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

No. 2018/M(N)/951/7

रेल भवन, नई दिल्ली- 110001, तिथि
Rail Bhavan, New Delhi-110001, **Dated** 21 **.11.2019**

Pr. Chief Mechanical Engineers
All Indian Railways

Sub: Maintenance of wagons inducted under **General Purpose Wagon Investment Scheme (GPWIS) – Model agreement to be signed between the "Party investing in General Purpose Wagon" and "Railway Administration"**

Ref: 1) Board's letter No. 2018/TC (FM)/4/11 dt.19.03.2019
2) Board's letter No. 2018/TC (FM)/04/01 dt.26.04.2018

. . .

The policy guidelines for GPWIS issued vide Board's letter (i) u/r. As per the provisions contained in Para 7.0 of the GPWIS master circular vide (i) above, the general purpose wagon owner shall sign a agreement with Railway Administration for maintenance of wagon. Accordingly, a model agreement for maintenance of wagons inducted under GPWIS is being enclosed herewith. The model agreement is also uploaded on the Indian Railway website http://www.indianrailways.gov.in →Railway Board directorates → Mechanical Engg → Circulars →Mechanical Freight, which may be downloaded for record by all concerned.

This issues with the concurrence of Finance (Commercial) Dte of Ministry of Railways.

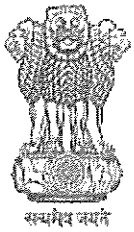
Necessary action may be taken accordingly.

D/A: as above

(AJAY NANDAN)
Exec. Director Mech. Engg. (Fr)
Railway Board

Copy to:

EDFM & EDFC/RB – for kind information



Government of India

Agreement

Between

Railway Administration, Government of India

And

M/s----------

for Maintenance of Wagons

This Agreement for maintenance of General Purpose Wagons (GPWs) under General Purpose Wagon Investment Scheme (GPWIS) on IR network (the "Agreement") is made on this the _____ day of _____ _____month, _____ year.

1.1 **BY AND BETWEEN**

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

2. _____, a company incorporated under the Companies Act, 2013, having its registered office at (insert)/citizen of India (hereinafter referred to as the "**Party inducting rake(s) in General Purpose Wagons Investment Scheme" (Party)** which expression shall, unless repugnant to the context, be deemed to include its successors and permitted assigns) of the other part.

3. Ministry of Railways vide letter no._____(insert letter number) dated_____ accorded "In Principle approval' (hereinafter called "IPA") to the Party _____(insert name of party) for induction of GPWs rake(s) and its movement on Indian Railways. The details of induction of rakes are inter-alia _____(insert Number of rakes), consisting of _____(Number of wagons), (including 4% maintenance spare), _____(insert type of wagons) and ----- brake van as per provision of GPWIS policy. The party shall induct these rake(s) within 18 (eighteen months) from the date of entering into agreement under the GPWIS under the GPWIS with Railway Administration.

4. The rakes described above, shall be based for maintenance at _____ Wagon Maintenance Depot of the _____(ZR). The maintenance base of the railways can be changed subject to mutual agreement.

1.2 **The parties now wish to enter into this Agreement to set in detail their mutual relationship and the terms and conditions, which shall govern the right of the Party to offer its GPWs for maintenance to Railway Administration and the obligation of Railway Administration to maintain such rakes.**

1.3 This agreement is being entered into as a supplementary agreement and as an integral part of the agreement entered into by the party for operation of general purpose wagon under General Purpose Wagon Investment Scheme on IR network between the party _____ ZR, vide agreement No._____ dated_____ hereinafter called GPWIS agreement.

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, the parties hereby agree as follows:

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ARTICLE 1. DEFINISTIONS AND INTERPRETATIONS

2.0 DEFINITIONS & INTERPRETATIONS

2.1 Definitions: The key words and expressions used in this agreement shall, unless the context otherwise requires will have the meaning ascribed thereto, which shall be same as that defined in the original **GPWIS** agreement, under described hereinafter otherwise.

2.2 Interpretation: All issues with respect to interpretation in this agreement shall be dealt in terms defined in the original **GPWIS** agreement, unless described in this agreement otherwise.

