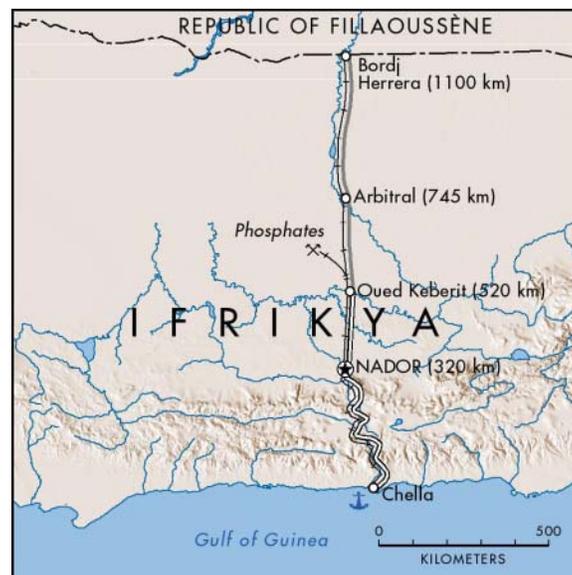


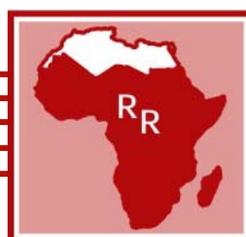


Concessioning of the Ifrikyia Railway



A Case Study

Karim-Jacques Budin



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Foreword

The case study of the concessioning of the Ifrikya railway was prepared by Karim-Jacques Budin, Lead Railway Specialist in the Transport Unit of the World Bank. The study is based in part on several recent actual case studies on railway concessioning in Sub-Saharan Africa. However, several features of the general context and data have been changed for pedagogical purposes. The Republic of Ifrikya should therefore be considered an entirely fictitious country and the description of conditions there should not in any way be construed as mirroring the situation in any country that has recently entered into a railway concessioning arrangement. Also, the positions ascribed to the World Bank representatives in the case study should not necessarily be considered a reflection of the policy of this institution and should not, under any circumstances, be interpreted as an indication of the positions that it is likely to take in a situation similar to the one described in the case study.

Organization of the Study

Instructions for preparing the case study, and questions to be discussed at the session.....	1
Presentation of the Ifrikyia Railway	3
Overall Structure of the Concessioning of the Ifrikyia Railway	7
Concession Agreement for the Railway Operation	17
Evaluation of Technical Proposals	71
Evaluation of Financial Proposals and Award of the Concession.....	79
Provisions for Monitoring and Oversight of the Concession	89

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Instructions for preparing the case study, and questions to be discussed at the session

Preparation of the case study

(Preparation time to be spent before the session : at least 2 hours)

Participants are asked, prior to the session, to :

- Read carefully Documents 1 (Presentation of the Ifrikya Railway), 2 (Overall Structure of the Concessioning of the Ifrikya Railway), 4 (Evaluation of Technical Proposals), 5 (Evaluation of Financial Proposals and Award of the Concession), and 6 (Provisions for Monitoring and Oversight of the Concession).
- Read in its entirety or at least review quickly Document 3 (Concession Agreement on Railway Operations). In any event, Section 4 (Utilization of Railway Infrastructure by Other Transport Service Operators) of this document must be read carefully.
- Prepare their responses to the following questions, which will be discussed at the session.

Questions to be discussed at the session

- (1) Do the general characteristics of the concession, as described in Chapter A of Document 2, seem to you to be appropriate, given the general situation in the Republic of Ifrikya ?
- (2) Do you think that the operation of passenger service by a specialized entity separate from the concessionaire, as described in paragraph 12 of Document 2 and recommended by the World Bank, is a good solution? Why, in your view, did the Ifrikyan authorities reject this option in the end?
- (3) Do you think that the ownership structure of the concessionaire (Document 1, B1) is satisfactory? Which concerns of the Privatization Committee do you think it satisfies? What aspects of the situation in Ifrikya would determine how these provisions would need to be changed, and what might those changes be?

- (4) Does the procedure for selecting the strategic shareholder, as described in B2 of Document 1 and as implemented under the conditions described in Documents 4 and 5, adequately meet the need for efficiency (i.e., the need to choose the "best" possible concessionaire), objectivity, and transparency? The following points in particular may be addressed:
- Relevance of the general procedure in a context in which corruption may be widespread (identify ways in which corruption might skew the process). Proposed changes to the procedure and the conditions under which it is implemented, in order to reduce the corresponding risks.
 - Relevance of the method of calculating the "financial value" of proposals (i.e., ways of taking into account candidates' proposals concerning concession fees, usefulness of the penalty for not rehiring SNCFI employees, etc.). Suggested changes to the method of calculating financial value.
- (5) In your view, is there a significant risk that the concessionaire will take unfair advantage of his privileged position? Do the provisions of the Concession Agreement and those pertaining to the monitoring and oversight of the concession provide adequate safeguards against this risk? What other arrangements might have been envisaged? Discuss their advantages and disadvantages relative to the arrangements that were actually chosen.
- (6) The Concession Agreement makes no provision for a regulator of Railway Operations. Discuss this option, based on the situation in the Republic of Ifrikyia. Discuss the provisions made for monitoring and oversight of the concession (Document 6).
- and any other issues raised by the participants.

1

Presentation of the Ifrikyia Railway

The Republic of Ifrikyia in brief

The Republic of Ifrikyia is located on the Gulf of Guinea. A former French colony (previously known as the Côte des Comptoirs du Sud), Ifrikyia became independent in 1960. With its strong presidential regime, the period of political stability experienced by the country until the late 1970s paved the way for virtually uninterrupted economic development, with strong growth in agricultural production (coffee, cocoa, cotton), development of natural gas reserves (Ifrikyia is third, after Algeria and Nigeria, among African exporters of liquid natural gas) and phosphates. Like other countries in the sub-region, it was adversely affected by the economic crisis of the 1980s. As a member of the CFA Franc Zone, Ifrikyia has in recent years pursued a prudent macro-economic policy that has allowed it to take advantage of the new circumstances arising from the 1994 currency devaluation. The Republic of Ifrikyia is, however, fourth on the list, published by the London-based NGO *International Corruption Watch*, of countries reputed to be most corrupt. The Government has lodged a vigorous protest against this classification.

The Railway System in Ifrikyia: An Overview

The Republic of Ifrikyia has a railway line managed by a public enterprise, the *Société nationale des chemins de fer d'Ifrikyia* (SNCFI) ¹. The line is 1,100 km long and links Chella, the country's economic capital (1.5 million inhabitants) and an important port on the Atlantic Ocean, with Bordj Herrera (250,000 inhabitants), a city near the border with the Republic of Fillaoussène, a landlocked country in the CFA Franc Zone which conducts most of its external trade via the port of Chella. The main cities served by the railway from Chella (PK 0) are Nador (PK 320), the administrative capital (400,000 habitants), Oued Keberit (PK 520), which is near a phosphate mine operated since 1982 by the *Société du Djebel Keberit* (a private company in which most of the capital is held by Americans), and Arbitral (PK 745), in the center of the cotton-growing area.

¹ In 1960, the SNCFI succeeded the *Régie des chemins de fer de la Côte des Comptoirs du Sud* which had been a part of the French Overseas Railway Agency (*Office des chemins de fer d'outre-mer*, OFEROM) during the colonial period.

Railway Infrastructure

The railway is single track (except for an 18 km stretch near Chella) and metric gauge. It was constructed in several stages beginning in the 1930s. The Arbitral/Bordj Herrera segment went into service in 1967. The Chella/Nador segment, which traverses a mountainous area, was particularly serpentine and had steep inclines making it problematic for freight trains, and thus was entirely rebuilt in the 1970s (with joint financing from the World Bank, the French *Caisse Centrale de Coopération Economique* and the African Development Bank). Depending on the segment, the condition of the tracks is satisfactory or acceptable, except for the Oued Keberit/Arbitral portion, which needs to be completely replaced. The safety of train traffic is handled through a block system operated by telephone. The telecommunications system is outmoded and unreliable.

Railway motive power and rolling stock

The locomotive fleet consists essentially of twenty-two 1,800 hp General Motors locomotives acquired in 1975. The rate of locomotive availability, which exceeded 85 percent in the 1980s, has since fallen below 60 percent, due, according to SNCFI's managers, to a scarcity of spare parts resulting from the enterprise's cash shortages. The wagon fleet consists of 880 wagons owned by SNCFI (rate of availability: 60 percent), and 190 privately-owned wagons belonging to the phosphate mining company and to petroleum companies (Mobil, Texaco), for which the rate of availability is 92 percent. The passenger fleet consists of 67 coaches in mediocre condition.

Overall trends in rail traffic

Railway traffic, which experienced strong growth from 1960 through the late 1970s, has been in general decline since 1980. Overall turnover, which totaled CFAF 15 billion in 1980, was CFAF 11 billion in 1997. This decline is attributable largely to increased competition from road transport starting in 1980, made possible by the spectacular expansion of the road network, particularly through the gradual paving of the route running parallel to the railway². Today, with the sole exception of the hauling of phosphates from the mine at Oued-Keberit, the railway faces stiff competition from road transport on all freight and passenger traffic segments.

² The Chella/Nador road segment has been paved since 1978, and the Nador/Oued Keberit segment since 1984. The Oued Keberit/Arbitral segment is currently being paved and the paving of the Arbitral/Bordj Herrera segment is projected to be complete by 2001-2002. The road from Bordj Herrera to Fillaoussène has been paved since 1975.

At the level of the public railway enterprise, this decline has also been accelerated by bureaucratic and often lax management, the lack of a commercial focus, frequent governmental interference in management, repeated changes of General Manager, rigid rate-setting procedures, as well as by questionable investment choices, particularly in the area of infrastructure.

Passenger traffic

Passenger traffic, which in 1980 totaled about 500 million passenger-kilometers and generated nearly CFAF 6 billion in revenue (i.e., 40 percent of SNCFI's overall turnover), only accounted for 120 million passenger-kilometers in 1997, resulting in a turnover of CFAF 2 billion. According to SNCFI, this decline is mainly due to unfair competition from regular buses and mini-buses, particularly along the Chella/Nador route. In the 1970s, SNCFI introduced a fast service operated with diesel-multiple units (DMU) (the "Gazelle") between Chella and Nador. This attracted a large ridership, but service gradually deteriorated and was dropped in 1988. SNCFI runs several local passenger trains which are believed to be operating on a large deficit (although SNCFI's poorly organized analytical accounting makes it impossible to determine their cost). SNCFI would like to do away with these services, but the Government has never provided an official response to SNCFI's queries on this subject.

Freight traffic

In general, freight traffic has more successfully resisted decline: its turnover for 1997 (CFAF 9 billion) was about the same as that for 1980. However, the structure of that traffic has changed considerably. The hauling of phosphates, which was nonexistent in 1980, now accounts for 2 million tons and over 20 percent of freight receipts. Container traffic, essentially bound for Fillaoussène (with re-loading onto trucks at Bordj-Herrera) has developed considerably. On the other hand, the traffic in hydrocarbons bound for Fillaoussène has been halved, despite a doubling of demand, since this is now being carried out mostly by road transporters based in Fillaoussène. Miscellaneous freight traffic has greatly declined and road transport is now the most common means used to move this type of merchandise. Several important clients (especially forwarding agents dealing in international transport) complain of the poor quality of service (e.g., shortage of wagons at the port of Chella, erratic in-transit times, frequent thefts of merchandise, difficulties in settling claims, etc.).

Personnel

As of 1997, SNCFI employed 4,500 people, compared to 5,900 in 1980. Hiring has essentially been frozen since 1989. SNCFI's personnel regulations, strongly patterned after those of the

French railways, have not undergone any significant change since the country's independence. SNCFI attempted in 1991 and 1995 to implement a staff reduction program, but was forced to abandon it for lack of financing. The union of railway employees, which used to be very powerful (since it was an important booster of the Independence Party), has lost some of its influence. Salaries offered by SNCFI are, in comparison to the private sector, high for implementation and oversight job categories, but low for middle management. Due to SNCFI's cash shortages, salaries are often paid very late. Overall staff morale is low and discipline is lax; many railway employees have second jobs or use the railway's workshop facilities for their personal profit. The ratio of staff costs to revenue has been steadily worsening for many years, and stood at 72 percent in 1997 (compared to 29 percent in 1980).

Financial status

In 1990, in order to halt the deterioration of the situation, and on the recommendation of donors, the Government entered into a Performance Contract with SNCFI for the 1990-1995 period, which provided, in particular, for Government financing of a staff reduction program and for compensation of deficits generated by local passenger services. Budget difficulties prevented the mobilization of the financing in question, and the Performance Contract was not renewed after 1995.

The overall financial situation of SNCFI — which was flourishing until the early 1980s — is very poor. The net deficit as of 1997 amounted to CFAF 7 billion. SNCFI has not repaid donor debt since 1990. Banks, which are collectively owed CFAF 9 billion, decided in 1996 to stop granting SNCFI any more supplemental short-term credit.

Concessioning of railway operations

After an examination of various possible scenarios and numerous discussions, the Government of the Republic of Ifrikya decided in 1997 to concession railway operations. This decision was made despite strong opposition from some politicians and managers at SNCFI, on the basis of the excellent results obtained with concessions in the area of water supply (which has been concessioned since 1975) and electricity (for which a concession was granted in 1989). The track record of the Abidjan-Ouagadougou railway, which has been operating successfully since 1995 under a concession arrangement and which Ifrikyan managers studied in Côte d'Ivoire and Burkina Faso, was also a factor in the decision. The Privatization Committee was put in charge of the railway concessioning process. The World Bank is contributing through a technical assistance project called the *Projet d'Appui à la Privatisation des Entreprises Publiques*, (PAPEP) [Public Enterprise Privatization Support Project].

2

Overall Structure of the Concessioneing of the Ifrikya Railway

Before deciding on the overall structure of railway concessioneing, the Privatization Committee of the Republic of Ifrikya, assigned by the Government to implement it, consulted on numerous occasions with managers of SNCFI and concessionaires in the water supply (SEXHYDRO) and electricity (SEXELEC) sectors, as well as with the directorates of the ministries of water and energy that oversee these concessioneings. A Committee team visited Abidjan and Ouagadougou to study SITARAIL (concessionaire of the Abidjan-Ouagadougou railway). A Committee delegation also attended the rail concessioneing seminar in Abidjan organized by the World Bank in October 1997. Finally, numerous consultations were held with specialists representing traditional donors in the railway sector.

At the conclusion of a supervision mission for the World Bank-financed *Projet d'Appui à la Privatisation des Entreprises Publiques* (PAPEP), the attached document was signed by the Vice-President of the Privatization Committee and the World Bank's Mission Leader. This document defines the general concessioneing structure decided upon by the Committee.

CONCESSIONING OF IFRIKYA RAILWAY OPERATIONS

1. The Government of the Republic of Ifrikyia has decided, in the context of its policy of restructuring and privatizing public enterprises in the transportation sector, to transfer the operation of the railway to a private concessionaire. The present document, appended to the *Aide-mémoire* of the November 1997 World Bank supervision mission of the *Projet d'Appui à la Privatisation des Entreprises Publiques* (PAPEP), summarizes the main arrangements envisaged regarding: (a) the general characteristics of the concessioning of railway operations; (b) the procedures for implementing the concession (e.g., structure of the concessioning company, procedures for choosing the strategic shareholder, personnel issues, etc.); (c) the tentative timetable for concessioning; and (d) World Bank support for the concessioning.

A. GENERAL CHARACTERISTICS OF THE CONCESSIONING OF RAILWAY OPERATIONS

2. The conditions under which the railway is to be operated by the concessionaire, as well as the relationship between the State and the concessionaire, shall be defined by a Concession Agreement signed by the State and the concessionaire, the general characteristics of which are outlined below. Under the terms of the concession, the concessionaire shall be responsible for: (i) technical and commercial operation of railway transport services; (ii) the operation, maintenance, renewal and remodeling of existing Railway Infrastructure; and (iii) management of railway real-estate. The concessionaire shall carry out this activity on a commercial basis, at its own expense and risk.

