

# **SHAREHOLDERS AGREEMENT**

REGARDING THE COMPANY

**Cargo Wagon, a.s.**

ENTERED INTO BY AND BETWEEN

**Železničná spoločnosť Cargo Slovakia, a.s.**

AND

**AAE Wagon a.s.**

05. March 2015

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This **SHAREHOLDERS AGREEMENT** has been entered into **BY AND BETWEEN** the following parties:

### **Cargo**

Business name: **Železničná spoločnosť Cargo Slovakia, a.s.**  
Registered office: Drieňová 24, 820 09 Bratislava, Slovak Republic  
Registration: with the Companies Register of Bratislava I District Court section  
Sa - insert No. 3496/B  
Registration No. (IČO): 35 914 921  
Represented by: Ing. Vladimír Ľupták, Chairman of the Board of Directors  
Ing. Jaroslav Daniška, Vice-Chairman of the Board of Directors

(hereinafter referred to as "**Cargo**")

and

### **Shareholder No. 2**

Business name: **AAE Wagon a.s.**  
Registered office: Karadžičova 8/A, 821 08 Bratislava, Slovak Republic  
Registration: with the Companies Register of Bratislava I District Court  
section Sa – insert No. 6020/B  
Registration No. (IČO): 47 882 921  
Represented by: JUDr. Andrea Dobišová, Chairman of the Board of Directors  
Ing. Ivan Heczko, Member of the Board of Directors

(hereinafter referred to as the "**Shareholder No. 2**")

(hereinafter Cargo and Shareholder No. 2 jointly referred to as the "**Parties**" and individually any of them as the "**Party**")

## PREAMBLE

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WHEREAS:

- (A) The Shareholder No. 2 and Cargo have entered, along with this Agreement, into the Share Purchase Agreement (as this term is defined hereinafter) pursuant to which the Shareholder No. 2 acquires the shares representing 66% of the registered capital of the Company (as this term is defined hereinafter);
- (B) The Parties wish the Company to acquire the Railway Carriages (as this term is defined hereinafter) from Cargo and subsequently to lease part of them (Leased Carriages) to Cargo under the terms and conditions specified in the Agreement on Transfer and Lease Back (as this term is defined hereinafter);
- (C) The Parties are interested in management of the Company whose main line of business will be management of freight carriages focused on the economic use of freight carriages in the European railway area;
- (D) The purpose of this Agreement is to record the relationship between Cargo and the Shareholder No. 2 as shareholders of the Company and to record their agreement as to the manner in which the business and affairs of the Company shall be conducted;

NOW, THEREFORE, THE PARTIES HAVE AGREED as follows:

## 1 INTERPRETATION OF TERMS

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### 1.1 Definitions

In this Agreement, unless otherwise implied by the context:

**Agreement** shall mean this Shareholders Agreement, including any Annexes and amendments hereto.

**Agreement on Transfer and Lease Back** shall mean the "Agreement on Transfer of Movable Assets for Consideration and Subsequent Lease Back of Means of Transport" (to be) concluded by and between the Company as the buyer or the lessor and Cargo as the seller or the lessee in relation with sale of the Railway Carriages and subsequent lease of the Leased Carriages, the wording of which shall in all material aspects correspond to draft attached as Annex No. 1 hereto, as (such draft) may be amended according to this Agreement, including any annexes, amendments and novations thereto.

**Arbitration Court** shall mean the International Court of Arbitration of the International Chamber of Commerce.

**Bank Loan Agreement** shall have the meaning referred to in Article 1 of the Share Purchase Agreement.

**Business Day** shall mean a day other than Saturday, Sunday or rest day in Slovak Republic and **Business Days** shall mean two or more of them.

**Centre** shall mean the ICC International Centre for ADR.

**Change of Control** shall mean a case when Group A of Shareholder No. 2 and Group B of Shareholder No. 2 cease to exercise joint, direct or indirect Control over the Shareholder No. 2.

**Commercial Code** shall mean the Slovak Act No. 513/1991 Coll. Commercial Code, as amended.

**Company** shall mean the Slovak joint-stock company Cargo Wagon, a.s., with its registered office at Lúčna 2, 821 05 Bratislava, Slovak Republic, Registration No. (IČO): 47 523 441, registered with the Companies Register of Bratislava I District Court, section Sa, insert No. 5889/B.

**Confidential Information** shall mean all the information, which the Party learned in connection with the negotiations, preparation and during the performance of this Agreement, Share Purchase Agreement, Agreement on Transfer and Lease Back, Future Agreement or any other related documentation or as a shareholder of the Company.

**Disposition** shall mean any of the following dispositions:

- a) sale, transfer, disposal of the Shares or any interest in any Shares or the Rights Attached to the Shares (for or without consideration),
- b) creation or permission to exist any Encumbrance over any Shares or over any interest in any Shares or over any Rights Attached to the Shares;
- c) entering into any agreement (implied, oral or written), regardless of validity of such an agreement, or making any arrangement with any person who is not a Party in respect of the votes attached to any Shares otherwise;
- d) any legal or factual act other than those under a) through c) hereof, which gives rise or enables even partial control of another person over the Company, over any Shares or over any interest in any Shares or over any of the Rights Attached to the Shares,

however always exclusive of transfer of claims of the Party to dividends or any appurtenances to dividends to any other person once the General Meeting has decided to pay such dividends, or pledging such claim of the Party to dividends or any appurtenances to dividends in favour of another person.

**Effective Date** shall mean the day, when this Agreement takes effect according to the first sentence of Section 21.2 hereof.

**Encumbrance** shall mean any charge, pledge, lien, mortgage, hypothecation, title retention, security interest or any other security agreement or arrangement or any other right of a third party, including pre-emption right and option right, or any agreement to create any of the above and **Encumbrances** shall mean two or more of them.

**Entitled Shareholder** shall mean, for the purposes of Article 16 hereof, the Party other than the Obligated Shareholder.

**Financing Entity** shall have the meaning referred to in Article 1 of the Share Purchase Agreement.

**Future Agreement** shall mean the agreement to transfer the Shares of the Obligated Shareholder and the receivables of the Obligated Shareholder against the Company from the loans or the like, (to be) entered into between the Parties upon exercise of the Pre-emption Right, as referred to in Section 16.5.1 a) hereof.

**General Director** shall mean a general director of the Company or any other officer with similar powers, in particular COO, CEO or a supreme executive officer within the operative management of the Company's activities.

**Group A of Shareholder No. 2** shall mean any person who, at the time of signing of this Agreement, exercises Control, directly or indirectly, over the Original Parent Company 1 and any person, who is under Control exercised, directly or indirectly, by the Original Parent Company 1.

**Group B of Shareholder No. 2** shall mean any person who, at the time of signing of this Agreement, exercises Control, directly or indirectly, over the Original Parent Company 2 and any person who is under Control exercised, directly or indirectly, by the Original Parent Company 2.

**Group Member** shall mean (i) a person belonging to the Group A of Shareholder No. 2, or (ii) a person belonging to the Group B of Shareholder No. 2, or (iii) any entity, which is under Control exercised, directly or indirectly, by Cargo, as the context requires.

**ICC Mediation Rules** shall mean the Mediation Rules of the International Chamber of Commerce.

**Leased Carriages** shall have the meaning referred to in Article 2 of the draft of the Agreement on Transfer and Lease Back attached as Annex No. 1 hereto.

**Lock-up Period** shall mean the period as of the Effective Date until 31 December 2016.

**Obligated Shareholder** shall mean the Party, which intends to transfer its Shares to a third person as referred to in Section 16.1 hereof.

**Operating Loan** shall have the meaning referred to in Article 1 of the Share Purchase Agreement.

**Operating Loan Agreement** shall have the meaning referred to in Article 1 of the Share Purchase Agreement.

**Original Parent Company 1** shall mean a Swiss company AAE Ahaus-Alstätter Eisenbahn Cargo AG, with its registered office at Neuhofstrasse 4, 6340 Baar, Switzerland, registered by commercial registry of Canton Zug (Handelsregister des Kantons Zug) under No. CH-101.984.323.

**Original Parent Company 2** shall mean a Swiss company Cargo Lease AG, with its registered office at Neuhofstrasse 4, 6340 Baar, Switzerland, registered by commercial registry of Canton Zug (Handelsregister des Kantons Zug) under No. CH-219.961.339.

**Parent Company** shall mean the entity or any of the entities, as the case may be, which exercise(s), individually or jointly, directly or indirectly, the Control over any other entity.

**Parties and Party** shall have the meaning referred to in the heading hereof.

**Person Interested** shall mean a third person, to whom the Obligated Shareholder intends to transfer its Shares.

**Pre-emption Right** shall mean the pre-emption right of the Entitled Shareholder relating to the Shares of the Obligated Shareholder according to Article 16 hereof.

**Qualified Participation, Control and Property Participation** shall have the meaning assigned to these terms in paragraph 8 of the Securities Act.

**Railway Carriages** shall have the meaning referred to in Article 2 of the draft of the Agreement on Transfer and Lease Back attached as Annex No. 1 hereto.

**Reserved Matters** shall mean any of the matters specified in Section 5.5.1 hereof in competence of the General Meeting and any of the matters specified in Section 6.9.1 hereof in competence of the Board of Directors, as the case may be.

**Rights Attached to the Shares** shall mean all the rights which according to the legal regulations and the Articles of Association are associated with the Shares, namely the right to participate in profit and liquidation balance, the right to participate in the

management of the Company, the right to take part in the General Meeting and require information at the General Meeting, including voting rights attached to the Shares and **Right Attached to the Shares** shall mean any of them individually.

**Rules** shall mean the Rules of Arbitration of the International Chamber of Commerce.

**Securities Act** shall mean the Slovak Act No. 566/2001 Coll. on Securities and Investment Services, as amended.

**Share** shall mean a share of the Company, including a bulk share and temporary certificate, if issued, and **Shares** shall mean any shares of the Company, including bulk shares and temporary certificates, if issued.

**Share Purchase Agreement** shall mean the "Agreement on Sale and Purchase of Shares of Cargo Wagon, a.s." entered into together with this Agreement by and between Cargo as the seller and the Shareholder No. 2 as the buyer in respect of Shares representing 66% share in the Company's registered capital.

**Subsidiary Loan** shall have the meaning referred to in Article 1 of the Share Purchase Agreement.

**Subsidiary Loan Agreement** shall have the meaning referred to in Article 1 of the Share Purchase Agreement.

**Tag-along Right** shall mean the right of the Entitled Shareholder to sell all its Shares to the Person Interested according to Article 16 hereof.

**Transfer Notice** shall mean a notice of the Obligated Shareholder's intention to transfer its Shares, delivered to the Entitled Shareholder under Section 16.3 hereof.

## 1.2 Interpretation

In this Agreement, unless other intention is implied by the context:

- a) Defined terms in singular shall include plural and vice versa.
- b) A reference to Article, Section, letter or other provision or Annex shall mean a reference to the Article, Section, letter or other provision or Annex hereto.
- c) A reference to the General Meeting, the Board of Directors, the Supervisory Board, Procurist (in Slovak: "*Prokurista*"), the General Director, Articles of Association and the business plan shall mean a reference to the General Meeting, the Board of Directors, the Supervisory Board, Procurist, the General Director, Articles of Association and the business plan of the Company.



- d) Any member of the Company's body elected upon proposal for election notified by the Party according to this Agreement shall be considered as a representative of the proposing Party. A reference to a representative of any of the Parties in any of the Company's bodies shall mean, depending on the context, a reference to the Cargo representative in the Supervisory Board, Cargo representative in the Board of Directors, the representative of Shareholder No. 2 in the Supervisory Board and the representative of Shareholder No. 2 in the Board of Directors.
- e) Any proxy of the Company authorized solely by representative(s) of a Party in the Company's bodies and any proxy authorized in substitution of such a proxy shall be considered as a representative of such Party. A reference to a representative of any of the Parties in the position of proxy of the Company includes a proxy of the Company authorized solely by representative(s) of such Party in the Company's bodies and a proxy authorized in substitution of such a proxy.
- f) A reference to a representative of a Party (in general) includes a representative of such Party in the Company's bodies, a representative of such Party in the position of proxy of the Company (including proxy authorized in substitution of such a proxy), the person who, according to Section 8.1.3 hereof, is deemed to be a representative of the Party and other representatives of such Party operating in the Company.
- g) A reference to a Party or other person includes also its legal successors (whether singular or universal, as the case may be), if any.
- h) If a Party is obliged hereunder to "procure" something, that shall mean, unless otherwise implied by this Agreement, the obligation to procure the relevant matter in particular by exercising the voting and other shareholder rights in the Company, as well as by actions of representatives of such Party in the Board of Directors or the Supervisory Board or by actions of a representative of such Party in the position of proxy of the Company that is according to this Section 1.2 letter e) considered as a representative of such Party and by actions of other such representatives of such Party operating in the Company (including the person, who according to Section 8.1.3 hereof is deemed to be a representative of the Party).

### **1.3 Headings**

Headings of Articles and Sections are provided for convenience only and have no effect on the interpretation of this Agreement.

## **2 SUBJECT MATTER OF THIS AGREEMENT**

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### **2.1 Subject Matter of this Agreement**

The subject matter of this Agreement is to determine the binding rules according to which the Parties

- a) shall exercise the rights and fulfil the obligations related to performance of control over the Company;
- b) shall exercise the rights and fulfil the obligations related to ownership of their Shares, including the issues of disposal of the Shares; and
- c) shall take certain legal and other factual steps in order to achieve some of the basic objectives of the Company as described in Section 3.3 hereof.

## **3 BASIC PRINCIPLES**

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### **3.1 Compliance with this Agreement**

The Parties undertake to comply with this Agreement and not to take any steps, including voting at the General Meeting or actions of their representatives (as referred in Section 1.2 letter f) hereof), which would be contrary to this Agreement, all within the maximum extent in which that is not in contradiction with mandatory provisions of legal regulations.

The Parties undertake to take all legal and other acts and to exercise their shareholder rights attached to the Shares in a way which is necessary or suitable in order to fulfil this Agreement and to refrain from any actions which would be contrary to this Agreement, all within the maximum extent in which that is not in contradiction with mandatory provisions of legal regulations.

### **3.2 General Principle of Management of the Company**

The Parties acknowledge and agree that the Board of Directors, in which both Parties shall be represented in compliance herewith, shall be in charge of the business management.

The Parties have agreed that the basic principle of the Company's management is the principle that consent of representatives of both Parties in the General Meeting and the Board of Directors is required for decisions on Reserved Matters, made in accordance with Section 5.4 letter a) and Section 6.7.1 letter a) hereof, as the case may be.

### **3.3 Basic Objectives of the Company**

The Parties have agreed that the basic objectives of the Company shall be:

- a) lease of the Leased Carriages to Cargo (the lessee) under the terms and conditions set in the Agreement on Transfer and Lease Back and at least for the period until (i) the last day of the calendar month, in which 8 years expire since the day when the purchase price for the Railway Carriages was paid by the Company to Cargo according to the Agreement on Transfer and Lease Back, or (ii) 31 December 2023, whichever occurs earlier (Section 13.1 of the draft of the Agreement on Transfer and Lease Back attached as Annex No. 1 hereto);
- b) lease of the Company's carriages to lessees in the extent, in which such lease is not contradictory to the terms and conditions of the Agreement on Transfer and Lease Back, while observing the principle of the most efficient use of the Company's resources; and
- c) performance of related business activities, while observing the principle of the most efficient use of the Company's resources.

### **3.4 Exercise of Shareholder Rights**

The Parties undertake that they will exercise all their shareholder rights associated with the ownership of their Shares (to the maximum extent in which that is not in contradiction with mandatory provisions of legal regulations) in compliance with this Agreement.

The Parties undertake, in particular (to the maximum extent in which that is not in contradiction with mandatory provisions of legal regulations):

- a) to procure, as needed, convening of the General Meeting and to propose and/or vote at the General Meeting for adoption of such resolutions of the General Meeting that are needed or suitable for the performance of the contents of this Agreement and/or fulfilment of the obligations hereunder; and
- b) to procure, in the particular matter, that members of the Board of Directors and members of the Supervisory Board, who are representatives of the relevant Party, will vote in the given matter and act in compliance with this Agreement.

### **3.5 Decision-Making of Collective Bodies**

The Parties undertake to procure presence of their representatives in the Company's bodies at meetings of collective bodies of the Company so that the attainment of quorum of such bodies will not be put at risk.

The Parties further undertake to procure that their representatives in the Company's bodies will exercise at meetings of the Company's collective bodies their voting rights so that the obligations following for the Parties from this Agreement, will not be put at risk.

The same principles shall apply accordingly in case of per rollam voting.

### **3.6 Company's Auditor**

The Parties have agreed that all Company's documents that are subject to the audit under the relevant legal regulations shall be audited only by an entity approved by the General Meeting.

## **4 COMPANY'S BODIES**

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### **4.1 Company's Bodies**

The Company's bodies shall be

- a) the General Meeting;
- b) the Board of Directors; and
- c) the Supervisory Board.

## **5 GENERAL MEETING**

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### **5.1 Acting of the General Meeting**

The General Meeting shall be held at least once in a calendar year, within the time limit prescribed by the legal regulations.

The Company's registered office or other suitable place in Bratislava shall be the venue for holding the General Meeting.

### **5.2 Convocation of the General Meeting**

The General Meeting shall be convened by the person authorized to do so according to the Articles of Association or legal regulations.

The Articles of Association shall always stipulate the possibility for each Party to initiate convening of the General Meeting; and the convening of the General Meeting shall be mandatory for the Company or its Board of Directors, unless it is in contradiction with mandatory legal regulations.

The Articles of Association shall always stipulate the possibility for each Party to convene the General Meeting, unless it is in contradiction with mandatory legal regulations.

### **5.3 Participation and Voting at the General Meeting**

Each Party shall be obliged to take part in the General Meeting and to exercise voting right at the General Meeting in compliance with this Agreement so that the obligations resulting for the Parties from this Agreement shall not be breached.

Each Party shall be obliged to pay the other Party a contractual fine in the following cases of breach of this Agreement:

- a) if a Party does not take part in the General Meeting, when a consent of the General Meeting to transfer of the Shares is to be granted; or
- b) if a Party does not exercise its voting right at the General Meeting in accordance with this Agreement, when a consent of the General Meeting to transfer of the Shares is to be granted; or
- c) if a Party does not take part in the General Meeting, when a decision on election or dismissal of a member of the Company's bodies is to be adopted by the General Meeting, and due to this fact only such General Meeting does not adopt a resolution in this matter in compliance with this Agreement; or
- d) if a Party does not exercise its voting right at the General Meeting in accordance with this Agreement, when a decision on election or dismissal of a member of the Company's bodies is to be adopted by the General Meeting, and due to this fact only such General Meeting does not adopt a resolution in this matter in compliance with this Agreement.

The right for a contractual fine according to this Section 5.3 arises only if the breaching Party does not remedy its breach in a period of 30 Business Days as of delivery of the other Party's call for remedy, while this other Party (or its representative in the Board of Directors) procured or was prepared to procure provision of sufficient cooperation to the breaching Party, including cooperation consisting in convening the General Meeting, in which the breaching Party may remedy its breach.

Contractual fine according to letters a) to d) above shall amount to EUR 5,000 (in words: five thousand euros) for every day following the expiry of remedy period according to this Section 5.3 until adoption of a resolution of the General Meeting in compliance with this Agreement.

### **5.4 Quorum and Decision-Making of the General Meeting**

The Parties undertake to procure that according to the Articles of Association:

- a) all decisions of the General Meeting on the Reserved Matters according to Section 5.5.1 hereof will require at least 2/3 (two thirds) majority of votes of all shareholders of the Company in order to be adopted; and

- b) all decisions of the General Meeting on any other matters will require at least simple majority of votes of all shareholders in order to be adopted (unless otherwise stipulated by mandatory provisions of legal regulations).

## **5.5 Matters in Competence of the General Meeting**

5.5.1 The Parties undertake to procure that according to the Articles of Association the following matters will be the Reserved Matters for the General Meeting and will be subject to prior approval adopted by the General Meeting in accordance with Section 5.4 letter a) hereof and that each of the following Reserved Matters will be performed by the Company only if approved by the General Meeting in advance:

- a) change of the Articles of Association;
- b) decision to increase and decrease the registered capital, to authorize the Board of Directors to increase the registered capital, and issuance of priority bonds or exchangeable bonds;
- c) election and removal of Procurist, including decision on granting or revocation of the respective power of attorney to Procurist;
- d) decision to dissolve the Company or change its legal form, decision on merger or splitting or consolidation of the Company;
- e) decision to commence or terminate trading with the Company's shares at stock exchange and decision that the Company shall cease to be a public joint-stock company;
- f) decision on approval of an agreement to transfer an undertaking or an agreement to transfer a part of an undertaking, decision on approval of pledging, provision of the right of use and lease or any other disposition in relation to an undertaking or a part of an undertaking;
- g) conclusion of an agreement on association, creation of a consortium, agreement on joint-ventures and other agreements of a similar nature;
- h) establishment and foundation of trading companies or other legal entities, in which the Company has any direct or indirect participation;
- i) change of the scope of business; and
- j) consent or refusal of the consent with transfer of the Shares or creating of pledge over the Shares.

5.5.2 The Parties agree and undertake to procure that according to the Articles of Association the following matters will be subject to prior approval of the General Meeting adopted in accordance with Section 5.4 letter b) hereof and that each of the following matters will be performed by the Company only if approved by the General Meeting in advance:

- a) election and removal of members of the Board of Directors, determination of the Chairman and the Vice-Chairman of the Board of Directors;
- b) election and removal of members of the Supervisory Board, except for the members of the Supervisory Board, who are being elected and dismissed by employees, determination of the Chairman and the Vice-Chairman of the Supervisory Board;
- c) election and removal of members of other bodies determined by the Articles of Association;
- d) approval of remuneration rules for members of the Company's bodies (including their claims in case of removal from their offices or other cessation of their offices beyond statutory standards);
- e) approval of regular individual financial statements and extraordinary individual financial statements, decision on profit distribution or on the settlement of losses and determination of royalties;
- f) adoption, modification and supplementation of the business plan; and
- g) decision on appointment and approval of auditor for the purpose of audit of the Company's documents, which need to be audited according to the legal regulations.

## **6 BOARD OF DIRECTORS**

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### **6.1 Number of Members**

The Parties shall procure that according to the Articles of Association the Company's Board of Directors will have three members, namely the Chairman, the Vice-Chairman and an (ordinary) member of the Board of Directors.

### **6.2 Election and Dismissal of Members**

The Parties shall procure that members of the Board of Directors will be elected and removed from office by the General Meeting, which shall also determine which of the elected members shall hold the position of the Chairman and the Vice-Chairman of the Board of Directors.

### **6.3 Term of Office**

The Parties shall procure that according to the Articles of Association the term of office of members of the Board of Directors will be five years.

### **6.4 Right of Nomination**

The Parties agree and undertake to procure in accordance with this Agreement that:

- a) the Shareholder No. 2 will always have two representatives in the Board of Directors, where one of the representatives will be the Chairman of the Board of Directors; and
- b) Cargo will always have one representative in the Board of Directors, who will be the Vice-Chairman of the Board of Directors.

