

## MUTUAL CONFIDENTIALITY AGREEMENT

**THIS AGREEMENT** is made and entered into on the effective date of \_\_\_\_\_, 20\_\_\_\_, by and between Amsted Rail Company, Inc. having a place of business at \_\_\_\_\_, and \_\_\_\_\_ having a place of business at \_\_\_\_\_, each individually referred to herein as "Party" and together as "Parties."

**WHEREAS**, the Parties wish to discuss certain technical and business matters for the purpose of evaluating a potential business arrangement and, in the event the Parties enter into a business agreement, to facilitate that business agreement ("Purpose").

**WHEREAS**, in connection with the Purpose, each Party may disclose (as a "Disclosing Party") or receive (as a "Receiving Party") information that is considered confidential or proprietary and worthy of protection.

**NOW THEREFORE**, in consideration of the mutual covenants and promises contained herein and for such other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereby agree that:

1. Definition of Confidential Information: "Confidential Information" as used throughout this agreement means any non-public information or data relating to the Purpose disclosed by one Party ("Disclosing Party") to another ("Receiving Party"). Confidential information may include any data, information, processes, business plans, source code, formulas, samples, or the like, that relates to the business, technology, personnel, marketing, customers, suppliers, investments, finances, operations, products, or services of Disclosing Party, and may include trade secrets. Confidential Information does not include information that:

- a) was or is available to the public through no fault of Receiving Party;
- b) was known to Receiving Party at or before the time of the disclosure;
- c) was received by Receiving Party from a third party not under an obligation of confidence; or
- d) is developed by or for Receiving Party without any use of or reliance on the disclosed Confidential Information.

2. Identification of Confidential Information: Confidential Information disclosed in writing should be marked as confidential or proprietary. For Confidential Information disclosed orally or visually, the Disclosing Party will designate such disclosures as Confidential Information at the time of, or prior to, the disclosure. Disclosing Party will also make reasonable efforts to reduce such oral or visual disclosure to a written summary form to enable Receiving Party to identify the specific information that Disclosing Party considers to be Confidential Information, and to mark such written summary as confidential or proprietary. Notwithstanding the foregoing, Confidential

Information should not be deemed to have lost its confidential status merely because it was inadvertently not reduced to writing or marked in accordance with this section.

3. Required Disclosure: In the event Receiving Party is required by law, court order, or some other regulatory body, to disclose any of Disclosing Party's Confidential Information, Receiving Party may comply with such requirement, however, Receiving Party shall promptly provide Disclosing Party with notice of the required disclosure. Receiving Party shall also provide, at the Disclosing Party's expense, any assistance that Disclosing Party may reasonably request in seeking to avoid or limit such required disclosure, or to otherwise obtain protection for that Confidential Information.

4. Protection of Confidential Information: Unless it secures prior written approval from Disclosing Party, Receiving Party shall:

- a) use all received Confidential Information solely for the Purpose;
- b) not disclose any received Confidential Information to any other party;
- c) safeguard the received Confidential Information using the same degree of care it would use to protect its own Confidential Information, but in no case less than reasonable care; and
- d) limit access to any received Confidential Information to employees and agents with a need-to-know in connection with the Purpose, and advise the employees and agents of the proprietary nature thereof and of the obligations set forth in this Agreement.

5. Term of Agreement and Protection: This Agreement shall expire three (3) years from the effective date unless terminated sooner by any Party upon thirty (30) days prior written notice. However, all obligations of confidentiality and protection under this Agreement shall expire five (5) years from the date of each disclosure by Disclosing Party except for any disclosure of any Confidential Information that is deemed a trade secret. In the case of Confidential Information that is deemed a trade secret, all obligations of confidentiality and protection under this Agreement shall extend for as long as such Confidential Information remains a trade secret.

6. Notification of Disclosure: Receiving Party shall immediately notify the Disclosing Party upon discovering any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement by Receiving Party, and will cooperate with any efforts to assist the Disclosing Party to regain the possession of its Confidential Information and prevent its further unauthorized use.

7. Specific Enforcement: If Receiving Party breaches, or threatens to commit a breach of, this Agreement, Disclosing Party shall have the right to have this Agreement specifically enforced by any court having equity jurisdiction. The Parties acknowledge and agree that any such breach or threatened breach may cause irreparable injury to Disclosing Party and that money damages alone may not prove an adequate remedy.

8. No Warranty: Disclosing Party provides all Confidential Information “As Is” and without any warranty, express, implied, or otherwise, regarding its completeness, accuracy or performance.

9. Severability: It is the desire and intent of the Parties that this Agreement be enforced to the fullest extent permissible under governing law. If any particular provision or portion of this Agreement shall be adjudicated by a court of competent jurisdiction to be invalid or unenforceable, this Agreement shall be deemed amended to delete such provision or portion adjudicated to be invalid or unenforceable without in any way affecting the remaining parts of this Agreement, such amendment to apply only with respect to the operation of this Agreement in the particular jurisdiction in which such adjudication is made.

10. Jurisdiction and Law: This Agreement shall be governed by, construed, and enforced in accordance with the laws of the United States and the State of Illinois, notwithstanding any conflict of laws rule that may direct the application of the laws of any other jurisdiction. Each Party agrees to submit to the jurisdiction of the courts of the State of Illinois.

11. Entire Agreement: This Agreement embodies the entire agreement between the Parties concerning the subject matter hereof. No modification, amendment or waiver of any part of this Agreement shall be effective unless in writing signed by the Parties.

12. No Assignment: This Agreement may not be assigned or transferred by any Party without the written consent of the other.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly authorized representatives effective as of the date first written above.

AMSTED RAIL COMPANY, Inc.

[OTHER PARTY OR PARTIES]

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_