1 Forwarding Note

11.1.1 The Concessionaire shall submit a Forwarding Note to Railway Administration for booking of containers to be transported by Railway Administration on the Concessionaire's Train. The Concessionaire hereby undertakes and covenants that such a Forwarding Note shall contain all prescribed details required for booking containers 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 Concessionaire and upon payment of Haulage Charges, the Railway Administration shall issue a Railway Receipt in acceptance of the containers tendered by Concessionaire 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 a Concessionaire'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 Rail 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 Concessionaire 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 Concessionaire 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) or any assignment/transfer of this Agreement by the Concessionaire to any Lender's Nominee for substitution of the Concessionaire pursuant to a Financing Event of Default under any Financing Document through the Substitution Agreement ("**Transferee**"), subject to such Transferee being found acceptable by the Railway Administration from a national security and public interest perspective.

12.1.2 The Concessionaire may transfer and/or assign the Concession to any third party after one (1) year after the commencement of commercial operations of the Concessionaire's Trains, however subject to the condition that such transfer shall be effected only pursuant to an approval from the Railway Administration, 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 Concessionaire 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 Concessionaire'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 Concessionaire 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 Concessionaire, or
- (ii) acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire 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 Concessionaire and undertakes that it shall not give effect to any such acquisition of equity or control of the Board of Directors of the Concessionaire 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 Concessionaire 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 Concessionaire;
 - (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 Concessionaire; 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 Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire 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 Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.
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ARTICLE 13

RAILWAY ADMINISTRATION'S LIABILITY AND SETTLEMENT OF CLAIMS

13.1 Custody of Concessionaire'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 Concessionaire's Trains, including Concessionaire's Wagons, containers and goods loaded therein, if any, shall be deemed transfer from the Concessionaire 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 Rail Terminal 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

13.2.1 Containers and goods

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

13.2.1.2 For determining the liability in case of an inward loaded rake all seals would be jointly examined by Railway Administration staff and Concessionaire's staff immediately on arrival and similarly for outward traffic, before the departure of the concessionaire's train, all seals will be jointly examined. In case the Railway Administration delivers container at the destination with the seals intact, Railway Administration shall not be liable for any claim in respect of such containers. For the avoidance of doubt, it is agreed that a Concessionaire's train 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 Rail Terminal shall be conducted expeditiously.

13.2.1.3 Unless otherwise prescribed in the Railway Act, in the event any container is damaged while in Railway Administration custody, Railway Administration shall have the following liabilities:

The liability of Railway Administration for such damaged container shall not exceed the Depreciated Replacement Value of that container (as on the date of damage to container) subject to adjustment of any insurance proceeds received by the Concessionaire towards any damaged container.

13.2.1.4 The extent of the monetary limit of the Railway Administration in respect of the consignments of Concessionaire 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 Concessionaire'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 Concessionaire within two working days after inspection of the damaged Wagons), any Concessionaire's Wagons damaged to the condition prior to occurrence of damage.

- (i) If Railway Administration is either unable to repair any such damaged Concessionaire's Wagon within a reasonable time or decides, in its sole discretion, that any Concessionaire's Wagon is damaged beyond repair, the liability of Railway Administration for such damaged Concessionaire's Wagon shall not exceed the Depreciated Replacement Value of that Concessionaire's Wagon subject to adjustment of any insurance proceeds received by the Concessionaire towards any damaged wagon. For the avoidance of doubt, it is expressly agreed that pursuant to payment of the aforesaid amount, the Concessionaire's damaged Wagon/scrap shall vest with the Railway administration.
- (ii) In case any of the Concessionaire's Wagon in the custody of the Railways Administration is untraceable for 30 (thirty) days or more, the Concessionaire 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 Concessionaire 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 Concessionaire's Wagon subject to adjustment of any insurance proceeds received by the Concessionaire 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.