For the avoidance of any doubts it shall not be considered as a breach of this Section 6.4 if a position in the Board of Directors is not occupied although the Parties have not breached their obligations under any other provisions of this Agreement.

### **6.5 Election and Dismissal of Members**

- 6.5.1 Either Party can anytime during the term of this Agreement notify the other Party a proposal for election of a new member of the Board of Directors who can be nominated by that Party (Section 6.4 hereof).

The proposal shall contain identification data of the proposed person (candidate), identification of the office for which the candidate is nominated and a brief curriculum vitae of the candidate.

- 6.5.2 Upon notification of a proposal by a Party pursuant to Section 6.5.1 hereof, the Parties shall be obliged to procure convocation of the General Meeting within 5 Business Days, so that the General Meeting will take place as soon as possible, while observing the deadlines stipulated by law and the Articles of Association. The Shareholder No. 2 shall be obliged to use its voting rights at the General Meeting to procure that the proposed candidate of Cargo will be elected member of the Board of Directors.

- 6.5.3 Either Party can anytime during the term of this Agreement notify the other Party of its proposal to remove its representative from the Board of Directors without giving any reasons. After delivery of such notice, the Parties shall be obliged to procure convocation of the General Meeting within 5 Business Days, so that the General Meeting will take place as soon as possible. The Shareholder No. 2 shall be obliged to use its voting rights at the General Meeting to procure that a representative of Cargo, proposed by Cargo to be removed, will be removed from the office in the Board of Directors.



6.5.4 If a Party proposes dismissal of its representative in the Board of Directors and also proposes election of a new candidate, Sections 6.5.1 through 6.5.3 hereof shall apply accordingly.

6.5.5 Where there is a risk of serious delay (for instance, due to unexpected cessation of office of a member of the Board of Directors), the Parties shall be obliged to procure that the new member of the Board of Directors will be elected as soon as possible – in particular by prompt notifying the nominations according to Sections 6.4 and 6.5 hereof and by waiving the time limits for holding the General Meeting prescribed by law or the Articles of Association for holding the General Meeting (paragraph 184 (3) of the Commercial Code).

**6.6 Participation and Exercising the Powers of a Member of the Board of Directors**

6.6.1 Each Party undertakes to procure that its representatives in the Board of Directors will, during their term of office, exercise their powers, act and vote in compliance with this Agreement, with the instructions given by the Party to its representative (such instructions to be consistent with this Agreement) and with the basic objectives of the Company according to Section 3.3 hereof, all within the maximum extent in which that is not in contradiction with mandatory provisions of legal regulations.

6.6.2 In case of failure of a representative of a Party in the Board of Directors to comply with this Agreement, the other Party shall be entitled to request immediate removal of such representative from its office in the Board of Directors by the General Meeting. Section 6.5.3 shall apply *mutatis mutandis*. Such request for removal from office shall be promptly delivered also to the other shareholder. If the other shareholder proposes its candidate for election of a new member of the Board of Directors, who can be nominated by such shareholder, prior to the General Meeting that shall decide on removal from office (or at such General Meeting, where both shareholders are present), such General Meeting shall decide also on election of a new member of the Board of Directors.

6.6.3 Each Party shall be obliged to pay the other Party a contractual fine in the following cases of breach of this Agreement:

- a) if a representative of the Party in the Board of Directors acts on behalf of the Company in respect of any of the Reserved Matters (Sections 5.5.1 and 6.9.1 hereof) without respective consent of the General Meeting or the Board of Directors, as the case may be, or contrary to the respective decision of the General Meeting or the Board of Directors, as the case may be, unless such action has been taken by representatives of both Parties in the Board of Directors acting together; or
- b) if any of the representatives of the Party in the Board of Directors does not vote for convening or otherwise defeats to convene the General Meeting that

according to this Agreement shall decide in a particular way on any of the following matters:

- (i) when a decision on election or dismissal of members of the Company's bodies is to be adopted by the General Meeting;
- (ii) when the consent of the General Meeting with a transfer of the Shares is to be granted;

and due to this fact only such General Meeting is not convened in compliance with this Agreement.

However, no right for a contractual fine according to letters a) and b) above will arise if the Party, whose representative in the Board of Directors is concerned, proves to the other Party that it instructed its representative to act in compliance with this Agreement and its representative in the Board of Directors acted in breach of such instruction.

The right for a contractual fine according to letters a) and b) above arises only if the breaching Party does not remedy its breach in a period of 30 Business Days as of delivery of the other Party's call for remedy, while this other Party (or its representative in the Company's bodies) procured or was prepared to procure provision of sufficient cooperation to the breaching Party (or to its representative in the Company's bodies).

- 6.6.4 The contractual fine according to Section 6.6.3 letter a) hereof shall amount to EUR 100,000 (in words: one hundred thousand euros) for each case.

The contractual fine according to Section 6.6.3 letter b) hereof shall amount to EUR 5,000 (in words: five thousand euros) for every day following the expiry of remedy period according to Section 6.6.3 hereof until convening of the respective General Meeting.

## **6.7 Quorum and Decision-Making of the Board of Directors**

- 6.7.1 The Parties have agreed and undertake to procure that according to the Articles of Association:

- a) Quorum of the Board of Directors that shall decide on any of the Reserved Matters according to Section 6.9.1 hereof shall be attained only if all three members of the Board of Directors are present at meeting of the Board of Directors (or all three members of the Board of Directors vote in case of per rollam voting), and any decision of the Board of Directors on the Reserved Matters according to Section 6.9.1 hereof shall be deemed to have been adopted if it is approved by majority of all members of the Board of Directors, provided that the following persons voted for the adoption of the decision

- (i) the Chairman of the Board of Directors and the Vice-Chairman of the Board of Directors; or
- (ii) an (ordinary) member of the Board of Directors and the Vice-Chairman of the Board of Directors; or
- (iii) all members of the Board of Directors.

Notwithstanding anything contrary in this Agreement, in case any position in the Board of Directors becomes vacant and within three months as of effective vacation of such position the General Meeting does not elect a new member of the Board of Directors to the vacant position only due to the fact that a shareholder, who is entitled to nominate candidate for such position, has not proposed its candidate, the following rules shall apply:

- (iv) quorum of the Board of Directors that shall decide on any of the Reserved Matters according to Section 6.9.1 hereof shall be attained if all members of the Board of Directors being in a function are present at meeting of the Board of Directors (or all members of the Board of Directors being in a function vote in case of per rollam voting), and
  - (v) any decision of the Board of Directors on the Reserved Matters according to Section 6.9.1 hereof shall be deemed to have been adopted if it is approved by majority of members of the Board of Directors being in a function.
- b) Quorum of the Board of Directors that shall decide on any matter other than the Reserved Matters shall be attained only if majority of all three members of the Board of Directors is present at meeting of the Board of Directors (or majority of all three members of the Board of Directors votes in case of per rollam voting), and any decision of the Board of Directors on any matter other than the Reserved Matters shall be deemed to have been adopted if it is approved by majority of all members of the Board of Directors.

6.7.2 The Parties undertake to procure that according to the Articles of Association decisions of the Board of Directors may be adopted by voting at meeting of the Board of Directors as well as by voting per rollam.

6.7.3 The Parties undertake to procure that according to the Articles of Association any member of the Board of Directors may convene a meeting of the Board of Directors and organize per rollam voting of the Board of Directors anytime.

## **6.8 Acting on Behalf of the Company**

The Parties shall procure that the Company will be entitled to act externally and oblige itself only in such a way that any two members of the Board of Directors will jointly act on behalf of the Company.

## **6.9 Matters in Competence of the Board of Directors**

6.9.1 The Parties undertake to procure that according to the Articles of Association the following matters will be the Reserved Matters for the Board of Directors and will be subject to prior consent of the Board of Directors (in the form of a resolution of the Board of Directors), adopted in accordance with Section 6.7.1 letter a) hereof, and that every of the following Reserved Matters will only be performed by the Company if the Board of Directors agrees to it in advance:

- a) adoption, modification and supplementation of the signature code;
- b) receipt or acquisition of bond, promissory note, blank promissory note and other debenture security issued by any other person, grant of loan or credit or any other similar performance, provided that as to the moment, when a decision of the Board of Directors on such matter is to be adopted, the total value of performance in respect of the relevant bond, promissory note, blank promissory note, other debenture security, loan, credit or other similar performance or related series thereof (regardless of a title for such performance) exceeds or is likely to exceed EUR 20,000,000 (in words: twenty million euros) or if such performance is repeated or continuing through the period over one year, the total value of performance per year exceeds or is likely to exceed EUR 20,000,000 (in words: twenty million euros);
- c) issuance of bond, promissory note, blank promissory note, other debenture security, receipt of loan, credit or any other similar performance, provided that as to the moment, when a decision of the Board of Directors on such matter is to be adopted, the total value of performance in respect of the relevant bond, promissory note, blank promissory note, other debenture security, loan, credit or other similar performance or related series thereof (regardless of a title for such performance) exceeds or is likely to exceed EUR 20,000,000 (in words: twenty million euros) or if such performance is repeated or continuing through the period over one year, the total value of performance per year exceeds or is likely to exceed EUR 20,000,000 (in words: twenty million euros);
- d) assumption of debt, issuance of guarantee or provision of any other security instrument or any other similar performance, provided that as to the moment, when a decision of the Board of Directors on such matter is to be adopted, the total value of the performance in respect of the relevant debts, guarantees, other security instruments or any other similar performance or related series thereof (regardless of a title for such performance) exceeds or is likely to exceed EUR 20,000,000 (in words: twenty million euros) or if such performance is repeated or

continuing through the period over one year, the total value of performance per year exceeds or is likely to exceed EUR 20,000,000 (in words: twenty million euros);

- e) conclusion, implementation or execution of any agreement, transaction, document or legal act, other than those mentioned in this Section 6.9.1, in Sections 5.5.1, 5.5.2, 6.9.3 letters a) to e) hereof, provided that as to the moment, when a decision of the Board of Directors on such matter is to be adopted, the total value of the performance under such agreement, transaction, document or legal act or related series thereof exceeds or is likely to exceed EUR 15,000,000 (in words: fifteen million euros) or if such performance is repeated or continuing through the period over one year, the total value of performance per year exceeds or is likely to exceed EUR 15,000,000 (in words: fifteen million euros); and
- f) until termination or cancellation of the Lease Contract (as defined in Section 19.5 of the draft Agreement on Transfer and Lease Back attached as Annex No. 1 hereto) and only if the consent of Cargo as the lessee is required under Section 16.36 of the draft Agreement on Transfer and Lease Back, any disposition with the Leased Carriages or any part thereof and any other act, mentioned in the first sentence of Section 16.36 of the draft of the Agreement on Transfer and Lease Back attached as Annex No. 1 hereto.

6.9.2 Notwithstanding anything contrary in Section 6.9.1 letters a) through f) hereof, the Parties agree that each of the following acts shall be excluded from the Reserved Matters for the Board of Directors:

- a) termination of the Agreement on Transfer and Lease Back or any part thereof by the Company; and
- b) enforcement of any claims of the Company and performance of any obligations by the Company resulting to it from breach of the Agreement on Transfer and Lease Back or from termination of the Agreement on Transfer and Lease Back (or its part).

6.9.3 The Parties undertake to procure that according to the Articles of Association the following matters will be subject to prior consent of the Board of Directors (in the form of a resolution of the Board of Directors), adopted in accordance with Section 6.7.1 letter b) hereof and that every of the following matters will only be performed by the Company if the Board of Directors agrees to it in advance:

- a) establishment of the position of the General Director, election and removal of the General Director;
- b) adoption, modification and supplementation of remuneration rules for the General Director and for executive employees (including their claims in case of

removal from their office or other cessation of their office beyond statutory standards);

- c) adoption, modification and supplementation of the organizational code;
- d) contributions to Company's equity other than contributions to the Company's registered capital;
- e) establishment of organizational units of the Company regardless of whether they shall be registered with the Companies Register or not; and
- f) any other matter that is not in competence of any other Company's body and at the same time is not any of the Reserved Matters for the Board of Directors.

6.9.4 For the avoidance of any doubts, granting consent of the representative of Cargo in the Board of Directors on the Reserved Matter referred to in Section 6.9.1 letter f) hereof shall not substitute the consent of lessee required according to the Agreement on Transfer and Lease Back for acts mentioned therein.

## **7 SUPERVISORY BOARD**

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### **7.1 Number of Members**

The Parties shall ensure that according to the Articles of Association the Supervisory Board will have three members, namely one Chairman, one Vice-Chairman and one other member of the Supervisory Board (provided that no member of the Supervisory Board is to be elected by employees).

If according to the valid legal regulations some members of the Supervisory Board are to be elected by employees, the Parties shall increase the number of members of the Supervisory Board by changing the Articles of Association so that the nomination rights of the Parties according to Section 7.4 hereof shall be preserved; for that purpose the Parties shall procure that the General Meeting shall be convened as soon as possible.

### **7.2 Election and Dismissal of Members**

The Parties shall procure that members of the Supervisory Board will be elected and removed from office by the General Meeting which shall also determine which of the elected members shall hold the position of the Chairman and the Vice-Chairman of the Supervisory Board.

If according to the valid legal regulations some members of the Supervisory Board are to be elected by employees, the General Meeting shall elect and remove from office the other members of the Supervisory Board, including the Chairman and the Vice-Chairman of the Supervisory Board.

### **7.3 Term of Office**

The Parties shall procure that according to the Articles of Association the term of office of members of the Supervisory Board will be five years.

### **7.4 Right of Nomination**

The Parties agree and undertake to procure in accordance with this Agreement that:

- a) the Shareholder No. 2 will always have at least two representatives in the Supervisory Board, where one of the representatives will be the Chairman of the Supervisory Board; and
- b) Cargo will always have at least one representative in the Supervisory Board who will be the Vice-Chairman of the Supervisory Board.

### **7.5 Election and Dismissal of Members**

The provisions of Section 6.5 hereof shall apply accordingly to the election and dismissal of members of the Supervisory Board elected by the General Meeting.

### **7.6 Exercising the Powers of a Member of the Supervisory Board**

7.6.1 The Parties undertake to procure that their representatives in the Supervisory Board will, during their term of office, exercise their powers, act and vote in compliance with this Agreement, with the instructions given by the Party to its representative (such instructions to be consistent with this Agreement) and with the basic objectives of the Company according to Section 3.3 hereof, all within the maximum extent in which that is not in contradiction with mandatory provisions of legal regulations.

7.6.2 In case of failure of a representative of a Party in the Supervisory Board to comply with this Agreement, the other Party shall be entitled to request immediate removal of such representative from its office in the Supervisory Board by the General Meeting. Section 6.5.3 (second and third sentence) in reference with Section 7.5 hereof shall apply mutatis mutandis. Such request for removal from office shall be promptly delivered also to the other shareholder. If the other shareholder proposes its candidate for election of a new member of the Supervisory Board, who can be nominated by such shareholder, prior to the General Meeting that shall decide on removal from office (or on such General Meeting, where both shareholders are present), such General Meeting shall decide also on election of a new member of the Supervisory Board.

### **7.7 Decision-Making of the Supervisory Board**

The Parties have agreed and undertake to procure that according to the Articles of Association any decision of the Supervisory Board shall be deemed to have been adopted if majority of all members of the Supervisory Board votes for the adoption of the decision.

The Parties undertake to procure that according to the Articles of Association decisions of the Supervisory Board may be adopted by voting at meeting of the Supervisory Board as well as by voting per rollam.

## **7.8 Matters in Competence of the Supervisory Board**

7.8.1 The Parties undertake to procure that according to the Articles of Association the following matters will fall under the competence of the Supervisory Board and also be subject to prior consent of the Supervisory Board (in the form of a resolution of the Supervisory Board), as the case may be, and that every of the following matters, for which a consent of the Supervisory Board is required, will only be performed by the Company if the Supervisory Board agrees to it:

- a) grant of loan, credit, transfer or provision of the right to use assets of the Company to or securing of an obligation of member of the Board of Directors, Procurist or any other person who is entitled to act on behalf of the Company and persons close to them or persons who act on their account (paragraph 196a of the Commercial Code);
- b) control, whether the accounting records are duly kept in compliance with the actual situation and whether the Company's business activities are being performed in compliance with legal regulations, Articles of Association, resolutions and instructions of the General Meeting;
- c) inspection of all documents and records relating to the Company's activities (all records, books of accounts, business records);
- d) examination of regular individual financial statements, extraordinary individual financial statements and consolidated financial statements and of a proposal to distribute profit or settle losses and submission of its opinion to the General Meeting;
- e) taking part at the General Meeting and informing the General Meeting about results of its supervisory activities;
- f) convocation of extraordinary General Meeting anytime when it is considered relevant and making proposals of necessary measures; and
- g) other matters, if any, which fall under the competence of the Supervisory Board or for which prior consent of the Supervisory Board is required according to the valid legal regulations.



## 8 GENERAL DIRECTOR, COMPANY'S PERSONNEL AND OTHER REPRESENTATIVES

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### 8.1 General Director

- 8.1.1 The Parties have agreed that an office of the General Director may be created in the Company as the supreme executive officer within the operative management of the Company's activities.

The General Director will be an executive employee under direct managerial competence of the Board of Directors.

The decision of the Board of Directors on the election of the relevant person in the office of the General Director adopted according to Section 6.7.1 letter b) hereof shall be a necessary precondition to establish and create employment relationship with the General Director.

Removal of the General Director from office by the Board of Directors adopted according to Section 6.7.1 letter b) hereof shall be a reason for filing a notice of termination of the employment contract by the Company.

For the avoidance of any doubts, it has been agreed that the General Director will not be a body of the Company.

- 8.1.2 Either Party can anytime during the term of this Agreement notify the other Party a proposal for election of a person to the office of the General Director or for removal of the General Director from its office. The proposal for election shall contain identification data of the proposed person and brief curriculum vitae of such person.
- 8.1.3 The General Director (or any other officer with similar powers, in particular COO, CEO or a supreme executive officer within the operative management of the Company's activities) elected solely by representative(s) of the Shareholder No. 2 shall be considered as a representative of the Shareholder No. 2.
- 8.1.4 The Shareholder No. 2 undertakes to procure that the person, who is its representative under Section 8.1.3 hereof, shall during the term of his/her office of the General Director exercise his/her powers and act in compliance with this Agreement and with the instructions given by the Shareholder No. 2 (or its representatives in the Company's bodies) to its representative (such instructions to be consistent with this Agreement), all within the maximum extent in which that is not in contradiction with mandatory provisions of legal regulations (in particular that he/she will not act without a decision of relevant Company's body on the particular matter, where needed, or contrary to a decision of relevant Company's body on the particular matter).

8.1.5 In case of failure of the person, who is a representative of the Shareholder No. 2 under Section 8.1.3 hereof, to comply with this Agreement, Cargo shall be entitled to request immediate removal of such representative from the office of the General Director by convening of the Board of Directors. The Shareholder No. 2 shall be obliged to procure that its representatives in the Board of Directors take part at such meeting of the Board of Directors and use their voting rights at the Board of Directors so that such representative is removed from the office of the General Director. Such request for removal from office shall be promptly delivered also to the Shareholder No. 2.

8.1.6 The Shareholder No. 2 shall be obliged to pay Cargo a contractual fine for breach of this Agreement, if the person, who is its representative under Section 8.1.3 hereof, acts on behalf of the Company in respect of the Reserved Matters without respective consent of the General Meeting or the Board of Directors, as the case may be, or contrary to the respective decision of the General Meeting or the Board of Directors, as the case may be.

However, no right for the contractual fine according to this Section 8.1.6 will arise if the Shareholder No. 2 proves to Cargo that the Shareholder No. 2 or its representatives in the Company's bodies instructed such person to act in compliance with this Agreement and such person acted in breach of such instruction.

The right for the contractual fine according to this Section 8.1.6 arises if the Shareholder No. 2 does not remedy its breach in a period of 30 Business Days as of delivery of Cargo's call for remedy, while Cargo (or its representative in the Company's bodies) procured or was prepared to procure provision of sufficient cooperation to the Shareholder No. 2 (or to its representative in the Company's bodies).

The contractual fine according to this Section 8.1.6 shall amount to EUR 100,000 (in words: one hundred thousand euros) for each case.

## **8.2 Securing of Company's Personnel**

The Parties undertake to procure the conditions needed so that the Company will have sufficient number of qualified employees for the performance of its line of business.

## **8.3 Other Representatives of the Parties**

8.3.1 Each Party undertakes to procure that its representative in the position of proxy of the Company shall during the period of its authorization exercise his/her powers and act in compliance with this Agreement and the instructions given by such Party (or its representatives in the Company's bodies) to act in a particular matter in a particular manner (such instructions to be consistent with this Agreement), all within the maximum extent in which that is not in contradiction with mandatory provisions of legal regulations (in particular that he/she will not act without a decision of

relevant Company's body on the particular matter, where needed, or contrary to a decision of relevant Company's body on the particular matter).

- 8.3.2 In case of failure of a representative of a Party in the position of proxy of the Company to comply with the instructions of such Party to act in a particular matter in a particular manner, the other Party shall be entitled to request immediate revocation of power of attorney granted to such representative in the position of proxy of the Company. The Shareholder No. 2 shall be obliged to procure that its representatives in the Board of Directors will act so that the power of attorney granted to such representative in the position of proxy is revoked. Such request for revocation of power of attorney shall be promptly delivered also to the other shareholder.
- 8.3.3 Each Party shall be obliged to pay the other Party a contractual fine for breach of this Agreement, if a representative of the breaching Party in the position of proxy of the Company acts on behalf of the Company in respect of the Reserved Matters without respective consent of the General Meeting or the Board of Directors, as the case may be, or contrary to the respective decision of the General Meeting or the Board of Directors, as the case may be.

However, no right for the contractual fine according to this Section 8.3.3 will arise if the shareholder, whose representative in the position of proxy of the Company is concerned, proves to the other shareholder that it (or its representatives in the Company's bodies) instructed its representative in the position of proxy of the Company to act in a particular matter in a particular manner (while such instruction was consistent with this Agreement) and such representative in the position of proxy of the Company acted in breach of such instruction.

The right for the contractual fine according to this Section 8.3.3 arises if the breaching Party does not remedy its breach in a period of 30 Business Days as of delivery of the other Party's call for remedy, while this other Party (or its representative in the Company's bodies) procured or was prepared to procure provision of sufficient cooperation to the breaching Party (or its representative in the Company's bodies).

The contractual fine according to this Section 8.3.3 shall amount to EUR 100,000 (in words: one hundred thousand euros) for each case.

## **9 ARTICLES OF ASSOCIATION**

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- 9.1 The Parties undertake to procure that during the term of this Agreement the Articles of Association will comply with

- a) legal regulations; and

b) with this Agreement.