3. **Railway transport services.** The concessionaire shall operate what are known as commercial rail freight and passenger transport services and, possibly, at the explicit request of the State, other passenger rail transport services to be operated under a regime of public service obligation (PSO). The nature, configuration, and technical and commercial organization of the services that are termed commercial shall be freely determined by the concessionaire on the basis of its profit goals. Passenger services that may be operated as PSO services – particularly local services – shall be the object of signed agreements between the State and the concessionaire; these agreements will define the configuration of such services and will stipulate the payment, by the State to the concessionaire, of a contribution to offset the deficit generated by said public service obligation. Under an alternative formula briefly described in paragraph 12 below, the operation of all passenger rail services would be handled by a specialized company distinct from the concessionaire, with the concessionaire operating only freight services. The Government shall make a decision soon regarding the latter variation, which is the one recommended by the World Bank mission.

4. **Utilization of Railway Infrastructure by other transport operators.** The use of Railway Infrastructure operated by the concessionaire may be opened, at the State's option, to other railway transport operators in cases to be determined, and particularly in a situation where the concessionaire takes unfair advantage of its privileged position. However, the concessionaire may enjoy a period of exclusivity not to exceed five years. The utilization of infrastructure would occur within the framework of specific agreements signed between the concessionaire and the operator in question; the latter would pay to the concessionaire an infrastructure usage fee.

5. **Railway Infrastructure.** Railway Infrastructure, which is and shall remain State property, will be made available to the concessionaire. The concessionaire will organize its utilization, will operate and maintain Railway Infrastructure and will bear the related expenses directly. The concessionaire shall be responsible for oversight (through the State's delegation of such responsibility) of works relating to the renewal and remodeling of existing infrastructure, and will finance such works (although the State may provide its financial guarantee for certain financing operations). Renewal and remodeling works shall be subject to State approval; at the conclusion of the concession, the State will reimburse the concessionaire for the non-depreciated portion of the investments. The development of new infrastructure (i.e., the creation of new lines) shall be decided by the State, which will set the terms and conditions under which the work is to be carried out. Their possible incorporation into the concession would occur by means of an amendment to the Concession Agreement.

6. **Railway motive power and rolling stock.** At the beginning of the concession, the concessionaire shall purchase, as a single package, all of SNCFI's railway motive power and rolling stock. Payment for this acquisition shall be scheduled over a five-year period. Any additional equipment that the concessionaire may require in the course of the concession — either to replace existing equipment or to handle increased traffic — shall be purchased or rented freely by the concessionaire, without any State intervention or financial guarantee. However, the State shall have right of first refusal on the sale of equipment by the concessionaire (particularly in order to ensure, by the end of the concession, the sustainability of railway operations.)

7. **Personnel.** The concessionaire's employees shall be subject to Labor Code provisions applicable to private sector employees. At the beginning of the concession, the concessionaire will select, from among SNCFI's existing personnel, the staff members that it intends to rehire. The conditions under which this operation is to be carried out are examined in paragraph 19 below.

8. **Concession Fee.** The concessionaire shall pay the State a concession fee in exchange for access to existing Railway Infrastructure and the right to operate rail services. The modalities of determining the fee (e.g., flat annual sum, percentage of the concessionaire's turnover, etc.) will be determined at a later stage.

9. **Duration of the Concession.** The duration of the concession must be sufficiently long to allow the concessionaire to develop and implement a long-term policy, particularly in the area of investments. A short concession would, on the other hand, present the advantage of providing a greater incentive for performance on the part of the concessionaire and would minimize the risks involved in a poor choice of concessionaire. The formula envisaged to respond to these somewhat contradictory objectives consists of a concession of the "rolling" type, with an initial duration of 20 years (i.e., the approximate amortization period for Railway Equipment), with the option of extension, by common agreement, for successive periods of five years, to be decided at the end of each five-year period.

10. **Tax provisions.** The concessionaire shall be subject to the tax provisions mandated by law. However, the purchase of fuels used in the locomotives and other rolling stock shall be exempt from the portion of the duty earmarked as a contribution to the Roads Fund.

11. **Monitoring of execution of the concession and resolution of disputes.** Execution of the concession shall be supervised by a Monitoring Committee made up of representatives of the State (Ministries of Finance and Transportation) and of the concessionaire. The concessionaire shall furnish, by way of an activity report, various documents to be specified in the Concession Agreement. An independent auditor designated by the Monitoring Committee will perform an annual audit of the Concession (including examination of the concessionaire's accounts, an opinion on the parties' adherence to the terms of the Concession Agreement, etc.). Disputes and litigation shall be resolved by an arbitration commission in accordance with the conciliation and arbitration rules of the International Chamber of Commerce.

12. **Alternative organization of passenger rail activity.** As indicated in paragraph 3 above, the Government shall make a decision soon regarding the organization of passenger rail services. As an alternative to the organizational set-up under which passenger services are operated by the concessionaire, the State may decide to entrust the operation of said services to a specialized company distinct from the concessionaire. Under this variant — which would be justified in particular by the fact that passenger transport is essentially a public service (as opposed to the exclusively commercial nature of freight activity) — passenger services would be provided by a separate company under an *affermage* agreement. Under this schema, and in view of the fact that it would not currently be economical to have passenger trains pulled by a fleet of locomotives distinct from the locomotive fleet assigned to freight trains, the concessionaire's role in the area of passenger service would consist of: (i) making Railway Infrastructure available to the specialized company for the operation of passenger service and dispatching passenger trains; and (ii) hauling passenger trains (other than trains operating with strings of self-propelled cars). The company operating the passenger service would then pay a toll to the concessionaire for the utilization of infrastructure (calculated on the basis of supplemental expenses incurred by the concessionaire as a result of the passenger traffic), as well as a fee for the hauling of passenger trains (calculated on the basis of locomotive-kilometers traveled).

B. METHOD OF IMPLEMENTING THE CONCESSION

B1. Ownership structure of the concessionaire

13. The concessionaire shall be a limited liability joint-stock company organized under Ifrikyan law, with its headquarters in Chella. A strategic shareholder shall hold at least 51 % of the company's capital ('A' shares) and shall pledge to maintain at least this percentage for a period of at least seven years; at least half of the 'A' shares must be held by persons of Ifrikyan nationality or by companies organized under Ifrikyan law. No suppliers of Railway Equipment or railway works enterprises may be part of the strategic shareholder. The strategic shareholder shall occupy a majority of the seats on the Board of Directors. The portion of the concessionaire's equity not held by the strategic shareholder (i.e., 'B' shares) shall be reserved for persons or legal entities of Ifrikyan nationality. Within this portion, at least five percent of the concessionaire's equity shall be set aside for current SNCFI employees. The State pledges not to hold, directly or through public enterprises, any more than 15 percent of the total equity of the company. During an interim period, a portion of 'B' shares may, while awaiting their assignment to persons or entities of Ifrikyan nationality, be subject to "warehousing", under terms and conditions still to be determined. The *Société des phosphates du Djebel Keberit* shall not be allowed to hold stock in the company of the strategic shareholder; on the other hand, there is no impediment to its holding 'B' shares in the concessionaire. It should be noted that, given the above provisions, foreign interests will be able to hold no more than 25.5 percent of the concessionaire's equity.

B2. Procedure for selecting the strategic shareholder of the concessionaire

14. The strategic shareholder shall be selected through international competitive bidding under a three-stage procedure, as described below. The entire process shall be entrusted to the Privatization Committee. Support to the Committee shall be provided by a specialized consultant; the consultant's services shall be financed under the World Bank-financed PAPEP.

15. **Search for and prequalification of candidates.** Potential strategic shareholders will be the object of an intense search effort. A call for expressions of interest shall be published in the national press as well as in the specialized international press. Presentation meetings shall be organized in the Republic of Ifrikyia, and a search mission shall visit various foreign countries (e.g., Western Europe, North America, South Africa). The technical, commercial and financial criteria for prequalification shall be communicated to the candidates, who will be invited to

submit their application for prequalification. All candidates fulfilling the selection criteria shall be selected.

16. **Intermediate “technical” stage of selection.** Technical bidding documents (Request for Technical Proposals RFTP) shall be provided to all prequalified candidates. The dossier will consist of: (i) general information on the overall economic situation and railway activity in the Republic of Ifrikya ; (ii) information defining the contractual and regulatory framework of the activity of the future concessionaire (and in particular a draft Concession Agreement); and (iii) a definition of the content of technical proposals and procedures for their submission. The technical proposals submitted by the candidates shall essentially consist of: (a) a prospective five-year business plan for the concessionaire (i.e., operations outlook and commercial policy, investment program, personnel policy, financial projections, etc.); and (b) their comments and suggestions concerning the draft Concession Agreement. The technical proposals will be discussed with each candidate; candidates will have an opportunity, upon the conclusion of these discussions, to revise their proposals. The various technical proposals will be awarded points on a 40-point scale, according to criteria to be defined at a later date. Candidates who have submitted a satisfactory technical proposal (i.e., one earning 30 or more points) shall then be invited to submit their proposals for the final selection round.

17. **Final “financial” stage of selection.** Upon completion of the intermediate “technical” stage, the Privatization Committee will produce a definitive version of the Concession Agreement (taking into account, if appropriate, suggestions made by the candidates) and will ask candidates who have successfully passed the intermediate stage to present their financial proposals. The financial "value" of the proposal — to be calculated according to a method that will be defined in the Request for Financial Proposals (RFFP) — will be a combination of the following elements: (i) price offered by the candidate for the acquisition of the SNCFI's Railway Equipment; (ii) proposed Concession Fee (for the first ten years of the concession period); and (iii) a "penalty", set as a function of the number of SNCFI employees not rehired by the concessionaire, and the amount of which shall reflect the sum of the severance compensation that the State will need to pay to said employees. The financial proposals shall be opened publicly. The proposal with the highest financial value shall be awarded 60 points. The other proposals shall receive a score arrived at by multiplying 60 by the ratio of the value of the proposal in question to the value of the highest financial proposal. A final score shall be awarded to each proposal; this score will be the sum of the technical score (on a 40-point scale) and the financial score (on a 60-point scale). The candidate submitting the proposal that obtains the highest final score shall be designated as the strategic shareholder of the concessionaire.

B3. Personnel issues

18. In implementing the concession, particular attention shall be paid to issues pertaining to SNCFI personnel, so as to avoid, in particular, any disturbance of the social and political climate during the interim period leading up to the concession and upon the start-up of the concession. The main personnel issues relate to the following: (i) implementation of the staff reduction program; (ii) promotion of shareholding by employees; and (iii) guarantees pertaining to the payment of retirement pensions to former employees subject to SNCFI personnel regulations. The arrangements to be made and the measures to be carried out have yet to be defined. The Ifrikyan government authorities and SNCFI management intend to work closely with the SNCFI workers' union on this definition. The following elements are therefore presented solely by way of general information.

19. **Staff reduction program.** SNCFI's current staff numbers (4,500 employees) will very likely prove to be far in excess of the needs of an enterprise subject to the strict profit imperatives that the concessionaire will implement. The concessionaire will therefore not be able, at the start of the concession, to take on all of SNCFI's existing personnel. The exact legal modalities of the staff reduction operation will need to be examined in the light of Labor Code provisions and similar recent experiences. The modalities of State funding of this program have yet to be determined. The State plans to ask the donor community to provide a portion of the required financing.

20. **Promotion of shareholding by employees.** As indicated above, a portion of the concessionaire's capital (i.e., at least 5 percent) shall be set aside for SNCFI employees (or possibly, in a more restrictive manner, for employees of the concessionaire). Shares may be held either directly by the parties concerned, or through the intermediary of one or more specialized investment companies. The exact procedures will need to be determined. The possibility of making a portion of severance compensation available in the form of shares will also be explored.

21. **Payment of retirement pensions of former employees subject to SNCFI personnel regulations.** Employees of the concessionaire will be subject to the general regime applicable to pensions managed by the National Retirement Fund (*Caisse Nationale des Retraites*, CNR), under the same conditions that apply to most current SNCFI employees. However, the pensions of some already-retired employees or ex-employees of SNCFI (e.g., those subject to so-called special personnel regulations) are regulated by a separate, and more favorable, pension policy, which is presently directly administered by the SNCFI. The concessionaire will naturally not be able to pay these pensions, as their particularly heavy financial impact would eliminate the concession's prospects for turning a profit. Adequate arrangements will need to be made to ensure the payment of these pensions.

C. TENTATIVE TIMETABLE FOR CONCESSIONING OF THE RAILWAY

22. The total duration of the process of railway concessioning is estimated at about 23 months, (starting with its initiation, scheduled for January 1, 1998), broken down as follows:

- Three months for the recruitment of the consultant to assist the Privatization Committee;
- Sixteen months for the actual process of choosing the strategic shareholder of the concessionaire; and
- four months to lay the groundwork for the concessionaire's actual takeover of operations.

The concessionaire's takeover of operations would thus be effective as of December 1, 1999.

23. **Recruitment of a consultant.** The consultant responsible for assisting the Privatization Committee shall be chosen through an RFP process, to take place no later than January 1, 1998. The consultant's draft terms of reference were discussed with the mission. Candidates shall be given a month to submit their proposals. Proposal evaluation, and contract negotiation and signature will require about two months. The total budget for consultants' services is estimated at US \$700,000.

24. **Selection of the strategic shareholder of the concessionaire.** The actual process of selecting the strategic shareholder of the concessionaire should take about sixteen months, broken down as follows :

- seven and one-half months for the phase devoted to searching and the prequalification of candidates;
- seven and one-half months for the intermediate "technical" phase of selection; and
- one month for the final financial phase of selection.

25. **Preparation of the transfer of operations to the concessionaire.** This period, lasting about four months, corresponds to the actual creation of the company holding the concession, the selection of staff to be re-hired by this company, its mobilization of the initial financing needed to start operations, and technical preparations for the operational transfer.

D. WORLD BANK SUPPORT FOR THE CONCESSIONING PROCESS

26. The services of the consultant charged with helping the Privatization Committee to implement the concession will be financed under the World Bank's *Projet d'Appui à la Privatisation des Entreprises Publiques* (PAPEP). The mission also took careful note of the Ifrikyan authorities' desire to have the Bank help finance the staff reduction program, and possibly the payment of pensions of former SNCFI employees subject to special personnel rules (see paragraphs 19 and 21 above). It was agreed that this issue would be discussed further at a later date.

27. The World Bank will monitor, as part of the supervision of PAPEP, execution of the concession process. In this connection, the following items shall be submitted to the World Bank for its non-objection.

- (a) the choice of the consultant to assist the Privatization Committee;
- (b) draft contract to be entered into by the Committee with the above-mentioned consultant;
- (c) prequalification criteria for potential candidates for the strategic shareholder of the concessionaire;
- (d) choice of candidates for the strategic shareholder made upon completion of the prequalification procedures;
- (e) draft Request for Technical Proposals (RFTP) for selection of the strategic shareholder;
- (f) choice of candidates retained upon completion of the intermediate technical selection;
- (g) draft Request for Financial proposals (RFFP), including the final draft of the concession Agreement.

Done at Nador, November 18, 1997

For the Privatization Committee of the
Republic of Ifrikyia

Si Hamza Berrabah,
Vice-Chairman

For the World Bank mission

Gérard Averseng

3

Concession Agreement for the Railway Operation

The Request for Financial Proposals (RFFP) for selection of the strategic shareholder of the concessionaire include, in an annex, the final draft of the Concession Agreement. The RFFP state the following:

Bidders must return a copy of the final draft Concession Agreement, with each page initialed by an authorized representative. The full name, title, and signature of this representative shall appear on the first page.

The bidder's initialing of the copy of the final draft Concession Agreement signifies that the concessionaire (i.e., the bidder), if declared the contract awardee, promises to sign said agreement as it stands and without modification, except for the completion of portions left blank and to prepare, with input from the State, the annexes mentioned in the Concession Agreement, within 30 calendar days following the creation of the concessionaire.

CONCESSION AGREEMENT FOR RAILWAY OPERATIONS

Between

- . the Republic of Ifrikyia, represented by the Minister of Transportation and the Minister of Finance, hereinafter referred to as “the State”,

And

- . the *Société d'exploitation des transports ferroviaires d'Ifrikyia*, a limited liability company with headquarters in Chella, represented by the Chairman of its Board of Directors, hereinafter referred to as "the concessionaire",

Jointly referred to hereinafter as “the Parties.”