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 Concessionaire ("**Third Party Consignment Claims**") and any Third Party Consignment Claims shall be settled by the Concessionaire at its sole cost and expense.
- 13.3.2 The Concessionaire hereby agrees and undertakes to indemnify and keep indemnified and otherwise save harmless throughout the Concession 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 For the claims payable to the Concessionaire while such containers were in the Railway Administration's custody, the Concessionaire 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 Parties hereby expressly acknowledge and agree that Railway Administration may at any time hereafter, and from time to time, introduce new specifications for Wagons either for undertaking double-stack rail container operation or other wise on such routes as the Railway administration may, in its sole discretion deem fit, (such specifications, referred to as “**Double Stack Wagon Specifications**” and the route on which such Double Stack Wagon Specifications may be applicable shall be referred to as the “**Double Stack Route(s)**”).
- 14.2 In the event Railway Administration introduces any Double Stack Wagon Specifications for any Double Stack Route(s), the Parties acknowledge that the Concessionaire shall within a reasonable period of time, at its sole cost and expense:
- (i) Upgrade and/or acquire new Wagons complying with the Double Stack Wagon Specifications, and/or axle load; and
 - (ii) Upgrade and/or suitably equip the origin and destination Rail Terminal(s) for handling of double stack container trains.
- 14.3 In the event the Concessionaire fails, for whatsoever reason, to comply with either of the requirements set out in Article 14.2 hereinabove, with in a reasonable period of time, to be decided by Railway administration for all Concessionaires on non-discriminatory basis, the Railway Administration may, till such time as the Concessionaire complies with the aforesaid requirements, at its sole discretion levy, and the Concessionaire hereby undertakes to pay, such additional surcharge on the Concessionaire’s Trains as the Railway Administration may prescribe, for operating single stack trains on any Double Stack Route(s). Provided however, the Railway Administration shall levy such additional surcharge on a non-discriminatory basis.
- 14.4 The Concessionaire 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 Concessionaire 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 Concessionaire will have no claim for damages or compensation on account of such modifications.
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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 Concessionaire, 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 Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire 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 Concessionaire being unable to exercise its rights under this Agreement or materially impairing the ability of the Concessionaire 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 Concessionaire;
- 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 Concessionaire 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 Concessionaire'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 Concessionaire shall not be entitled for any compensation of any kind whatsoever 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 Concessionaire in an amount equal to the Registration Fee paid by Concessionaire and in the event the Concessionaire 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 Concessionaire a termination payment to the Concessionaire 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 Concessionaire for such termination; and (ii) if the railway Administration has charged the Concessionaire any registration fees for extension of the Agreement Period, the Railway Administration shall pay to the Concessionaire 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 Concessionaire for extension of the Agreement Period shall be taken into account and not the registration fee paid by the Concessionaire 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 Concessionaire 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 Concessionaire 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 Concessionaire 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 Concessionaire, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire and the Railway Administration shall not be liable to indemnify the Concessionaire for any such claims.

16.2 Indemnity by the Concessionaire

16.2.1 Without limiting the generality of Article 16.1.1 above, the Concessionaire 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:

- (a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
- (b) payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire's contractors, suppliers and representatives; or
- (c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its contractors which are payable by the Concessionaire or any of its contractors.

16.2.2 Without limiting the generality of the provisions of this Article 16.1.1, the Concessionaire 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 Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations hereunder. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire 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 Concessionaire 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 Concessionaire is unable to secure such licence within a reasonable time, the Concessionaire 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:
- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or

- (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defense of such action; or
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defense of such action and shall have been so notified by the Indemnified Party; or
- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - (i) that there may be specific defenses available to it which are different from or additional to those available to the Indemnifying Party; or
 - (ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if 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 Article 16 shall survive termination or expiry of this Agreement.

ARTICLE 17
TERMINATION

17.1 Termination for Concessionaire 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 Concessionaire fails to cure the default within a cure period of 60 (sixty) days, the Concessionaire shall be deemed to be in default of this Agreement (a "**Concessionaire 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 Concessionaire abandons or manifests intention to abandon its obligations without the prior written consent of Railway Administration;
- (b) The Concessionaire fails to operate its Container Trains in accordance with the requirements of this Agreement within three (3) years from the date of award of the IPA;
- (c) the Concessionaire is in breach of the Maintenance Requirements;
- (d) the Concessionaire has failed to make any payment to Railway Administration pursuant to this Agreement;
- (e) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (f) the Concessionaire has transferred its rights in breach of the provisions of this Agreement;
- (g) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- (h) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets;
- (i) the Concessionaire 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 Concessionaire is passed, or any petition for winding up of the Concessionaire 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 Concessionaire 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 Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire 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 Concessionaire as at the date hereof; and
- (k) the Concessionaire 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 Concessionaire Default, Railway Administration shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire (“**Railway Administration Notice of Termination**”); provided that before issuing the Termination Notice, Railway Administration shall by a written notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation (“**Railway Administration Notice of Intent to Terminate**”), and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice in writing, subject to the provisions of Article 17.1.3.