- 9.2** To that end, the Parties undertake to modify and amend the Articles of Association at the General Meeting held in accordance with Article 11 hereof, so as to reach compliance of the Articles of Association with this Agreement.
- 9.3** Anytime a discrepancy between the Articles of Association and legal regulations or this Agreement occurs, the Parties further undertake, upon a call of any of the Parties, to immediately modify or amend the Articles of Association at the next General Meeting, so as to reach compliance of the Articles of Association with legal regulations and this Agreement. Provisions of Section 7.1 hereof shall not be affected.
- 9.4** The Parties hereby agree that in case of any discrepancy between the Articles of Association and this Agreement, this Agreement shall prevail to the maximum extent that is not in contradiction with mandatory provisions of legal regulations. If the mandatory provisions of legal regulations provide that any of the Parties must act, or refrain from acting, in a manner which is inconsistent with the provisions of this Agreement, then that Party shall act, or refrain from acting, in accordance with the mandatory provisions of legal regulations. In such case, the Parties agree to use their best efforts to construe the purpose and the provisions of this Agreement by all means available to prevent a breach of this Agreement from occurring and to prevent liability for such breach from arising and, if appropriate, in this respect agree to promptly amend or modify this Agreement accordingly.

## **10 DISTRIBUTION OF PROFIT**

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### **10.1 The Share of the Parties in the Company's Profit**

The Parties shall participate in the Company's profit according to the ratio of the nominal value of Shares held by the respective Party and the nominal value of Shares held by both Parties.

### **10.2 Payment of Dividends**

The Parties undertake to procure that the disposable profit of the Company for every accounting period will be distributed and paid to the Parties in the maximum extent, subject to the following conditions being satisfied:

- a) the reserves and funds prescribed by legal regulations and the Articles of Association have been built up or replenished;
- b) the capital expenditures or any other transactions prescribed by the then current business plan will not be put at risk by payment of dividends;

- c) as of the date of adoption of the relevant resolution on the declaration of the dividends, there are no overdue debts of the Company in respect of any loans, credits, notes, debentures or similar instruments;
- d) ability of the Company to repay any of its debts in respect of any loans, credits, notes, debentures or similar instruments (even if not overdue yet) will not be put at risk by payment of dividends; and
- e) payment of dividends will not result in breach of covenants, undertakings or obligations ensuing to the Company in respect of any loans, credits, notes, debentures or similar instruments (including the Bank Loan Agreement, Subsidiary Loan Agreement, Operating Loan Agreement).

That shall not apply solely in case that the Parties expressly agree to use the disposable profit otherwise.

The disposable profit shall mean the entire profit of the Company which can be distributed among shareholders in the maximum extent permitted by the legal regulations.

Each Party undertakes to use its voting right at the General Meeting in accordance with this Section 10.2.

## **11 STEPS TO BE TAKEN AFTER SIGNATURE OF THIS AGREEMENT**

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### **11.1 Conditions of the Financing Entity**

The Parties undertake to exert maximum efforts that can be reasonably requested from them in order to implement any conditions and requirements for amendment or modification of the draft Agreement on Transfer and Lease Back attached as Annex No. 1 hereto, Share Purchase Agreement and this Agreement, which are raised by the Financing Entity in respect to the Bank Loan Agreement.

To that end the Shareholder No. 2 undertakes to notify Cargo in due time of and to demonstrate to Cargo any such conditions and requirements of the Financing Entity and the proposed amendments and modifications in the draft Agreement on Transfer and Lease Back attached as Annex No. 1 hereto, Share Purchase Agreement and this Agreement.

The Parties undertake to finalize the drafting of amendments and modifications of the draft Agreement on Transfer and Lease Back attached as Annex No. 1 hereto, Share Purchase Agreement and this Agreement, made pursuant to this Section 11.1, as soon as possible, however at the latest by the Effective Date.

For the avoidance of any doubts no amendment to this Agreement regarding any amendments and modifications in the draft of the Agreement on Transfer and Lease Back made according to this Section 11.1 hereof shall be required.

## **11.2 Notification of First Nominations and Proposals**

11.2.1 Not later than on the Effective Date the Parties shall (i) notify their nominations for positions in the Company's collective bodies in compliance with the rules agreed in this Agreement, (ii) agree on proposal for amendments to the Articles of Association in order to harmonize the Articles of Association with the rules and requirements stipulated by this Agreement and (iii) notify also other proposals of the Parties that shall be discussed at the General Meeting to be convened according to Section 11.3 hereof. For that purpose, rules stipulated in Sections 6.4, 6.5.1, 7.4 and 7.5 hereof shall apply accordingly for the process of first nominations of candidates of the Parties.

11.2.2 The Parties acknowledge that when a decision of the extraordinary General Meeting on granting consent with the draft of the Agreement on Transfer and Lease Back according to Section 11.3 hereof is to be adopted, the Parties shall follow the draft of the Agreement on Transfer and Lease Back provided in Annex No. 1 hereto to the maximum possible extent, taking into account any modifications agreed by the Parties pursuant to Section 11.1 hereof after the conclusion of this Agreement.

## **11.3 Convening and Holding the General Meeting**

11.3.1 The Parties shall procure that an extraordinary General Meeting shall take place as far as possible on the Effective Date, otherwise not later than within 5 Business Days after the Effective Date (in particular by waiving the time limits for holding the General Meeting prescribed by law or the Articles of Association) in order to:

- a) dismiss members of the Company's collective bodies (if applicable) and elect new members of the Company's collective bodies;
- b) harmonize the Articles of Association with the rules and requirements stipulated by this Agreement;
- c) grant consent with the draft of the Agreement on Transfer and Lease Back;
- d) grant consent with establishing and/or rise of any Encumbrance over the Shares (including the Rights Attached to the Shares) by shareholders of the Company to secure receivables of the Financing Entity (or any member thereof) against the Company under or in connection with the Bank Loan Agreement (if such Encumbrance is required under the Bank Loan Agreement or in relation with it, and if consent of the General Meeting is needed under the terms and conditions of this Agreement or the Articles of Association).

11.3.2 Each Party shall be obliged to exercise its voting rights at the extraordinary General Meeting held according to Section 11.3.1 hereof in accordance with this Agreement. In particular, the Parties shall procure that the General Meeting will, at that meeting:

- a) dismiss the proposed members of the Company's bodies and elect the proposed candidates to new members of the Company's bodies, provided that the proposals for dismissal and election have been made in accordance with the rules and requirements of this Agreement;
- b) approve amendments of the Articles of Association, provided such amendments are required to harmonize the Articles of Association with the rules and requirements stipulated by this Agreement;
- c) grant consent with the draft of the Agreement on Transfer and Lease Back, provided such draft corresponds in all material aspects to Annex No. 1 to this Agreement (as may be modified by the Parties according to Section 11.1 hereof); and
- d) grant consent with establishing and/or rise of any Encumbrance over the Shares (including the Rights Attached to the Shares) by shareholders of the Company in favour of the Financing Entity or any member thereof (if consent of General Meeting is needed under the terms and conditions of this Agreement or the Articles of Association), provided that (i) such Encumbrance secures receivables of the Financing Entity or any member thereof against the Company under or in connection with the Bank Loan Agreement and (ii) the terms, extent and form of such Encumbrance are in line with the Bank Loan Agreement.

#### **11.4 Convening and Holding the Meeting of Collective Bodies**

11.4.1 Within 2 Business Days after the election of new members of the Company's collective bodies through the decision of the General Meeting pursuant to Section 11.3 hereof, the Parties shall procure that meetings of the collective bodies shall be convened and held to:

- a) grant consent of the Board of Directors with acquisition of the Railway Carriages by the Company from Cargo and with provision of right of use of the Leased Carriages by the Company to Cargo, pursuant to the Agreement on Transfer and Lease Back (if such consent is needed under the terms and conditions of this Agreement, the Articles of Association or otherwise);
- b) grant consent of the Board of Directors with receipt of facility from the Financing Entity under the Bank Loan Agreement (if such consent is needed under the terms and conditions of this Agreement, the Articles of Association or otherwise);
- c) grant consent of the Board of Directors with establishing and/or rise of any Encumbrance over the Company's assets (whether existing or future) by the

Company, and with issuing promissory notes, blank promissory notes by the Company to secure receivables of the Financing Entity (or any member thereof) against the Company under or in connection with the Bank Loan Agreement (if such Encumbrance, promissory notes or blank promissory notes are required under the Bank Loan Agreement or in relation with it, and if such consent is needed under the terms and conditions of this Agreement, the Articles of Association or otherwise);

- d) grant consent of the Board of Directors with receipt of Subsidiary Loan from the Shareholder No. 2 under the Subsidiary Loan Agreement (if such consent is needed under the terms and conditions of this Agreement, the Articles of Association or otherwise);
- e) grant consent of the Board of Directors with receipt of Operating Loan from Cargo under the Operating Loan Agreement (if such consent is needed under the terms and conditions of this Agreement, the Articles of Association or otherwise);
- f) grant consent of the Board of Directors and consent of the Supervisory Board with establishing and/or rise of any Encumbrance over the Company's assets (whether existing or future) by the Company to secure receivables of the Shareholder No. 2 against the Company under or in connection with the Subsidiary Loan Agreement (if such Encumbrance is required under the Subsidiary Loan Agreement or in relation with it, and if such consent is needed under the terms and conditions of this Agreement, the Articles of Association or otherwise);
- g) grant consent of the Board of Directors and consent of the Supervisory Board with establishing and/or rise of any Encumbrance over the Company's assets (whether existing or future) by the Company to secure receivables of Cargo against the Company under or in connection with the Operating Loan Agreement (if such Encumbrance is required under the Operating Loan Agreement or in relation with it, and if such consent is needed under the terms and conditions of this Agreement, the Articles of Association or otherwise); and
- h) grant consent of the Supervisory Board with provision of right of use of the Leased Carriages to Cargo pursuant to the Agreement on Transfer and Lease Back (if required under paragraph 196a of the Commercial Code, the Articles of Association or otherwise).

11.4.2 The Parties shall procure that their representatives in the Board of Directors and in the Supervisory Board, as the case may be, will, at the meeting of such body according to Section 11.4.1 hereof, exercise their voting rights in such a way that consent with the following transactions / dispositions will be granted on the conditions stated herein by the relevant collective body:



- a) acquisition of the Railway Carriages by the Company from Cargo and provision of right of use of the Leased Carriages by the Company to Cargo, pursuant to the Agreement on Transfer and Lease Back (if such consent is needed under the terms and conditions of this Agreement, the Articles of Association or under paragraph 196a of the Commercial Code or otherwise),
- b) receipt of facility from the Financing Entity under the Bank Loan Agreement (if such consent is needed under the terms and conditions of this Agreement, the Articles of Association or otherwise), provided that the terms and conditions of the Bank Loan Agreement comply in all material aspects with the terms and conditions of the draft Bank Loan Agreement submitted to Cargo under Sections 2.4 and 3.1 letter b) of the Share Purchase Agreement;
- c) establishing and/or rise of any Encumbrance over the Company's assets (whether existing or future) and issuing of promissory notes, blank promissory notes by the Company in favour of or to the Financing Entity or any member thereof (if consent of the Company's collective body is needed under the terms and conditions of this Agreement or the Articles of Association), provided that (i) such Encumbrance, promissory notes, blank promissory notes secure receivables of the Financing Entity or any member thereof against the Company under or in connection with the Bank Loan Agreement and (ii) the terms, extent and form of such Encumbrance, promissory notes and blank promissory notes are in line with the Bank Loan Agreement;
- d) receipt of Subsidiary Loan from the Shareholder No. 2 under the Subsidiary Loan Agreement (if such consent is needed under the terms and conditions of this Agreement or the Articles of Association);
- e) receipt of Operating Loan from Cargo under the Operating Loan Agreement (if such consent is needed under the terms and conditions of this Agreement or the Articles of Association or otherwise);
- f) establishing and/or rise of any Encumbrance over the Company's assets (whether existing or future) in favour of the Shareholder No. 2 (if consent of the Company's collective body is needed under the terms and conditions of this Agreement, the Articles of Association or otherwise), provided that (i) such Encumbrance secures receivables of the Shareholder No. 2 against the Company under or in connection with the Subsidiary Loan Agreement; (ii) the terms, extent and form of such Encumbrance are in line with the Bank Loan Agreement (and security documents related to the Bank Loan Agreement) and with the Subsidiary Loan Agreement; and (iii) ranking, terms and conditions of such Encumbrance in favour of the Shareholder No. 2 and any Encumbrance in favour of Cargo (as a security for satisfaction of receivables of Cargo under or in connection with the Operating Loan Agreement) shall correspond to the principle of equal treatment; and

g) establishing and/or rise of any Encumbrance over the Company's assets (whether existing or future) by the Company in favour of Cargo (if consent of the Company's collective body is needed under the terms and conditions of this Agreement, the Articles of Association or otherwise), provided that (i) such Encumbrance secures receivables of Cargo against the Company under or in connection with the Operating Loan Agreement; (ii) the terms, extent and form of such Encumbrance are in line with the Bank Loan Agreement (and security documents related to the Bank Loan Agreement) and the Operating Loan Agreement; and (iii) ranking, terms and conditions of such Encumbrance in favour of Cargo and any Encumbrance in favour of the Shareholder No. 2 (as a security for satisfaction of receivables of the Shareholder No. 2 under or in connection with the Subsidiary Loan Agreement) shall correspond to the principle of equal treatment.

11.4.3 The Parties agree that the obligations of the Parties pursuant to Sections 11.4.1 and 11.4.2 hereof may be fulfilled also by per rollam voting on such matters in the Board of Directors and the Supervisory Board.

#### **11.5 Agreement on Transfer and Lease Back**

Within 7 Business Days after the Effective Date, the Parties shall procure (by acting of their representatives in the Board of Directors) that the Company undersigns the Agreement on Transfer and Lease Back in the form, which will correspond to the draft approved by the General Meeting pursuant to Section 11.3 hereof.

## **12 FINANCING OF THE COMPANY, BUSINESS PLAN**

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#### **12.1 Bank Loan Agreement**

Financing of a part of the consideration for the transfer of the Railway Carriages (which is not financed from the Subsidiary Loan) and VAT liabilities accruing on the (total) consideration for the transfer of the Railway Carriages under the Agreement on Transfer and Lease Back shall be procured from a facility under the Bank Loan Agreement.

Within 7 Business Days after the Effective Date, the Parties shall procure (by acting of their representatives in the Board of Directors) that the Company undersigns the Bank Loan Agreement on and subject to the terms and conditions, approved by the Board of Directors pursuant to Section 11.4 hereof.

#### **12.2 Subsidiary Loan and Operating Loan**

The Company shall be granted Subsidiary Loan amounting to EUR 20,000,000 (in words: twenty million euro) under the Subsidiary Loan Agreement and Operating Loan amounting to EUR 10,000,000 (in words: ten million euro) under the Operating Loan Agreement.

### **12.3 Further Financing**

To procure additional financing the Parties shall act in compliance with this Agreement and/or the business plan approved according to this Agreement.

### **12.4 Business Plan**

The Company shall be managed by the Company's bodies in compliance with the business plan approved according to this Agreement.

## **13 DEADLOCK**

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### **13.1 Deadlock occurrence**

13.1.1 The threat of deadlock occurs in any of the following situations:

- a) a resolution to approve a particular Reserved Matter for the General Meeting under Section 5.5.1 hereof is not adopted at the General Meeting (unless due to the fact that any of the Parties has not been duly invited to take part at such General Meeting) and no resolution on the respective Reserved Matter was adopted even in a period of 40 Business Days after the date of such General Meeting;
- b) a resolution to approve a particular Reserved Matter for the Board of Directors under Section 6.9.1 hereof was not adopted by the Board of Directors at duly convened meeting of the Board of Directors or duly organized per rollam voting of the members of the Board of Directors and no resolution on the respective Reserved Matter was adopted even in a period of 40 Business Days after the date of such meeting of the Board of Directors or after expiry of the period for exercising voting rights of members of the Board of Directors in such per rollam voting. For the avoidance of any doubts, it will not be a threat of deadlock if consent of representatives of only one Party is sufficient to adopt a resolution on the respective Reserved Matter due to the fact that the rules under second sentence of Section 6.7.1 letter a) hereof apply.

13.1.2 The deadlock shall arise in the moment when one Party delivers to the other Party a notice that the situation of deadlock according to Section 13.1.1 letter a) or b) hereof occurred, describing details and circumstances of the deadlock.

After the deadlock arises the Parties shall use all reasonable endeavours in order to resolve the deadlock by mutual negotiations. The Parties shall proceed in good faith and bearing in mind the legitimate interests of both Parties and the Company, taking into account the obligations and principles defined in this Agreement.

After expiry of a period of 40 Business Days after the deadlock arose (if the situation of the deadlock is continuing) any Party may notify the other Party in written that it

wishes to begin the procedure of mediation under Section 13.2 hereof; in such notice the Party shall eventually propose nomination for a mediator.

## **13.2 Mediation**

- 13.2.1 Any of the Parties may file a request for mediation with the ICC International Centre for ADR (i.e. Centre) only when, after expiry of a period of 40 Business Days after the deadlock arose (if the situation of the deadlock is continuing), any Party notified the other Party in written that it wishes to begin the procedure of mediation under this Section 13.2; in such case the Parties shall refer the dispute relating to the deadlock to proceedings under the ICC Mediation Rules.
- 13.2.2 Vienna, Austria shall be the venue of mediation under this Section 13.2.
- 13.2.3 The mediation under this Section 13.2 shall be conducted in English language.
- 13.2.4 The mediation shall be conducted by one mediator appointed or confirmed under the ICC Mediation Rules. The Parties agree that where the Centre neither proposes a list of mediators, nor appoints the mediator, the Parties may jointly nominate mediator for confirmation by the Centre. The right of the Parties to jointly nominate mediator for confirmation by the Centre any time prior to or during mediation is not affected.
- 13.2.5 The costs of mediation proceedings (inclusive of any deposits requested under the ICC Mediation Rules) shall be borne by the Parties equally. Each Party is entitled to demand reimbursement for any excess payment.
- 13.2.6 Unless otherwise agreed in the settlement agreement concluded in mediation, if any Party breaches its obligation under such settlement agreement, the breaching Party shall be liable to pay to the other Party a contractual fine amounting to EUR 100,000 (in words: one hundred thousand euros) and the Party entitled to the contractual fine shall have the right to claim damages (including lost profit) in the amount exceeding such contractual fine.
- 13.2.7 Unless prohibited by applicable law, the commencement of mediation proceedings under the ICC Mediation Rules shall not prevent any Party from commencing and/or continuing in arbitration in accordance with this Agreement in respect of the same matter; any other remedies or proceedings available to the Parties under this Agreement or applicable law are not affected as well.

## 14 RESTRICTIONS ON TRANSFERABILITY OF SHARES BY CONSENT OF THE COMPANY

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### 14.1 Restrictions on Transferability

14.1.1 The Parties shall procure that the transferability of registered Shares will be restricted during the Lock-up Period by consent of the Company. During the Lock-up Period the Articles of Association shall make the transferability of the Shares conditional upon consent of the Company, where the General Meeting shall be competent to grant the consent to the transfer of the Shares.

14.1.2 The deadline in which the Company is obliged to decide about the Party's request for consent shall be 50 days following delivery of the Party's request to the Company in accordance with this Agreement.

The period stipulated for decision of the Company (the General Meeting) on granting the consent to transfer the Shares shall not commence until the Party delivers to the Company the request in accordance with provisions of this Section 14.1.2.

The Party may request for the consent of the Company to the transfer of its Shares only when:

- a) the consent of the other Party to the transfer of the Shares under Section 15.1.1 hereof was granted or is deemed to be granted (if such consent is necessary according to this Agreement);
- b) the requesting Party proves to the other Party in compliance with the last sentence of this Section 14.1.2 that a consent of the other Party is not necessary according to this Agreement, or that a consent of the other Party is deemed to be granted according to this Agreement (if applicable); and
- c) other conditions for the transfer of the Shares stipulated by Articles 15 and 16 hereof were met.

Such request of the Party shall specify the Shares, in respect of which the consent of the other Party to the transfer of the Shares under Section 15.1.1 hereof was granted or is deemed to be granted (if such consent of the other Party is necessary according to this Agreement), as well as the Shares, in respect of which the Party requires the consent of the Company to transfer.

If according to this Agreement no consent of the other Party to transfer of the Shares is necessary or such consent is deemed to be granted, the Party requiring for the consent of the General Meeting to transfer of its Shares shall, at the latest with such request, provide the other Party with all relevant evidence proving that according to

this Agreement consent of the other Party to such transfer of the Shares is not necessary or such consent is deemed to be granted.

- 14.1.3 The deadline in which the Company is obliged to notify the decision of the General Meeting about the Party's request for consent to the requesting Party shall be 10 Business Days following the decision of the General Meeting.

#### **14.2 Deciding on Grant of Consent to Transfer of Shares**

- 14.2.1 The Board of Directors shall be obliged to convene the General Meeting so that it will be held within 50 days following:

- a) the day of delivery of the Party's request for the consent of the Company in accordance with Section 14.1.2 hereof, and simultaneously
- b) the day (i) when the consent of the other Party to the transfer of the Shares under Section 15.1.1 hereof was granted or is deemed to be granted (if such consent is necessary according to this Agreement), and (ii) when other conditions for the transfer of the Shares stipulated by Articles 15 and 16 hereof were met.

The Parties undertake to procure that the representatives of the Parties in the Board of Directors will vote for convening of such General Meeting so that it will be held within the deadline according to this Section 14.2.1.

- 14.2.2 The Parties shall be further obliged to procure that the General Meeting will grant consent to the transfer of the Shares if according to this Agreement there are no reasons for refusal to grant such consent.

#### **14.3 Refusal to Grant Consent to Transfer of Shares**

The Articles of Association shall contain a provision according to which the General Meeting may refuse to grant the consent to the transfer of the Shares only if the terms and conditions stipulated in Section 14.1 and Articles 15 and 16 hereof are not met.

#### **14.4 Pledge**

- 14.4.1 The consent of the Company, on which the General Meeting shall decide, is also required for creating of pledge over the Shares during the Lock-up Period.

- 14.4.2 Unless otherwise stated in this Agreement, provisions of Sections 14.1 to 14.3 hereof shall apply accordingly to the decision-making on the consent of the Company to creation of pledge over the Shares.

- 14.4.3 A Party may request for the consent of the Company to pledging of the Shares in favour of the Financing Entity (or any member thereof) only when such Party proves to the other Party (at the latest with such request) that a consent of the other Party to pledging of the Shares under Section 15.1.1 hereof is not necessary according to this Agreement.

Such request of the Party shall specify the Shares in respect of which the Party requires the consent of the Company to pledging.

The period stipulated for decision of the Company (the General Meeting) on granting the consent to pledging of the Shares shall not commence until the Party delivers to the Company the request in accordance with provisions of this Section 14.4.3.

The Board of Directors shall be obliged to convene the General Meeting so that it will be held within 50 days following the day of delivery of the Party's request for the consent of the Company in accordance with this Section 14.4.3. Article 11 hereof shall not be affected.

The Articles of Association shall contain a provision according to which the General Meeting may refuse to grant the consent to pledging of the Shares in favour of the Financing Entity only if the terms and conditions stipulated in this Section 14.4.3 are not met.

#### **14.5 Registration of Restriction of Transferability with the Companies Register**

The Parties undertake to procure that the restriction on transferability of the Shares by consent of the Company (the General Meeting) will be registered in relation to the Company with the Companies Register.

Upon expiry of the Lock-up Period the Parties shall procure that deletion of the entry on restriction of the transferability of the Shares will be registered with the Companies Register.