It has been agreed as follows:

SUMMARY

DEFINITIONS

TITLE ONE. GENERAL INFORMATION

Article 1-1	Purpose of the Agreement
Article 1-2	Railway operations
Article 1-3	Commercial nature of railway operations
Article 1-4	Assignment of rights and obligations of the Concessionaire
Article 1-5	State guarantee
Article 1-6	Equity interest
Article 1-7	Standards, norms and methods of maintenance and operation of Railway Infrastructure and equipment
Article 1-8	Environnemental protection
Article 1-9	Insurance
Article 1-10	Cooperation with other railway enterprises and with foreign railway networks
Article 1-11	Personnel of the Concessionaire
Article 1-12	Re-hiring by the Concessionaire of some employees of the SNCFI
Article 1-13	Swearing-in of some employees of the Concessionaire
Article 1-14	Continued validity of some contracts concluded prior to the entry into force of the Concession Agreement
Article 1-15	Changes in legislation or regulations that pose a serious and lasting threat to the financial equilibrium of the Concessionaire

TITLE 2. THE RAILWAY NETWORK CONCESSIONED

Article 2-1	Composition of the Railway Network Concessioned
Article 2-2	Transfer and inventory of the Railway Network Concessioned
Article 2-3	Managerial powers of the Railway Network Concessioned
Article 2-4	Occupancy permits and leases
Article 2-5	Property no longer assigned to railway service
Article 2-6	Recovery by the State of property belonging to the Railway Network Concessioned
Article 2-7	Acquisition of lands by means of expropriation in the public interest
Article 2-8	Installation of conduits on public lands belonging to the Railway Network Concessioned
Article 2-9	Public crossings
Article 2-10	Private crossings
Article 2-11	Protection of persons, property, capital works and installations

TITLE 3. MANAGEMENT OF RAILWAY INFRASTRUCTURE

Article 3-1	Delegation of contracting authority to the Concessionaire
Article 3-2	Integration of works into the Railway Network Concessioned
Article 3-3	Private rail branch lines
Article 3-4	Telecommunications systems
Article 3-5	State approval of operations to renew and remodel Railway Infrastructure
Article 3-6	Non-State-approved operations to renew and remodel Railway Infrastructure
Article 3-7	Current rehabilitation or development works

TITLE 4. COMMERCIAL RAIL SERVICES OPERATED BY THE CONCESSIONAIRE

Article 4-1	Commercial Rail Services
Article 4-2	Door-to-door and multimodal transport services
Article 4-3	Configuration and organization of commercial freight services
Article 4-4	Individual freight transport contracts
Article 4-5	Auxiliary transport activities
Article 4-6	Configuration and organization of regular commercial passenger transport
Article 4-7	Individual passenger transport contracts
Article 4-8	Pricing of Commercial Rail Services: general principles
Article 4-9	Price-setting methods
Article 4-10	Prices of intermodal and international transport

TITLE 5. PUBLIC SERVICE OBLIGATIONS OF THE CONCESSIONNAIRE

Article 5-1	Rail services operated as a public service obligation
Article 5-2	Reduced fares imposed on the Concessionaire
Article 5-3	Financial compensation for public service obligations
Article 5-4	Requisition of the Concessionaire's resources

TITLE 6. UTILIZATION, BY OTHER RAIL OPERATORS, OF THE INFRASTRUCTURE OF THE RAILWAY NETWORK CONCESSIONED

Article 6-1	Operating licenses for rail transport on the Railway Network Concessioned
Article 6-2	Case of serious dereliction of duty on the part of the Concessionaire vis-à-vis a client or group of clients
Article 6-3	Legal proceedings related to serious dereliction of duty on the part of the Concessionaire vis-à-vis a client or group of clients
Article 6-4	Usage Agreements for rail infrastructure – General observations
Article 6-5	Negotiation of Rail Infrastructure Usage Agreements with holders of licenses (a) and (b)
Article 6-6	Negotiation of Rail Infrastructure Usage Agreements with holders of licenses (c), (d) and (e)

TITLE 7. RAILWAY EQUIPMENT

Article 7-1	Railway Equipment used by the Concessionaire
Article 7-2	Railway transport equipment utilized for services operated as a mandatory public service
Article 7-3	Wagons owned by private parties
Article 7-4	Railway Equipment used by other Rail Transport Operators
Article 7-5	State's right of first refusal upon the sale, by the Concessionaire, of Railway Equipment
Article 7-6	Acquisition by the Concessionaire of SNCFI's Railway Equipment at the start of the concession

TITLE 8. CONCESSION FEE

Article 8-1	Concession Fee – General observations
Article 8-2	Amount of the Concession Fee
Article 8-3	Payment of the Concession Fee

TITLE 9. ACCOUNTING AND TAX PROVISIONS

Article 9-1	Accounts of the Concessionaire
Article 9-2	Tax provisions
Article 9-3	Land tax contributions
Article 9-4	Purchase of fuel under an exemption from the contribution to the road fund

TITLE 10. EFFECTIVENESS, DURATION AND END OF THE CONCESSION

Article 10-1	Entry into force
Article 10-2	Duration of the concession
Article 10-3	Early cancellation
Article 10-4	Dismissal for breach of obligation
Article 10-5	Dismissal by reason of dissolution or liquidation
Article 10-6	Termination by reason of <i>force majeure</i>
Article 10-7	Disposal of property, contracts, obligations, debts and responsibilities of the Concessionaire upon expiration of the Agreement
Article 10-8	Lenders' right of substitution

TITLE 11. DISPUTES AND LITIGATION

Article 11-1	Procedure for resolution of disputes and litigation
Article 11-2	Applicable law

TITLE 12. MONITORING OF EXECUTION OF THE CONCESSION

Article 12-1	Concession Monitoring Committee
Article 12-2	Documents to be submitted by the Concessionaire
Article 12-3	Audit of the concession
Article 12-4	Penalties in the event of dereliction of duty or misdeed on the part of the Concessionaire
Article 12-5	Service provision and technical assistance contracts
Article 12-6	Management fee

ANNEXES

Annex A	Nomenclature and functioning of balance sheet accounts specific to the concession
Annex B	Fixed amount F(n) of the Concession Fee
Annex C	List of contracts for which the Concessionaire takes the place of the SNCFI
Annex D	Ongoing rehabilitation and development works
Annex E	Standard format for monthly statistical activity report

DEFINITIONS

"Commercial Rail Services": Commercial rail freight and passenger services operated by the Concessionaire, which the Concessionaire considers able to generate adequate profits in view of the performance objectives that it has set for itself. (See Article 4-1).

"Concessionaire": the *Société d'exploitation des transports ferroviaires d'Ifrikyia*, signatory of the Concession Agreement.

"Concession Agreement": the Concession Agreement contained herein, including its definitions, annexes, and amendments.

"Concession Fee": fee, defined in Article 8-1, payable by the Concessionaire to the State.

"General Safety Regulation (GSR) on Railway Operations": all regulatory texts establishing the rules for circulation of trains to be applied by the Concessionaire in order to ensure the safety of rail traffic. (See Article 1-6).

"Property to be Returned": Railway Infrastructure constituting the Railway Network Concessioned, made available to the Concessionaire upon entry into force of the Concession Agreement or built subsequently under State financing.

"Property to be Taken Back": Railway Infrastructure constituting the Railway Network Concessioned, constructed subsequent to the effectiveness of the Concession Agreement, under financing of the Concessionaire.

"Rail Service Operated as a Public Service": a rail service operated by the Concessionaire at the express request of the State or of local authorities. (See Article 5-1).

"Rail Transport Operator": an enterprise, other than the Concessionaire, that holds a Rail Transport Operator's license.

"Railway Equipment": a piece of apparatus designed to roll on the track, such as a self-propelled hauling device (locomotive), wagons, coaches, self-propelled passenger transport conveyances, track maintenance apparatus, and rescue apparatus.

"Railway Infrastructure": any real asset that is a part the Railway Network Concessioned, as described in Article 2-1.

"Railway Infrastructure Usage Agreement": an agreement entered into by the Concessionaire and a Rail Transport Operator and pertaining to the utilization, by the Rail Transport Operator, of certain infrastructure belonging to the railway network.

"Railway Network Concessioned": all rail infrastructure made available to the Concessionaire. The composition of the Railway Network Concessioned is defined in Article 2-1.

"Railway Operations:" Railway operations shall be taken to mean, in accordance with the provisions of Article 1-2 :

- . the technical and commercial operation of freight and passenger transport services on the Railway Network Concessioned;
- . the operation, maintenance, renewal and remodeling of Railway Infrastructure belonging to the Railway Network Concessioned; and
- . the management of real estate of the Railway Network Concessioned.

"The State": the Republic of Ifrikya.

"Users' License for Rail Transport": a license issued by the State to a Rail Transport Operator, who is thereby allowed to operate rail services on all or part of the Railway Network Concessioned (see Article 6-1).

TITLE ONE – GENERAL INFORMATION

Article 1-1. Purpose of the Concession Agreement

The State places under concession, with the *Société d'exploitation des transports ferroviaires d'Ifrikya* and under terms and conditions defined by the present Agreement (the "Concession Agreement"), railway operations on the national railway network (the "Railway Network Concessioned") as of the date of signing of the Concession Agreement.

Article 1-2. Railway operations

Railway Operations, in the context of this Concession Agreement, shall be understood to mean:

- . the technical and commercial operation of freight and passenger rail transport services on the Railway Network Concessioned;
- . the operation, maintenance, renewal and remodeling of Railway Infrastructure belonging to the Railway Network Concessioned; and, finally,
- . the management of real estate of the Railway Network Concessioned.

Article 1-3. Commercial nature of Railway Operations

Railway Operations are considered to be a commercial activity, and as such are subject to the provisions of the Concession Agreement and Commercial Code.

The Concessionaire shall pursue its operations on a commercial basis, in active competition with other modes of transport and transportation enterprises.

Railway Operations shall be carried out at the expense and risk of the Concessionaire. The Concessionaire may in no event lay claim to any indemnification from the State in the event that economic conditions encountered are different from those upon which it based its operational forecast.

Article 1-4. Assignment of rights and obligations of the Concessionaire

The Concessionaire may not assign to any third party its rights and obligations under the terms of the Concession Agreement.

However, the Concessionaire is authorized to delegate, to other Rail Transport Operators holding a rail transport license, the technical and commercial operation of certain freight or passenger transport services. The rights and obligations of the Concessionaire as defined in the

Concession Agreement then become applicable, by operation of law, to the licensee with regard to the operation of the services in question.

Moreover, the Concessionaire is entitled to use the services of subcontractors for the execution of services of any nature associated with Railway Operations, and may enter into any contract of association, with third parties, for the execution of said services.

Article 1-5. State guarantee

The State guarantees the Concessionaire that it may, as soon as the Concession Agreement enters into force, take any measure in order to conduct Railway Operations, free from any commitment, obligation, or responsibility of the State or of the *Société nationale des chemins de fer d'Ifrikya* resulting from Railway Operations occurring prior to the entry into force of the Concession Agreement. The State guarantees that the Concessionaire shall not be held liable for any third-party action arising from events that predate the entry into force of the Concession Agreement.

Article 1-6. Equity interest

In furtherance of its objectives, the Concessionaire may hold or create subsidiaries or take out equity interest in entities or companies, whether based in the Republic of Ifrikya or abroad, the goals of which are related or complementary to its operations.

Article 1-7. Standards, norms and methods of maintenance and operation of Railway Infrastructure and Railway Equipment

The State exercises technical oversight of the Concessionaire's activities under legal terms and conditions applicable to transport sector enterprises.

In order to ensure the safety of persons and goods transported, Railway Infrastructure and Railway Equipment shall be maintained in good condition and shall be operated in accordance with standards, norms and methods of maintenance and operation determined by the Concessionaire on the basis of common practice in the railway industry and the recommendations of the International Union of Railways.

In the event that the arrangements made by the Concessionaire prove to be completely incompatible with the requirements of the preceding paragraph, the State may, after having heard from the Concessionaire, order the adoption of the measures necessary. If the Concessionaire fails to comply and fifteen days elapse without a response to formal notification, the State may, on its own initiative, have the necessary work done, at the expense and risk of the Concessionaire.

Specific provisions intended to ensure the safety of rail transport and the protection of the environment may, in case of necessity, be made by State Decree, after hearing from the Concessionaire.

The General Regulation on the Safety (GRS) of Railway Operations is adopted and modified by Decree issued by the Minister of Transportation, either at the initiative of the Concessionaire, or at the initiative of the Minister of Transport, after hearing from the Concessionaire. The GRS applicable upon entry into force of the Concession Agreement is that applicable to the railway network of the *Société nationale des chemins de fer d'Ifrikya* (SNCFI) on the day preceding the entry into force of the Concession Agreement.

Article 1-8. Environmental protection

The Concessionaire must adhere to legislative and regulatory provisions pertaining to environmental protection. At its own expense, it shall take the necessary measures to repair or restore sites and soil whenever capital works or equipment that it operates do damage to the environment or are carried out in violation of environmental regulations. In the event of destruction or permanent depreciation of a capital work belonging to the Railway Network Concessioned, the Concessionaire shall take the necessary measures to repair any damage done to the site by the work in question.

Subject to the provisions of the third paragraph of this Article, the Concessionaire is not responsible, however, for restoring or rebuilding the sites and soil of the Railway Network Concessioned if the environmental damage done by Railway Operations predates the entry into force of the Concession Agreement. The State and the Concessionaire shall prepare jointly, within six months of the entry into force of the Concession Agreement, an environmental action plan for the restoration and reconstruction of sites and soil of the Railway Network Concessioned that were contaminated prior to the entry into force of the Concession Agreement. The Concessionaire is responsible for implementation of the environmental action plan, which shall take place over a period not to exceed five years following its preparation. The State shall bear all costs associated with implementing the environmental action plan.

In the event of failure on the part of the Concessionaire to adhere to the procedures set forth in the environmental action plan, and if a period of three months elapses without response from the Concessionaire to the official notification from the State to the Concessionaire, then the State is no longer subject to the provisions of the preceding paragraph and can compel the Concessionaire to comply, at its sole expense, with any legislative or regulatory provision relative to the environment, even including those that would oblige the Concessionaire to restore or rebuild sites and soil belonging to the Railway Network Concessioned that were contaminated prior to the entry into force of the Concession Agreement.

Article 1-9. Insurance

The Concessionaire promises to take out the insurance policies required to cover, subject to reasonable deductibles, risks associated with Railway Operations on the Railway Network Concessioned. To this end, the Concessionaire is bound to take out one or more insurance policies covering civil liability vis-à-vis clients or third parties, as well as the risk of fire or destruction of property belonging to the Railway Network Concessioned. The Concessionaire pledges to provide the State, upon request, with a copy of the insurance policies so that the State may verify their soundness, the scope of risk covered and the procedures for indemnification.

Article 1-10. Cooperation with other railway enterprises and with foreign railway networks

The Concessionaire shall cultivate a policy of active cooperation with other rail enterprises operating within the national borders and with foreign networks, with a view to promoting national and international rail transport.

To that end and, depending on the case, subject to legal provisions pertaining to competition and international treaties, the Concessionaire shall, with other railway enterprises and foreign railway networks, sign any cooperation agreement and create any joint entity that can help promote and implement national and international rail traffic.

Article 1-11. Personnel of the Concessionaire

The Concessionaire's employees are subject to Labor Code provisions applicable to salaried employees of the private sector. They are covered by the policy on pensions, social security and medical coverage for salaried employees of the private sector.

The Concessionaire shall define and modify its personnel policy in accordance with procedures set forth in the Labor Code.

Article 1-12. Re-hiring by the Concessionaire of some employees of the SNCFI

The Concessionaire shall re-hire, as of the date of entry into force of the Concession Agreement, employees of the *Société nationale des chemins de fer d'Ifrikyà* (SNCFI) as per a list which it shall forward to the State within 15 days of entry into force of this Agreement, at the latest. The total number of these employees shall not be less than two thousand (2,000).

The State shall assume responsibility for, and bear the cost of, resolving the status of personnel rehired by the Concessionaire as of the date of their re-hiring, in particular the payment of salaries, social security, and pension contributions, as well as the payment of the pensions of employees who were, prior to their rehiring, covered by a pension policy other than the one applicable to private sector employees.