17.1.3 Railway Administration shall, if there be Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Article 17.1.2 to the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event Railway Administration receives such representation on behalf of Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or suspend the Concession, as the case may be, for enabling the Lenders' Representative to exercise the Lenders' right of substitution in accordance with the Substitution Agreement:

Provided that the Lenders' Representative may, instead of exercising the Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, Railway Administration shall withdraw its notice or the suspension referred to above, as the case may be, and restore all the rights of the Concessionaire:

Provided further that upon written request from the Lenders' Representative and the Concessionaire, Railway Administration shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as Railway Administration may deem appropriate.

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 90 (ninety) 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 Concessionaire 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 Concessionaire 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 Concessionaire may have under this Agreement, upon occurrence of Railway Administration Default, the Concessionaire shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to Railway Administration (“**Concessionaire Notice of Termination**”); provided that before issuing the Termination Notice, the Concessionaire shall by a written notice inform Railway Administration of its intention to issue the Termination Notice and grant 15 (fifteen) days to Railway Administration to make a representation, and may after the expiry of such 15 (fifteen) 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 Concessionaire Default, the Concessionaire shall not be entitled to any compensation whatsoever for such termination from Railway Administration.

17.3.2 If this Agreement is terminated pursuant to an Railway Administration Default, Railway Administration shall pay to the Concessionaire, by way of termination payment, an amount equal to 150% (one hundred and fifty per cent) of the Registration Fee and in the event Concessionaire offer for sale its Wagons to the Railway Administration, at 120% (one hundred and twenty percent) of the Depreciated Replacement Value of the Concessionaire’s Wagons.

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 Concessionaire achieving Commercial Operation Date, no termination payment whatsoever shall be due or payable by the Railway Administration to the Concessionaire.

17.4.2 It is further agreed that in the event this Agreement is extended beyond the initial Agreement Period and is thereafter terminated prior to expiry of the extended term for:

(i) any Concessionaire Default, no termination payments whatsoever shall be payable by the Railway Administration to the Concessionaire; or

(ii) any Railway Administration Default, the Railway administration shall pay to the Concessionaire an amount equal to 150% (one hundred and fifty per cent) of the registration fee paid by the Concessionaire for extension of the initial Agreement Period and, in the event the Concessionaire offers for sale its Wagons to the Railway Administration, the Depreciated Replacement Value of the Concessionaire’s Wagons. For avoidance of doubt, it is hereby clarified that in the event the Railway Administration does not charge any additional registration fee the extension of the concession period, no compensation shall be payable to the Concessionaire pursuant to this sub-part (ii).

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 Concessionaire, 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 Concessionaire 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 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 Concessionaire 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 18.4

18.4 Arbitration

- 18.4.1 Any Dispute, which is not resolved amicably as provided in Article s 18.1, 18.2 and 18.3 shall be finally decided by reference to arbitration by a Board of Arbitrators, appointed pursuant to this Article 18.4. 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.
- 18.4.2 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.
- 18.4.3 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 18.4 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Railway Administration agree and undertake to carry out such Award without delay.
- 18.4.4 The Concessionaire and the Railway Administration agree that an Award may be enforced against the Concessionaire and/or Railway Administration, as the case may be and their respective assets wherever situated.
- 18.4.5 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.

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 Concessionaire, 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 Concessionaire 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 Concessionaire;
- (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 Concessionaire.

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 Concessionaire'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 Concessionaire 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 For and on behalf of [insert]
through Railway Administration, by
General Manager, Northern Railway

[insert]

WITNESS:

1. _____

2. _____

WITNESS:

1. _____

2. _____

SUBSTITUTION AGREEMENT

THIS SUBSTITUTION AGREEMENT is entered into on this the *** day of *** 20**.