## **15 LIMITATION OF DISPOSITION**

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### **15.1 Limitation of Disposition**

15.1.1 The Parties agree that any Disposition by the Party during the Lock-up Period requires a prior written consent of the other Party, unless otherwise stated below in this Agreement.

15.1.2 Consent of the General Meeting according to Article 14 hereof is required (besides the consent of the Party) for transfer of any of the Shares during the Lock-up Period and for creation of pledge over any of the Shares during the Lock-up Period.

15.1.3 The Parties further agree that each transfer of the Shares shall be subject to the Pre-emption Right and the Tag-along Right, regardless of whether such transfer is made during or after expiry of the Lock-up Period, unless otherwise stated below in this Agreement.

### **15.2 Disposition in Contradiction with this Agreement**

It is a breach of the Agreement if a Party for whatsoever reason exercises or allows to exercise, in contradiction with this Agreement, a Disposition (regardless of eventual invalidity of the Disposition or its title), in particular without prior written consent of the other Party according to Section 15.1.1 hereof or of the Company's body according to Section 15.1.2 hereof or in breach of the Pre-emption Right or the Tag-along Right of the other Party or in breach of restrictions and limitations resulting from Section 15.7 hereof.

The Party that breached the obligation according to this Section 15.2 shall be obliged to pay the other Party a contractual fine in the amount of EUR 1,000,000 (in words: one million euro).

### **15.3 Lock-up Period**

The Parties have agreed that during the Lock-up Period none of the Parties may exercise a Disposition without a prior written consent of the other Party, unless otherwise expressly stipulated by this Agreement.

If a request of a Party for the consent to the Disposition is delivered during the Lock-up Period, the other Party may refuse to grant the consent to a Disposition even without giving reasons, unless otherwise expressly stipulated by this Agreement.

After expiry of the Lock-up Period no consent of the respective Party under Section 15.1.1 hereof is required to a Disposition.

### **15.4 Pledge over Shares according to the Bank Loan Agreement**

Pledging of the Shares by a Party in favour of the Financing Entity (or any member thereof), even during the Lock-up Period, is not subject to consent of the other Party according to Section 15.1.1 hereof or to any other restrictions under this Agreement, provided that:

- a) such pledge over the Shares secures receivables of the Financing Entity (or any member thereof) against the Company under or in connection with the Bank Loan Agreement; and
- b) the terms, extent and form of such pledge are in line with the Bank Loan Agreement.

Notwithstanding the above, consent of the General Meeting according to Section 15.1.2 hereof shall be required for creation of such pledge over the Shares during the Lock-up Period.

When the conditions for pledging of the Shares in favour of the Financing Entity (or any member thereof) according to this Section 15.4 are met and the request of the Party for consent of the Company with creation of such pledge is delivered to the



Company in accordance with Section 14.1 hereof, the Parties shall procure that the General Meeting will grant consent to pledging of the Shares (if required under this Agreement) in a procedure under Section 14.2 hereof.

The same shall apply accordingly to the pledge over the Rights Attached to the Shares, if such security is required to secure the receivables of the Financing Entity (or any member thereof) against the Company under the Bank Loan Agreement or in connection with it.

#### **15.5 Disposition between the Parties**

The Parties have agreed that any Disposition between the Parties is not subject to consent of the other Party according to Section 15.1.1 hereof.

When transferring the Shares between the Parties according to this Section 15.5, the Parties shall procure that the General Meeting will grant consent to such transfer of the Shares (if required under this Agreement) in a procedure under Section 14.2 hereof.

#### **15.6 Intra-Group Transfers**

15.6.1 The Parties have agreed that any Disposition to the Group Member during the Lock-up Period under the terms of this Section 15.6 is not subject to the Pre-emption Right, the Tag-along Right and consent of the other Party according to Section 15.1.1 hereof, provided that a Change of Control does not occur as a result of such Disposition to the Group Member.

15.6.2 *intentionally omitted*

15.6.3 During the Lock-up Period Cargo shall be free to transfer its Shares to a person that is under Control exercised, directly or indirectly, by Cargo, provided that Cargo shall ensure that such transferee shall first sign an agreement, under which it shall fully adhere to the terms of this Agreement as a new party hereto instead of Cargo.

15.6.4 When the respective conditions relating to transfer of the Shares stipulated in Section 15.6.3 hereof are met and the request of the Party for consent of the Company with such transfer (together with the documents proving fulfilment of such conditions) is delivered to the other Party in accordance with Section 14.1 hereof, the Parties shall procure that the General Meeting will grant consent to the transfer of the Shares (if required under this Agreement) in a procedure under Section 14.2 hereof.

15.6.5 For the avoidance of any doubts, the Pre-emption Right and the Tag-along Right shall not be affected in case of any Disposition to a Group Member made after expiry of the Lock-up Period.

#### **15.7 Transfer of the Shares**

Unless otherwise agreed by the Parties:

- a) any transfer of the Shares, whether during or after expiry of the Lock-up Period, must be exercised in respect of all Shares held by the respective Party; and
- b) when transferring the Shares, whether during or after expiry of the Lock-up Period, the respective shareholder shall assign to the transferee, together with its Shares, all its receivables following from the loans or the like granted to the Company.

## **16 PRE-EMPTION RIGHT AND TAG-ALONG RIGHT, CONSENT OF THE PARTY WITH TRANSFER OF SHARES**

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### **16.1 Pre-emption Right**

The Party intending to transfer its Shares to a third person (i.e. the Person Interested) for or without consideration (i.e. the Obligated Shareholder), shall offer the other Party (i.e. the Entitled Shareholder) for sale all its Shares under the terms stated in this Article 16.

### **16.2 Tag-along Right**

In case the Entitled Shareholder is interested, the Obligated Shareholder shall procure that it sells its Shares to a third person (i.e. the Person Interested) only provided that such Person Interested buys also all the Shares of the Entitled Shareholder under the terms stated in this Article 16.

### **16.3 Transfer Notice**

The Obligated Shareholder shall, without undue delay, deliver the Transfer Notice to the Entitled Shareholder.

The Transfer Notice shall be considered an irrevocable offer of the Obligated Shareholder to enter into an agreement on future agreement on transfer of the Shares of the Obligated Shareholder to the Entitled Shareholder and assignment of the receivables of the Obligated Shareholder from loans and the like towards the Company, addressed to the Entitled Shareholder.

Should the intended transfer of the Shares occur during the Lock-up Period, the Transfer Notice shall be also considered a request of the Obligated Shareholder for consent of the Entitled Shareholder to a Disposition pursuant to Section 15.1.1 hereof.

The Transfer Notice of the Obligated Shareholder shall contain at least the following information:

- a) identification of the Shares of the Obligated Shareholder, which are to be transferred;
- b) identification of the Person Interested and of persons exercising, directly or indirectly, individual or joint Control over it (i.e. each Parent Company);
- c) the purchase price per one Share to be transferred by the Obligated Shareholder, the purchase price per 1 EUR of nominal value of the Share to be transferred by the Obligated Shareholder and the total purchase price and other material conditions of the intended contract, including the conditions for securing payment of the purchase price;
- d) the amount of receivables of the Obligated Shareholder from the loans or the like granted to the Company, the amount of consideration for the assignment of such receivables and other material conditions of such assignment, including the conditions for securing payment of the consideration;
- e) representation of the Person Interested confirming its intention to buy all Shares of the Obligated Shareholder and the receivables of the Obligated Shareholder from the loans or the like granted to the Company and other conditions of the intended contract;
- f) representation of the Person Interested to assume all rights and obligations of the Obligated Shareholder following from this Agreement in case of acquisition of the Shares of the Obligated Shareholder;
- g) representation of the Person Interested that it undertakes to buy all Shares of the Entitled Shareholder and the receivables of the Entitled Shareholder from the loans or the like towards the Company in case the Tag-along Right is exercised (Section 16.2 hereof), all under the same terms (as far as possible) and the principle of equal treatment; and
- h) other terms required under applicable law for the agreement on future agreement pursuant to Section 16.5.1 hereof and representation of the Obligated Shareholder that its Transfer Notice at the same time constitutes an irrevocable offer to enter into agreement on future agreement pursuant to Section 16.5.1 hereof, which (the offer) is addressed to the Entitled Shareholder.

#### **16.4 Response**

The Parties agree that the Entitled Shareholder may deliver a written response to the Obligated Shareholder within 120 days following the day of delivery of the Transfer Notice to the Entitled Shareholder. In such response the Entitled Shareholder:

- a) will exercise its Pre-emption Right. In such case, the Parties shall proceed pursuant to Section 16.5 hereof and the Entitled Shareholder shall be obliged to buy from the Obligated Shareholder all its Shares; or
- b) will exercise its Tag-along Right. In such case, no consent of the respective Party under Section 15.1.1 hereof is required for transfer of the Shares (both the Shares of the Obligated Shareholder and the Shares of the Entitled Shareholder) to the Person Interested and the Parties shall proceed pursuant to Section 16.6 hereof; or
- c) will neither exercise its Pre-emption Right nor the Tag-along Right. In such case (if no consent of the Entitled Shareholder is required under this Agreement), the Parties shall proceed pursuant to Section 16.7 hereof; or
- d) will exercise neither its Pre-emption Right nor the Tag-along Right. In such case, it shall also inform the Obligated Shareholder whether it consents to the transfer of the Shares to the Person Interested or not (if such consent of the Entitled Shareholder is required under this Agreement). Thereafter the Parties shall proceed pursuant to Section 16.8 hereof.

## **16.5 Procedure After Exercising the Pre-emption Right**

16.5.1 The notice of the Entitled Shareholder, in which the Pre-emption Right is exercised, constitutes an acceptance of the Obligated Shareholder's offer made by the Transfer Notice to conclude the agreement on future agreement according to Section 16.3 hereof under the following terms:

- a) the Parties are obliged to enter into the agreement on transfer of the Shares and receivables of the Obligated Shareholder against the Company from the loans and the like from the Obligated Shareholder to the Entitled Shareholder under the terms stated in the Transfer Notice (i.e. Future Agreement);
- b) both Parties shall be bound to enter into the Future Agreement within 60 days following delivery of the response of the Entitled Shareholder, in which the Pre-emption Right has been exercised;
- c) if any of the Parties breaches the obligation to enter into the Future Agreement, the non-breaching Party shall be entitled to demand conclusion of the Future Agreement and also compensation for damages. If the Entitled Shareholder breaches the obligation to enter into the Future Agreement, the Obligated Shareholder may withdraw from the agreement on future agreement and within 60 days from such withdrawal it is entitled to conclude an agreement on transfer of the Shares under the terms specified in its Transfer Notice as if the Pre-emption Right was not exercised. In case of transfer of the Shares in accordance with the previous sentence, no consent of the Entitled Shareholder under Section 15.1.1 hereof is required for such transfer; the provisions of Sections 16.7.1 to 16.7.3 hereof shall apply accordingly.

16.5.2 After the conclusion of the Future Agreement, the Parties shall procure that the General Meeting will grant consent to transfer of the Shares (if required under this Agreement) in a procedure under Section 14.2 hereof.

## **16.6 Procedure After Exercising the Tag-along Right**

16.6.1 If the Entitled Shareholder exercises its Tag-along Right, the Obligated Shareholder can only enter into an agreement with the Person Interested (i) if such agreement corresponds with the terms specified in the Transfer Notice and (ii) if simultaneously with that agreement the Entitled Shareholder enters with the Person Interested into an agreement, where the terms and conditions of both agreements have to correspond with the principle of equal treatment (in particular, the same price per 1 EUR of nominal value of the Shares, the same price per 1 EUR of nominal value of the loan receivables, the same payment conditions, the same advantages, means of security and the like).

16.6.2 After the conclusion of the above-mentioned agreements, the Parties shall be obliged to procure that the General Meeting will grant consent to the transfers of the Shares (if required under this Agreement) in a procedure under Section 14.2 hereof.

16.6.3 If the agreements according to Section 16.6.1 hereof are not executed within 60 days from the delivery of the Entitled Shareholder's response to the Obligated Shareholder, the right of the Obligated Shareholder to transfer its Shares to the Person Interested pursuant to Section 16.6.1 hereof in respect to the relevant Transfer Notice, as well as the right of the Obligated Shareholder to request for consent of the Company with transfer of the Shares (if applicable), shall cease to exist.

16.6.4 However, the Obligated Shareholder's right to sell its Shares to the Person Interested under the terms specified in the relevant Transfer Notice shall not be precluded if execution of the agreements according to Section 16.6.1 hereof did not take place due to wilful acting or negligence of the Entitled Shareholder; in such case the Obligated Shareholder may proceed pursuant to Sections 16.7.1 to 16.7.3 hereof accordingly (while the period of 60 days mentioned in Sections 16.7.1 to 16.7.3 shall be replaced with a period of 90 days following delivery of the Entitled Shareholder's response to the Obligated Shareholder). After delivery of the agreements and documents duly signed and executed according to Sections 16.7.1 and 16.7.2 hereof, the Parties shall procure that the General Meeting will grant consent to the transfers of the Shares (if required under this Agreement) in a procedure under Section 14.2 hereof.

## **16.7 Procedure for Transfer if Neither the Pre-emption Right nor the Tag-along Right Is Exercised and No Consent of the Party for Transfer of the Shares Is Required**

16.7.1 If the Entitled Shareholder does not exercise its Pre-emption Right or its Tag-along Right in its response under Section 16.4 letter c) hereof and no consent of the Entitled Shareholder under Section 15.1.1 hereof is required for the transfer of the Shares, the Obligated Shareholder may sign an agreement on transfer of the Shares and other

rights with the Person Interested specified in the Transfer Notice and under the terms specified in the Transfer Notice – and to deliver the agreement to the Entitled Shareholder within 60 days from delivery of the Entitled Shareholder's response.

16.7.2 The Obligated Shareholder shall also ensure that:

- a) the agreement is signed, by which the Person Interested assumes rights and obligations from this Agreement as the future shareholder in case of acquisition of the Shares; and
- b) other documents are executed that are required for the intended transfer according to the Transfer Notice;

and that such agreements and documents are delivered to the Entitled Shareholder within 60 days following delivery of the response of the Entitled Shareholder under Section 16.4 letter c) hereof.

16.7.3 If the agreements and documents according to Sections 16.7.1 and 16.7.2 hereof are not executed and delivered to the Entitled Shareholder within 60 days from the delivery of the Entitled Shareholder's response to the Obligated Shareholder, the right of the Obligated Shareholder to transfer its Shares to the Person Interested pursuant to Sections 16.7.1 and 16.7.2 hereof in respect to the relevant Transfer Notice shall cease to exist.

16.7.4 If no response under Section 16.4 hereof is delivered to the Obligated Shareholder within 120 days following the day of delivery of the Transfer Notice to the Entitled Shareholder and no consent of the Entitled Shareholder under Section 15.1.1 hereof is required for transfer of the Shares, the Obligated Shareholder may transfer its Shares to the Person Interested under the terms of Sections 16.7.1 to 16.7.3 hereof.

**16.8 Procedure for Transfer if Neither the Pre-emption Right nor the Tag-along Right Is Exercised and Consent of the Party for Transfer of the Shares Is Required**

16.8.1 If the Entitled Shareholder does not exercise its Pre-emption Right or its Tag-along Right and it consents to the intended transfer in its response under Section 16.4 letter d) hereof, the Obligated Shareholder may sign an agreement on transfer of the Shares and other rights with the Person Interested specified in the Transfer Notice and under the terms specified in the Transfer Notice – and to deliver the agreement to the Entitled Shareholder within 60 days from delivery of the Entitled Shareholder's response.

16.8.2 The Obligated Shareholder shall also ensure that:

- a) the agreement is signed, by which the Person Interested assumes rights and obligations from this Agreement as the future shareholder in case of acquisition of the Shares; and

- b) other documents are executed that are required for the intended transfer according to the Transfer Notice;

and that such agreements and documents are delivered to the Entitled Shareholder within 60 days following delivery of the response of the Entitled Shareholder under Section 16.4 hereof.

16.8.3 After delivery of the agreements and documents duly signed and executed according to Sections 16.8.1 and 16.8.2 hereof, the Parties shall procure that the General Meeting will grant consent to the transfer of the Shares in a procedure under Section 14.2 hereof.

16.8.4 If the agreements and documents according to Sections 16.8.1 and 16.8.2 hereof are not executed and delivered to the Entitled Shareholder within 60 days from the delivery of the Entitled Shareholder's response to the Obligated Shareholder, the consent of the Entitled Shareholder to the intended transfer shall cease to be effective and the right of the Obligated Shareholder to request for consent of the Company with transfer of the Shares shall cease to exist.

16.8.5 If no response under Section 16.4 hereof is delivered to the Obligated Shareholder within 120 days following the day of delivery of the Transfer Notice to the Entitled Shareholder and consent of the Entitled Shareholder under Section 15.1.1 hereof is required for transfer of the Shares, then consent of the Entitled Shareholder with the intended transfer of the Shares under Section 15.1.1 hereof shall be deemed to have been granted. Provisions of Sections 16.8.1 to 16.8.4 hereof shall apply mutatis mutandis.

## **16.9 Pledge**

The provisions of this Article 16 shall also apply accordingly to create pledge over the Shares, unless otherwise stipulated in this Agreement.

# **17 SANCTIONS**

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## **17.1 Termination of this Agreement**

The Parties agree that this Agreement cannot be terminated, withdrawn or otherwise cancelled by any unilateral legal act unless otherwise stipulated by mandatory provisions of legal regulations from which the Parties cannot deviate by means of an agreement.

That shall be without prejudice to the right of the Parties to exercise other legal remedies stipulated in this Agreement or in legal regulations.

**17.2 Contractual Fine in Case of Breach of this Agreement**

A Party shall be entitled to a contractual fine in cases stipulated in this Agreement.

**17.3 Recurring or Continuing Violation**

In case of recurring violation of an obligation following from this Agreement, the right to a new contractual fine arises.

If a contractual fine is determined by every day of the continuing violation, there shall arise the entitlement to individual contractual fine for every day of continued violation until due fulfilment of the obligation.

**17.4 Relation to Compensation for Damage**

The provisions regarding a contractual fine shall not affect the right to damages (including lost profit) in the amount exceeding the amount of contractual fine.

**17.5 Maturity of Contractual Fine**

A contractual fine shall be payable within 20 days following the day when the breaching Party receives a written call of the entitled Party to pay a contractual fine, with description of the breach, for which such contractual fine is to be paid, to the account identified in such a call.

**17.6 Relation between Contractual Fine and Breached Obligation**

The Party's obligation that is secured by a contractual fine is not discharged by paying such contractual fine.

## **18 CHANGE OF CONTROL**

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**18.1** The Shareholder No. 2 undertakes to notify Cargo, without undue delay, of any Change of Control occurring during the Lock-up Period.

**18.2** The Shareholder No. 2 undertakes to procure that all its Shares shall be transferred prior to the Change of Control to an entity, which is under joint Control exercised by the Group A of Shareholder No. 2 and Group B of Shareholder No. 2, if such Change of Control occurs during the Lock-up Period. Provisions of Section 15.6 hereof shall apply accordingly.

For the avoidance of any doubts Section 15.7 hereof shall not be affected.

**18.3** If the Shareholder No. 2 breaches the obligation according to Section 18.2 hereof, the Shareholder No. 2 shall be obliged to pay Cargo a contractual fine in the amount of EUR 1,000,000 (in words: one million euro).



## 19 REPRESENTATIONS OF THE PARTIES

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### 19.1 Representations of the Parties

Each of the Parties hereby represents to the other Party that:

- a) the representing Party is a company duly established and existing under the laws of jurisdiction of its original incorporation, it is a company operating in compliance with relevant legal regulations, it has an unlimited capacity to exercise rights and legal acts and it has obtained all the required consents and approvals (including internal ones) that are required for the validity, effect, enforceability and fulfilment of this Agreement;
- b) the representing Party is not bankrupt, no bankruptcy or restructuring proceedings (or similar proceedings) are pending in respect to the representing Party; this representation shall be considered as true if such proceedings have been initiated over the representing Party by a third party and the representing Party demonstrates to the satisfaction of the other Party that such procedure is frivolous or vexatious or otherwise certain to be dismissed;
- c) the representing Party is not in the process of dissolution (whether with or without liquidation);
- d) the representing Party is entitled to enter into and fulfil this Agreement, the conclusion and fulfilment of this Agreement will not result in breach of legal regulations or other decisions and measures binding on the representing Party or internal regulations of such Party, which (the breach) could have any negative impact on the validity, effect, enforceability and fulfilment of this Agreement;
- e) conclusion and fulfilment of this Agreement will not result in breach of any other agreement, to which the representing Party is a party, or of any other obligation of the representing Party, which (the breach) could have any negative impact on the validity, effect, enforceability and fulfilment of this Agreement;
- f) no litigation, court, arbitration, execution or enforcement, administrative, governmental or regulatory proceedings or any other proceedings before any authority are pending, which could have any negative impact on the validity, effect, enforceability and fulfilment of this Agreement or on ability of the representing Party to satisfy its obligations hereunder;
- g) all the obligations of the representing Party, which follow from this Agreement, represent, under the terms stipulated in this Agreement, valid, effective and enforceable obligations towards such Party;

- h) no commitments or obligations, the fulfilment of which could have any negative impact on the validity, effect, enforceability and fulfilment of this Agreement, apply to the representing Party.

## **19.2 Obligations of the Parties in Relation to the Representations**

Each of the Parties undertakes to exert maximum efforts that can be reasonably requested from it in order to maintain the representations referred to in Section 19.1 hereof true, complete and accurate for the entire term of this Agreement.

# **20 CONFIDENTIALITY DUTY**

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## **20.1 Obligation to Maintain Confidentiality**

The Parties shall be obliged to maintain confidentiality of all the Confidential Information, to maintain it in secrecy and protect it against unauthorized disclosure and dissemination and to take the steps required for the protection and safeguarding of the Confidential Information.

The Parties identically represent that they will not provide any information concerning this Agreement to any news media without prior consent of the other Party.

Each of the Parties to this Agreement shall procure that its members of statutory or other bodies, executive employees, employees, representatives, consultants, financial investors and other contractual partners will comply with the obligation to maintain confidentiality contained in this Article 20.

## **20.2 Ban on Misuse of Information**

Neither Party shall be entitled to use without written consent of the other Party the Confidential Information concerning the other Party and/or the Company in contradiction with the purpose of the Confidential Information, namely for its own needs or for any other purpose that is not needed or required for the fulfilment of this Agreement.

## **20.3 Permitted Disclosures**

20.3.1 The obligation to maintain confidentiality (Section 20.1 hereof) shall not apply if:

- a) the Party discloses or uses the Confidential Information with prior written consent of the other Party; or
- b) the Party discloses or uses the Confidential Information on the basis of an obligation imposed by valid legal regulations or on the basis of an order of the competent court or any other authority in compliance with legal regulations or on the basis of stock exchange rules binding upon the Party; or

- c) the Party discloses or uses the Confidential Information in the necessary extent needed for due exercise of rights or fulfilment of duties of the Party; or
- d) the Party discloses or uses the Confidential Information in court, arbitration, mediation or administrative proceedings for the purpose of obtaining a decision or consent of an authority that is required for fulfilment of this Agreement or for the purpose of exercise of its rights or fulfilment of its obligations (for instance, as evidence); or
- e) the Party discloses the Confidential Information, to the extent necessary, to persons that have to be acquainted with the Confidential Information in order to be able to assess the Confidential Information, to provide consultancy and the like, in particular its employees, persons acting on behalf of such Party, its directors, consultants and other representatives of such Party, its Parent Company, Group Member, Person Interested, Financing Entity, other persons providing financing to the Party or to the Company and the like; or
- f) the Confidential Information becomes publicly available without any breach of legal regulations or this Agreement (including this Agreement being published in the Central Registry of Contracts maintained according to paragraph 5a of the Act No. 211/2000 Coll. on free access to information, as amended).