The Concessionaire has no responsibility whatsoever vis-à-vis employees of the *Société nationale des chemins de fer d'Ifrikya* (SNCFI) whom it does not re-hire as of the date of entry into force of this Concession Agreement.

Article 1-13. Swearing-in of some employees of the Concessionaire

Employees of the Concessionaire who are appointed to tasks of fee collection, verification of passenger tickets, and railway surveillance may be sworn in.

Article 1-14. Continued validity of some contracts concluded prior to the entry into force of the Concession Agreement

As an exception to the provisions of Article 1-5, the Concessionaire, by sole virtue of the concession granted to it, takes the place of the *Société nationale des chemins de fer d'Ifrikya*, formerly responsible for Railway Operations, in exercising the latter's rights and responsibilities with regard to third party beneficiaries of those contracts signed prior to the date of entry into force of the Concession Agreement as listed in Annex C.

Any obligation contracted by the *Société nationale des chemins de fer d'Ifrikya* prior to the date of entry into force of the Concession Agreement, and that does not derive expressly from contracts listed in Annex C, is not binding with respect to the Concessionaire.

The Concessionaire does not assume any debts, claims, or liabilities of the *Société nationale des chemins de fer d'Ifrikya*, or in connection with any of the contracts listed in Annex C, which may have been generated by events occurring prior to the date of effectiveness of the Concession Agreement.

Article 1-15. Changes in legislation or regulations that pose a serious and lasting threat to the financial equilibrium of the Concessionaire

In the event that legislation or regulations, particularly tax laws, labor laws, or laws pertaining to environmental safety and protection, were to alter the circumstances of Railway Operations in such a way as to pose a serious and lasting threat to the financial equilibrium of the Concessionaire, the parties agree to re-examine, at the Concessionaire's request, the provisions of the Concession Agreement. In the event of agreement, the parties shall sign an amendment to the Concession Agreement. If, within six months of the Concessionaire's request, no agreement has been reached, an arbitration procedure as defined in Article 11-1 shall be initiated.

TITLE 2 – THE RAILWAY NETWORK CONCESSIONED

Article 2-1. Composition of the Railway Network Concessioned

The Railway Network Concessioned consists, at the time of the signing of the Concession Agreement, of all rail infrastructure established for the operation of freight and passenger rail transport services on the national railway network operated as of this same date. Any modifications to the general configuration of the Railway Network Concessioned (e.g., integration of new lines, elimination of lines, etc.) shall occur by means of amendments to the present Agreement.

The Railway Network Concessioned is public property.

Railway Infrastructure belonging to the Railway Network Concessioned consist of the following elements:

- lands occupied by railway infrastructure;
- track infrastructure, including: main frame and sub-grade, particularly embankments, ditches, drains, gutters, trenches, aqueducts, slope-protection plantings, passenger and freight platforms, shoulders and tracks, enclosing walls, hedges, fences;
- civil engineering structures, including : rail overpasses, viaducts, culverts and other track infrastructure for obstacle avoidance, road overpasses, foot-bridges, underpasses and other track-crossing infrastructure accommodating vehicular or pedestrian traffic, tunnels, retaining walls and works providing protection against falling rocks;
- road and pedestrian crossings, including facilities intended to ensure the safety of vehicular and pedestrian traffic;
- superstructure of the track, particularly rails and inner rails, rails and girders, ties, ballast, including gravel and sand, track apparatus;
- roadways leading to passenger- and freight-handling plazas, including road access;
- track and station security and signaling facilities and fixed telecommunications installations, including installations for the production, transformation and distribution of electricity for signaling and telecommunications functions;
- installations for the transformation, transport, and distribution of electric current for train propulsion: sub-stations, feeder lines between sub-stations and contact wires, overhead electrical lines and their supports;
- buildings at passenger stations, stops and terminals, buildings at freight stations and terminals;
- public lighting installations around stations and passenger- and freight-handling plazas;

- buildings used specifically in the service of infrastructure;
- workshops and fixed installations for the maintenance of rail equipment.

Movable goods, even if associated with the aforementioned real assets, are not part of the Railway Infrastructure.

Article 2-2. Transfer and inventory of the Railway Network Concessioned

The Railway Network Concessioned is made available to the Concessionaire by the State under the legal regime applicable to property concessioned.

Rail infrastructure of the Railway Network Concessioned handed over to the Concessionaire upon entry into force of the Concession Agreement and those built subsequently with State financing constitute the concession's Property to be Returned. Rail infrastructure of the Railway Network Concessioned that were built subsequent to the entry into force of the Concession Agreement under financing of the Concessionaire constitute the concession's Property to be Taken Back.

The Concessionaire has an obligation, at the end of the concession, to hand back to the State the Railway Network Concessioned in a condition conforming to the operational use for which it is intended.

The Concessionaire shall maintain, in a format prescribed by the State, a permanent updated inventory of the Railway Network Concessioned. This inventory may be consulted and verified at any time by the State. An initial inventory shall be established, at the Concessionaire's expense, and exchanged between the State and the Concessionaire, within six months of the entry into force of the present Concession Agreement.

Article 2-3. Managerial powers of the Railway Network Concessioned

The Concessionaire shall manage the Railway Network Concessioned.

For this purpose, and subject to the legislative and regulatory provisions applicable to the works declared to be in the general interest and of public utility, the Concessionaire shall exercise all managerial powers over real estate belonging to the Railway Network Concessioned. It assumes, subject to the following provisions relative to the transfer of property, all rights and obligations of the owner. It acts in lieu of the State and represents the State in legal proceedings.

The Concessionaire is not authorized, however, to proceed with the transfer of property of the Railway Network Concessioned. This provision does not apply to materials and components coming from operations related to the maintenance, renewal, and remodeling of rail infrastructure, which the Concessionaire may sell at a profit, as indicated in Article 3-3 below.

Article 2-4. Occupancy permits and leases

The Concessionaire may, for any real estate of the Railway Network Concessioned, grant occupancy permits, issue leases, and set and collect fees, rents and miscellaneous revenues for its own profit.

However, the occupancy permits and leases issued by the Concessionaire are subject to the counter-signature of the State in instances where their duration exceeds the duration of the period remaining under the concession.

Article 2-5. Property no longer assigned to railway service

Lands and other real estate belonging to the Railway Network Concessioned that are no longer assigned to rail services or to ancillary services of rail service and to related activities and/or that do not present reasonable prospects of future use related to said services and activities, shall be handed back, without delay and without indemnity, to the State. The handing back shall occur either at the initiative of the Concessionaire or at the express request of the State, after hearing from the Concessionaire.

Article 2-6. Recovery by the State of property belonging to the Railway Network Concessioned

Real estate belonging to the Railway Network Concessioned and used by the Concessionaire in the pursuit of his activity cannot be repossessed by the State or transferred to territorial authorities except for reasons of public utility, and in exchange either for the prior reconstitution by the State of the repossessed property, or for the payment to the Concessionaire of an indemnity equal to the replacement value of the repossessed property. This indemnity shall be evaluated and paid in such a way as to permit the Concessionaire to proceed with the reconstitution of the repossessed property prior to the date of actual repossession.

Article 2-7. Acquisition of lands by means of expropriation in the public interest

The Concessionaire is vested, for the acquisition of lands needed to carry out operations to remodel rail infrastructure, with the rights that legislation and regulations confer upon the Administration for the acquisition of lands by means of expropriation in the public interest. The lands shall be acquired by the Concessionaire on behalf of the State and shall become public property. The acquisition shall be financed by the Concessionaire, unless the State has agreed to ensure said financing in part or in whole.

Article 2-8. Installation of lines and conduits on public lands belonging to the Railway Network Concessioned

The installation by third parties, on lands belonging to the Railway Network Concessioned, of lines and conduits for public or private use, particularly including

telecommunications arteries, facilities for the transport and distribution of electric power, gas, hydrocarbons, potable water and wastewater, shall be regulated by a contract entered into by the Concessionaire and the manager or Concessionaire of the service in question.

The contract is subject to the counter-signature of the State in the event that its duration exceeds the time period remaining under the concession.

Article 2-9. Public crossings

Crossings at the intersections of rail lines of the Railway Network Concessioned and public roadways are authorized by Decree of the Minister of Roads, after hearing from the Concessionaire.

The Decree shall specify the equipment to be installed and the conditions under which any surveillance of the crossing is to be done by the Concessionaire.

Road and rail works to create the crossing shall be performed and financed by the State.

The Concessionaire shall be responsible for the maintenance of rail installations and signals at the crossing and for preparing visible lozenges. The State (or the entity designated by it in the Decree referred to in the first paragraph of the present Article) shall be responsible for setting up and maintaining road signaling devices.

Charges incurred by the Concessionaire in connection with maintenance and operation of the crossings referred to in the present Article shall be partially (i.e., 50 percent) covered by a contribution of the State paid to the Concessionaire. The amount of the contribution shall be the object of an evaluation submitted annually by the Concessionaire on a date set by the State. The payment of the contribution shall occur in quarterly installments equal to one fourth of the evaluation, and valued as of the first day of the civil quarter.

Article 2-10. Private crossings

The installation of crossings at the intersections of rail lines belonging to the Railway Network Concessioned and of private vehicular or pedestrian thoroughfares may be authorized by the Concessionaire.

The procedures for the creation, maintenance, and management of these crossings are fixed by special Agreements between the Concessionaire and the beneficiaries. The Special Agreement shall be subject to counter-signature by the State in the event that its duration exceeds the time period remaining under the concession.

Article 2-11. Protection of persons, property, capital works and installations

Policing measures and arrangements needed to ensure the protection of persons, property, capital works and installations within the limits of the Railway Network Concessioned shall be determined by the Minister of Security, after hearing from the Concessionaire.

Policing tasks shall be handled by the State and carried out at its expense.

Guard duties shall be performed by the Concessionaire and at its expense.

Officers of the police, army and customs services who are responsible, in accordance with the provisions of this Article, for maintaining order on trains and for surveillance of the railway, shall be transported free of charge on the trains when they are on duty. This obligation does not entitle the Concessionaire to any financial compensation.

TITLE 3 – MANAGEMENT OF RAILWAY INFRASTRUCTURE

Article 3-1. Delegation of contracting authority to the Concessionaire

The State shall delegate to the Concessionaire contracting authority for all works and operations to be conducted on the Railway Network Concessioned. The Concessionaire shall organize the use and ensure the operations of rail infrastructure; it shall determine programs of maintenance, renewal, and remodeling of rail infrastructure and shall carry out works or arrange for them to be carried out.

Rules for procurement of works and supplies shall be freely determined by the Concessionaire.

The Concessionaire shall bear, directly and in their entirety, charges relative to the operation, maintenance, renewal and remodeling of rail infrastructure, subject, on the one hand, to the State's financing of investments for the remodeling or development of infrastructure associated with public service operations, as may be set forth in the agreements concluded between the State and the Concessionaire under the provisions of Article 5-1 below, and, on the other hand, the provisions contained in Article 2-7 concerning the acquisition of lands.

The State, may, if it deems it appropriate, provide its guarantee to loans underwritten by the Concessionaire for the financing of renewal and remodeling works.

Borrowings underwritten by the Concessionaire for the financing of renewal and remodeling works are subject to the State's countersignature when their duration exceeds the period remaining under the concession.

Article 3-2. Integration of works into the Railway Network Concessioned

All works for the maintenance, renewal and remodeling of Railway Infrastructure carried out by the Concessionaire shall become part of the Railway Network Concessioned as of the date of works reception.

However, the Concessionaire is authorized to sell, for its own profit, any residual and used materials and components and any material resulting from dumping and demolition associated with maintenance and operations of replacement and development of rail infrastructure.

Article 3-3. Private rail branch lines

The Concessionaire may establish or promote the establishment of private rail branch lines and specialized installations for rail transport within the confines of industrial, commercial, and port enterprises.

The logistics of construction, financing, and operation of private branch lines and lines from which branches originate are set by specific contracts negotiated freely between the Concessionaire and the owners or users of the branch lines. These contracts are, however, subject to the countersignature of the State in the event that their duration exceeds the period remaining under the concession.

Article 3-4. Telecommunications systems

The Concessionaire may operate itself all telecommunications systems used in Railway Operations.

The Concessionaire may negotiate, with Rail Transport Operators with which it enters into Infrastructure Usage Agreements under conditions set forth in Title 6, contracts pertaining to the use of the telecommunications systems referred to in the preceding paragraph by said operators for the needs of their Railway Operations.

The Concessionaire may, subject to legislative and regulatory provisions pertaining to telecommunications, enter into a partnership with telecommunications operators for the creation and operation of all telecommunications systems located within the property occupied by the Railway Network Concessioned.

Article 3-5. State approval of operations to renew and remodel Railway Infrastructure

Planned Railway Infrastructure renewal and remodeling operations shall be submitted by the Concessionaire to the State for approval.

For each operation envisaged, the Concessionaire shall prepare a technical description and tentative implementation timetable, quantify the estimated amount of the investment and explain its technical and financial justification; the Concessionaire shall indicate the tentative depreciation schedule of the investment and the procedures envisaged for its financing.

The State's approval is granted by joint decision of the Minister of Transportation and the Minister of Finance, upon the recommendation of the Monitoring Committee referred to in Article 12-1, within three months of the Concessionaire's request.

At the end of the concession, and whatever the circumstances may be, the State owes the Concessionaire an indemnity equal to the non-depreciated portion, as per the Concessionaire's

balance statement, of the investment corresponding to operations that were the object of approval under the conditions set forth in this Article.

Article 3-6. Non-State-approved operations to replace and develop Railway Infrastructure

Infrastructure renewal and remodeling operations proposed by the Concessionaire and for which the State has refused its approval referred to in Article 3-6 above, may, however, be carried out by the Concessionaire, absent any formal objection on the part of the State.

The objection must be duly founded and may only be based on the fact that the operation could compromise railway safety or violate environmental protection rules or urban planning and/or land occupation regulations.

The non-depreciated portion of investments corresponding to operations referred to in the present Article does not entitle the Concessionaire to indemnification by the State at the end of the concession.

Borrowings underwritten by the Concessionaire to finance operations referred to in the present Article may not benefit from a State guarantee.

Article 3-7. Current rehabilitation or development works

Property that is undergoing rehabilitation or development work when the Concession Agreement enters into force shall be made available to the Concessionaire as is and shall be completed by the Concessionaire at the State's expense. The State shall delegate to the Concessionaire for this purpose its contracting authority role and, if necessary, works supervisor, as well as the required financial resources. A specific inventory of works underway is found in Annex D.

TITLE 4 – COMMERCIAL RAIL SERVICES OPERATED BY THE CONCESSIONNAIRE

Article 4-1. Commercial Rail Services

The so-called Commercial Rail Services operated by the Concessionaire are those rail transport services that the Concessionaire considers able to produce adequate returns given the financial performance objectives it has set for itself. The nature, configuration, technical and commercial organization and rate-setting of Commercial Rail Services shall be freely determined by the Concessionaire.

Article 4-2. Door-to-door and multimodal transport services

The Concessionaire is authorized to operate, or to have operated, road transport up to and in continuation of the Commercial Rail Services for freight and passengers.

The Concessionaire may also enter into any agreement with any operator aimed at the implementation of “door-to-door” commercial freight or passenger transport services or the implementation of multiple modes of transport.

Commercial Rail Freight Transport Services

Article 4-3. Configuration and organization of commercial freight services

The Concessionaire shall be free to define, on the basis of their commercial viability and profitability, the nature, configuration and technical and commercial organization of Commercial Rail Services for freight transport.

Article 4-4. Individual freight transport contracts

The Concessionaire may enter into individual contracts with one or more freight shippers or receivers, stipulating terms and prices for the transport of this merchandise that are different from those that would result from publicized rates and that are tailored to the specific nature of the transport to be carried out.

The terms of the contracts shall not be made public.

Article 4-5. Auxiliary transport activities

The Concessionaire may exercise the function of an auxiliary and particularly those of a forwarding agent, and may perform, either himself or through an intermediary to which he is

answerable, services that complement freight transport, such as pick-up, delivery, warehousing, loading, unloading, processing and any operation ancillary to the primary function of transport.