2.3 **Measurements and Arithmetic Conventions**

2.3.1 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.

2.4 **Priority of Agreements and Errors/Discrepancies**

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

2.4.2 In case of ambiguities or discrepancies within this Agreement, the following shall apply.

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

2.4.2.2 Between any value written in numerals and that in words, the latter shall prevail.

ARTICLE 2 - SCOPE OF AGREEMENT

3.0 SCOPE OF AGREEMENT

3.1 Maintenance

3.1.1 The party shall procure standard rake composition including one brake van and 4% additional wagons as maintenance spares as per the provision of original GPWIS agreement and make available the same for induction ad commissioning of the wagons into service at the nominated maintenance base depot.

3.1.2 The investors wagons shall be maintained by Railway Administration in accordance with the maintenance schedule notified by the Railway Administration and as amended time to time. Such maintenance shall inter-alia include intensive examination, issue of CC based brake power certificate, Routine Overhaul (ROH), Periodical Overhaul (POH) and all other prescribed/required maintenance activities, the time schedule for which is notified by the Railway Administration from time to time.

3.1.3 The Railway Administration shall maintain the parties wagons at the nominated base depot, which is _____ wagon maintenance depot of _____Division of _____ZR

3.1.4 The party shall hand over empty wagons in rake formation to Railway Administration for carrying out the maintenance as per the schedule specified and/or requirement, by the Railway Administration.

3.1.5 The intensive examination of the rake offered by the party shall normally be completed at the base depot within a period of 12hours from the time the party's wagon in empty rake formation are placed on the examination line of the maintenance depot, provided that there is no bunching of railways owned wagons for examination at the depot.

3.1.6 Further, the time stipulated for examination shall not be applicable vis-a-vis such wagons that are declared sick during the course of examination and/or required to be detached from party's train for sickline/ROH/workshop attention.

3.1.7 The agreement shall cover _____ rakes of _____ wagon type constituting _____ wagons of rake and _____ as 4% maintenance spare and also _____ brake vans.

3.2 **Maintenance charges**

3.2.1 The Party hereby acknowledges and agrees that the wagon maintenance charges shall be @ 2% of the 'current capital cost' of procurement of the wagons. The "current capital cost" shall be updated time to time as per the extant policies of Railway Board. The current policy for arriving at current capital cost is as defined in Railway Board's letter No.2010/AC-iii/34/Pt. II/MIL-RAIL date 17.06.2015 and No.2015/M(W)/814/18 dt.07.12.2015. The GST and other taxes applicable on maintenance charges shall be payable extra as per the applicable rate. The Party shall directly deposit these taxes under Reverse Charge Mechanism to Government directly under intimation to Railway Administration.

3.2.2 The Party shall have to pay the said amount in advance on quarterly basis to Railways by 7th of first month of the quarter. If payment is not received by the Railway Administration within the due date then the Party shall be liable to pay interest @ 12% per annum from the first day of the quarter till the actual day of realization.

3.2.3 The basis for current capital cost of the procurement of the wagon shall be the latest purchase order placed by Indian Railways

3.2.4 In those cases where no purchase order has been placed by Indian Railways within the three years from the date of start of the Financial Year in which the GPWIS operator starting the induction, the current capital cost applicable as the basis of maintenance charges, shall be arrived at by escalating the last purchase order rate of IR (which is more than three years old) by the method defined in Railway Board's letter No.2015/M(W)/814/18 dt.07.12.2015. This rate shall be applicable initially and shall be updated later as per para 3.2.1 above."

3.3 Scope of Maintenance

3.3.1 Any damages to the wagon body during handling at loading /unloading terminals shall be borne by the party as per the cost of repair assessed and/or advised by the railways.

3.3.2 However, in the event of break-down or accidents due to negligence on part of the Party (even if it is established at a later stage), Railway Administration shall carry out repairs and restoration of the wagons at the expense of the Party. Provided however, if the Railway Administration-in its sole discretion – is unable to repair and/or restore the Wagons, then the Railway Administration shall

reimburse the Party only the actual Scrap Value of the wagons after deducting all the administrative expenses for disposing off the wagons and other loss caused to the Railway assets. The ownership of the condemned wagon will rest with RA.