20.3.2 Prior to provision of information according to Section 20.3.1 letter e) hereof, the relevant Party shall be obliged to procure that the persons, to whom it discloses the Confidential Information, will be acquainted with the conditions of this Article 20 and shall exert maximum efforts that can be reasonably requested from it in order to ensure that such person will comply with the confidentiality duty under this Article 20 and it will not use the Confidential Information in contradiction with its purpose.

#### **20.4 Reporting Duty**

A Party shall be obliged to immediately inform the other Party if the obligation of the first Party to disclose the Confidential Information arises – in writing and in cases allowed by the legislation, even before the Confidential Information is provided. The Party undertakes to consult with the other Party the timing, contents and extent of the disclosure (if possible according to mandatory provisions of legal regulations) and when providing the information the Party undertakes to protect the rights and legitimate interests of the other Party.

#### **20.5 Rights Associated with Intangible Goods**

Any Confidential Information shall remain property of the person who provided such Confidential Information. For the avoidance of any doubts, the Parties identically represent that this Agreement does not give rise to any agreement on exercise or use of industrial or other intellectual property rights and they do not undertake to enter into such an agreement.

#### **20.6 Term**

The confidentiality duty shall not be limited in terms of time.

## **21 TERM OF THIS AGREEMENT**

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#### **21.1 Validity**

This Agreement shall become valid in the moment of its conclusion.

#### **21.2 Effect**

This Agreement, except for provisions of Sections 11.1, 11.2 and Article 22 hereof, shall take effect in the moment when the Shareholder No. 2 acquires the Shares representing 66 per cent share in the Company's registered capital via acts according to Section 5.2 letter a) of the Share Purchase Agreement.

Sections 11.1, 11.2 and Article 22 hereof shall take effect on the first day following the day when this Agreement has been published in Central Registry of Contracts maintained according to paragraph 5a of the Act No. 211/2000 Coll. on free access to information, as amended.

#### **21.3 Termination of this Agreement**

This Agreement shall terminate if any of the Parties ceases to be a shareholder of the Company, unless otherwise stipulated herein.

However, the Agreement shall not terminate

- a) if a Party transfers the Shares to a third party in contradiction with this Agreement, unless otherwise agreed by the Parties;
- b) if upon transfer of the Shares by the Party the transferee of the Shares accedes to this Agreement – in such case, this Agreement shall remain in force and the transferee of the Shares shall become a party to this Agreement;
- c) in case of transfer or transition of the Shares or rights and obligations of the Party to a legal successor (for instance, in case of merger, fusion, division, sale of undertaking etc.) – in such case, this Agreement shall remain in force and the legal successor of the Party shall become a party to this Agreement; or
- d) if any defects relating to the transfer of the Shares to the Shareholder No. 2 under the Share Purchase Agreement subsequently emerge, until the moment, in which it will be decided in a final decision of the relevant court that the Shareholder No. 2 has not become or has ceased to be a shareholder of the Company or a final decision with similar effects will be issued.

## **21.4 Surviving Provisions and Claims**

21.4.1 After termination of this Agreement, the Parties shall be still bound by the following provisions:

- a) Article 20 (Confidentiality Duty);
- b) Section 21.4 (Surviving Provisions and Claims);
- c) Article 22 (Disputes);
- d) Sections 23.1 through 23.4, 23.6 through 23.9;
- e) other provisions, the nature of which implies that they should survive termination of this Agreement. For the avoidance of any doubts, Section 23.5 shall not survive withdrawal from this Agreement, termination of this Agreement or any other cancellation of this Agreement.

21.4.2 Moreover, the termination of this Agreement shall have no effect on the rights, claims and entitlements of the Party, which arose due to breach of this Agreement before its termination.

## **22 DISPUTES**

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### **22.1 Conciliation Proceedings**

The Parties shall preferentially solve any disputable issues arisen out of or in connection with this Agreement by negotiations in good faith.

In case of a dispute, any of the Parties can invite the other Party to negotiate to resolve the dispute. If the dispute is not resolved within 30 days after delivery of the notice of dispute to the relevant Party, the dispute shall be referred to and finally resolved according to the provisions of Section 22.2 hereof.

### **22.2 Arbitration**

All disputes arising out of or in connection with this Agreement, including any questions regarding existence, validity, interpretation, breach or termination of this Agreement, which cannot be resolved within conciliation proceedings (Section 22.1 hereof), shall be submitted to the International Court of Arbitration of the International Chamber of Commerce and shall be finally settled under the Rules, which Rules are deemed to be incorporated by reference into this Section 22.2. Notwithstanding the above, the Parties agree that any matter excluded under applicable law from arbitration proceedings shall be finally resolved within the jurisdiction of courts of Slovak Republic.

**22.3 Composition of the Arbitral Tribunal**

The arbitral tribunal shall consist of three arbitrators appointed in accordance with the Rules, save for the third arbitrator, who shall act as president of the arbitral tribunal, that shall be nominated by the two arbitrators confirmed or appointed there before in accordance with the Rules.

**22.4 Venue of the Arbitration Proceedings**

Vienna, Austria shall be the venue of the arbitration proceedings.

**22.5 Language of the Arbitration Proceedings**

The arbitration proceedings shall be conducted in English language.

**22.6 Consolidation of the arbitration proceedings**

22.6.1 If more arbitrations are commenced under this Agreement or Share Purchase Agreement or Future Agreement and any party contends that two or more such arbitrations raise similar issues of law or fact and that the issues should be resolved in one set of proceedings, then:

- a) the parties to such arbitrations shall agree to consolidation and jointly request the Arbitration Court to consolidate them pursuant to Article 10, paragraph (a) of the Rules; or
- b) where the parties to such arbitrations fail to make the joint request under Section 22.6.1 letter a) above within 15 days of one party making the above contention, any party to such arbitrations may request the Arbitration Court to consolidate them pursuant to Article 10 of the Rules.

22.6.2 If the Arbitration Court decides to consolidate two or more arbitrations following the request made pursuant to Section 22.6.1 hereof or otherwise in accordance with the Rules, the arbitral tribunal in such consolidated proceedings shall be selected as follows:

- a) the parties to the consolidated proceedings shall agree on the composition of the arbitral tribunal; and
- b) failing to reach such agreement within 30 days of consolidation being decided by the Arbitration Court, the arbitrations shall be consolidated into the arbitration that commenced first in accordance with Article 10 of the Rules.

Any party to the consolidated proceedings shall be bound by the arbitration award rendered, even if it chooses not to participate in the consolidated proceedings.

**22.7 Binding Nature of the Arbitration Award**

The Parties represent that the arbitration award will be final, binding and enforceable. The Parties acknowledge that either Party shall be entitled to demand enforcement of the arbitration award.

The Parties represent that they rule out, in the extent permitted by valid laws, the possibility of any recourse or to demand cancellation of arbitration proceedings and/or arbitration award or to take advantage of any intervention of any other court with the arbitration proceedings, as well as the possibility to file any proposals for exercise of all rights related.

**22.8 Confidentiality**

The Parties represent that all arbitration awards, materials and documents executed for the purpose of arbitration proceedings, writing filings or oral testimonies submitted or filed within the framework of any arbitration proceedings according to this Article 22 shall be deemed confidential and the Parties undertake to take all reasonable steps to protect them against disclosure and publication.

Article 20 hereof shall apply accordingly.

**22.9 Severability of the Arbitration Clause**

The invalidity or unenforceability of this Agreement shall have no effect on the validity and enforceability of the arbitration clause contained in this Article 22.

## **23 FINAL PROVISIONS**

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**23.1 Cooperation**

The Parties undertake to provide each other with cooperation required for the purpose of satisfaction of their obligations hereunder and/or fulfilment of this Agreement, which can be reasonably required from them.

The Parties undertake to inform each other about all facts which could affect fulfilment or endanger fulfilment of the obligations of any of the Parties hereunder.

**23.2 Acting in Good Faith**

Each Party undertakes to exercise its rights and fulfil its obligations hereunder in good faith and bearing in mind the legitimate interests of the other Party.

**23.3 Severability**

If any part of any provision of this Agreement is deemed to be or becomes invalid or unenforceable in any aspect, invalidity or unenforceability of such provision shall have no effect on the remaining part of such provision and on remaining provisions.

That shall not apply if the affected part of the provision cannot be separated from the remaining part of the provision or from the remaining provisions.

The Parties undertake to immediately replace such invalid or unenforceable provision by a new valid and enforceable provision corresponding in the maximum extent possible with the original intention and economic purpose of the original (invalid or unenforceable) provision.

#### **23.4 Correspondence**

23.4.1 Any notice, request or any other information to be made or provided in connection with this Agreement shall be made or provided in writing and shall be delivered to the addressee by hand, by registered mail or by means of generally recognized courier service (however, not by e-mail or fax, unless otherwise stated hereinafter) to the address provided herein :

Cargo:	Shareholder No. 2:
Železničná spoločnosť	AAE Wagon a.s.
Cargo Slovakia, a.s.	Karadžičova 8/A
Drieňová 24	821 08 Bratislava
820 09 Bratislava	Slovak Republic
Slovak Republic	

For the attention of: General Director      For the attention of: Board of Directors

23.4.2 Any notice, request or other information hereunder shall be deemed to have been delivered:

- a) on the day of delivery of the notice if delivered by hand, registered mail or by a courier; or
- b) on the day when the addressee refused to receive the notice being delivered in compliance with this Agreement or when the cooperation of the addressee required for due delivery was not provided; or
- c) on the day when an attempt on delivery took place if the delivery to the address of the Party in compliance with this Agreement is not possible for reasons on the part of the addressee (for instance, the address does not exist or the addressee is unknown at that address).

23.4.3 Without prejudice to Section 23.4.1 hereof, any common notice or request or any other common information to be made or provided in connection with this Agreement may be delivered by e-mail to the address provided herein:



Cargo:

Shareholder No. 2:

E-mail:

E-mail:

For the avoidance of any doubts, any notice relating to a breach of this Agreement or to a contractual fine or provisions of Articles 13 through 16 hereof, waiver, call for fulfilment of any obligation or raising of a claim, termination or cancellation of this Agreement, as well as any legal act shall not be considered as common.

23.4.4 Any e-mail notice hereunder shall be deemed to have been delivered on the day when received in the e-mail box of the addressee, if received until 3:00 p.m. of the respective Business Day, otherwise on the following Business Day.

23.4.5 The addresses for delivery provided above can be changed anytime by unilateral written notice delivered by the relevant Party to the other Party in compliance with this Agreement.

#### **23.5 No Assignment**

Neither Party may assign its claim, other right or obligation hereunder to any other person without written consent of the other Party.

However, a Party may assign (transfer) its financial claims following from a breach of this Agreement also without consent of the other Party.

#### **23.6 Amendments to this Agreement**

Unless otherwise stated herein, any modifications or amendments to this Agreement may only be made on the basis of a written agreement of the Parties. This Agreement can be terminated, under the terms and conditions stipulated herein, in written only.

#### **23.7 Governing Law**

This Agreement and all rights and obligations following from or relating to this Agreement, including the issues of conclusion, validity, effect or interpretation of this Agreement, breach of this Agreement, entitlements following from such breach, issues related with the rights and obligations of the Parties which shall survive termination of this Agreement, shall be governed by the laws of Slovak Republic, namely preferentially by the Commercial Code, not taking into account any conflict-of-law provisions.

#### **23.8 Annexes**

The following Annexes constitute an integral part of this Agreement:

Annex No. 1: Draft of the Agreement on Transfer and Lease Back.

### **23.9 Language and Counterparts**

This Agreement has been executed in English and Slovak language, in four counterparts in each language version. Each Party shall receive two counterparts in each language version.

In case of any discrepancies between the language versions of this Agreement, the English language version shall prevail.

[A PAGE CONTAINING SIGNATURES OF THE SHAREHOLDERS FOLLOWS]

In **WITNESS OF THEIR CONSENT**, the Parties have attached their signatures hereunder on the day mentioned on the first page.

ON BEHALF OF <b>Železničná spoločnosť Cargo Slovakia, a.s.</b>	<hr/> Name: Ing. Vladimír Lupták Title: Chairman of the Board of Directors
	<hr/> Ing. Jaroslav Daniška Title: Vice-Chairman of the Board of Directors
ON BEHALF OF <b>AAE Wagon a.s.</b>	<hr/> Name: JUDr. Andrea Dobišová Title: Chairman of the Board of Directors
	<hr/> Name: Ing. Ivan Heczko Title: Member of the Board of Directors

# **SHAREHOLDERS AGREEMENT**

## **ANNEX NO. 1**

**AGREEMENT  
ON TRANSFER OF MOVABLE ASSETS FOR  
CONSIDERATION AND SUBSEQUENT LEASE  
BACK OF MEANS OF TRANSPORT**

ENTERED INTO BY AND BETWEEN:

**Železničná spoločnosť Cargo Slovakia, a.s.**

**as the Seller or as the Lessee**

AND

**Cargo Wagon, a.s.**

**as the Buyer or as the Lessor**

[xx. xxxx 2015]

This **AGREEMENT** has been entered into **BY AND BETWEEN** the following Parties:

**The Seller / Lessee**

Business name: **Železničná spoločnosť Cargo Slovakia, a.s.**

Registered office: Drieňová 24, 829 09 Bratislava, Slovak Republic

Registration: with the Companies Register of Bratislava I District Court  
section Sa, insert No. 3496/B

Registration No. (IČO): 35 914 921

Represented by: [name], [title]

[name], [title]

(hereinafter referred to as the **“Seller”** or as the **“Lessee”**)

and

**The Buyer / Lessor**

Business name: **Cargo Wagon, a.s.**

Registered office: Lúčna 2, 821 05 Bratislava, Slovak Republic

Registration: with the Companies Register of the Bratislava I District Court,  
section Sa, insert No. 5889/B

Registration No. (IČO): 47 523 441

Represented by: [name], [title]

[name], [title]

(hereinafter referred to as the **“Buyer”** or as the **“Lessor”**)

(hereinafter jointly referred to the Seller / Lessee and the Buyer / Lessor as the **“Parties”** or individually to any of them as the **“Party”**).

## PART I

### GENERAL PROVISIONS

#### ARTICLE 1

##### PREAMBLE

- 1.1 Whereas the Seller needs to obtain funds for refinancing of existing financial liabilities in such a way that he will be still able, without any interruption, to conduct his business activities as they were conducted until now;
- 1.2 Whereas the Seller, after considering all his possibilities, considers the sale of part of the Seller's assets with simultaneous arrangement of the possibility of partial use of the assets as the lessee for the period necessarily required as the most suitable alternative to reach the determined objective;
- 1.3 Whereas the Government of the Slovak Republic by its Resolution No. 390/2013 Coll. as of 10 July 2013 (hereinafter referred to as "**the Government Resolution**") approved the "Proposal of measures to consolidate railway freight transport of the Slovak Republic" according to which there should be, *inter alia*, "secured implementation of internal restructuring and entry of partners with relevant know-how into daughter companies within the process of economic consolidation of Železničná spoločnosť Cargo Slovakia, a.s.";
- 1.4 Whereas, on the basis of the Government Resolution, the Ministry of Transport, Construction and Regional Development of the Slovak Republic (hereinafter referred to as "**the MTCRD**") as the sole shareholder of the Seller adopted Resolution No. 35/RA-2013 as of 22 July 2013 authorizing the Seller to commence the process of preparation of transfer of the respective assets (hereinafter referred to as "**the MTCRD Decision**");
- 1.5 Whereas the MTCRD, being the sole shareholder of the Seller performing competences of the Seller's General Meeting, decided on [•] on sale of part of the rolling stock of the Seller's railway carriages to the Seller's 34% daughter company and on related lease back of part of such transferred Railway Carriages to the Seller and approved the terms and conditions of this Agreement (hereinafter referred to as "**the Decision No. I**");
- 1.6 Whereas the Buyer's General Meeting decided on [•] on the purchase of part of the rolling stock of the Seller's railway carriages and related subsequent lease back of part of such acquired Railway Carriages to the Seller and approved the terms and conditions of this Agreement (hereinafter referred to as "**the Decision No. II**");
- 1.7 Whereas both the Seller's Supervisory Board and the Buyer's Supervisory Board approved the transfer for consideration of part of the rolling stock of the Seller's railway carriages to the Buyer and related subsequent lease back of part of such

transferred Railway Carriages to the Seller and approved the terms and conditions of this Agreement;

- 1.8 Whereas, after the acquisition of part of the rolling stock of the Seller's railway carriages, the Buyer will exercise decisive part of his activities in the form of lease of substantial part of the acquired Railway Carriages to the Seller;
- 1.9 Whereas in compliance with the Government Resolution, MTCRD Decision, Decision No. I and Decision No. II, the Seller and the Buyer approach to the transfer of part of the rolling stock of the Seller's railway carriages for consideration from the Seller to the Buyer and also to the lease back of part of these Railway Carriages to the Seller;

**THEREFORE**, the Parties, having considered the above mentioned, have decided to enter into the following Agreement.

## **ARTICLE 2**

### **DEFINITIONS AND INTERPRETATION RULES**

- 2.1 The Parties have agreed that the following terms used herein shall have for the purpose of this Agreement the following meaning:
  - 2.1.1 **Agreement** shall mean this Agreement on Transfer of Movable Assets for Consideration and Subsequent Lease Back of Means of Transport, including all Annexes hereto, and amendments, supplements and modifications hereto, if any;
  - 2.1.2 **Annexes** shall mean the Annexes hereto, regardless of whether they are made in written or electronic form;
  - 2.1.3 **Arbitration Court** shall mean the International Court of Arbitration of the International Chamber of Commerce in Vienna;
  - 2.1.4 **Authorized Persons** shall mean legal entities or natural persons who have authorized access to the Confidential Information in connection with this Agreement;
  - 2.1.5 **AVV Agreement** shall mean the international multilateral agreement: *AVV/GCU Agreement – Allgemeiner Vertrag für die Verwendung von Güterwagen/The General Contract for Use of Wagons* (<http://www.gcubureau.org>);
  - 2.1.6 **Business Day** shall mean a day other than Saturday, Sunday or rest day in the Slovak Republic and **Business Days** shall mean two or more of them;



- 2.1.7 **Buyer** shall mean the business company Cargo Wagon, a.s., with its registered office at Lúčna 2, 821 05 Bratislava, registration No.: 47 523 441, registered with the Companies Register of the Bratislava I District Court, section Sa, insert No. 5889/B;
- 2.1.8 **Buyer's Bank Account** shall mean the bank account held by the Buyer in [•], IBAN [•], SWIFT [•] or any other account to be notified by the Buyer to the Seller in writing afterwards;
- 2.1.9 **Carriage Keeper** shall mean an identification of the entity that economically uses the carriage as a means of transport for a long term. VKM code is provided on the carriage and is stated in the National Register of Carriages. It represents the keeper himself, including the persons authorized by the keeper;
- 2.1.10 **Carriage Unit** shall mean any object (i) consisting at least of carriage underframe and respective number of Wheelsets (carriage with underframe) or consisting at least of respective number of Wheelsets (carriage without underframe); and (ii) marked with unique registration number assigned thereto in the National Register of Carriages;
- 2.1.11 **Change of Control** shall mean the case of acquirement of control (control within the meaning stipulated in paragraph 8 of Act No. 566/2001 Coll. on Securities and Investment Services, as amended) over the Lessee by any person or entity, other than the Slovak Republic;
- 2.1.12 **Civil Code** shall mean Act No. 40/1964 Coll., as amended;
- 2.1.13 **Closest Place of Connection** shall mean the closest border-crossing station in the network of ŽSR from the place of maintenance and/or repair performance;
- 2.1.14 **COC Approval** shall mean a prior written approval signed by the Financing Entity (each and all) approving the Change of Control;
- 2.1.15 **Commercial Code** shall mean Act No. 513/1991 Coll., as amended;
- 2.1.16 **Confidential Information** shall mean any information which the Parties learn within the framework of their contractual relationship established by this Agreement or which, based on any other circumstances, is identifiable as trade secret of any Party or which is, based on the will of any Party, identified as confidential;
- 2.1.17 **Decision No. I** has the meaning referred to in Section 1.5 hereof;
- 2.1.18 **Decision No. II** has the meaning referred to in Section 1.6 hereof;

- 2.1.19 **Discount** shall mean discount on the Purchase Price which may be applied solely under the terms and conditions stipulated in Section 5.4 hereof;
- 2.1.20 **Documents** shall mean all and any documents in whatsoever form which are according to the valid legal regulations required for the use and operation of the Railway Carriages, including any other technical and other related documents which exist and are available to the Seller;
- 2.1.21 **ECM** shall mean the entity in charge of maintenance according to COMMISSION Regulation (EU) No. 445/2011;
- 2.1.22 **Effective Date** shall mean the day when this Agreement shall enter into force according to Section 19.1 hereof;
- 2.1.23 **Expert Institution** shall mean Ústav súdneho inžinierstva Žilinskej univerzity in Žilina, Ulica 1. mája 32, 010 26 Žilina;
- 2.1.24 **Expert Opinion** shall mean the Expert Opinion No. [●] prepared by the Expert Institution in the matter of determining the general value of the assets according to the state as at [●], including an updated amendment, if any, containing the way of their valuation and determination of their value and copy thereof shall be attached as Annex No. 5 hereto;
- 2.1.25 **Facilities Agreement** shall mean the Senior Term Facilities Agreement dated [●], concluded by the Buyer as borrower and the Financing Entity as lender, in order to grant funds to the Buyer for payment of the Purchase Price or any part thereof;
- 2.1.26 **Final Handover Protocol** shall mean a final report confirming handover of the Railway Carriages by the Seller and takeover of the Railway Carriages by the Buyer executed and approved pursuant to Sections 6.7 and 6.8 hereof;
- 2.1.27 **Financing Entity** shall mean (i) a bank or (ii) a branch of a foreign bank or (iii) each and all of a group of banks and/or branches of foreign banks, as the case may be, that shall grant funds to the Buyer for payment of the Purchase Price or any part thereof;
- 2.1.28 **Force Majeure** shall mean the events referred to in Article 24 hereof;
- 2.1.29 **Government Resolution** has the meaning referred to in Section 1.3 hereof;
- 2.1.30 **Handover Protocols of the Leased Carriages** shall mean reports confirming handover of the Leased Carriages by the Seller and takeover of the Leased Carriages by the Buyer executed pursuant to Section 6.2.1 hereof;
- 2.1.31 **Handover Period** shall mean the period running from the Effective Date until the last day of the calendar month in which the Effective Date occurred. In

case that the Effective Date is not the first, second or third day of the respective calendar month, the Handover Period shall mean the period running from the first day of the calendar month following the calendar month in which the Effective Date occurred until the last day of such calendar month;