Commercial Passenger Rail Transport Services

Article 4-6. Configuration and organization of regular commercial passenger transport services

The Concessionaire shall define freely, on the basis of their commercial viability and profitability, the nature, configuration and technical and commercial organization of regular commercial rail transport services for passengers, particularly with regard to the types of services offered (e.g., classes of train cars, baggage transport, provision of sleeper cars, etc.), the frequency of service, the stops, schedules, composition of trains and the specific conditions of access to the trains.

Relevant information on the configuration of said services shall be made available to the public. Terms and conditions governing the use of tickets must be specified upon the purchase of these tickets.

Any change in the configuration of the services shall be brought to the attention of the public by the Concessionaire at least fifteen days before it goes into effect. The Concessionaire shall not, except in the event of *force majeure*, make any unexpected changes to the configuration of said services.

Article 4-7. Individual passenger transport contracts

In connection with commercial passenger transport services, the Concessionaire may enter into individual contracts with third parties, the conditions of which shall be determined on a negotiated basis. These contracts may stipulate that the service is to be provided by special coaches or trains and that services in addition to the transport shall be provided.

The terms of individual contracts shall not be made public.

Pricing of Commercial Rail Services

Article 4-8. Pricing of Commercial Rail Services - General principles

Services provided by the Concessionaire in connection with Commercial Rail Services give rise to an obligation on the part of the clientele to pay a fare.

The fare collected for a given service cannot, except in the case of a one-time promotional operation of strictly limited duration, which may not, under any circumstances exceed one year, be less than the avoidable expenses attributable to the service provided.

Article 4-9. Price-setting methods

The prices of services provided under the heading of Commercial Rail Services are set, in the general context of the provisions of Article 4-8 above, either in application of publicized tariffs, or in application of individual contracts entered into by the Concessionaire and its clients.

Publicized tariffs shall be set and revised freely by the Concessionaire. Tariffs may include so-called commercial discounts intended to promote traffic, improve the conditions under which the equipment is used and, in general, increase the profitability of the services. The publicized tariffs shall be made known to the public by the Concessionaire at least fifteen days before the date on which they go into effect.

Prices set in connection with individual contracts are freely determined by the Concessionaire after negotiation with the clients. Prices set in connection with individual contracts shall not be made public.

Article 4-10. Prices of intermodal and international transport

The Concessionaire may, in the context of multimodal or international commercial freight or passenger service in which it participates, apply multimodal or international transport prices.

These prices shall be established under the same conditions as those specified in Articles 4-8 and 4-9 above.

TITLE 5 – PUBLIC SERVICE OBLIGATIONS OF THE CONCESSIONNAIRE

Article 5-1. Rail services operated as a public service obligation

At the express request of the State or of public territorial authorities, the Concessionaire shall operate, as a mandatory public service, freight transport services as well as passenger service, whether regular or not, aside from the commercial services mentioned in Title 4 above.

These services shall be operated in the framework of agreements entered into between the Concessionaire, the State and the authority (or authorities) concerned.

The agreements shall specify, in particular, the configuration of the service offered (especially with regard to regular passenger services: i.e., frequency of service, approximate schedules, coach classes and numbers of seats available, stops, terms of travelers' access to the service, conditions under which baggage may be transported), the fare to be collected from users by the Concessionaire for the services supplied, as well as the specific modalities of the possible acquisition, financing and operation of the installations and equipment to be deployed to this end.

The agreements shall provide for the payment, by the State to the Concessionaire, of a contribution for the mandatory public service and shall specify the methods of its calculation and payment. The amount of the contribution shall be determined in such a way that the sum of receipts collected by the Concessionaire from users of the service and of the amount of the contribution covers all charges that would be attributable to the service concerned in a context of efficient management of the activity by the Concessionaire and makes a reasonable contribution to the coverage of the structural expenses of rail operation.

The Concessionaire shall cease to operate the service in the case of non-payment of the contribution for mandatory public service as provided for under the corresponding agreement.

Article 5-2. Reduced fares imposed on the Concessionaire

The Minister of Transportation may require the Concessionaire to apply, temporarily or permanently, on certain Commercial Rail Services and/or for the benefit of certain clients of said services, fares that are below publicized tariffs set by the Concessionaire. This obligation is deemed a public service obligation and entitles the Concessionaire to financial compensation to be paid by the State, under conditions set forth in Article 5-3 below.

Article 5-3. Financial compensation for public service obligations

Any obligations imposed by the State, whether regarding the operation of mandatory public services pursuant to Article 5-1, or regarding fares for Commercial Rail Services pursuant

to Article 5-2, or, in general, any decision by the State in the specific area of railway activity not provided for under the present Concession Agreement and entailing a reduction of the Concessionaire's profits, shall entitle the Concessionaire to financial compensation from the State, which shall be referred to as the contribution for public service obligations.

Subject to the specific provisions set forth in the agreements referred to in Article 5-1, the amount of the contribution offsets the impact on the Concessionaire's operating revenues. Said amount shall be determined by common agreement between the Minister of Transportation and the Concessionaire, before the obligation takes effect. Payment of the contribution shall be made in quarterly installments valued as of the first day of the calendar quarter.

In any case, failure by the State to pay the contribution shall entail, with no need for any other formality, the cancellation of the obligation imposed on the Concessionaire.

Article 5-4. Requisition of the Concessionaire's resources

When public safety, domestic security or external State security are seriously imperiled, and troops, equipment, food rations and rescue equipment must be transported urgently to a location within the country that is served by the railway, the Concessionaire shall, without delay, make available all his assets to the State, upon a requisition made under the regulatory conditions.

The State explicitly reserves the right, under such circumstances, to take all measures it may deem appropriate, including the direct takeover of the management of Railway Operations, for a period that will be determined by Decree.

Expenses borne by the Concessionaire in application of the provisions of the present Article entitle the Concessionaire to compensation, the amount of which shall be set by the State based on a proposal from the Concessionaire.

TITLE 6 – UTILIZATION, BY OTHER OPERATORS, OF THE INFRASTRUCTURE OF THE RAILWAY NETWORK CONCESSIONED

Operating licenses for rail transport operations on the Railway Network Concessioned

Article 6-1. Operating licenses for rail transport on the Railway Network Concessioned

The State shall issue, to Rail Transport Operators, operating licenses for rail transport on the Railway Network Concessioned only in the following cases:

- (a) when the Concessionaire plans to delegate to the Rail Transport Operator the technical and commercial operation of certain freight and passenger transport services in the context of the provisions set forth in Article 1-4 above;
- (b) when the Concessionaire, without delegating to the Rail Transport Operator the technical and commercial operation of certain freight and passenger transport services, informs the State that it has no objection to the operation of the envisaged transport services by said operator;
- (c) when the Rail Transport Operator operates a rail transport service as a public service obligation, and has been selected on the basis of competitive bidding in which the Concessionaire was entitled to participate;
- (d) when the Rail Transport Operator holds the concession of a rail infrastructure connected to the Railway Network Concessioned. The license may then only apply, unless the Concessionaire agrees otherwise, to transport services having their origin or their destination in one of the stations located on the rail infrastructure of which the enterprise is the Concessionaire; and
- (e) in case of serious dereliction of duty on the part of the Concessionaire vis-à-vis a client or group of clients. The license shall then be issued either directly to the client or group of clients, or to a Rail Transport Operator acting on behalf of the client or group of clients. Unless the Concessionaire agrees otherwise, the rail transport services to which the license applies can only be those on which the Concessionaire was seriously delinquent, and can only be supplied to the client or group of clients in question.

Article 6-2. Case of serious dereliction of duty on the part of the Concessionaire vis-à-vis a client or group of clients

The following situations shall be considered instances of serious dereliction of duty on the part of the Concessionaire vis-à-vis a Client or group of clients, in the sense of Article 6-1, paragraph (e) above:

- (1) when transport prices applied by the Concessionaire, on a client or group of clients for a given transport that is essential to the operations of said client or group of clients, constitute an obvious abuse of its privileged position; or
- (2) when the Concessionaire applies, over a period of time, to a given transport entrusted to it by a client or group of clients, discriminatory conditions compared to those applied to other clients shipping similar volumes over the route in question, if said conditions are seriously detrimental to the operations of the client or group of clients; or
- (3) when the Concessionaire refuses over a period of time, and in a blatant or negligent manner, to provide a client or group of clients with a transport service essential to their operations, while similar service is provided to other clients; or
- (4) when the Concessionaire is incapable of supplying a client or group of client with sustained rail transport services that are essential for its operations, in terms of capacities offered or quality of services rendered, or price of service.

It is agreed in any event that the rates applied by the Concessionaire cannot be considered as constituting an abuse of privileged position or as inadequate in the situations described in (1) and (4) above, unless said rates exceed twice the amount of the charges (including depreciation and capital expenses relative to rolling stock, calculated on the basis of replacement cost) directly attributable to the traffic in question, as determined according the methods habitually used in the rail transport industry.

Article 6-3. Legal proceedings related to serious dereliction of duty on the part of the Concessionaire vis-à-vis a client or group of clients

When a client or group of clients believes that he is affected by the situations described in Article 6-2 (1), (2), (3), or (4), and therefore wishes to obtain a Rail Transport Operator's license either for itself or for an operator acting on his behalf, it shall submit a request for this to the State. The request shall be accompanied by appropriate supporting documentation.

In the event that the State believes that the request is admissible, it shall transmit to the Concessionaire, for comment, a copy of the dossier submitted by the client or group of clients. If the Concessionaire believes that the situations described in Article 6-2 (1), (2), (3), or (4) does not apply to the client or group of clients, it shall so inform the State within thirty days

following receipt of the copy of the dossier from the State. The position of the Concessionaire shall be justified by all appropriate documentation.

If, after having been informed of the Concessionaire's position, the State confirms its intention to take appropriate action at the request of the client or group of clients, the Concessionaire may, within fifteen days of notification by the State, request that the admissibility of the request of the client or group of clients be confirmed by arbitration conducted by three arbitrators, one designated by the Concessionaire, another by the client or group of clients in question, and the third jointly by the two first arbitrators; if one or another of the parties fails to designate its arbitrator within thirty days after the request for arbitration submitted by the Concessionaire, or if the arbitrators designated by the parties fail, within thirty days, to reach an agreement on the selection of the third arbitrator, the arbitrator(s) yet to be named shall be designated by the President of the Commercial Tribunal of Chella called upon by the first party to submit the matter to it. The State may issue the rail transport operation permit only if the arbitration procedure confirms that the client or group of clients concerned is in fact in one of the situations described in cases (1), (2), (3) or (4) referred to in Article 6-2.

Usage Agreements for Rail Infrastructure belonging to the Railway Network Concessioned

Article 6-4 . Usage Agreements for Rail Infrastructure – General Observations

The Concessionaire shall enter into usage agreements for infrastructure belonging to the Railway Network Concessioned with Rail Transport Operators holding a rail transport operation license issued by the State under the conditions set forth in article 6-1 above. The agreements shall allow the use of rail infrastructure only for the operation of transport services for which the license is issued.

The Concessionaire shall send a copy of the agreement to the Minister of Transportation. The terms of the agreements shall not be made public, except in the case of agreements signed with Rail Transport Operators holding licenses issued pursuant to Article 6-1(c).

Article 6-5. Negotiation of Rail Infrastructure Usage Agreements with holders of licenses (a) and (b)

The Concessionaire shall freely negotiate the agreements entered into with Rail Transport Operators holding licenses issued by the State under the provisions of paragraphs (a) and (b) of Article 6-1. Payment collected by the Concessionaire under such an agreement may

not, however, be less than the amount of the expenses borne by Concessionaire and directly attributable to the service in question.

Article 6-6. Negotiation of Rail Infrastructure Usage Agreements with holders of licenses (c), (d) and (e)

The Concessionaire pledges to negotiate agreements entered into with Rail Transport Operators holding licenses issued by the State under the provisions of paragraphs (c), (d) and (e) of Article 6-1 in such a way that, given the service in question, no discriminatory measures are imposed upon said operator as compared to other users of the infrastructure. The term "other users of the infrastructure" shall be taken to mean either the Concessionaire itself or other operators with which the Concessionaire has entered into infrastructure usage agreements.

When the Concessionaire and the operator fail to reach an agreement on the terms of the Rail Infrastructure Usage Agreement, these terms shall be set by decision of the Minister of Transportation, in accordance with the proposals of a group of experts, one designated by the Concessionaire, the second by the operator, and the third by common agreement of the two preceding experts, or, failing that, by the Minister of Transportation.

When the dispute between the Concessionaire and the operator concerns the amount of the payment to be collected by the Concessionaire under the agreement, said amount shall be fixed by decision of the Minister of Transportation, in accordance with the proposals of the group of experts referred to in the preceding paragraph, at a level that may not be lower than the amount of the expenses borne by the Concessionaire and attributable to the service in question, plus fifty percent for a contribution to coverage of the Concessionaire's structural expenses.

TITLE 7 – RAILWAY EQUIPMENT

Article 7-1. Railway Equipment used by the Concessionaire

Railway Equipment (i.e., locomotives, wagons, coaches, and self-propelled passenger cars, track maintenance vehicles, rescue equipment, and in general, all devices and vehicles designed to roll on railway tracks) utilized by the Concessionaire in connection with Railway Operations are either owned by the Concessionaire or owned by third parties and rented by the Concessionaire in the framework of contracts freely negotiated by the Concessionaire and his fellow contracting parties.

Article 7-2. Railway transport equipment utilized for services operated as a mandatory public service

Railway transport equipment utilized by the Concessionaire for the operation of rail services as a mandatory public service may be provided free of charge to the Concessionaire by the State (or the local authority for which the obligation is incurred). The list of equipment concerned shall, if necessary, be specified in the service agreement signed between the State (or the local authority) and the Concessionaire under the provisions of Article 5-1 above.

The Concessionaire is obligated to take out insurance against damage to and loss of equipment referred to in the present Article.

Article 7-3. Wagons owned by private parties

The Concessionaire may authorize and promote the utilization, for transport that it operates, of rail equipment belonging to third parties, particularly the so-called privately-owned wagons for freight transport.

Article 7-4. Railway Equipment used by other Rail Transport Operators

Rail equipment utilized by Rail Transport Operators holding a rail transport operation license for the Railway Network Concessioned is subject to the Concessionaire's technical approval. The refusal of permission shall always be justified, and may only be motivated by the equipment's failure to conform to the size, weight, and safety standards set by the Concessionaire.

Article 7-5. State's right of first refusal upon the sale, by the Concessionaire, of Railway Equipment

Subject to the provisions of Article 10-7, paragraph (b) below, the Concessionaire is free to dispose of rail equipment that it owns. However, the State shall have right of first refusal for the acquisition of the property concerned.

Sales contracts for the property entered into by the Concessionaire with third parties shall only become enforceable after a period of thirty days from the time they were brought to the attention of the State, and provided that, by the date of expiration of said period, the State has not made known its intention to replace the purchaser, under the same conditions as those set forth in the contracts.

Miscellaneous equipment of the Concessionaire, other than rail equipment, even if utilized for railway operation purposes, is not covered by the provisions of the preceding paragraph.

Article 7-6. Acquisition by the Concessionaire of SNCFT's Railway Equipment at the start of the concession

The Concessionaire, on the date of effectiveness of the concession, shall enter into a contract for the acquisition of rail equipment belonging to the *Société nationale des chemins de fer d'Ifrikyá*. This contract is entered into on a commercial basis and is considered to be separate from the Concession Agreement.

TITLE 8 – CONCESSION FEE

Article 8-1. Concession Fee – General Observations

In exchange for the use of rail infrastructure of the Railway Network Concessioned and for the right granted to the Concessionaire to operate rail services, the Concessionaire owes the State a fee, referred to as the “Concession Fee”.

The Concession Fee shall be due beginning with the fiscal year following the first anniversary of the entry into force of this Concession Agreement.

For accounting and tax purposes, the Concession Fee shall be considered to be an operating expense of the Concessionaire for the fiscal year to which it refers.