AMONGST

- 1 **The President of India**, acting through [insert], Railway Administration, Government of India (hereinafter referred to as “**Railway Administration**” which expression shall, unless repugnant to the context, be deemed to include its successors and permitted assigns);
- 2 [**** **LIMITED**], a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at ****, (hereinafter referred to as the “**Concessionaire**” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);
- 3 **** [name and particulars of Lenders’ Representative] and having its registered office at ****, acting for and on behalf of the Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**”, which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

- (A) The Railway Administration has entered into a Concession Agreement dated *** with the Concessionaire (the “**Concession Agreement**”) to give a Grant to the Concessionaire to require the Railway Administration to haul the Concessionaire’s Trains carrying Exim Traffic and /or Domestic Traffic on specified routes, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) The Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Documents.
- (C) The Lenders have requested the Railway Administration to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.
- (D) In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Railway Administration has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

NOW IT IS HEREBY AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“**Agreement**” means this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

“**Concessionaire Event of Default**” shall have the meaning ascribed to in the Concession Agreement.

“**Financing Documents**” means the documents executed by the Concessionaire with the Lenders including all amendments or modifications thereto for meeting all or any part of the

capital costs of establishing a Rail Terminal and/or procuring Wagons/Containers and other rolling stock, from time to time.

“**Financial Default**” means occurrence of a material breach of the terms and conditions of the Financing Documents or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

“**Lenders’ Representative**” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“**Nominated Company**” means a company, incorporated under the provisions of the Companies Act, 1956, selected by the Lenders’ Representative, on behalf of the Lenders, and proposed to the Railway Administration for assignment/transfer of the Concession as provided in this Agreement;

“**Notice of Financial Default**” shall have the meaning ascribed thereto in Article 3.2.1; and

“**Parties**” means the parties to this Agreement collectively and “**Party**” shall mean any of the Parties to this Agreement individually.

1.2 Interpretation

1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of the Lenders.

1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.3 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

1.2.4 The rules of interpretation stated in Articles 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 ASSIGNMENT

2.1 Assignment of rights and title

The Concessionaire hereby assigns the rights, title and interest in the Concession to, and in favour of, the Lenders’ Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Lenders under the Financing Documents.

3 SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

3.1.1 Pursuant to the rights, title and interest assigned under Article 2.1, the Lenders’ Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.1.2 The Railway Administration hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders’ Representative in accordance with this Agreement. (For the avoidance of doubt, the Lenders or the Lenders’ Representative shall not be entitled to operate as the Concessionaire either individually or collectively).

3.2 Substitution upon occurrence of Financial Default

3.2.1 Upon occurrence of a Financial Default, the Lenders’ Representative may issue a notice to the Concessionaire (the “**Notice of Financial Default**”) along with particulars thereof, and send a copy to the Railway Administration for its information and record. A Notice of Financial Default under this Article 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.

3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders’ Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Documents, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.

3.2.3 At any time after the Lenders’ Representative has issued a Notice of Financial Default, it may by notice require the Railway Administration to suspend all the rights of the Concessionaire

under the Grant, and upon receipt of such notice, the Railway Administration shall undertake suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Railway Administration may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Railway Administration may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.3 Substitution upon occurrence of Concessionaire Default

3.3.1 Upon occurrence of a Concessionaire Default, the Railway Administration shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.

3.3.2 In the event that the Lenders' Representative makes a representation to the Railway Administration within the period of 15 (fifteen) days specified in Article 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Railway Administration shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Railway Administration shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days, as Railway Administration may deem appropriate.

3.4 Procedure for substitution

3.4.1 The Railway Administration and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Railway Administration under Article 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Lenders under the Financing Documents, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Railway Administration under the Concession Agreement and towards the Lenders under the Financing Documents, subject to such substitution by a Nominated Company not being prejudicial to national security or public interest, provided further that in case the right of substitution is proposed to be exercised by the lenders prior to one year after commencement of commercial operation, the Nominated Company shall also satisfy the eligibility of selection criteria prescribed by MOR .

3.4.2 Upon selection of a Nominated Company, the Lenders' Representative shall request the Railway Administration to:

- (a) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
- (b) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.

3.4.3 If the Railway Administration has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within a reasonable period from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. The Railway Administration thereupon shall transfer and endorse the Concession within 30 (thirty) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Railway Administration, the Lenders' Representative may propose another Nominated Company

whereupon the procedure set forth in this Article 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

3.5 Selection to be binding

3.5.1 The decision of the Lenders' Representative and the Railway Administration in selection of the Nominated Company shall be final and binding on the Concessionaire and shall be deemed to have been made with the concurrence of the Concessionaire.. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Lenders or the Railway Administration taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Railway Administration and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Railway Administration or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

3.5.2 All actions of the Lenders' Representative hereunder shall be deemed to be by and on behalf of, and expressly authorized by, the Lenders, and be binding upon them.