- 2.1.32 **Invoice** shall mean a written document which has the particulars determined and required by generally binding legal regulations of the Slovak Republic and which is executed according to and in compliance with this Agreement and on the basis of which a Party is obliged to pay the other Party the sum of money indicated in the Invoice;
- 2.1.33 **Lease** shall mean the lease of the Leased Carriages, as a contract on lease of means of transport (in Slovak: *Zmluva o nájme dopravného prostriedku*) for consideration by the Lessee from the Lessor in the way and under the terms and conditions stipulated herein;
- 2.1.34 **Leased Carriage** shall mean any carriage of the Railway Carriages listed in Annex No. 2 hereto which is the object of the Transfer and is the object of the Lease hereunder in the respective time. The term **Leased Carriages** shall mean all or any part of the Railway Carriages which are the object of the Transfer and are the object of the Lease hereunder in the respective time;
- 2.1.35 **Lessee** shall mean the business company Železničná spoločnosť Cargo Slovakia, a.s., with its registered office at Drieňová 24, 820 09 Bratislava, registration No.: 35 914 921, registered with the Companies Register of the Bratislava I District Court, section Sa, insert No. 3496/B;
- 2.1.36 **Lessor** shall mean the business company Cargo Wagon, a.s., with its registered office at Lúčna 2, 821 05 Bratislava, registration No.: 47 523 441, registered with the Companies Register of the Bratislava I District Court, section Sa, insert No. 5889/B;
- 2.1.37 **MTCRD Decision** has the meaning referred to in Section 1.4 hereof;
- 2.1.38 **National Register of Carriages** shall mean the national register of carriages kept by the Transport Authority, with its registered office at Letisko M.R.Štefánika, 823 05 Bratislava;
- 2.1.39 **Non-Leased Carriage** shall mean any of the Railway Carriages which is the object of the Transfer but is not the object of the Lease hereunder in the respective time. The term **Non-Leased Carriages** shall mean all or any part of the Railway Carriages which are the object of the Transfer but are not the object of the Lease hereunder in the respective time;

- 2.1.40 **OECD Index** shall mean the “OECD Harmonised Index of Consumer Prices – All Items”, published at OECD Internet site (<http://stats.oecd.org/index.aspx?queryid=26661>);
- 2.1.41 **Parties** shall mean the Seller and the Buyer or the Lessee and the Lessor;
- 2.1.42 **Partial Handover Procedures** shall mean proceedings performed pursuant to Sections 6.2.2 and 6.3 through 6.5 hereof, within the framework of which the Seller shall hand over the Non-Leased Carriages and the Buyer shall take over the Non-Leased Carriages;
- 2.1.43 **Partial Handover Protocol** shall mean a report on handover of each individual Non-Leased Carriage by the Seller and on its takeover by the Buyer executed pursuant to Section 6.2.2 hereof;
- 2.1.44 **Periodic Maintenance and Technical Checks I** shall mean planned preventive maintenance, repairs and technical checks of the Leased Carriages performed in prescribed periods at least in the extent according to chapter No. 5 of the SÚNV Regulation – N8, as being in force at the date hereof, Act No. 513/2009 Coll. on Railways, as amended and Decree No. 351/2010 Coll., as amended, in order to assure that all dimensions and tolerances after repair shall comply with chapter No. 5 of the SÚNV Regulation. The term **Periodic Maintenance and Technical Check I** shall mean any of the Periodic Maintenance and Technical Checks I;
- 2.1.45 **Periodic Maintenance and Technical Checks II** shall mean planned preventive maintenance, repairs and technical checks of the Leased Carriages performed in prescribed periods at least in the extent according to chapter No. 5 of the SÚNV Regulation – N2.X, N4, as being in force at the date hereof, Act No. 513/2009 Coll. on Railways, as amended and Decree No. 351/2010 Coll., as amended, in order to assure that all dimensions and tolerances after repair shall comply with chapter No. 5 of the SÚNV Regulation. The term **Periodic Maintenance and Technical Check II** shall mean any of the Periodic Maintenance and Technical Checks II;
- 2.1.46 **Purchase Price** shall mean the total purchase price for the Railway Carriages stated in Sections 5.1 and 5.2 hereof;
- 2.1.47 **Railway Carriages** shall mean the part of the rolling stock of freight carriages/carriage units of various type, quality, accessories, age, wear rate and other features listed in Annex No. 1 hereto. The Railway Carriages represent a set of things in aggregate and include railway carriages suitable for further operation as well as railway carriages/carriage units that are temporarily not in operational condition; for the purpose of this Agreement the Railway Carriages are divided into the Leased Carriages and the Non-Leased Carriages;

- 2.1.48 **Rent** shall mean the sum of money agreed between the Parties in this Agreement as financial consideration which the Lessee is obliged to pay the Lessor for the Lease of the Leased Carriages, namely in the way and under the terms and conditions stipulated herein;
- 2.1.49 **Seller** shall mean the business company Železničná spoločnosť Cargo Slovakia, a.s., with its registered office at Drieňová 24, 820 09 Bratislava, registration No.: 35 914 921, registered with the Companies Register of the Bratislava I District Court, section Sa, insert No. 3496/B;
- 2.1.50 **Seller's Bank Account** shall mean the account held by the Seller in Všeobecná úverová banka, a.s., IBAN SK [REDACTED], BIC SUBASKBX or any other account to be notified by the Seller to the Buyer in writing afterwards;
- 2.1.51 **Schedule of Partial Handover Procedures** shall mean timetable of the Partial Handover Procedures agreed by the Parties and specified in Annex No. 9 hereto;
- 2.1.52 **SÚNV Regulation** shall mean the regulation for periodic maintenance which defines the system of maintenance of freight carriages and carriages for special purposes (passenger carriages – army carriages, carriages for own purposes, workshop carriages included in freight trains) and which was issued by the Section of Rail Vehicles Services of the company Železničná spoločnosť Cargo Slovakia, a.s., with its registered office at Drieňová 24, 820 09 Bratislava, registration No.: 35 914 921, registered with the Companies Register of the Bratislava I District Court, section Sa, insert No. 3496/B and constitutes Annex No. 4 hereto;
- 2.1.53 **Transfer** shall mean transfer for consideration of the ownership title to the Railway Carriages from the Seller to the Buyer in the way and under the terms and conditions stipulated herein;
- 2.1.54 **Transfer Date** shall mean the day, on which the Purchase Price is paid by the Buyer according to and in compliance with Section 5.3 hereof;
- 2.1.55 **VAT** shall mean value added tax as it is defined and regulated by generally binding legal regulations of the Slovak Republic;
- 2.1.56 **V 62 – Operating-Technical Regulation for railway carriages** shall mean the Operating-Technical Conditions for Railway Freight Carriages laying down the technical requirements for carriages and their components in operation, in order to secure regular and safe operation of carriages, and the regulation determines the principles for performing related works. It also lays down the conditions for transport of carriages with defects and with exceeded deadline of regular maintenance. The regulation was issued by the Operation Section of the company Železničná spoločnosť Cargo Slovakia,

a.s., with its registered office at Drieňová 24, 820 09 Bratislava, registration No.: 35 914 921, registered with the Companies Register of the Bratislava I District Court, section Sa, insert No. 3496/B and constitutes Annex No. 3 hereto;

- 2.1.57 **Wheelset** shall mean carriage component consisting of two monoblocks of wheels, axle, relevant bearings and bearing boxes. The term **Wheelsets** shall mean two or more of them;
  - 2.1.58 **Written document** shall mean all and any notices, statements, requests, calls and filings made in connection with this Agreement and fulfilment of this Agreement;
  - 2.1.59 **ŽSR** shall mean *Železnice Slovenskej republiky (Railways of the Slovak Republic)*, with its registered office at Klemensova 8, 813 61 Bratislava, registration No.: 31 364 501, registered with the Companies Register of the Bratislava I District Court, section Po, insert No. 312/B. ŽSR is by law the operator of railways in the territory of the Slovak Republic.
- 2.2 If this Agreement refers to laws or any other legal regulations, such references shall be interpreted as references to laws and legal regulations in its valid and effective wording.
  - 2.3 Except for the cases when otherwise unambiguously implied by the context, this Agreement shall be interpreted as follows:
    - 2.3.1 any reference to this Agreement shall also include a reference to Annexes hereto, where each of the Annexes constitutes an integral part of this Agreement, and any reference to Articles and Sections shall be a reference to the Articles and Sections of this Agreement;
    - 2.3.2 headings provided herein are for easier orientation in the text of this Agreement only and shall have no influence on the interpretation of this Agreement;
    - 2.3.3 the wording of this Agreement shall have preference over the wording of the text of Annexes, unless expressly otherwise provided in the text of this Agreement;
    - 2.3.4 in matters regulated by this Agreement the wording of this Agreement shall have preference over the wording of the AVV Agreement.

## ARTICLE 3

### SUBJECT MATTER OF THIS AGREEMENT

3.1 The subject matter of this Agreement is:

- 3.1.1 transfer for consideration of the ownership title to the Railway Carriages from the Seller to the Buyer, namely in the way and under the terms and conditions stipulated herein;
- 3.1.2 lease back of the Leased Carriages to the Lessee by the Lessor, namely in the way and under the terms and conditions stipulated herein; and
- 3.1.3 regulation of the rights and obligations of the Parties related to the Transfer and the Lease; and
- 3.1.4 regulation of other rights and obligations of the Parties, namely in the way and under the terms and conditions stipulated herein.

## PART II

### TRANSFER OF RAILWAY CARRIAGES

## ARTICLE 4

### OBJECT OF TRANSFER

- 4.1 The Seller hereby transfers the Railway Carriages to the Buyer and the Buyer hereby accepts the Railway Carriages without any reservations and undertakes to pay the Seller the Purchase Price for the sale of the Railway Carriages hereunder.
- 4.2 The Parties have agreed that the Seller shall hand over the Railway Carriages to the Buyer in the way and under the terms and conditions stipulated in Article 6 hereof.

## ARTICLE 5

### PURCHASE PRICE AND ITS MATURITY

- 5.1 The Purchase Price of all Railway Carriages amounts to EUR 180.501.700,- (in words: *one hundred and eighty million and five hundred one thousand and seven hundred euros*) excluding VAT and EUR 216.602.040,- (in words: *two hundred and sixteen million and six hundred two thousand and forty euros*) including VAT; VAT represents EUR 36.100.340,-.
- 5.2 The Parties have agreed and hereby declare that the Purchase Price as stated in Section 5.1 hereof represents total purchase price agreed *en bloc* for the Railway

Carriages. The Purchase Price may be decreased solely in the way and under the terms and conditions stipulated in Section 5.4 hereof.

- 5.3 The Parties have agreed that the Purchase Price shall be paid by the Buyer to the Seller's Bank Account on the basis of the Invoice issued by the Seller in compliance with Section 5.4 hereof. The obligation of the Buyer to pay the Purchase Price shall be deemed as fulfilled in the moment when the payable sum is credited to the Seller's Bank Account.
- 5.4 The Seller shall issue the Invoice in the amount of the Purchase Price including VAT and deliver the Invoice to the Buyer without undue delay after (i) all respective Handover Protocols of Leased Carriages are executed and signed by both Parties and (ii) the Final Handover Protocol is approved by both Parties (Section 6.8 hereof). If it is, upon the approved Final Handover Protocol (Section 6.8 hereof), found out that the total number of the Non-Leased Carriages resulting from the approved Final Handover Protocol is lower than the total number of the Non-Leased Carriages stated in Annex No. 1 hereto, the Buyer shall be entitled to the Discount. The Parties have agreed that the amount of the Discount shall be determined as a multiple of the lump sum of EUR 3,541,- (in words: *three thousand five hundred and forty-one euros*) excluding VAT (i.e. EUR 4,249.20 including VAT) and the number representing the difference between:
- (i) the total number of the Non-Leased Carriages stated in Annex No. 1 hereto; and
  - (ii) the total number of the Non-Leased Carriages resulting from the approved Final Handover Protocol.

The Invoice shall be due on the third Business Day after the day the Invoice is issued and delivered to the Buyer.

## ARTICLE 6

### HANDOVER AND TAKEOVER OF RAILWAY CARRIAGES

- 6.1 The Seller shall be obliged to hand over the Railway Carriages to the Buyer and the Buyer shall be obliged to take over the Railway Carriages from the Seller.
- 6.2 The Parties have agreed that the Railway Carriages shall be handed over and taken over during the Handover Period as follows:
- 6.2.1 The Leased Carriages shall be handed over and taken over by the Parties without the need of their physical handover and takeover, i.e. the Leased Carriages shall remain in the Seller's/Lessee's possession. The Parties shall confirm handover and takeover of the Leased Carriages by signing the Handover Protocols of the Leased Carriages executed in the form and with



the contents as provided in Annex No. 6 hereto. The Handover Protocols of the Leased Carriages shall be executed and signed by the Parties continually during the Handover Period, namely on days respective Leased Carriages are presented in the Slovak Republic. All of the Handover Protocols of the Leased Carriages shall be executed in two (2) counterparts; each Party shall receive one (1) counterpart thereof. Regardless of the execution of the Handover Protocols of the Leased Carriages:

- (i) risk of damage to the Leased Carriages shall pass from the Seller to the Buyer in compliance with Section 6.10 hereof;
- (ii) ownership title to the Leased Carriages shall be acquired by the Buyer in compliance with Section 8.1 hereof.

6.2.2 The Non-Leased Carriages shall be handed over and taken over by the Parties physically and continually in the Partial Handover Procedures regarding each individual Non-Leased Carriage, namely on day the Non-Leased Carriage is presented in the Slovak Republic. The Partial Handover Procedures shall take place during the Handover Period in accordance with the Schedule of Partial Handover Procedures provided in Annex No. 9 hereto, updated by the Seller in respect of the Effective Date. The Parties shall execute and sign the Partial Handover Protocol about each of the Partial Handover Procedures in the form and with the contents as provided in Annex No. 7 hereto. Every Partial Handover Protocol shall be executed in two (2) counterparts; each Party shall receive one (1) counterpart thereof. For the avoidance of any doubts the Parties declare that regardless of the day the Non-Leased Carriage is taken over by the Buyer, ownership title to the Non-Leased Carriages shall be acquired by the Buyer in compliance with Section 8.1 hereof.

6.3 The Parties shall be obliged to participate in the Partial Handover Procedures. If the particular Non-Leased Carriage to be handed over corresponds at least with the characteristics of the Carriage Unit the Buyer shall be obliged to take over such Non-Leased Carriage and sign the respective Partial Handover Protocol.

6.4 In case the Buyer does not take over any of the Non-Leased Carriages, and/or does not sign any Partial Handover Protocol, despite the Non-Leased Carriage in question corresponds at least with the characteristics of the Carriage Unit, such Non-Leased Carriage shall be considered as taken over by the Buyer on the day stated in the Schedule of Partial Handover Procedures.

6.5 For the avoidance of any doubts the Parties declare that for the purpose of this Agreement the respective Non-Leased Carriage is taken over by the Buyer:

6.5.1 upon signing the relevant Partial Handover Protocol by both Parties; or

6.5.2 upon it is considered as taken over according to Section 6.4 hereof.

- 6.6 If requested by the Buyer the Seller shall ensure, at his own expense, that the respective Non-Leased Carriage is able of transfer on its own wheels so it could be towed to other place on its own wheels. For the avoidance of any doubts the Parties declare that the Seller shall not be responsible for technical condition of such Non-Leased Carriage and he shall not be obliged to ensure its operational condition and safe operation in compliance with relevant generally binding legal regulations.
- 6.7 The Parties have agreed that within three (3) Business Days following the expiry of the Handover Period the Final Handover Protocol shall be executed and signed by the Parties in the form and with the contents as specified in Annex No. 8 hereto. The Final Handover Protocol shall contain in particular (i) the total number of the Leased Carriages taken over by the Buyer from the Seller, as it results from the Handover Protocols of the Leased Carriages and (ii) the total number of the Non-Leased Carriages taken over by the Buyer from the Seller in the Partial Handover Procedures. The Final Handover Protocol shall be executed in two (2) counterparts; each Party shall receive one (1) counterpart thereof. The Buyer undertakes to approve the Final Handover Protocol prepared by the Seller by his signature within the period determined in the first sentence of this Section 6.7 hereof. If the Buyer fails to do so without reasonable and serious reasons, the Final Handover Protocol shall be considered as approved by the Buyer (with the contents as executed and signed by the Seller).
- 6.8 For the avoidance of any doubts the Parties declare that for the purpose of this Agreement the Final Handover Protocol is approved by both Parties:
- 6.8.1 upon signing the Final Handover Protocol by both Parties; or
- 6.8.2 upon the Final Handover Protocol is considered as approved according to Section 6.7 hereof.
- 6.9 Unless otherwise agreed between the Parties:
- 6.9.1 As at the Transfer Date the Seller shall provide the Buyer with the Documents regarding the Leased Carriages as specified in Annex No. 10 hereto.
- 6.9.2 As at the execution of the Final Handover Protocol the Seller shall provide the Buyer with the Documents regarding the Non-Leased Carriages as specified in Annex No. 10 hereto.
- 6.9.3 Upon Buyer's written request the Seller shall provide the Buyer, within a reasonable period, with other Documents relating to the Railway Carriages specified in Annex No. 11 hereto, at the cost of the Seller.
- 6.10 The risk of damage to the Railway Carriages shall pass from the Seller to the Buyer as follows:

- 6.10.1 in relation to the Leased Carriages the risk of damage shall continue to be with the Seller (taking into account Sections 16.31 and 16.32 hereof) due to the fact that the Leased Carriages form a subject of Lease in accordance with this Agreement, whereas the physical tenure stays with the Seller and the Buyer only acquires ownership title of the Leased Carriages;
- 6.10.2 in relation to the Non-Leased Carriages the risk of damage shall pass from the Seller to the Buyer continually as at takeover of the respective Non-Leased Carriage by the Buyer (Section 6.5 hereof). For the avoidance of any doubts, from the moment described in the previous sentence the Buyer shall bear any damage to the Non-Leased Carriages (including damage caused by Force Majeure), regardless of day of acquisition of the ownership title to the Non-Leased Carriages (Section 8.1 hereof).

## ARTICLE 7

### LIABILITY FOR DEFECTS OF RAILWAY CARRIAGES

- 7.1 The Buyer hereby declares that prior to conclusion of this Agreement he had the opportunity to inspect legal and technical condition of the Railway Carriages and to find out all the necessary details and information concerning the Railway Carriages. The Buyer hereby confirms that he accepts and acquires all Railway Carriages as is (in Slovak *ako stoja a ležia*). The Parties have agreed that the Seller shall not be held responsible for any defects of the Railway Carriages, except for: (i) defects relating to the quantity of the Non-Leased Carriages as stipulated in Section 7.2 (i) hereof; and (ii) defects of the Railway Carriages relating to the misrepresentations of the Seller provided in Sections 9.1.1 through 9.1.4 hereof.
- 7.2 Regardless of any other provisions of this Agreement, the Parties have expressly agreed that:
- (i) The Seller shall be liable towards the Buyer solely for defects relating to the quantity of the Non-Leased Carriages, i.e. the Seller shall be liable towards the Buyer that the total number of the Non-Leased Carriages resulting from the approved Final Handover Protocol (Section 6.8 hereof) corresponds with the total number of the Non-Leased Carriages stated in Annex No. 1 hereto. In case that the total number of the Non-Leased Carriages resulting from the approved Final Handover Protocol (Section 6.8 hereof) is lower than the total number of the Non-Leased Carriages stated in Annex No. 1 hereto, the Buyer shall be entitled to the Discount under the terms and conditions stipulated in Section 5.4 hereof.
  - (ii) If it proves that any of the representations of the Seller provided in Sections 9.1.1 through 9.1.4 hereof was not true, complete or accurate at the date of conclusion of this Agreement and/or at the Transfer Date and the Buyer

informs the Seller in writing of existence of any legal or actual defects of the Railway Carriages in relation to such misrepresentation, the Seller shall remove such defects of the Railway Carriages without undue delay. Unless the defects specified in the previous sentence are removed, the Seller undertakes to compensate the Buyer for the damage suffered by the Buyer in consequence of such misrepresentation. For the avoidance of any doubts the Parties declare that the Buyer shall not be entitled to the Discount or any other discount on the Purchase Price in such case.

- 7.3 In relation to the Railway Carriages, the Seller does not assume any guarantees of any kind towards the Buyer and the Seller shall not be held responsible for any defects of the Railway Carriages except for the defects as stipulated in Sections 7.1 and 7.2 hereof.
- 7.4 For the avoidance of any doubts, according to the express agreement of the Parties, the provisions of the Commercial Code regarding liability for defects (Section 422 et seq. of the Commercial Code) shall not apply in connection with the sale of the Railway Carriages and the Parties hereby exclude the application of these provisions.

## ARTICLE 8

### ACQUISITION OF OWNERSHIP TITLE AND OTHER RIGHTS AND OBLIGATIONS

- 8.1 The Buyer shall acquire the ownership title to the Railway Carriages as at the Transfer Date.
- 8.2 Immediately after acquiring the ownership title to the Railway Carriages, the Buyer shall file an application for registration of change of the Railway Carriages owner in the National Register of Carriages. The Parties have agreed that the Seller shall remain the Carriage Keeper of the Leased Carriages. Unless otherwise agreed by the Parties, the Seller shall be ECM of the Leased Carriages at least for the period of one (1) year since the Transfer Date under a separate agreement concluded by the Parties. The Carriage Keeper and ECM for the Non-Leased Carriages shall be the Seller at least for the period of two (2) years since the Transfer Date, unless otherwise determined by the Buyer.
- 8.3 In relation to the Non-Leased Carriages the cost connected with registration of change of ownership with the National Register of Carriages pursuant to Section 8.2 hereof shall be fully borne by the Buyer.
- 8.4 In relation to the Leased Carriages the cost connected with registration of change of ownership with the National Register of Carriages pursuant to Section 8.2 hereof shall be borne by the Parties equally.
- 8.5 Potential fees invoiced by ŽSR for reposition (in Slovak *deponovanie*) and parking (in Slovak *odstavenie*) of the Leased Carriages within the public railway network of ŽSR

during the term of Lease hereunder shall be borne by the Seller/Lessee, i.e. the Seller/Lessee shall reimburse the Buyer/Lessor for such cost.

- 8.6 The Parties have agreed that potential fees invoiced by ŽSR for reposition (in Slovak *deponovanie*) and parking (in Slovak *odstavenie*) of the Non-Leased Carriages within the public railway network of ŽSR shall be borne by the Seller solely in case the Seller is the Carriage Keeper for those Non-Leased Carriages, however until 31.12.2017 at the latest, i.e. the Seller shall reimburse the Buyer for such cost. Any other cost related to the Non-Leased Carriages (surveillance, parking and reposition within the private railway shunting, transfer within the railway network of ŽSR, etc.) shall be borne by the Buyer. For the avoidance of any doubts the Parties hereby declare that this Section 8.6 hereof refers only to the division of potential fees and cost regarding the reposition and parking of the Non-Leased Carriages to which the Seller is the Carriage Keeper and shall not give rise to the Seller's liability for damage to such Non-Leased Carriages.
- 8.7 The Parties have agreed that the Seller is obliged to assign to the Buyer, without undue delay upon request of the Buyer, any of his claims arising from and/or related to the liability for defects of the repairs performed on the Railway Carriages by third parties prior to the Transfer Date (claims arising from liability for defects of the work pursuant to Section 560 et seq. of the Commercial Code). The assignment of such claims shall be free of charge.