Article 8-2. Amount of the Concession Fee

The annual amount of the Concession Fee referred to in Article 8-1 above and payable by the Concessionaire for fiscal year (n) is equal to the sum of two elements:

- (a) a fixed element $F(n)$, the amount of which is determined in Annex B ; and
- (b) a variable element equal to the following percentage of the turnover, exclusive of taxes, of the Concessionaire’s Railway Operations during the fiscal year in question, namely:
 - $[x]$ percent for the first fiscal year for which the Concession Fee is due;
 - $[y]$ percent for the second and third fiscal years;
 - $[z]$ percent for the fourth, fifth, and sixth fiscal years; and
 - $[w]$ percent for subsequent fiscal years.

The term "turnover, excluding taxes, of Railway Operations" shall be taken to mean the sum of the following elements:

- revenues generated by rail transport services operated by the Concessionaire, excluding transport for the own use of the Concessionaire, namely: revenues from commercial freight and passenger transport, revenues from services operated as mandatory public services (receipts collected from users plus contribution for mandatory public service payable by the State), financial compensation due from the State to the Concessionaire in connection with the public service obligations referred to under Title 5;

- . remuneration of the Concessionaire for utilization of rail infrastructure by other Rail Transport Operators; and
- . fees, rents and miscellaneous revenues from the management of property belonging to the Railway Network Concessioned.

Article 8-3. Payment of the Concession Fee

The Concession Fee mentioned in Article 8-1 above shall be paid in quarterly installments, each installment payable within sixty days after the end of the quarter that it covers. The amount of each quarterly payment shall be equal to the sum of one quarter of the amount of the fixed portion F(n) and of the variable portion covering the quarter in question. The variable portion shall be determined based on the estimated turnover for said quarter, insofar as it is known to the Concessionaire on the day prior to payment of the installment, with adjustment made, if necessary, for any disparities between estimated turnover and definitive turnover of preceding quarters.

Any late payment by the Concessionaire of the Concession Fee shall give rise to a late fee payable by the Concessionaire calculated on the basis of the discount rate of the Central Bank, plus two percent.

TITLE 9 – ACCOUNTING AND TAX PROVISIONS

Article 9-1. Accounts of the Concessionaire

The Concessionaire shall keep his accounts in a commercial format, in accordance with prevailing legislative and regulatory provisions and the provisions of the present Convention.

Balance accounts specific to the concession, the nomenclature and operation of which are specified in Annex A, shall be opened by the Concessionaire.

Article 9-2. Tax provisions

The Concessionaire shall be subject to the tax provisions legally applicable to commercial, industrial and service enterprises.

It shall benefit, however, from specific tax provisions applicable to concessionary companies, particularly as regards depreciation and the provision for replacement, under the conditions set forth in Annex A.

The State pledges that levies and taxes owed by the Concessionaire, as well as any fees, taxes or surtaxes of a fiscal or semi-fiscal nature that may be added to the sale price of rail services, shall not have any character specific to Railway Operations or to rail transport, and shall be applied equally to the transporters with which the Concessionaire is likely to be in competition, and under conditions that avoid influencing the competitiveness of rail transport in relation to competing modes of transportation.

Article 9-3. Land tax contributions

Since the Concessionaire is only the manager of the public property belonging to the Railway Network Concessioned, it is exempt, as far as said public real estate is concerned, from all levies and assessments relative to land tax contributions and mortmain property, as well as from any fee of the same type.

Article 9-4. Purchase of fuel under an exemption from the contribution to the road fund

Fuel used in the rolling stock shall be purchased by the Concessionaire under an exemption from the road or highway fund contribution collected for road usage, maintenance, and replacement costs generated by road transport.

TITLE 10 – EFFECTIVENESS, DURATION AND END OF THE CONCESSION

Article 10-1. Entry into force

The Concession Agreement shall enter into force, with no particular formality, fifteen days after all of the following conditions have been met:

- (a) the Concession Agreement has been signed by the parties;
- (b) the Concession Agreement has been approved by Decree of the Council of Ministers and the Decree of Approval has been published in the Official Gazette;
- (c) The Concessionaire has obtained, from donors and financial and banking institutions, assurances deemed satisfactory by the State and by the Concessionaire that they will finance the investment program that the Concessionaire plans to implement within the first five years of the concession;
- (d) The Concessionaire has conveyed to the State the list of staff of the *Société nationale des chemins de fer d'Ifriky*a (SNCFI) to be re-hired by the Concessionaire under conditions set forth in Article 1-12 above; and
- (e) The companies *[insert names of companies]* providing upstream control of the strategic shareholder of the *Société d'exploitation des transports ferroviaires d'Ifriky*a (SETRAFI) have made a commitment to the State to maintain this joint oversight for a period of at least seven years starting from the date of entry into force of the Concession Agreement, and said strategic shareholder has promised to hold at least 51 percent of SETRAFI's capital for a period of at least the same duration.

However, unless the parties agree otherwise, the Concession Agreement shall be considered null and void if it does not take effect one hundred and eighty (180) days following its signature by the parties.

Article 10-2. Duration of the concession

This agreement is entered into for an initial period of thirty years.

The parties shall meet between the ninth and tenth anniversary of the entry into force of the present Agreement in order to decide if grounds exist for extending the Agreement for an additional ten years beyond its initial term.

In the event that an extension is decided, the parties shall meet between the nineteenth and twentieth anniversary of the date of entry into force of the present Agreement to decide if

there are grounds to extend the concession for another period of ten years, and so on, at ten-year intervals.

Article 10-3. Early cancellation

Aside from the case in which this agreement expires at term under the conditions set forth in Article 10-2 above, it can be terminated either by forfeiture on the part of the Concessionaire, or officially through dissolution, legal liquidation, or bankruptcy of the *Société d'exploitation des transports ferroviaires d'Ifrikya*, or, finally, by contract cancellation for reasons of *force majeure*.

Article 10-4. Dismissal for breach of obligation

In the event that, except for a case of *force majeure*, (a) either the Concessionaire should seriously default on its obligations as defined by the present Agreement; (b) the Concessionaire were to cease all rail transport operation for a prolonged period or were to carry out operations only at an extremely reduced level, and even if this cessation of operations were due to financial difficulties; (c) or the companies [*insert names of companies*] handling upstream control of the strategic shareholder of the *Société d'exploitation des transports ferroviaires d'Ifrikya* (SETRAFI) were to default on their commitment referred to in paragraph (e) of Article 10-1; (d) or the strategic shareholder of the SETRAFI were to fail to meet his commitment referred to in paragraph (e) of Article 10-1, the State may, if no remedy is provided within three months after official notification by the State, decide to dismiss the Concessionaire. This dismissal would be pronounced against the Concessionaire and at its expense and risk.

Possession of all property utilized by the Concessionaire in connection with Railway Operations would be transferred, as of the date of dismissal, to the State or to any other person or company designated by the State, which would, by operation of law, replace the Concessionaire, the Concessionaire having no entitlement to indemnification in this connection.

Article 10-5. Dismissal by reason of dissolution or liquidation

The dissolution, legal liquidation or bankruptcy of the *Société d'exploitation des chemins de fer d'Ifrikya* automatically terminates the Agreement, at the fault, expense, and risk of the Concessionaire, under conditions identical to those set forth in Article 10-4 above relative to the dismissal of the Concessionaire.

Article 10-6. Termination by reason of *force majeure*

Cases of *force majeure* are considered to be those events that are unforeseeable, external to the parties, and unpreventable.

In the event of an occurrence that would constitute a case of *force majeure*, the party that invokes *force majeure* must, immediately after the occurrence of this event, provide written notification thereof to the other party. The notification shall specify the precipitating event involved as well as its consequences for the concession's operations. Within eight days following this notification, the parties shall meet to assess the event and to agree on arrangements to mitigate the consequences of the *force majeure* on the operation of the concession.

In the event that, due to an occurrence constituting *force majeure*, the operation of the concession proves to be irretrievably compromised or is suspended for a period exceeding one year, the State or the Concessionaire may cancel the concession.

To the extent that the financial equilibrium of the concession is affected by the occurrence of the case of *force majeure*, the parties agree to meet and to adopt, if necessary, any measure that can remedy the situation. If no agreement is reached within a period of three months, either party may proceed with the cancellation of the concession.

Article 10-7. Disposal of property, contracts, obligations, debts and responsibilities of Concessionaire upon expiration of the Concession Agreement

Upon the conclusion of the present Concession Agreement, either at the date agreed upon by the parties, or by reason of one of the causes of cancellation referred to in Articles 10-4, 10-5 and 10-6, and whatever the reason may be, the disposal of the property, contracts, obligations, debts and responsibilities of the Concessionaire shall be handled as follows :

- (a) Rail infrastructure constituting the Railway Network Concessioned, the concession's Property to be Returned and Property to be Taken Back shall be immediately handed back to the State for its disposition, with the State having no obligation to pay the Concessionaire any indemnity, except with regard to renewal and remodeling operations that received State approval, and for which indemnification shall be made under the conditions set forth in Article 3-6 (last paragraph) above.
- (b) Real assets, other than rail infrastructure and movable property owned by the Concessionaire and used by the Concessionaire for Railway Operations, may be acquired by the State or by any person or company designated by the State. Such acquisition shall occur at the net book value of the property as it appears in the Concessionaire's balance sheet as of the date of the conclusion of the Concession Agreement. The State shall inform the Concessionaire of its intention to purchase all or

part of the property concerned no sooner than five years and no later than one year prior to the expiration date of the Concession Agreement, if this Concession Agreement runs until the expiration date agreed upon by the parties, and no later than three months after the date of expiration in the event of early cancellation referred to in Articles 10-4, 10-5 and 10-6. The Concessionaire shall dispose freely of property which the State has not expressed an interest in acquiring within the stated timeframes.

- (c) Regarding loans obtained by the Concessionaire to finance operations of infrastructure renewal or remodeling that received State approval under the conditions set forth in Article 3-6 above, the State shall pay the Concessionaire, within six months following the end of the Concession Agreement, an indemnity established in such a way as to allow the Concessionaire to disengage itself entirely from all lenders and representing the sums due (for principal and ancillary charges) in connection with such borrowings. The indemnity is, however, reduced by the sums to be reimbursed by the State to the Concessionaire by virtue of the provisions of said Article 3-6 which were the object of an actual reimbursement by the State within the same six-month time limit following the end of the Concession Agreement. The amount of the indemnity shall be paid into an escrow account opened by the Concessionaire in a top-ranking banking establishment and earmarked solely for the reimbursement by the Concessionaire of sums due in connection with the borrowings. The State cannot be held legally responsibly for the non-payment of lenders provided that it has paid the aforementioned amount into the escrow account.
- (d) The Concessionaire's obligations in connection with its borrowings for the financing of infrastructure renewal and remodeling for which, under the provisions of Article 3-7, the State refused its approval, shall not be taken over by the State.
- (e) Regarding sub-contracting contracts, all rights and obligations of the Concessionaire are transferred to the State by means of notification made to the creditor of the fact of this transfer, at the initiative of one of the parties. This notification shall indicate that the Concessionaire is free of any obligation vis-à-vis the subcontractor. The State takes the place of the Concessionaire and assumes, as of the date of notification, all rights and obligations resulting from these contracts. The Concessionaire shall inform its co-contractors of the substitution authority conferred upon the State, through the inclusion of the appropriate contractual clauses.
- (f) Labor contracts entered into by the Concessionaire with its personnel are taken over by the State.
- (g) Contracts, commitments, authorizations and leases entered into by the Concessionaire in connection with the management of railway real estate shall be taken over by the State; and

- (h) Claims and debts other than those mentioned above and for which the precipitating event occurred prior to the end of the Concession Agreement, remain the responsibility of the Concessionaire.

The State immediately takes the place of the Concessionaire, and assumes all its rights, and collects all revenues and income from Railway Operations occurring in a time period after the end of the Concession Agreement. The Concessionaire shall still be obliged to pay off all expenses and debts incurred prior to the end of the Concession Agreement if they are not taken over by the State.

Article 10-8. Lenders' right of substitution

The right of lenders to substitute themselves for the Concessionaire may be granted to said lenders in the context of medium- and long-term loan contracts underwritten for the financing of investment programs implemented by the Concessionaire. This right shall then be expressly set forth in the loan contract. The compatibility of the conditions under which the right of substitution is exercised with the conditions mentioned hereinafter must be approved by the State prior to the signature of loan contracts.

Upon the occurrence of one of the events referred to in the following paragraph, and to the extent that these events continue over time, a legal entity designated and approved by the lenders (the "Entity") shall be, at the option of these lenders and under the conditions set forth below, simultaneously substituted by the State for the Concessionaire. The Entity must justify to the State, prior to such substitution, that it has sufficient financial and technical capability to continue Railway Operations. The Entity shall assume all rights and obligations of the Concessionaire as provided for under the present Agreement.

The events referred to for purposes of the substitution are the following:

- (a) Non-payment, within six months of notification addressed to the Concessionaire by registered letter from lenders referring to the present provision, of any sum due by virtue of the lending agreements referred to in the first paragraph of the present Article.
- (b) Significant postponement, on the basis of objective data, of the date of total termination of lenders' claims.
- (c) Declaration, by any one of the lenders, of the event of default of one or more of the loans granted under the loan contracts referred to in the first paragraph of the present Article, such event being duly notified to the Concessionaire.
- (d) Cessation of payment, liquidation, bankruptcy of the *Société d'exploitation des transports ferroviaires d'Ifrikya*, or other similar events.

The lenders or the Entity notify the State of their intention, and at the same time provide information allowing the State to verify that the conditions of the present Article have been met. Unless the State has indicated, within two months of such notification, that the conditions have not been met, it shall be assumed to have confirmed the Entity's substitution for the Concessionaire.

From the time of the State's express or implicit confirmation of the substitution, the Entity shall enjoy all the rights and assume all obligations provided for under the present Agreement vis-à-vis the State in the place of the Concessionaire. To this end, the substitution entails the devolution of real estate and property rights necessary for the operation of rail services.

TITLE 11 – DISPUTES AND LITIGATION

Article 11-1. Procedure for resolution of disputes and litigation

The State and the Concessionaire shall endeavor to resolve amicably any dispute or litigation relative to the interpretation and application of the clauses of the present Agreement.

In the event that an amicable resolution is not possible, the dispute or litigation shall be resolved in accordance with the arbitration procedure described hereinafter.

The dispute or litigation shall be definitively and irrevocably resolved by an arbitration commission composed of three arbitrators, one designated by the State, the second by the Concessionaire, and the third by common agreement of the first two. If the parties fail to designate their arbitrators within thirty days of the arbitration request submitted by one of the parties, or if the arbitrators designated by the parties fail to reach an agreement on the nomination of the third arbitrator within thirty days, the rules of reconciliation and arbitration of the International Chamber of Commerce in Paris, France shall be applied at the request of the party filing the complaint first.

Arbitration shall be conducted in *[language to be specified]*, in accordance with the rules of conciliation and arbitration of the International Chamber of Commerce in Paris, France. It shall take place in Chella or, if the arbitration commission should so decide unanimously, in any other place in the Republic of Ifrikya.

Each of the parties shall bear the cost of the arbitrator that it designates. Other expenses generated by the arbitration shall be shared equally between the parties.

The parties pledge from the outset to abide by the arbitration decisions.

Article 11-2. Applicable law

Any dispute or litigation as to the validity, interpretation or application of the Concession Agreement shall be resolved by the applicable law of the Republic d’Ifrikya in effect at the date of the dispute or litigation.

TITLE 12 –MONITORING OF EXECUTION OF THE CONCESSION

Article 12-1. Concession Monitoring Committee

The monitoring of execution of this Concession Agreement shall be handled by a Committee (the "Monitoring Committee") presided over by a person not belonging to the Administration and appointed for five years by the Minister of Transportation on the recommendation of the President of the Chamber of Commerce of Chella. The Committee shall include a representative of the Minister of Transportation, a representative of the Minister of Finance, and two representatives of the Concessionaire.

The Monitoring Committee shall meet in regular session once a year to examine the documents referred to in Article 12-2 below and, if necessary, the audit report referred to in Article 12-3 below, and in special session as required at the request of any one of its members.

The Monitoring Committee shall examine any question pertaining to execution of the Concession Agreement which requires consultation between the parties.

The Monitoring Committee shall not interfere in any way whatsoever with the internal management of the Concessionaire.

The Monitoring Committee shall copy the minutes of its sessions to the Minister of Transportation and to the Minister of Finance.

