

## CONFIDENTIALITY AGREEMENT

**THIS CONFIDENTIALITY AGREEMENT** ("Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, ("Effective Date") by and between Amsted Rail Company, Inc. ("Owner") having a place of business of \_\_\_\_\_, and \_\_\_\_\_ ("Recipient"), having a place of business of \_\_\_\_\_.

WHEREAS, Owner wishes to disclose confidential and proprietary information to the Recipient, and to obtain appropriate protection for their confidential and proprietary information.

The parties agree:

1. "Confidential Information" as used throughout the Agreement means any and all information, observation, or data, in whatever form or medium, concerning the business or affairs of Owner or any of its affiliates that Owner discloses or otherwise provides to Recipient. Confidential Information includes, without limitation, trade secrets, data, processes, source code, algorithms, formulas, schematics, engineering drawings, computer models, diagrams, samples, facility designs, financial information, customer and supplier information, marketing information, or any other information that Recipient knows or reasonably should understand is considered confidential. Confidential Information does not include information that Recipient can show:

- (i) was known to Recipient prior to disclosure by Owner;
- (ii) is, or hereafter becomes, other than through the fault of Recipient, generally available to the public; or
- (iii) is received by Recipient in good faith from a third party who is under no obligation of confidentiality with respect to that information.

2. The Confidential Information may be used solely for the benefit of Owner and for the purpose and under the terms described herein, and may not be used for the benefit of Recipient, or used for the benefit of or disclosed to any third party, without the prior written consent of Owner.

3. In the event Recipient is required by law, court order, or some other regulatory body, to disclose any of Owner's Confidential Information, Recipient may comply with such requirement, however, Recipient shall promptly provide Owner with notice of the required disclosure. Recipient shall also provide, at the Owner's expense,

any assistance that Owner may reasonably request in seeking to avoid or limit such required disclosure, or to otherwise obtain protection for that Confidential Information.

4. This Agreement shall expire five (5) years from the effective date. However, all obligations of confidentiality and non-use under this Agreement shall expire five (5) years from the date of each disclosure by Owner to Recipient, 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, the obligations shall extend for as long the Confidential Information remains a trade secret.

5. Recipient shall use no less than the same degree of care in protecting the Confidential Information that they would use for their own confidential and proprietary information, and in no case less than reasonable care. Recipient may not disclose the Confidential Information to any of its directors, officers, employees, or agents, other than those having a need to know for the purposes of the Agreement, and then only on the understanding that such persons are made aware of and undertake to observe the provisions of this Agreement.

6. Recipient may not disclose the Confidential Information to any third party without prior written consent of Owner.

7. Owner grants no right(s) in or license(s) to Recipient in any patent, Confidential Information, or other intellectual property disclosed per this this Agreement.

8. Owner provides all Confidential Information "As Is" and without any warranty, express, implied, or otherwise, regarding its completeness, accuracy or performance.

9. No party may disclose the other party's interests in the subject matter of this Agreement, or the fact that the parties are working together, without the prior written consent of the other Party.

10. Recipient may not make any copies or reproductions of the Confidential Information without the prior written consent of Owner.

11. Upon the conclusion of this Agreement, or at any earlier time, Recipient shall, at the written request of Owner, return to Owner any tangible forms of Confidential Information (regardless of the medium) within its possession or control.

12. If Recipient breaches, or threatens to commit a breach of, this Agreement, Owner shall have the following rights and remedies, each of which rights and remedies shall be independent of the other and severally enforceable, and all of which rights and

remedies shall be in addition to, and not in lieu of, any other rights and remedies available to Owner under law or in equity: the right and remedy to have this Agreement specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach may cause irreparable injury to Owner and that money damages alone may not prove an adequate remedy.

13. This Agreement shall be interpreted in accordance with the laws of the United States and the State of Illinois. Any legal or equitable action or proceeding arising out of, or in connection with, this Agreement shall be commenced and maintained in the appropriate federal or state courts in the State of Illinois, and both parties hereby irrevocably waive any and all objections to such jurisdiction and venue.

14. If any of the provisions of this Agreement are found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision(s) shall be deemed modified to the limited extent required to permit enforcement of the Agreement as a whole.

15. This Agreement embodies the entire agreement between the parties hereto concerning the subject matter hereof. No modification, amendment or waiver of any provision of this Agreement shall be effective unless in writing signed by the parties.

16. By signature and execution of this Agreement, each of the named signatories, separately and individually, and on behalf of their companies and associates do hereby confirm that the party on whose behalf the signor is acting as signatory, is hereby bound by this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement.

Amsted Rail Company, Inc. \_\_\_\_\_

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

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

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

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

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

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

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

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