## ARTICLE 9

### REPRESENTATIONS OF THE SELLER

- 9.1 The Seller hereby represents and warrants for the Buyer that all the Seller's representations and warranties provided in this Section 9.1 hereof are true, complete and accurate both as at the date of conclusion of this Agreement and as at the Transfer Date:
- 9.1.1 The Seller is the sole and exclusive owner of the Railway Carriages and is entitled to exercise all the rights associated with the ownership of the Railway Carriages.
- 9.1.2 The Railway Carriages are registered in the National Register of Carriages.
- 9.1.3 As at the date of conclusion of this Agreement, the Railway Carriages are free of any pledge, pre-emption rights or any rights of third parties, except for (i) the rights of third parties resulting from lease (sublease) contracts stated in Annex No. 12 hereto; and (ii) the pledge which is or will be established in favour of the Financing Entity, whereof the Buyer is aware. As at the Transfer Date, the Railway Carriages are free of any pledge, pre-emption rights or any rights of third parties, except for the pledge which is

or will be established in favour of the Financing Entity, whereof the Buyer is aware.

- 9.1.4 The Railway Carriages do not contain asbestos and are not radioactively contaminated.
- 9.1.5 The Seller is a joint stock company duly incorporated and validly existing under the laws of the Slovak Republic.
- 9.1.6 No bankruptcy has been declared and no restructuring has been permitted in relation to the Seller's property in compliance with Act No. 7/2005 Coll., as amended. The Seller is not in liquidation and has not been dissolved.
- 9.1.7 The Seller has obtained all the required approvals of his bodies needed for the conclusion and fulfilment of this Agreement or no such approvals are required, as the case may be.
- 9.1.8 This Agreement was duly signed by the individuals authorized to act/sign on behalf of the Seller.
- 9.1.9 The Seller/Lessee has at his disposal sufficient funds allowing the Seller/Lessee to meet all his financial obligations following from the Part III of this Agreement (Lease Back of Railway Carriages).
- 9.2 If it proves that any of the representations provided in Section 9.1 hereof was not true, complete or accurate at the date of conclusion of this Agreement and/or at the Transfer Date, the Seller undertakes to compensate the Buyer for the damage suffered by the Buyer in consequence of such misrepresentation.

## **ARTICLE 10**

### **REPRESENTATIONS OF THE BUYER**

- 10.1 The Buyer hereby represents and warrants for the Seller that all the Buyer's representations and warranties provided in this Section 10.1 hereof are true, complete and accurate both as at the date of conclusion of this Agreement and as at the Transfer Date:
  - 10.1.1 Before conclusion of this Agreement, the Buyer had the opportunity to inspect and acquaint himself with the legal and technical condition of the Railway Carriages. The Buyer accepts and acquires all Railway Carriages as is (in Slovak *ako stoja a ležia*) and accepts that the Seller shall not be held responsible for any defects of the Railway Carriages, except for defects as stipulated in Sections 7.1 and 7.2 hereof.

- 10.1.2 The Buyer has at his disposal sufficient funds allowing the Buyer to meet all his financial obligations following from this Agreement.
- 10.2 If it proves that any of the representations provided in Section 10.1 hereof was not true, complete or accurate at the date of conclusion of this Agreement and/or at the Transfer Date, the Buyer undertakes to compensate the Seller for the damage suffered by the Seller in consequence of such misrepresentation.

### **PART III**

#### **LEASE BACK OF RAILWAY CARRIAGES**

##### **ARTICLE 11**

##### **SUBJECT OF LEASE**

- 11.1 Since the day when the ownership title to the Railway Carriages passes hereunder to the Lessor as the new owner of the Railway Carriages (Transfer Date), the Lessor hereby leases for consideration the Leased Carriages to the Lessee for the Lessee's exclusive use and the Lessee accepts the Leased Carriages.
- 11.2 The list and more detailed specification of the Leased Carriages that are subject of the Lease hereunder are provided in Annex No. 2 hereto.
- 11.3 The Lessee hereby declares that prior to the Transfer Date he had the opportunity to inspect legal and technical condition of the Leased Carriages and to find out all the necessary details and information concerning the Leased Carriages. The Parties have agreed that the Lessor shall not be held responsible for any defects of the Leased Carriages existing as at the Transfer Date. The Parties have agreed that the Lessee accepts into the Lease the Leased Carriages and each of them as listed in Annex No. 2 hereto in the condition exactly the same as they and each of them have been sold to the Lessor according to Part II of this Agreement (Transfer of Railway Carriages). To avoid any doubt, the Parties hereby confirm that in this context they do not have in mind the concept "as is" as regulated in Section 501 of the Civil Code and/or interpreted in relevant decisions of Slovak courts and thus Section 501 of the Civil Code does not apply to the Leased Carriages herein.
- 11.4 The Lessee shall be entitled to ask the Lessor, on the basis of an evaluation of his operating needs, for an overall increase in the number of Leased Carriages by 3% of the total number specified in Annex No. 2 hereto, namely the Lessee shall be entitled to do so twice a year, in June and December. If the Lessor decides to satisfy such request, he shall provide the Lessee with additional number of requested railway carriages from the list of Railway Carriages set out in Annex No. 1 hereto (or if such Railway Carriages are not available, any other respective railway carriages provided by the Lessor) and lease such additional railway carriages to the Lessee upon a written amendment hereto. In such case the unit price of daily rent per each Leased Carriage applied in the respective time shall be preserved.

- 11.5 The Lessee shall be entitled to ask the Lessor, on the basis of an evaluation of his operating needs, for temporary replacement (for maximum of six months) of every single Leased Carriage by another railway carriage (also by another type of railway carriage) according to the Lessee's requirements. If the Lessor decides to satisfy such request, he will replace every single Leased Carriage as requested by the Lessee from the list of Railway Carriages set out in Annex No. 1 hereto. In such case the unit price of daily rent per each Leased Carriage applied in the respective time shall be preserved.

## **ARTICLE 12**

### **PURPOSE OF LEASE**

- 12.1 The Parties have agreed that the Lessee shall be entitled to use the Leased Carriages for whatsoever purpose related to his line of business registered with the Companies Register, in particular, for the operation of transport on railway, loading, unloading, reloading and storage of goods, as well as for the provision of the Leased Carriages or any part thereof to a third party for the purpose of their use, to other carriers in domestic transport and/or international transport according to the conditions of the AVV Agreement.
- 12.2 If the Lessee intends to use the Leased Carriages for any other purpose than referred to in Section 12.1 hereof, the Lessee undertakes to inform the Lessor of his intention. The Lessor shall be obliged to give the Lessee his written consent to such use of the Leased Carriages or part thereof without undue delay, unless there are any serious reasons due to which the Lessor cannot give such consent to the Lessee.
- 12.3 For the avoidance of any doubts the Parties declare that no prior written consent of the Lessor is necessary for the provision of the Leased Carriages or any part thereof for purpose of the economic mobilization of the state; exclusion from the Rent according to Section 14.17 hereof shall not be applied in such a case.

## **ARTICLE 13**

### **TERM OF LEASE**

- 13.1 Unless otherwise expressly stipulated herein, the Lease hereunder has been agreed for a definite period of time, namely (i) until the last day of the calendar month in which eight (8) years expire since the Transfer Date or (ii) until December 31, 2023; whichever occurs earlier.
- 13.2 The term of Lease referred to in Section 13.1 hereof shall be automatically prolonged by four (4) years in relation to the Leased Carriages specified by the Lessee, if the Lessee delivers the Lessor, no later than twenty-four (24) months before expiry of the term of Lease referred to in Section 13.1 hereof, a written notice that he insists on the



prolongation of the term of Lease in respect to number and types of Leased Carriages (hereinafter referred to as the “**First Prolongation Leased Carriages**”) in accordance with the following scope and structure:

- 13.2.1 the Lessee shall specify the total number of the First Prolongation Leased Carriages, whereas such number of First Prolongation Leased Carriages shall include min. 30% and max. 70% of the total number of the Leased Carriages at the time of commencement of the term of Lease hereunder; and
- 13.2.2 the Lessee shall specify the number of respective types (i.e. based on unified letter marking of carriage - Eas, Res, Zaes, *etc.*) of First Prolongation Leased Carriages, whereas the structure of the respective types of First Prolongation Leased Carriages (i.e. percentage ratio representing the number of each type of First Prolongation Leased Carriages out of total number of First Prolongation Leased Carriages) shall be identical to the structure of the respective types of Leased Carriages (i.e. percentage ratio representing the number of each type of Leased Carriages out of total number of Leased Carriages) at the time of commencement of the term of Lease hereunder, taking into account (i) an acceptable tolerance of  $\pm 5\%$  in respect to the percentage ratio regarding each type and (ii) rule of rounding up to the next whole number of the respective types of First Prolongation Leased Carriages (hereinafter referred to as the “**First Prolongation Notice**”).

The Parties specifically agreed that if the First Prolongation Notice is not delivered in accordance with Sections 13.2.1 and 13.2.2 hereof and within the deadline specified herein, the option of the Lessee for the First Prolonged Term of Lease (as defined below) shall expire, unless otherwise agreed by the Lessor in writing.

13.3 In case that:

- (i) the Lessee delivers to the Lessor the First Prolongation Notice in compliance with Section 13.2 hereof; and
- (ii) the number of the First Prolongation Leased Carriages stated in the First Prolongation Notice is lower than 70% of the total number of the Leased Carriages at the time of commencement of the term of Lease hereunder; and
- (iii) the Lessee delivers to the Lessor, no later than twelve (12) months before expiry of the term of Lease referred to in Section 13.1 hereof, second written notice that he insists on the prolongation of the term of Lease in relation to another Leased Carriages specified by the Lessee in this second notice, whereas such notice has to comply with Sections 13.2.1 and 13.2.2 as well (hereinafter referred to as the “**Second Prolongation Notice**”);

in addition to the Leased Carriages specified in the First Prolongation Notice the term of Lease referred to in Section 13.1 hereof shall be automatically prolonged by four (4) years also in relation to the Leased Carriages specified by the Lessee in the Second Prolongation Notice (such Leased Carriages shall be considered as the First Prolongation Leased Carriages). Unless otherwise agreed by the Parties, total number and structure of types of the First Prolongation Leased Carriages in relation to which the term of Lease is prolonged according to the First Prolongation Notice and the Second Prolongation Notice has to be in accordance with the Sections 13.2.1 and 13.2.2 hereof. If the Second Prolongation Notice is not delivered in accordance with Sections 13.2.1, 13.2.2 and 13.3 hereof and within the deadline specified herein, the option of the Lessee for the Leased Carriages specified by the Lessee in the Second Prolongation Notice shall expire, unless otherwise agreed by the Lessor in writing.

- 13.4 The term of Lease prolonged according to Section 13.2 hereof or according to Sections 13.2 and 13.3 hereof, as the case may be, (herein referred to as the “**First Prolonged Term of Lease**”) shall be automatically prolonged by four (4) years (hereinafter referred to as the “**Second Prolonged Term of Lease**”) in relation to the Leased Carriages specified by the Lessee, if the Lessee delivers the Lessor, no later than twelve (12) months before expiry of the First Prolonged Term of Lease, a written notice that he insists on another prolongation of the term of Lease in respect to number and types of the Leased Carriages (hereinafter referred to as the “**Second Prolongation Leased Carriages**”) in accordance with the following scope and structure:

- 13.4.1 the Lessee shall specify the total number of the Second Prolongation Leased Carriages, whereas such number of Second Prolongation Leased Carriages shall not exceed the total number of the First Prolongation Leased Carriages; and
- 13.4.2 the Lessee shall specify the number of respective types (i.e. based on unified letter marking of carriage - Eas, Res, Zaes, *etc.*) of Second Prolongation Leased Carriages, whereas the structure of the respective types of Second Prolongation Leased Carriages (i.e. percentage ratio representing the number of each type of Second Prolongation Leased Carriages out of total number of Second Prolongation Leased Carriages) shall be identical to the structure of the respective types of Leased Carriages (i.e. percentage ratio representing the number of each type of Leased Carriages out of total number of Leased Carriages) at the time of commencement of the term of Lease hereunder, taking into account (i) an acceptable tolerance of  $\pm 5\%$  in respect to the percentage ratio regarding each type and (ii) rule of rounding up to the next whole number of the respective types of Second Prolongation Leased Carriages.

The Parties specifically agreed that if the prolongation notice is not delivered in accordance with Sections 13.4.1 and 13.4.2 and within the deadline specified herein, the option of the Lessee for the Second Prolonged Term of Lease shall expire, unless otherwise agreed by the Lessor in writing.

- 13.5 In relation to any Leased Carriage to which the term of Lease will not be prolonged according to Section 13.2 hereof (respectively according to Sections 13.2 and 13.3 hereof, as the case may be) the Parties may agree that (i) the respective Periodic Maintenance and Technical Check I of such Leased Carriage which should be performed by the Lessor according to the Maintenance Plan (Section 16.1 hereof), (ii) the respective Periodic Maintenance and Technical Check II of such Leased Carriage which should be performed by the Lessee in accordance with this Agreement; in the seventh or eighth year of the term of Lease, will not be performed. The Parties have agreed that the Lessee shall pay the Rent for such Leased Carriage solely until the date this Leased Carriage is in operational condition in compliance with relevant generally binding legal regulations and standards applicable in the Slovak Republic, despite non-performance of such Periodic Maintenance and Technical Check I and Periodic Maintenance and Technical Check II. In case that such Leased Carriage is no longer in operational condition according to the previous sentence the Parties shall agree on retirement of this Leased Carriage from the Lease and its return to the Lessor. The Parties have agreed that provisions of Section 16.29 hereof shall not be applied in such case. Retirement of the Leased Carriage from the Lease according to this Section 13.5 hereof shall be confirmed by the Parties in a written amendment hereto.
- 13.6 Other terms and conditions of the Lease stipulated in this Agreement shall be preserved also during the First Prolonged Term of Lease and the Second Prolonged Term of Lease, unless otherwise stipulated herein.
- 13.7 For the avoidance of any doubts, if the term of Lease is prolonged pursuant to Sections 13.2 through 13.4 hereof, the term of Lease shall expire and the Lease under this Agreement shall terminate by expiry of such prolonged term.
- 13.8 The Parties agreed that the conditions regarding the First Prolongation Leased Carriages and/or the Second Prolongation Leased Carriages under Sections 13.2.2 and/or 13.4.2 hereof do not have to be complied with by the Lessee in respect to the following types of carriages: Gbs, Gags, Kbkks, Ks, Kbs, Laas, Scmms, Sammp, Es, Uaai, Bpk, Daak.

## **ARTICLE 14**

### **RENT, MATURITY OF RENT AND EXCLUSIONS FROM RENT**

#### **Rent**

- 14.1 The Lessee undertakes to pay the Lessor for the use of the Leased Carriages the Rent to be calculated, unless otherwise stipulated hereinafter, as the sum of unit prices of daily rent for the Leased Carriages multiplied by the number of days of the relevant calendar month. Adjustments of the Rent due to exclusions from the Rent according to Section 14.17 hereof shall be made in compliance with Section 14.16 hereof.

- 14.2 The unit price of daily rent has been agreed by the Parties in the amount of EUR 10.35 (in words: *ten* euros and *thirty-five* cents) per each Leased Carriage excluding VAT and in compliance with Act No. 18/1996 Coll. on Prices, as amended, and Decree of the Ministry of Finance of the Slovak Republic No. 87/1996 Coll. implementing the Act on Prices, as amended. VAT shall be added to the unit price of daily rent in compliance with the provisions of Act No. 222/2004 Coll. on Value Added Tax, as amended.
- 14.3 The unit price of daily rent for the Leased Carriages has been agreed as fixed and invariable price, regardless of the type, quality, accessories, age, wear rate and other features of the Leased Carriages, namely during the entire term of Lease hereunder, subject to adjustment according to Sections 14.5 through 14.10 hereof.
- 14.4 The Rent according to this Agreement includes all the cost of the Lessor connected or related to the fulfilment of the Lessor's obligations according to this Agreement and the respective generally binding legal regulations.
- 14.5 The unit price of daily rent for the Leased Carriages shall be increased pursuant to Section 14.6 hereof for the first time in the year 2017 (as of 1 January 2017).
- 14.6 The unit price of daily rent for the Leased Carriages shall be automatically increased annually as at 1<sup>st</sup> January of the respective calendar year (hereinafter referred to as the **"Increase Date"**) as follows:
- 14.6.1 in years 2017 and 2018 the unit price of daily rent shall be increased by actual amount of the growth of the consumer prices in the Slovak Republic for the respective previous calendar year determined by the rules for OECD Index, but no more than by 2 %;
- 14.6.2 starting from 1<sup>st</sup> January 2019 the unit price of daily rent shall be increased by actual amount of the growth of the consumer prices in the Slovak Republic for the respective previous calendar year determined by the rules for OECD Index.
- The basis for calculation of such increased unit price of daily rent shall be the unit price of daily rent for the Leased Carriage paid by the Lessee in the previous calendar year. The Parties have agreed that in case the OECD Index is or will be negative, for the purposes hereof the OECD Index is considered to be equal to 0 %.
- 14.7 The Lessor shall inform the Lessee by a written notice of the increase in the unit price of daily rent for the Leased Carriages as soon as possible after the Increase Date. Until receipt of such notice the Lessee shall pay the Rent in the amount as paid in the prior calendar year. On the first payment date after the receipt of such notice the Lessee shall pay any amount due as a result of the increase in the unit price of daily rent for the period from the Increase Date to said payment date.

- 14.8 The Parties shall confirm the increase in the unit price of daily rent pursuant to Sections 14.5 through 14.7 hereof by a written amendment hereto without undue delay.

**Rent paid in the First Prolonged Term of Lease and in the Second Prolonged Term of Lease**

- 14.9 Unless otherwise agreed by the Parties, the unit price of daily rent for each of the Leased Carriages applied in the first calendar year of the First Prolonged Term of Lease shall be in the amount of 60% of the sum calculated pursuant to the methodology stated in Annex No. 13 hereto. In the following calendar years of the First Prolonged Term of Lease this unit price of daily rent shall be increased pursuant to Section 14.6.2 hereof. During the whole First Prolonged Term of Lease Sections 14.7 and 14.8 hereof shall apply *mutatis mutandis*.
- 14.10 The Parties have agreed that the unit price of daily rent for each of the Leased Carriages applied in the first calendar year of the Second Prolonged Term of Lease shall be in the amount of the actual unit price of daily rent paid by the Lessee in the last calendar year of the First Prolonged Term of Lease. In the following calendar years of the Second Prolonged Term of Lease this unit price of daily rent shall be increased pursuant to Section 14.6.2 hereof. During the whole Second Prolonged Term of Lease Sections 14.7 and 14.8 hereof shall apply *mutatis mutandis*.

**Maturity of the Rent**

- 14.11 The Lessee shall pay the Rent on the basis of Invoices issued by the Lessor. The Invoice for the Rent for the period of one calendar month shall be issued by the Lessor immediately after the end of the respective calendar month, not later than within ten (10) days after the end of the calendar month.
- 14.12 The Rent for the period since the first day of the term of Lease by the end of the relevant calendar month shall be calculated according to the number of days since the first day of the term of Lease until the end of the calendar month and the number of Leased Carriages leased to the Lessee during that period of time.
- 14.13 Unless otherwise stipulated herein, any Invoice issued by the Lessor hereunder, including the performance required on the basis of this Agreement shall be payable within twenty-one (21) days following the day of issue of the Invoice for the Lessee, namely via bank transfer to the Lessor's bank account. The obligation of the Lessee to pay the Rent shall be deemed as fulfilled in the moment when the payable sum was credited in favour of the Lessor's bank account stated in the Invoice.
- 14.14 The Invoices issued by the Lessor have to contain the particulars laid down by Act No. 222/2004 Coll. on Value Added Tax, as amended. If the Invoice issued by the Lessor does not have all the particulars required by the law and this Agreement or contains incorrect or incomplete data, the Lessee shall be entitled to return such Invoice to the Lessor for its supplementation or correction, as the case may be, and

the Lessor shall be obliged, depending on the nature of the discrepancy, to issue a new, corrected or supplemented Invoice with a new maturity deadline which shall start to pass upon delivery of such a new, corrected or supplemented Invoice to the Lessee.

- 14.15 If the Lessee delays payment of his financial obligation hereunder, the Lessor shall be entitled to claim default interest in the amount determined by Regulation No. 21/2013 Coll. of the Government of the Slovak Republic implementing some provisions of the Commercial Code, as amended.

#### **Rent adjustments due to exclusions from the Rent**

- 14.16 With regard to exclusions from the Rent according to Section 14.17 hereof the Parties have agreed that the Lessor shall without undue delay issue a credit note reflecting the respective exclusions from the Rent according to Section 14.17 hereof.

#### **Exclusions from the Rent**

- 14.17 The Parties have agreed that any of the Leased Carriage is excluded from the Rent:

14.17.1 **from the day** after the Leased Carriage is presented by the Lessee (Section 16.6 hereof shall apply *mutatis mutandis*) for the performance of repair of Leased Carriage if the Lessee is not able to use the Leased Carriage for whatsoever reason attributable to the Lessor according to this Agreement (including performing of repairs needed due to damage to the Leased Carriages for which the Lessor is liable according to Sections 16.31 and 16.32 hereof) and such is taken over by the Lessor (or entity/person designated by the Lessor), whereas in case the Lessor fails to take over the respective Leased Carriage even within 48 hours from the time of provable presentation by the Lessee under this Section 14.17.1 hereof, the Leased Carriage shall be deemed as taken over by the Lessor by lapse of such 48 hour period; **until** the Leased Carriage is presented by the Lessor (or entity/person designated by the Lessor) after completion of the repair (Sections 16.8 and 16.9 hereof shall apply *mutatis mutandis*) and is taken over by the Lessee, whereas in case the Lessee fails to take over the respective Leased Carriage even within 48 hours from the time of provable presentation by the Lessor under this Section 14.17.1 hereof, the Leased Carriage shall be deemed as taken over by the Lessee by lapse of such 48 hour period; or

14.17.2 **from the 16<sup>th</sup> day** after the Leased Carriage is presented by the Lessee for the performance of the Periodic Maintenance and Technical Check I according to Section 16.6 hereof and is taken over by the Lessor (or entity/person designated by the Lessor), whereas in case the Lessor fails to take over the respective Leased Carriage even within 48 hours from the time of provable presentation by the Lessee under this Section 14.17.2 hereof, the Leased Carriage shall be deemed as taken over by the Lessor by lapse of such 48 hour period; **until** the Leased Carriage is presented by the Lessor (or

entity/person designated by the Lessor) after completion of the Periodic Maintenance and Technical Check I according to Sections 16.8 or 16.9 hereof and is taken over by the Lessee, whereas in case the Lessee fails to take over the respective Leased Carriage even within 48 hours from the time of provable presentation by the Lessor under this Section 14.17.2 hereof, the Leased Carriage shall be deemed as taken over by the Lessee by lapse of such 48 hour period.