Article 12-2. Documents to be submitted by the Concessionaire

The Concessionaire shall submit, by the 20th of each month to the Minister of Transportation and to the Minister of Finance, with copy to the Chairman of the Monitoring Committee, a statistical report of activity for the preceding month. The report shall be prepared according to the format provided in Annex E.

The Concessionaire shall address each year, as a report on its activity, and within four months of the closure of the preceding fiscal year, the following documents to the President of the Monitoring Committee:

- . the corporate statements of the *Société d'exploitation des transports ferroviaires d'Ifrikya*, accompanied by the report of the auditor and external auditor;
- . an annual implementation report and an estimated annual program for the public service obligations imposed on the Concessionaire under the terms of the Concession Agreement;

- . an annual implementation report on the Rail Infrastructure Usage Agreements involving other Rail Transport Operators;
- . an annual report on matters related to railway safety (analysis of rail accidents, measures taken to improve safety, etc.) and, if necessary, on the specific aspects of Railway Operations associated with environmental protection;
- . an updated version of the inventory of lands and rail infrastructure belonging to the Railway Network Concessioned; and
- . the status of execution of the infrastructure renewal and remodeling program.

These documents shall also be copied for information purposes to the Minister of Transportation and to the Minister of Finance.

Article 12-3. Audit of the concession

At least every four years, an audit of the concession shall be done by an independent auditor designated by the Monitoring Committee.

The auditor shall give his opinion on the parties' adherence to the clauses of the Concession Agreement. The auditor shall have access to the accounts, books, contracts, accounting documents and any other item or document of the Concessionaire, as well as to all operational offices and work sites of the Concessionaire. He shall perform any verification and inspection he deems appropriate. He may obtain the assistance of consultants.

The audit report shall be conveyed to the Monitoring Committee within six months of the closure of the fiscal year to which it refers.

The cost of the audit shall be shared equally by the State and the Concessionaire.

Article 12-4. Penalties in the event of dereliction of duty or misdeed on the part of the Concessionaire

In the event of total or partial dereliction of duty or misdeed on the part of the Concessionaire in the execution of the obligations entrusted to it under the Concession Agreement, and with the exception of cases of *force majeure*, the State may, after a thirty-day period with no remedy to official notification, impose penalties on the Concessionaire in the form of a daily late fee.

The late fee shall be due from the date of expiration of the notification until such time as the Concessionaire has made full restitution for the dereliction of duty or misdeed.

The amount of the daily late fee shall be set by the State based on the seriousness of the dereliction of duty or misdeed. It may not, however, exceed the amount of One Hundred Thousand Ifrikyan Dinars (100,000 DI) per day for the first thirty days of application, and Two Hundred Thousand Ifrikyan Dinars (200,000 DI) per day thereafter. The aforementioned amounts shall be set with reference to the economic conditions prevailing in the year 2000; they shall be revised annually by application of the consumer price index of the preceding year.

The penalties cited in the present Article are payable immediately and in full. They may not, under any circumstances, be invoked by the Concessionaire in order to limit the scope of his responsibility and are understood not to include possible damages.

Article 12-5. Service provision and technical assistance contracts

Service provision and technical assistance contracts entered into by the Concessionaire with enterprises belonging to the strategic shareholder of the *Société d'exploitation des transports ferroviaires d'Ifrikya* (SETRAFI) or affiliated with them shall be subject, prior to their signing, to the approval of SETRAFI's Board of Directors. These contracts must correspond to clearly identified services and must be for defined amounts and durations. Aside from the obligations to which they are subject under the legislation pertaining to commercial companies, these contracts shall be subject to systematic and specific review by the auditor referred to in Article 12-3, who shall ascertain whether the services are actually being provided and the reasonableness of the prices charged.

The provisions of this Article are also applicable to contracts for supplies, equipment rental and works execution for amounts that exceed a threshold set by the Monitoring Committee referred to in Article 12-1, and that are entered into with enterprises belonging to the strategic shareholder of SETRAFI and enterprises affiliated with them.

For the purposes of the present Article and of Article 12-6 below, the following shall be considered to be enterprises affiliated with the enterprises counted among SETRAFI's strategic shareholders: (a) any enterprise of which more than 50 percent of the capital is held, directly or indirectly, by one or more enterprises belonging to the strategic shareholder; (b) any enterprise that holds, directly or indirectly, more than 50 percent of the capital of an enterprise counted among the strategic shareholder; and (c) any enterprise of which more than 50 percent of the capital is held by an enterprise that itself holds more than 50 percent of an enterprise counted among the strategic shareholder.

Article 12-6. Management Fee

The annual amount of any management fee or similar commission paid by the Concessionaire to the strategic shareholder of the *Société d'exploitation des transports ferroviaires d'Ifrikya* (SETRAFI), to one or more enterprises counted among the strategic shareholders, or to one or more enterprises affiliated with the enterprises counted among the

strategic shareholders, in connection with services other than those referred to in Article 12-5, may not, under any circumstances, exceed one percent of the turnover, excluding taxes, of Railway Operations for the year in question, as defined in Article 8-2.

Chella, January 15, 1999

For the State

The Minister of Transportation

The Minister of Finance

For the Concessionaire

The Chairman of the Board of Directors

of the *Société d'exploitation des transports ferroviaires d'Ifrikya*

(The Concession Agreement was approved by Decree No. 99/12 dated February 3, 1999.)

ANNEX A

NOMENCLATURE AND FUNCTIONING OF BALANCE SHEET ACCOUNTS SPECIFIC TO THE CONCESSION

Nomenclature of accounts

15. Reserves for risks and expenses

156. Reserves for replacement of fixed assets

1561. Reserves for replacement of fixed assets concessioned by the party awarding the concession

1562. Reserves for replacement of fixed assets concessioned by the Concessionaire

1572. Reserves for large-scale repairs

22. Fixed assets concessioned

220. Fixed assets concessioned by the party awarding the concession

225. Fixed assets concessioned by the Concessionaire

229. In-kind entitlements of the party awarding the concession

2290. Cost-free contributions of the party awarding the concession

2295. Assets concessioned by the Concessionaire

28. Depreciation of fixed assets

282. Depreciation of fixed assets concessioned

2820. Fixed assets concessioned by the party awarding the concession

2825. Fixed assets concessioned by the Concessionaire

FUNCTIONING OF ACCOUNTS

1. Accounting related to the fixed assets assigned to the concession by the State

1.1. Commencement of the concession

Property is valued on the basis of its estimated value at the time of its transfer to the Concessionaire. Account 220 is debited and Account 2290, credited.

1.2. Depreciation and reserves

1.2.a. Non-renewable fixed assets

The Concessionaire shall proceed to depreciate the property at the usual rates. Depreciation is credited to Account 2820 and debited from Account 2290. Since the cost of these fixed assets is zero for the Concessionaire, their depreciation shall not be considered an expense and shall have no impact on its bottom line.

A reserve for major repairs may be created (under Account 1572); it shall be debited from the bottom line once the repair has been completed.

1.2.b. Renewable fixed assets

Apart from the depreciation occurring as described in 1.2.a. above, the Concessionaire shall make an annual payment into the reserve for replacement calculated on the basis of the estimated replacement cost of the real asset. It shall be credited to Account 1560 and, at the time of the replacement, shall be deposited to Account 2290. The reserve for replacement shall be considered an expense of the Concessionaire and shall be accounted for in the bottom line.

2. Accounting pertaining to fixed assets brought to the concession by the Concessionaire [fixed assets in the form of rail infrastructure handed over cost-free by the Concessionaire to the State at the end of the concession; Concession Agreement Article 10-7, paragraph (a)]

2.a. Depreciation. The Concessionaire shall depreciate the property at the usual rates. Depreciation is credited to Account 2825 and Account 2295 is debited. Depreciation shall not be considered an operating cost for the Concessionaire and shall not be accounted for in the bottom line.

2.b. Caducity Amortization Charge. In order to allow the reconstitution of capital invested by the Concessionaire, a caducity amortization charge shall be debited from the expense account and credited to Account 2295. For each operation, the duration of the amortization shall be equal, at the Concessionaire's option: (a) to the period remaining until the end of the

concession at the time that the operation is initiated; (b) to the duration of depreciation, in the event that this duration is less than the period remaining until the end of the concession at the time that the operation is initiated and provided that the asset is amortizable; or (c) the loan repayment period when over 50 percent of the operation's financing is covered by the loan. A caducity amortization charge is levied regardless of whether the property is amortizable. It constitutes an operating cost for the Concessionaire and shall be accounted for in the bottom line.

ANNEX B

FIXED AMOUNT $F(n)$ OF THE CONCESSION FEE

The fixed amount $F(n)$ of the Concession Fee payable for fiscal year (n) is equal to the product of the amounts $f(n)$ taken from the preceding table, multiplied by the revision coefficient $R(n)/R(0)$ in which:

$R(n)$ is the consumer price index in the Republic of Ifrikyia for the year (n-2) ; and

$R(0)$ is the consumer price index for the Republic of Ifrikyia for the year *[year preceding date of signature of the Concession Agreement]*

Values of $f(n)$

(in thousands of Ifrikyan Dinars)

(n)	$F(n)$	(n)	$f(n)$
1		11	
2		12	
3		13	
4		14	
5		15	
6		16	
7		17	
8		18	
9		19	
10		20 to 30	

ANNEX C

LIST OF CONTRACTS FOR WHICH THE CONCESSIONAIRE TAKES THE PLACE OF THE
SNCFI

(Article 1-14)

[section to be completed]

ANNEX D

ONGOING REHABILITATION OR DEVELOPMENT WORKS

(Article 3-8)

[section to be completed]

ANNEX E

STANDARD FORMAT FOR MONTHLY STATISTICAL ACTIVITY REPORT

(Article 12-2)

[section to be completed]

4

Evaluation of Technical Proposals

The following section contains:

- Excerpts from the Request for Technical Proposals (RFTP) regarding the procedure for selecting the strategic shareholder and the evaluation and selection of technical proposals;
- The summary table of technical scores obtained by the four candidates who submitted technical proposals.³

³ Twelve companies or groups of companies were prequalified. Four groups (actually comprising nine of the prequalified enterprises) submitted technical proposals.

EXERPTS FROM THE REQUEST FOR TECHNICAL PROPOSALS (RFTP)

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2. PROCEDURE FOR SELECTING THE STRATEGIC SHAREHOLDER

The Privatization Committee of the Republic of Ifrikyia has undertaken to select the private-sector or privately-managed company or consortium that will serve as the strategic shareholder of the future Concessionaire charged with operating Ifrikyia's railway.

The choice of strategic shareholder is made according to a three-step bidding procedure :

- prequalification (the step already completed) ;
- intermediate selection based on the technical proposal;
- Final selection.

The technical proposal presented by a candidate will be awarded a score (what is known as the "technical score") under conditions set forth in paragraph 6 of this dossier. The technical score is based on a 40-point scale.

Only candidates having submitted a technical proposal deemed satisfactory (i.e., one that has received a technical score of 30 or more points) shall be invited to go on to the final selection stage. For purposes of the final selection, candidates shall submit a financial proposal under conditions that shall be set forth in the Request for Financial Proposals (RFFP). Each proposal shall be assigned a "financial value" arrived at through a combination of the following elements: (i) the price proposed by the candidate for acquisition of the SNCFI's Railway Equipment; (ii) the proposed Concession Fee for the first ten years of the concession; and (iii) a "penalty" based on the number of SNCFI employees not re-hired by the Concessionaire; the amount of this penalty will reflect the amount of the severance payments that the State shall be obliged to pay to said employees. The proposal corresponding to the highest financial value will receive a "financial score" of 60 points. The other proposals will receive financial scores equal to 60 multiplied by the ratio of the financial value of the proposal in question to the financial value deemed highest.

4.2. Evaluation of technical proposals

The Evaluation Committee will examine carefully all the elements presented to it by the candidates. It will pay particular attention to the following aspects of the issues covered in the technical proposal:

Commercial strategy

The Evaluation Committee will attach particular importance to market knowledge displayed by the candidate and to the appropriateness of the rates envisaged for the various sectors.

Organization

The evaluation of the candidate will take into account in particular the efficiency of the proposed organization, its compatibility with the railway's commercial mandate, its consistency with the objectives, and its appropriateness to the realities of the Republic of Ifrikyia.

Human resources

In its scoring, the Evaluation Committee will take into account:

- . proposals in the area of staff reductions;
- . plans for assisting with the retraining of employees who will have to leave the employ of the railway;
- . training plans to be offered to railway employees;
- . the candidate's policy with regard to sub-contracting;
- . the staff promotion policy to be implemented;
- . the mix of nationals and expatriates in the managerial ranks; and
- . action plans to be introduced to foster the well-being and motivation of railway employees.

Technical aspects

The Evaluation Committee's scoring will be based in particular on the following:

- . coherence and technical soundness of the proposals;
- . optimization of costs of the proposed technical solutions; and

- . timetable for implementation of these solutions.

Five-year investment program

This will be evaluated on the basis of the following criteria:

- . Coherence of investments and resources deployed based on the proposed objectives; and
- . Efficacy of the technical solutions envisaged to rehabilitate infrastructure and rolling stock.

Financial projections

The score awarded by the Evaluation Committee will be based upon:

- . the coherence of the underlying hypotheses;
- . their justification and explanation;
- . level of detail of the projections;
- . coherence and quality of the model used.

Financing plan and structure of equity

In evaluating the quality and reliability of the financing plan proposed by the candidates, the Evaluation Committee will pay particular attention to:

- . the percentages of equity in the ownership structures (equity + debts) of the two companies, i.e., the Concessionaire and the strategic shareholder;
- . the guarantees provided by the candidates concerning future capital increases intended to maintain certain financial ratios;
- . the capacity of both companies to raise funds and obtain financing, and particularly guarantees of funding availability from banking establishments;
- . the availability of the candidates' parent companies to provide their guarantee in order to facilitate project financing. The amount and cost of these guarantees must be specified;
- . the preservation of conservative financial ratios; and
- . the candidates' ability to repay debts contracted by the end of the concession period.

4.3 Scoring

Scoring of the various elements of the technical proposals will be done by the Evaluation Committee. The Committee shall be presided over by the Vice-President of the Privatization Committee and made up of two representatives of the *Société nationale des chemins de fer d'Ifrikya*, one representative of the Ministry of Transportation and one representative of the Ministry of Finance. It will be assisted by representatives of Hiram & Brothers Bank which is assisting the Privatization Committee in implementing the concessioning process. The Committee reserves the right to request any additional information from candidates it deems necessary.

Points shall be awarded according to the following procedure :

1. For each selection criterion, the members of the Evaluation Committee shall discuss the rating to be assigned to each proposal: 'excellent' (all possible points); 'good' (3/4 of possible points); 'acceptable' (1/2 of the possible points); 'mediocre' (1/4 of the possible points) and 'poor' (no points.)
2. After the discussion, each member shall indicate, on a secret ballot, the number of points he is awarding to each proposal for each criterion.
3. The technical score awarded to a proposal is arrived at by calculating the arithmetical average of the scores awarded by the members of the Committee.

SUMMARY TABLE OF TECHNICAL SCORES
OBTAINED BY CANDIDATES SUBMITTING A TECHNICAL PROPOSAL

Selection criteria	Max. number of points	Candidates			
		A	B	C	D
Business plan	26	14	25	21.5	21
Commercial strategy	6	3	5.5	5	2.75
Organization	2	0	1.75	1.75	1.75
Human resources	6	4	6	4.25	6
Technical aspects	6	4	6	5.5	5.5
Five-year investment program	4	0	4	3.5	3.5
Financial projections	2	0	1.75	1.5	1.5
Reliability of the financing plan and capital structure	14	4	13	10	9.5
TOTAL	40	15	38	31.5	30.5

5

Evaluation of Financial Proposals and Award of the Concession

The following section contains:

- excerpts from the Request for Financial Proposals (RFFP) regarding the procedure for selecting the strategic shareholder and for evaluating financial proposals
- The summary table of financial proposals of the three candidates still under consideration at the conclusion of the intermediate technical selection stage
- The table of final scores of the proposals submitted by the candidates
- Annex tables showing the calculation of projected Concession Fees (results of which are used to determine the “financial value” of the proposals)

EXCERPTS FROM THE REQUEST FOR FINANCIAL PROPOSALS (RFFP)

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1. CANDIDATES ACCEPTED INTO THE FINAL SELECTION ROUND

The following candidates (in alphabetical order) were selected on December 12, 1998 upon completion of the intermediate technical selection phase and are invited to submit financial proposals for the Ifrikya Railway under concession. The technical scores obtained (out of a possible 40 points) are indicated in parentheses:

- consortium B, consisting of [...]: (38 points)

- consortium C, consisting of [...]: (31.5 points)
- consortium D, consisting of [...]: (30.5 points)

Candidates may not form groups to respond to the call for financial proposals. Changes in the composition of the consortiums may be accepted, with the following restrictions:

- no more than 30 % of the capital of the future strategic shareholder held amongst the current members, as defined in the technical proposal;
- no more than 10 % of the capital of the future strategic shareholder held by new members, either in replacement of, or as a complement to, current members.