4 PROJECT AGREEMENTS

4.1 Substitution of Nominated Company in Project Agreements

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

5 TERMINATION OF CONCESSION AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Railway Administration to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Railway Administration shall undertake Termination under and in accordance with the provisions of the Concession Agreement.

5.2 Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Railway Administration is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth herein, the Railway Administration may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

6 DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- (a) Where the Lenders' Representative (on behalf of all the Lenders) communicates in writing that (i) the Lender's Representative does not intend to seek substitution of the Concessionaire, or (ii) that the Lenders' Representative has not been able to find suitable Nominated Company; or
- (b) no sum remains to be advanced, or is outstanding to the Lenders, under the Financing Documents.

7 INDEMNITY

7.1 General indemnity

7.1.1 The Concessionaire will indemnify, defend and hold the Railway Administration and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

- 7.1.2 The Railway Administration will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Railway Administration to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Railway Administration, its officers, servants and agents.
- 7.1.3 The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Article 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8 DISPUTE RESOLUTION

8.1 Dispute resolution

- 8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Railway Administration, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.
- 8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Delhi and the language of arbitration shall be English.

9 MISCELLANEOUS PROVISIONS

9.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at Delhi shall have jurisdiction over all matters arising out of or relating to this Agreement.

9.2 Waiver of sovereign immunity

The Railway Administration unconditionally and irrevocably:

- (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 Railway Administration with respect to its 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; and

- (d) consents generally in respect of the enforcement of any judgement 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 judgement that may be made or given in connection therewith).

9.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

9.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

9.5 Waiver

9.5.1 Waiver by any Party of a default by another 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.

9.5.2 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 thereunder nor time or other indulgence granted by a Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

9.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

9.7 Survival

9.7.1 Termination of this Agreement:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

9.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

9.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Article 8 of this Agreement or otherwise.

9.9 Successors and assigns

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

9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile. The address for service of each Party and its facsimile

number are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

9.12 Authorised representatives

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

9.13 Original Document

This Agreement may be executed in three 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 RAILWAY ADMINISTRATION

BY: _____

Name:

Title:

FOR AND BEHALF OF *[insert name of Concessionaire]* DULY AUTHORISED VIDE RESOLUTION OF THE BOARD OF DIRECTORS

BY: _____

Name:

Title:

SIGNED AND DELIVERED ON BEHALF OF LENDERS' REPRESENTATIVE

BY: _____

Name:

Title:

Annexure II

**GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)**

No.TC-I/2002/ 214/5

New Delhi, dated 22.2.2006

General Managers(Comml.)
All Indian Railways.

- Sub: (i) All India Costs for Diesel Shunting Engine Hour and Train Engine Hour for recovery of siding and shunting charges**
(ii) All India Costs for Electric Train Engine Hour for recovery of siding and shunting charges

Ref: Board's letter of even number dated 15.2.2005.

.....

	Ministry of Railways have decided to revise the All India Costs for Diesel Shunting Engine and Train Engine Hour for Broad Gauge and Meter Gauge and Electric Train Engine Hour for Broad Gauge circulated vide Board's letter cited above, with effect from 01.4.2006(first of April two thousand six) as under:																		
	<table style="width: 100%; border-collapse: collapse;"><thead><tr><th></th><th style="text-align: center;"><u>Broad Gauge</u></th><th style="text-align: center;"><u>Meter Gauge</u></th></tr></thead><tbody><tr><td>Diesel Engine</td><td style="text-align: center;">(Cost per hour)</td><td style="text-align: center;">(Cost per hour)</td></tr><tr><td>Shunting Engine</td><td style="text-align: center;">Rs.3290/-</td><td style="text-align: center;">Rs.4050/-</td></tr><tr><td>Train Engine</td><td style="text-align: center;">Rs.4140/-</td><td style="text-align: center;">Rs.5680/-</td></tr><tr><td>Electric Engine</td><td></td><td></td></tr><tr><td>Train Engine</td><td style="text-align: center;">Rs.7120/-</td><td style="text-align: center;">---</td></tr></tbody></table>		<u>Broad Gauge</u>	<u>Meter Gauge</u>	Diesel Engine	(Cost per hour)	(Cost per hour)	Shunting Engine	Rs.3290/-	Rs.4050/-	Train Engine	Rs.4140/-	Rs.5680/-	Electric Engine			Train Engine	Rs.7120/-	---
	<u>Broad Gauge</u>	<u>Meter Gauge</u>																	
Diesel Engine	(Cost per hour)	(Cost per hour)																	
Shunting Engine	Rs.3290/-	Rs.4050/-																	
Train Engine	Rs.4140/-	Rs.5680/-																	
Electric Engine																			
Train Engine	Rs.7120/-	---																	
2.0	Costs to be recovered for Steam locos wherever in use over Indian Railways shall be identical to that of Diesel Engines indicated above.																		
3.0	These revised costs will remain in force until further orders.																		
4.0	The Train Engine Hour Cost for Electric Locomotive on the Meter Gauge will continue to be worked out and notified by the Zonal Railways for application on their system.																		
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 dated 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	This issues with the concurrence of the Finance Directorate in the Ministry of the																		