3.3.3 Any damage to the wagons (including its components and auxiliaries) caused during loading/unloading by Party as well as deficiencies arising out of thefts or pilferages inside the area under Party's jurisdiction will be repaired by railways at Party's cost. The bills for such repairs will be raised separately by railways and the same shall be payable by Party in addition to charges mentioned at Article – 4 above.

3.3.4 Towards the unscheduled and unforeseen repairs and restoration activities Bills will be raised quarterly. The quarterly bills therefore, would be raised before the beginning of a quarter (say Q4) for maintenance charges of Q4 and for damages and deficiency charges of Q2. Cost of damaged deficiency shall be computed on the basis of latest procurement cost of material and current labour cost. The applicable Goods and Service Tax shall be paid by the Party directly to the Government with intimation to Railway Administration.

4.0 Obligations of the Party

4.1 Without prejudice to any other covenants and obligations as set out in the Agreement, the Party 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:

4.1.1 To ensure that the wagons inducted under the GPWIS agreement are conforming to all the required contents regarding designs specifications and quality of the wagons procured.

4.1.2 To ensure that the wagons once becoming due for examination shall be moved to and placed in the nominated base depot within the scheduled time period defined in the schedule published by the Railway Administration.

4.1.3 To bear the cost of any damages that accrued due to any unsafe situation, accident or failure that will occur when the wagons are being operated even beyond the scheduled time period provided for maintenance i.e. wagons being operated overdue maintenance or examination, due to Party's failure for making the wagons available for maintenance in time as per para 4.1.2.

5. **Obligations of Railway Administration**

5.1 The parties expressly acknowledge and agree that railways shall be responsible for planning and coordinating the maintenance of trains, movement of rakes of the party when the same has been offered for maintenance in the nominated base depot. In case of any other requirement of examination of maintenance due to exigency of operations, the Railway Administration shall plan and coordinate such emergency attention as may be required to make the rake fit for return to the nominated base location..

5.2 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 networks.

6 **Assignment and Transfer**

6.1 All provisions of assignment transfer and change of control as specified in the GPWIS agreement shall be applicable.

7 **FORCE MAJEURE**

7.1 All provisions of Force Majeure as specified in GPWIS agreement shall be applicable.

8. **Termination**

8.1 This agreement shall stand terminated simultaneously with the termination of original GPWIS agreement.

9. **DISPUTE RESOLUTION, CONCILIATION & ARBITRATION**

9.1 Any dispute, difference or controversy of whatever nature however arising under or out of or in relation to this Agreement (including its interpretation) between Railway Administration (for this contract, CRSE(Fr) of the Railways) and the Party, shall be resolved as per the mechanism defined in 'GPWIS Agreement' signed between Railway Administration and the Party.

10 **MISCELLANEOUS**

10.1 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 9, the courts at _____(insert name of the Head Quarter of zonal railway) shall have jurisdiction over matters arising out of or relating to this

Agreement.

10.2 Waiver

10.2.1 All provisions regarding waiver, as specified in GPWIS agreement shall be applicable.

10.3 Consequential or Special Loss

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.

10.4 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:

10.4.1 In the case of the Party, 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 Party may from time to time designate by notice to the Railway Administration (Insert)

10.4.2 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 Party;

10.4.3 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.

10.5 Review of Agreement

10.5.1 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 trains consisting of Party's GPWs, which may require appropriate review of this Agreement.

10.5.2 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 Party 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.

10.5.3 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.

10.6 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.

10.7 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 authorised representatives of the parties hereto on the day and year first above written

FOR AND ON BEHALF OF RAILWAY ADMINISTRATION

BY:_____

Name

Title:

Address:

FOR AND BEHALF OF _____(insert name of Party) DULY AUTHORISED VIDE RESOLUTION OF THE BOARD OF DIRECTORS

BY:_____

Name

Title:

Address:

WITNESS:

1._____

(NAME, Title & Address)

2._____

(Name, Title & Address)

WITNESS:

1._____

(NAME, Title & Address)

2._____

(Name, Title & Address)