2. PROCEDURES FOR SELECTING THE STRATEGIC SHAREHOLDER

The Privatization Committee of the Republic of Ifrikya has undertaken to select the private-sector or privately-managed company or consortium that will serve as the strategic shareholder of the future Concessionaire charged with operating Ifrikya's railway.

The choice of the strategic shareholder is done in a three-step bidding procedure:

- prequalification (the stage already completed);
- intermediate selection on the basis of the technical proposal (a step already completed); and
- final selection.

For purposes of the final selection, the candidates will present a financial proposal under conditions set forth in the present Financial Bidding Documents (FBDs). Each proposal will be assigned a "financial value" determined, in accordance with the methods set forth in 4 below, by a combination of the following elements: (i) the price offered by the candidate for acquisition of the SNCFI's Railway Equipment; (ii) the Concession Fee proposed for the first ten years of the concession; and (iii) a "penalty" determined as a function of the number of SNCFI employees who are not re-hired by the Concessionaire. The proposal with the highest financial value shall receive a "financial score" of 60 points. The other proposals will receive a financial score equivalent to the product of 60 multiplied by the ratio of the financial value of the proposal in question to the financial value of the highest-scoring proposal.

A final score will be assigned to each proposal. This score will be the sum of the technical score (out of a possible 40 points) and the financial score (out of a possible 60 points). The candidate who has submitted the proposal that receives the highest final score shall be designated as strategic shareholder of the Concessionaire (or the "awardee" of the concession).

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4. FINANCIAL PROPOSALS

Candidates are invited to submit, in their financial proposals, their proposals concerning:

- (i) the purchase price for the whole of SNCFI's Railway Equipment;
- (ii) the Concession Fee; and
- (iii) the number of SNCFI employees that they pledge to re-hire at the beginning of the concession.

These proposals must be submitted in the format of the model letter and attached table shown in Annex 1.

4.1. Purchase price of Railway Equipment

Candidates shall indicate the proposed purchase price, all taxes included, for the whole of the rolling stock listed in Annex 6. The proposed price may not in any case be less than CFAF twelve (12) billion.

The price offered shall be payable to the State in five equal installments, the first of which shall be due on the second anniversary date of the effectiveness of the concession. These installments will bear quarterly interest payable when due at the interest rate appearing in bidding invitations set by the Central Bank of Ifrikya and in effect as of the due date.

4.2. Concession Fee

The candidates shall indicate the assigned values of x , y , z and w used to calculate the amount of the Concession Fee to be entered into Article 9-2 of the Concession Agreement, a final draft of which is found in Annex 3.

4.3. Number of SNCFI employees re-hired by the Concessionaire

Candidates shall indicate the number of SNCFI employees that they pledge to re-hire once the concession becomes effective. This number shall be recorded in Article 8-2 of the Concession Agreement.

5. EVALUATION OF FINANCIAL PROPOSALS

The "financial score" for each proposal shall be determined in the following manner:

5.1. Determination of the financial value of each proposal

The "financial value" of each proposal shall be calculated by adding the purchase price of the Railway Equipment to the present value of Concession Fees, as stated in the proposal, and by subtracting from the amount thus obtained a "penalty" for non-hiring of SNCFI employees.

The present value of the Concession Fees for the first ten years of the concession is obtained by applying the proposed percentages -- **x**, **y**, **z** and **w** -- to the projected turnover for, respectively: year 1 (for **x**), years 2 and 3 (**y**); years 4 and 5 (**z**); and years 5 through 10, inclusive (**w**), as set forth in the technical proposals submitted by the candidates. The projected fees thus calculated for each year are added, after discounting at the nominal rate of fifteen (15) percent. It shall be assumed, in performing this calculation, that the fee will be paid in full at the end of the year. Concession Fees to be paid beyond the tenth year of the concession do not enter into the calculation of the proposal's financial value.

The penalty for not re-hiring SNCFI employees will be determined as follows. The number of employees not rehired will be calculated by subtracting from 4,500 (the current staff count of SNCFI) the number of employees that the candidate proposes to re-hire. For every employee not re-hired, a flat penalty of CFAF 6 million shall be applied for proposal evaluation purposes.

5.2. Determination of the financial score for each proposal

The proposal with the highest financial value calculated as described above shall receive a financial score of 60 points. The other proposals will receive a financial score equivalent to the product of 60 multiplied by the ratio of the financial value of the proposal in question to the financial value of the proposal with the highest financial value.

**SUMMARY TABLE OF FINANCIAL PROPOSALS
SUBMITTED BY CANDIDATES**

[Table compiled by the Privatization Committee on the basis of the candidates' financial proposals]

	Unit	Candidates			
		A	B	C	D
Purchase price of SNCFT's Railway Equipment	CFAF million	-	18 000	12 000	22 000
Concession Fee Year 1 (x)	% of turnover	-	2	0	0,5
Concession Fee Years 2 and 3 (y)	% of turnover	-	2	2	1,5
Concession Fee Years 4 and 5 (z)	% of turnover	-	3	4	3
Concession Fee Years 6 through 10 (w)	% of turnover	-	3	6	4
Number of SNCFI employees re-hired by the Concessionaire	Unit	-	4300	2400	4000
Number of SNCFI employees not re-hired	Unit	-	200	2100	500

FINAL SCORING OF PROPOSALS SUBMITTED BY THE CANDIDATES

[Table compiled by the Privatization Committee on the basis of the candidates' technical and financial proposals]

	Unit	Candidates			
		A	B	C	D
Purchase prices of SNCFI Railway Equipment	Millions CFAF	-	18 000	12 000	22 000
Present value of Concession Fees for first ten years of the concession *	Millions CFAF	-	1789.3	3427.9	2176.9
Penalty for not re-hiring SNCFI agents (to be deducted)	Millions CFAF	-	1200	12600	3000
Financial value of the proposal	Millions CFAF	-	18589.3	2827.9	21176.9
Financial score of the proposal	Out of 60 points	-	52.7	8	60
Technical score of the proposal	Out of 40 points		38	31.5	30.5
Overall score of the proposal	Out of 100 points	-	90.7	39.5	90.5

* See calculation table in Annex

ANNEXES

[Tables compiled by the Privatization Committee on the basis of the candidates' technical and financial proposals]

CALCULATION OF PROJECTED CONCESSION FEES

CANDIDATE B

Year	Projected turnover (CFAF millions)	Proposed fee rate (%)	Projected fee (CFAF millions)	Discount factor	Projected present value of the fee (Millions CFAF)
1	12000	2	240	0.870	208.8
2	13000	2	260	0.756	196.6
3	13500	2	270	0.658	177.7
4	14000	3	420	0.572	240.2
5	14500	3	435	0.497	216.2
6	15000	3	450	0.432	194.4
7	15000	3	450	0.376	169.2
8	15000	3	450	0.327	147.2
9	15000	3	450	0.284	127.8
10	15000	3	450	0.247	111.2
TOTAL					1789.3

CALCULATION OF PROJECTED CONCESSION FEES

CANDIDATE C

Year	Projected turnover (Millions CFAF)	Proposed fee rate (%)	Projected fee (Millions CFAF)	Discount factor	Projected present value of the fee (Millions CFAF)
1	13000	0	0	0.870	0
2	15000	2	300	0.756	226.8
3	16000	2	320	0.658	210.6
4	17000	4	680	0.572	389.0
5	18000	4	720	0.497	357.8
6	19000	6	1140	0.432	492.5
7	21000	6	1260	0.376	473.8
8	23000	6	1380	0.327	451.3
9	25000	6	1500	0.284	426.0
10	27000	6	1620	0.247	400.1
TOTAL					3427.9

CALCULATION OF PROJECTED CONCESSION FEES

CANDIDATE D

Year	Projected turnover (Millions CFAF)	Proposed fee rate (%)	Projected fee (Millions CFAF)	Discount factor	Projected present value of the fee (Millions CFAF)
1	12500	0.5	62.5	0.870	54.4
2	14000	1.5	210	0.756	158.8
3	14500	1.5	217.5	0.658	143.1
4	16000	3	480	0.572	274.6
5	17000	3	510	0.497	253.5
6	17500	4	700	0.432	302.4
7	18500	4	740	0.376	278.2
8	20000	4	800	0.327	261.6
9	20500	4	820	0.284	232.9
10	22000	4	880	0.247	217.4
TOTAL					2176.9

6**Provisions for Monitoring and Oversight of the Concession**

The following text contains the Decision pertaining to the creation of a Technical Monitoring Unit for Railway Operations signed by the Minister of Transportation of the Republic of Ifrikyia.

Republic of Ifrikya

MINISTRY OF TRANSPORTATION

**DECISION 99/33/MINT/CAB PERTAINING TO THE CREATION OF A TECHNICAL
MONITORING UNIT FOR RAILWAY OPERATIONS**

The Minister of Transportation,

Considering:

- The Constitution,
- Decree 97/214 dated December 7, 1997 pertaining to the organization of the Government,
- Decree 97/215 dated December 7, 1997 pertaining to the appointment of members of the Government,
- Decree 98/21 pertaining to the organization of the Ministry of Transportation,
- The Concession Agreement for Railway Operations signed on January 15, 1999 by the Republic of Ifrikya and the *Société d'exploitation des transports ferroviaires d'Ifrikya*,
- The service requirements,

HEREBY DECIDES:

Article 1

A Technical Unit responsible for monitoring Railway Operations (the "Railway Unit") shall be created within the Ministry of Transportation. The Railway Unit is placed under the direct authority of the Minister.

Article 2

The Railway Unit is responsible for monitoring the execution of the Concession Agreement pertaining to Railway Operations ("the Agreement") signed on January 15, 1999 by the Republic of Ifrikya and the *Société d'exploitation des transports ferroviaires d'Ifrikya* ("the Concessionaire") for all matters under the purview of the Minister of Transportation.

To this end, the Railway Unit shall:

- (1) Prepare and monitor the implementation of provisions relative to the State's technical oversight of the Concessionaire's activity, particularly as regards railway safety

(Agreement, Article 1-7). In this connection, it shall handle in particular the processing of any amendments to the General Regulation on the Safety (GRS) of Railway Operations;

(2) Prepare and submit for the approval of the Minister of Transportation the measures to be prescribed to the Concessionaire in the event that the provisions determined by the Concessionaire in the area of standards, norms and methods of maintenance and operation should prove to be completely incompatible with the proper maintenance and operation of Railway Infrastructure and Railway Equipment (Agreement, Article 1-7);

(3) Prepare and monitor the Concessionaire's implementation of the environmental action plan for the restoration and refurbishment of sites and soils belonging to the Railway Network Concessioned (Agreement, Article 1-8);

(4) Ensure that the Concessionaire supplies copies of insurance policies (Agreement, Article 1-9);

(5) Assist the Concessionaire, on an as-needed basis, with swearing-in procedures for certain of its employees (Agreement, Article 1-13);

(6) Prescribe the format in which the Concessionaire is to maintain the permanent inventory of the Railway Network Concessioned, and shall verify said inventory (Agreement, Article 2-2);

(7) Countersign occupancy permits for public railway properties concessioned and leases, when the duration of permits and leases exceeds the period remaining under the concession (Agreement, Article 2-4);

(8) Initiate requests for the handing over, by the Concessionaire, of lands and other property belonging to the Railway Network Concessioned which cease to be assigned to railway usage (Agreement, Article 2-5);

(9) Assist the Concessionaire in implementing expropriation procedures in the public interest (Agreement, Article 2-7);

(10) Countersign permits for the installation, on real estate occupied by the Railway Network Concessioned, of public service lines and conduits when their duration exceeds the period remaining under the Concession (Agreement, Article 2-8);

(11) Monitor preparation, by the Minister of Roads, of decrees authorizing creation of public level crossings (Agreement, Article 2-9);

(12) Ensure the incorporation into the State budget (or Roads Fund) of the State's contribution to the maintenance and operation of public level crossings (Agreement, Article 2-9);

(13) Countersign agreements on the creation of private rail crossings when their duration exceeds the period remaining under the Concession (Agreement, Article 2-10);

(14) Ensure follow-up, with the relevant departments of the Ministry of Finance, of requests for guarantees of loans underwritten by the Concessionaire for the financing of Railway Infrastructure replacement and development (Agreement, Article 3-1);

(15) Countersign contracts entered into by the Concessionaire pertaining to private branch lines, when their duration exceeds the period remaining under the Concession (Agreement, Article 3-3);

(16) Process, on behalf of the Minister of Transportation, requests for approval of rail infrastructure replacement and development operations (Agreement, Articles 3-5 and 3-6);

(17) Ensure that information pertaining to the configuration of commercial passenger rail services operated by the Concessionaire is made available to the public (Agreement, Article 4-6);

(18) Prepare, in liaison with the relevant departments of the Ministry of Finance, draft individual agreements relative to rail services operated as an mandatory public service (Agreement, Article 5-1);

(19) Ensure the incorporation, into the State budget, of contributions owed by the State to the Concessionaire in connection with public service obligations (Agreement, Article 5-3);

(20) Collaborate on preparation of the requisition of the Concessionaire's inputs (Agreement, Article 5-4);

(21) Participate, with other relevant State departments, in processing requests for Rail Transport Operators' Licenses (Agreement, Article 6-1);

(22) Participate, with other relevant State departments, in the implementation of procedures relative to the State's right of first refusal upon the sale of Railway Equipment by the Concessionaire (Agreement, Article 7-5);

(23) Verify the calculation of the amount of the Concession Fee (Agreement, Article 8-2) and ensure, in liaison with the relevant departments of the Ministry of Finance, that the Concessionaire pays this fee (Agreement, Article 8-3);

(24) Participate, on behalf of the Ministry of Transportation, in procedures relative to the early cancellation of the Concession Agreement (Agreement, Article 10-3) and to the lenders' substitution for the Concessionaire (Agreement, Article 10-8);

(25) Participate, on behalf of the Ministry of Transportation, in the devolution of property, contracts, obligations, debts and responsibilities of the Concessionaire at the conclusion of the Concession Agreement and in the substitution for the Concessionaire (Agreement, Article 10-7);

(26) Assist the relevant State departments in preparing and conducting arbitration procedures (Agreement, Article 11-1);

(27) Assist the State's representatives on the Concession Monitoring Committee in preparing the Committee's sessions (Agreement, Article 12-1), particularly by analyzing documents drawn up by the Concessionaire in connection with Article 12-2 of the Agreement; and

(28) Obtain from the Concessionaire its monthly statistical activity report (Agreement, Article 12-2).

Article 3

Staff assigned to the Railway Unit shall include the following :

- A Coordinator, with the rank of Director within the Central Administration, having extensive experience with Railway Operations;
- a specialist in railway safety and environmental protection;
- a statistician/economist; and
- support staff (secretary, messenger, driver).

After a year of operations, the provisions of the present Article will be reviewed in the light of the Railway Unit's work load.

Article 4

The Railway Unit may call upon consultants to execute tasks assigned to it.

Article 5

The Railway Unit has its own budget, which it submits to the Minister of Transportation for approval.

Article 6

This decision, which takes effect on the date of entry into force of the Concession Agreement on Railway Operations, shall be published and disseminated wherever necessary, and in particular to other State departments involved in monitoring the concession, to the

Concessionaire, and to lenders providing financial assistance to the investment program implemented by the Concessionaire.

Signed []

Minister of Transportation