	Railways.
	The receipt of the letter may please be acknowledged.

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

No. TC-1/2002/214/5

New Delhi, dated 22.2.2006

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

for Financial Commissioner(Railways)
New Delhi, dt. 22.2.2006

No.TC-I/ 2002/214/5

Copy to:

1. General Manager(Optg.), All Indian Railways.
2. All Port Trusts, Railways.
3. Managing Director, CRIS, Chankyapuri, New Delhi-21
4. Chief Administrative Officer, FOIS, Northern Railway, Camp: CRIS, Chankyapuri, New Delhi-21
5. Managing Director, Konkan Railway Corporation, Belapur Bhavan, Sector-11, CBD Belapur, New Mumbai-400614
6. Director General, Railway Staff College, Vadodara
7. General Secretary, IRCA, New Delhi.
8. Director, IRITM, Lucknow.

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

Copy to:

CRB, MT, FC, Railway Board
AM(T&C), Adv(C&IS), Adv(C), Adv (T), Adv.(PM), Adv.(F), Adv.(Vig.), Railway Board
EDTC(R), ED (FM), EDPG, EDTT (M), EDTT (S), EDTT (F), EDF(C&RM), EDV (T), ED(Plg.),
Railway Board
TC (CR), F(C) & TT-III (F) Branches, Railway Board.

Annexure III

**Government of India
Ministry of Railways
Railway Board**

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: <ul style="list-style-type: none">▪ 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:

CRB, MT, FC, Railway Board
AM(T&C), AM(C&IS), Adv(C), Adv(F), Adv(T), Adv.(PM), Railway Board
EDTC(R), EDPG, ED(FM), EDTT(M), EDTT(S), EDTT(F), EDF(C&RM), EDV(T),
ED(Safety)Railway Board
TC(R), TC(CR), F(C), Safety Branches, Railway Board.

**GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
RAILWAY BOARD**

No. 2006/TT-III/73/12

Rail Bhavan, New Delhi, dt.11.10.2006

**The General Managers,
All Indian Railways**

Sub: Haulage charges recoverable for movement of containers in privately owned wagons.

1.0 In supersession of letter No.2006/TT-III/73/2 dated 23.3.2006, sanction of Ministry of railways is accorded for levy of haulage charges as per the rules and rates prescribed herein under. These charges will be payable by all operators including CONCOR to Indian railway for container traffic.

2.0 Haulage charges of container trains

It has been decided that:-

- 2.1 There shall be a single uniform rate for both domestic and EXIM container traffic. The rates are based on the payload of the containers including the weight of containers. The rates are given in Rates Table at Annexure-I
- 2.2 The rates for haulage charges mentioned in the Rate Tables are the base rates. Surcharges like busy season surcharge, busy route surcharge etc., wherever applicable, will be leviable to all types of container traffic as per extant rules.
- 2.3 Empty containers, when moved in privately owned wagons shall be charged at 65% of the rates for loaded single deck 20 Tonnes container rate. The rates are given in Rate Table at Annexure-I.
- 2.4 In case of Double stack container train operation in privately owned wagons, containers in the upper stack, whether loaded or empty, shall be charged at 50% of the normal rate and lower stack containers will be charged as per normal tariff.
- 2.5 Privately owned empty flat wagons shall be charged at 60% of the rates for loaded single deck 20 Tonnes container rate.
- 2.6 There shall be no recovery from operator for maintenance of wagons.
- 2.7 All extant Commercial Rules in vogue regarding levy of punitive charges for overloading, penalty for mis-declaration, weighment etc. will be applicable to the container traffic, provided it is not in contravention with any instruction mentioned herein under.
- 2.8 The haulage charges for container trains shall be payable to the Railways for a minimum number of wagons, depending upon the type of stock, as given in the table below. For all purposes, one wagon shall be treated as equivalent to two TEUs. The composition of rake should not be more than standard composition given below:

Type of Stock	Minimum composition for charge	Standard composition for charge
BLCA	40 wagons = 80 TEUs	45 wagons = 90 TEUs
BLLA	35 wagons = 70 TEUs	40 wagons = 80 TEUs
Other	30 wagons = 60 TEUs	35 wagons = 70 TEUs

3.0 System for charging

3.1 The rates for haulage charges for loaded containers (TEUs), Empty containers and Empty flat wagons owned by operators are given in the enclosed Rate Tables at Annexure –I.

3.2 The haulage charges will be calculated for

- (i) The actual number of loaded containers, subject to a minimum of 2 TEUs per wagon.
- (ii) The actual number of empty containers, subject to a minimum of 2 TEUs per wagon.
- (iii) The actual number of empty flat wagons in the rake.

3.3 If the total number of wagons in a rake is less than the minimum composition prescribed above, haulage charges for the short fall in the number of wagons shall be calculated at the rates prescribed for empty flat wagons.

3.4 To arrive at the total haulage charges for each train, all the haulage charges calculated separately, as per para 3.2 and 3.3 above, will be added together.

4.0 Hub and Spoke system

Operator can operate Hub and Spoke system for transportation of containers in certain regions for which the system of documentation and calculation of haulage charges would be as follows:-

4.1 Hub is a container loading facility/depot, which will be used by an operator to aggregate/disseminate traffic. For this purpose the operator may make a request to Railway indicating the pairs of station between which he will run his container trains via this hub. Depending on operational feasibility and ensuring that this feasibility is not used by operator to get undue benefit of telescopic rate, the hub will be approved and notified to the Railway Administration by the Railway Board.

4.2 The Originating point will clearly indicate on the Railway Receipt (RR) whether the container will go directly to the destination or will move via a specified hub.

4.3 The haulage charges for the loaded container will be charged from the originating point to the destination point for the entire distance of actual haulage via the specified “hub”.

4.4 For the loaded/empty container transhipped at the “hub”, a subsequent RR with “zero” freight will be prepared for the distance from the hub to the destination, duly cross-referring the original RR and the originating point on the subsequent RR.

4.5 The RR for recovery of haulage charges will be prepared by Railway Staff posted at ICD/port/railway terminal on the basis of summary given by the operator of ICD indicating weight of consignment including the tare weight of container.

5.0 Commodities restricted for movement by containers

- 5.1 Ores, Minerals, Coal and Coke will be in Restricted commodities for movement by containers.
- 6.0 The above rates will come into effect from 1.11.2006 and shall be valid till further advise.
- 7.0 This issues with the concurrence of Finance Directorate in the Ministry of Railways.

(R.K.Tandon)
Exe. Director Traffic Trans. (F)

Copy to: Managing Director, CRIS, Chanakya Puri, N.Delhi.
Managing Director, KRCL, Belapur Bhavan, New Mumbai.
Director General, Railway Staff College, Vadodara.
The Chief Administrative Officer, FOIS, Tilak Bridge, N.Delhi.
Chief Commercial Managers, all Indian Railways.
Chief Operation Managers, all Indian Railways.
All Container Train Operators.

No. 2006/T-III/73/12

New Delhi, dated 11.10.2005

Copy to: (1) FA & CAOs, all Indian Railways.
(2) ADAI/Railways (with 45 spare copies)

(Naresh Salecha)
Exec. Director Finance (C & RM)

Copy for information to: PPS to CRB, OMT and FC
OSD/MR, EDTT(M), EDTT(S), EDF(C&RM), EDTC(R) and
ED(FM)
TC(CR), TC(R) & F(C) Branches of Railway Board