14.17.3 The Parties have agreed that the Lessor shall complete every Periodic Maintenance and Technical Check I and present the Leased Carriage in question according to Sections 16.8 or 16.9 hereof no later than forty - five (45) days after presentation of the Leased Carriage by the Lessee according to Section 16.6 hereof and takeover of the Leased Carriage by the Lessor (or entity/person designated by the Lessor), whereas in case the Lessor fails to take over the respective Leased Carriage even within 48 hours from the time of provable presentation by the Lessee under this Section 14.17.3 hereof, the Leased Carriage shall be deemed as taken over by the Lessor by lapse of such 48 hour period. If the Lessor fails to fulfil obligations according to the previous sentence, starting from the 46<sup>th</sup> day after day of takeover of the Leased Carriage in question by the Lessor according to this Section 14.17.3 hereof the Lessor shall be obliged to compensate the Lessee for actual damage incurred by the Lessee per each day of delay, but namely only in the amount corresponding to the difference between:

- (i) (a) daily costs (market prices) borne by the Lessee in relation to lease or any other usage of the replacement for the Leased Carriage in question for the same purpose as stipulated herein, or (b) 60% of the amount of the rate applicable to the respective type of the Leased Carriage as set out in the mutual agreement of the Lessee and the cargo operator in other respective country providing the replacement for the Leased Carriage in question (RIV rate "a"), valid at the respective time; whichever is lower; and
- (ii) the actual sum of unit price of daily rent for the Leased Carriage hereunder,

until the completion of the Periodic Maintenance and Technical Check I and presentation of the Leased Carriage in question to the place according to Sections 16.8 or 16.9 hereof.

For the avoidance of any doubt, the Lessor shall not compensate loss of profit of the Lessee in such a case.

14.17.4 The Parties have agreed that the sum corresponding to the exclusions from the Rent according to Section 14.17.2 hereof shall be determined within 30 days after expiration of every half - year of the term of Lease in the way that the average of days of duration of the Periodic Maintenance and Technical

Check I per Leased Carriage passing through the Periodic Maintenance and Technical Check I in the relevant half - year shall be calculated. In case that such average exceeds 15 days (counted according to Section 14.17.2 hereof and taking into consideration Section 14.17.5 hereof), the sum of exclusions from the Rent shall be calculated according to the following formula:  $NoD \times R \times LC$

NoD - number of days being in excess of 15 days

R - unit price of daily rent per Leased Carriage paid by the Lessee in the relevant half – year

LC – total number of Leased Carriages passing through the Periodic Maintenance and Technical Check I in the calendar half – year.

The sum corresponding to the exclusions from the Rent according to Section 14.17.1 hereof shall be determined within 30 days after expiration of the relevant half – year based on actual days of duration of the exclusion from the Rent counted according to Section 14.17.1 hereof.

- 14.17.5 The Parties have agreed that in case any violent damage of the Leased Carriage (except for violent damage of the Leased Carriage for which the Lessor is liable according to Sections 16.31 and 16.32 hereof) and other maintenance and repairs for which the Lessee is liable hereunder shall be removed/repaired during performance of the Periodic Maintenance and Technical Check I, the starting day for exclusion from the Rent stipulated in Section 14.17.2 hereof shall be postponed by a period necessary for removal/repair of such damage and/ or maintenance and repairs. The period necessary for removal/repair shall be reasonably agreed by the Parties without undue delay. If period necessary for removal/repair of the violent damage is not agreed by the Parties, no exclusion from the Rent may be claimed by the Lessee in such case.
- 14.18 At the end of each calendar quarter the Parties shall confirm in writing number of Leased Carriages excluded from the Rent according to Section 14.17 hereof in the respective calendar months of the calendar quarter and duration (number of days) of every exclusion.
- 14.19 The Parties declare that list of exclusions from the Rent stipulated in Section 14.17 hereof represents an exhaustive list of all exclusions from the Rent and no other exclusion from the Rent under any law, Force Majeure or any other circumstances may be applied.
- 14.20 Notwithstanding anything to the contrary contained in this Agreement the Parties hereby expressly declare that after the Leased Carriage is taken over by the Lessor (or entity/person designated by the Lessor) for any reasons according to this Agreement (including performance of the Periodic Maintenance and Technical Check I), all terms and conditions of exclusions from the Rent as stipulated in Section 14.17 hereof shall be applied, regardless of Force Majeure (e.g. the Leased Carriage in question is



excluded from the Rent if the conditions stipulated in Section 14.17.2 hereof are met, the Lessor shall be obliged to compensate the Lessee for actual damage incurred by the Lessee per each day of delay if the conditions stipulated in Section 14.17.3 hereof are met, *etc.*), except for the following situation:

- 14.20.1 the respective Periodic Maintenance and Technical Check I that shall be secured by the Lessor cannot be performed due to Force Majeure but the Leased Carriage in question may be used by the Lessee for the purpose stipulated herein. In such case the Lessee shall adopt technical and operational measures, which postpone the deadline for realisation of respective Periodic Maintenance and Technical Check I by another three months (+3M) in order to secure availability of such Leased Carriage. Such technical and operational measures will be done through technical assessment of carriages (in Slovak: *technické posúdenie vozňov*) in compliance with relevant generally binding legal regulations.
- 14.21 The Parties have agreed that the Lessor may provide the Lessee with a temporary replacement railway carriage materially similar to the Leased Carriage in question, whereas in such case no exclusion from the Rent, compensation of damage or any other claim of the Lessee pursuant to Section 14.17 hereof shall apply in respect to the period of provision of the replacement railway carriage by the Lessor in accordance with this Section 14.21 hereof.

## **ARTICLE 15**

### **THE METHOD AND CONDITIONS OF HANDOVER AND TAKEOVER OF LEASED CARRIAGES**

- 15.1 The Parties have agreed that the Lessee takes over the Leased Carriages from the Lessor for the Lease in compliance with and in the way referred to in Section 6.2.1 hereof.
- 15.2 By signing this Agreement, the Lessee confirms and represents that he is aware of the condition of the Leased Carriages and that he will take over the Leased Carriages from the Lessor, for the purpose of their use, in such a condition as stipulated in Section 11.3 hereof.

## ARTICLE 16

### RIGHTS AND OBLIGATIONS OF THE PARTIES

#### Periodic Maintenance and Technical Checks I and Periodic Maintenance and Technical Checks II

16.1 The Parties have agreed that the Periodic Maintenance and Technical Checks I and Periodic Maintenance and Technical Checks II shall be carried out as follows:

16.1.1 The Lessor shall be obliged to perform the Periodic Maintenance and Technical Checks I.

16.1.2 The Lessee shall be obliged to perform the Periodic Maintenance and Technical Checks II.

Plan of the Periodic Maintenance and Technical Checks I (herein referred to as the “**Maintenance Plan**”) constitutes Annex No. 14 hereto. Where it is found during the initial 8-year term of Lease according to Section 13.1 hereof that (i) date of any Periodic Maintenance and Technical Check I stated in the Maintenance Plan is not consistent with the date of the respective Periodic Maintenance and Technical Check I resulting from data on the Leased Carriage in question, and (ii) difference in such dates is more than six calendar (6) months:

(i) The Lessee shall pay to the Lessor, upon Lessor’s written request, financial compensation in the amount of EUR 90,- for each commenced calendar month (starting from the seventh calendar month of such difference) in every particular case when it is found that the respective Periodic Maintenance and Technical Check I of the Leased Carriage should be performed earlier than stated in the Maintenance Plan.

(ii) The Lessor shall pay to the Lessee, upon Lessee’s written request, financial compensation in the amount of EUR 90,- for each commenced calendar month (starting from the seventh calendar month of such difference) in every particular case when it is found that the respective Periodic Maintenance and Technical Check I of the Leased Carriage should be performed later than stated in the Maintenance Plan.

16.2 Expense related to the Periodic Maintenance and Technical Checks I and Periodic Maintenance and Technical Checks II shall be borne by the Parties as follows:

16.2.1 The Lessor shall bear all expense related to the Periodic Maintenance and Technical Checks I, except for (i) expense related to the Periodic Maintenance and Technical Checks II that will need to be incurred within the Periodic Maintenance and Technical Checks I due to a failure of an obligation of the Lessee to perform the Periodic Maintenance and Technical Checks II in accordance with this Agreement, as evidenced in the revision entry protocol

(in Slovak: *vstupný protokol do revízie*) and/or any other document and as approved by the Lessee, (ii) expense incurred due to removal/repair of violent damage and/or losses, other than natural losses (e.g. common wear and tear), occurred on the Leased Carriage prior it is presented according to Section 16.6 hereof for performance of the Periodic Maintenance and Technical Check I; whereas such shall be borne by the Lessee. If the Lessor pays any expense which should be borne by the Lessee according to the previous sentence, the Lessee shall be obliged to compensate all such expense provably and purposefully spent by the Lessor, namely on the basis of an Invoice issued by the Lessor and delivered to the Lessee, where documents proving the amount of the expense shall be attached to the Invoice.

The Parties have agreed that if anytime during the term of Lease hereunder when ECM of the Leased Carriages is the Lessee:

- (i) periodicity of the Periodic Maintenance and Technical Checks I is changed to less than eight (8) years; and/or
- (ii) scope of the Periodic Maintenance and Technical Checks I is changed so that it exceeds requirements prescribed for the Periodic Maintenance and Technical Checks I at the date of conclusion of this Agreement;

the Parties shall agree on mutual compensation as a result of the increase in expense incurred by the Lessor in connection with performance of the Periodic Maintenance and Technical Checks I after such change in the way that the Lessee shall bear any and all extra costs resulting from such change, unless the Parties agree otherwise.

16.2.2 The Lessee shall bear all expense related to the Periodic Maintenance and Technical Checks II, except for expense related to the Periodic Maintenance and Technical Checks I that will need to be incurred within the Periodic Maintenance and Technical Checks II due to a failure of an obligation of the Lessor to perform the Periodic Maintenance and Technical Checks I in accordance with this Agreement, as evidenced in the revision entry protocol (in Slovak: *vstupný protokol do revízie*) and/or any other document and as approved by the Lessor. If the Lessee pays any expense which should be borne by the Lessor according to the previous sentence, the Lessor shall be obliged to compensate all such expense provably and purposefully spent by the Lessee, namely on the basis of an Invoice issued by the Lessee and delivered to the Lessor, where documents proving the amount of the expense shall be attached to the Invoice.

- 16.3 For the purpose of handover of the Leased Carriages for performance of the Periodic Maintenance and Technical Checks I, the Lessor shall be obliged to inform the Lessee in writing, namely at least 30 (thirty) days in advance, of the identification of the Leased Carriage, including the date of start and end of the Periodic Maintenance and Technical Check I.

- 16.4 The Lessee undertakes to allow the Lessor, in the extent necessary, to perform every Periodic Maintenance and Technical Check I and deliver to the Lessor the Leased Carriage in question. The Lessor shall exert maximum effort leading to performance of every Periodic Maintenance and Technical Check I of the Leased Carriage in the shortest time possible, so that the Lessee would be limited in the possibility to use the Leased Carriage in question in the least extent possible. The Lessor undertakes to return every Leased Carriage to the Lessee without undue delay after the Periodic Maintenance and Technical Check I is performed.
- 16.5 Notwithstanding anything to the contrary contained in this Agreement, if the Lessor finds out that the Periodic Maintenance and Technical Check I which was supposed to be performed by the Seller prior to the Transfer Date pursuant to Annex No. 2 hereto, was not performed, the Lessor shall notify the Lessee of this finding in writing without undue delay and submit to the Lessee a price quote for its realisation. The Lessee shall inform the Lessor in writing within three (3) Business days following the date of delivery of the price quote whether:
- (i) The Lessee accepts the price quote; in such case the Lessor shall provide the respective Periodic Maintenance and Technical Check I in compliance with the price quote at Lessee's cost and the Lessee shall be obliged to compensate all cost provably and purposefully spent by the Lessor, namely on the basis of an Invoice issued by the Lessor and delivered to the Lessee, together with the documents proving the amount of the cost; or
  - (ii) The Lessee does not accept the price quote; in such case the Lessee shall provide the respective Periodic Maintenance and Technical Check I at Lessee's cost.

For the avoidance of doubt, no exclusion of Rent shall be applied in respect of any event or delay under this Section 16.5.

**Handover and takeover of the Leased Carriages for the purpose of performing of the Periodic Maintenance and Technical Check I**

- 16.6 Unless otherwise agreed by the Parties, the place of handover of the Leased Carriage for the Periodic Maintenance and Technical Check I shall be (i) a workshop of the entity designated to perform the Periodic Maintenance and Technical Check I, determined by the Lessor in every particular case or (ii) if the Periodic Maintenance and Technical Check I is being carried out outside the territory of the Slovak Republic, the place of handover shall be the Closest Place of Connection, determined by the Lessor in every particular case.
- 16.7 The Lessor shall notify the place according to Section 16.6 hereof where the handover of the Leased Carriage for the performance of the Periodic Maintenance and Technical Check I shall take place at least fifteen (15) days before the determined date of the Periodic Maintenance and Technical Check I.

- 16.8 Unless otherwise agreed by the Parties, after completion of the Periodic Maintenance and Technical Check I the Lessor shall hand over the Leased Carriage to the Lessee in the respective workshop where the Periodic Maintenance and Technical Check I was performed.
- 16.9 Unless otherwise agreed by the Parties, if the Periodic Maintenance and Technical Check I is being carried out outside the territory of the Slovak Republic, the place of handover after its completion shall be the Closest Place of Connection.
- 16.10 Transfer cost related to handover and takeover of the Leased Carriages for the purpose of performing the Periodic Maintenance and Technical Checks I within the railway infrastructure of ŽSR shall be borne by the Lessee.

#### **Other Repairs of the Leased Carriages**

- 16.11 The Lessor shall be obliged to secure, at his own expense, repairs of the Leased Carriages needed due to damage to the Leased Carriages for which the Lessor is liable according to Sections 16.31 and 16.32 hereof.
- 16.12 The Lessee undertakes to notify the Lessor of any need for such repair without undue delay and to allow the Lessor to perform such repair.
- 16.13 If the Lessor delays performance of repair of the Leased Carriage which should be secured by the Lessor according to Section 16.11 hereof and fails to perform the same within an additional reasonable deadline determined in the Lessee's call served to the Lessor, the Lessee shall be entitled to procure performance of such repair at the Lessor's expense.
- 16.14 The Lessor shall be obliged to compensate all cost provably and purposefully spent by the Lessee according to Section 16.13 hereof, namely on the basis of an Invoice issued by the Lessee and delivered to the Lessor, where documents proving the amount of the cost shall be attached to the Invoice.
- 16.15 With respect to the repairs of the Leased Carriages which should be secured by the Lessor according to Section 16.11 hereof, Sections 16.4, 16.6 through 16.9 hereof shall be applied *mutatis mutandis*.
- 16.16 The Lessee shall provide for (i) common repairs which arose due to operation of the Leased Carriages and performance of which is necessary to maintain the Leased Carriages in operational condition and for their safe operation in compliance with relevant generally binding legal regulations and standards applicable in the Slovak Republic and (ii) any other repairs and maintenance of the Leased Carriages for which the Lessor is not liable for according to Sections 16.31 and 16.32 hereof.
- 16.17 Expense of repairs according to Section 16.16 hereof shall be borne by the Lessee.

### **Wheelset Exchange**

16.18 Notwithstanding anything to the contrary contained in this Agreement, repairs representing exchanges of the Wheelsets of the Leased Carriages shall be provided by the Parties under the terms and conditions set out in Sections 16.19 through 16.24 hereof.

16.19 For the purpose of Sections 16.19 through 16.24 hereof the exchange of the Wheelset of the Leased Carriage shall mean:

- (i) exchange of all components of the Wheelset, where both monoblocks of wheels are exchanged for new ones; or
- (ii) exchange of both monoblocks of wheels at least, where both monoblocks of wheels are exchanged for new ones; or
- (iii) exchange of the axle at least, where axle is exchanged for a new one;

(hereinafter referred to as the “**Wheelset Exchange**”, in plural “**Wheelsets Exchanges**”).

For the avoidance of any doubts in case when only the bearings or the bearing boxes of the Wheelset are exchanged, such exchange shall not be considered as the Wheelset Exchange.

16.20 The Parties have agreed that during the term of Lease stated in Section 13.1 hereof (i.e. initial 8 years):

16.20.1 The Lessor shall perform the Wheelsets Exchanges during the Periodic Maintenance and Technical Checks I in the total amount of 8,024 Wheelsets Exchanges, however no more than 1,003 Wheelsets Exchanges in every year of the term of Lease (for the avoidance of doubt, if in any year such limit of 1,003 is not reached, the remaining number of the Wheelsets Exchanges shall increase the limit in the following year of the term of Lease unless such Wheelsets Exchanges are compensated by the Lessor according to Section 16.20.5 hereof).

16.20.2 The Lessor shall bear all costs relating to the Wheelsets Exchanges according to Section 16.20.1 hereof (e.g. cost of any component needed for the respective Wheelset Exchange, work cost and cost related to transfer of material needed for the Wheelset Exchange, all cost related to storage, transfer, scrapping or any other disposal of the Wheelset or any part thereof, removed from the Leased Carriage due to the Wheelset Exchange etc.).

16.20.3 In case that the necessity to perform Wheelset Exchange occurs during any occasion other than the Periodic Maintenance and Technical Check I such Wheelset Exchange shall be performed by the Lessee. In such case the Lessee

shall bear cost of any component needed for the Wheelset Exchange, work cost and cost related to transfer of material needed for the Wheelset Exchange. The Lessee shall also bear cost related to transfer of Wheelset or any part thereof removed from the Leased Carriage due to the Wheelset Exchange to a station in the network of ŽSR specified by the Lessor, taking into account reasonable and most effective way of transfer in order to eliminate such transfer cost.

16.20.4 When the Lessee performs the Wheelset Exchange according to Section 16.20.3 hereof he may order components needed for the respective Wheelset Exchange from the Lessor. In such case the Lessor notifies the Lessee without undue delay following the delivery of such order whether (i) the Lessor delivers components based on the order of the Lessee to the place determined by the Lessee and (at the same time) the Lessor informs the Lessee about the respective delivery period, or (ii) the Lessor decides not to satisfy the Lessee's order. If the Lessor provides all components ordered by the Lessee according to this Section 16.20.4 hereof at Lessor's cost, such Wheelset Exchange shall be considered as performed by the Lessor and shall be included into the limit stipulated in Section 16.20.1 hereof. Other cost (other than cost of any component needed for the Wheelset Exchange) shall be borne by the Lessee *mutatis mutandis* as stipulated in Section 16.20.3 hereof. In case that the delivery period notified by the Lessor is too long or the Lessor notifies the Lessee that decides not to satisfy the Lessee's order, (i) the Lessee shall perform the respective Wheelset Exchange using components provided by the Lessee, and (ii) cost relating to such Wheelset Exchange shall be borne by the Lessee *mutatis mutandis* as stipulated in Section 16.20.3 hereof. Subsequently, if the Lessor provides the respective components after performance of such Wheelset Exchange, the Lessee shall replace components used by the Lessee due to the Wheelset Exchange by the components provided by the Lessor, namely within three (3) months from its provision by the Lessor, unless the Periodic Maintenance and Technical Check I is performed on the Leased Carriage in question earlier (i.e. in such case the replacement procedure shall be performed during the Periodic Maintenance and Technical Check I at Lessor's cost and components used by the Lessee shall be returned to the Lessee at Lessee's cost). Work cost, cost related to storage of the Wheelset or any part thereof removed from the Leased Carriage (i.e. other than components provided by the Lessee) and cost related to its transfer to the Lessor in respect of replacement procedure performed by the Lessee shall be borne by the Lessee.

16.20.5 If the total amount of the Wheelsets Exchanges actually performed by the Lessor is less than the total amount of the Wheelsets Exchanges that should have been performed by the Lessor in period considered according to Section 16.20.1 hereof the Lessor shall pay to the Lessee financial compensation. Unless otherwise agreed by the Parties, the amount of such compensation shall be counted by end of each year of the term of Lease according to the following formula:  $APP \times D$

APP – weighted average purchase price of the Wheelset paid by the Parties in period considered

D - difference between total agreed amount of the Wheelsets Exchanges that should have been performed by the Lessor in period considered (Section 16.20.1 hereof) and amount of the Wheelsets Exchanges actually performed by the Lessor in compliance with this Agreement in period considered.

- 16.20.6 For the avoidance of doubt, the Lessor shall not bear any expense incurred due to removal/repair of and shall not be responsible for performance of any Wheelset Exchange in respect to any violent damage and/or losses, other than natural losses occurred on any Wheelset.
- 16.20.7 Furthermore the Parties have agreed that any breach or delay of the Lessor's obligations set out in Section 16.20.3 hereof shall in no case constitute any exclusion from the Rent.
- 16.21 In case that the necessity to perform Wheelset Exchange occurs the Parties shall be obliged to inform each other of this fact without undue delay and shall exert maximum effort leading to performance of every Wheelset Exchange in the shortest time possible.
- 16.22 The Parties have agreed that the number of Wheelsets Exchanges performed by the Parties in every calendar quarter shall be confirmed by the Parties in writing by the 5<sup>th</sup> Business Day since the end of the respective calendar quarter at the latest.
- 16.23 During the First Prolonged Term of Lease the Lessor shall perform Wheelsets Exchanges in the total amount of 12,5 per cent of the total amount of the Wheelsets on the Leased Carriages leased to the Lessee at the time when the First Prolonged Term of Lease commenced, divided proportionally into four (4) years. During the Second Prolonged Term of Lease the Lessor shall perform Wheelsets Exchanges in the total amount of 12,5 per cent of the total amount of the Wheelsets on the Leased Carriages leased to the Lessee at the time when the Second Prolonged Term of Lease commenced, divided proportionally into four (4) years. The Parties have agreed that all other terms and conditions stipulated in Sections 16.20 through 16.22 hereof shall apply *mutatis mutandis* also during the First Prolonged Term of Lease and the Second Prolonged Term of Lease.
- 16.24 All cost related to the Wheelsets Exchanges above the number of Wheelsets Exchanges stated in Section 16.20.1 and 16.23 hereof shall be borne by the Lessee.

#### **Modifications of the Leased Carriages**

- 16.25 During the term of Lease hereunder, the Lessee shall be entitled to perform modifications (modernization, reconstruction) of the Leased Carriages and install new technological and other equipment in compliance with the relevant legal



regulations, namely solely on the basis of an express written consent of the Lessor. In order to obtain the consent of the Lessor according to previous sentence, the Lessee shall be obliged to submit to the Lessor specification of modifications with cost calculation and depreciation period.

- 16.26 The Lessor shall be obliged to give the Lessee his written consent to modifications according to Section 16.25 hereof without undue delay, unless there are any serious, reasonable and rational reasons due to which the Lessor cannot give such consent to the Lessee.
- 16.27 The consent of the Lessor to the modification according to Section 16.25 hereof does not give rise to the Lessor's liability for correctness and compliance of such modifications with the relevant generally binding legal regulations. The Lessor hereby gives his consent that technical valorisation of the Leased Carriages due to the modifications performed by the Lessee at his own expense shall be depreciated by the Lessee.
- 16.28 Modifications of the Leased Carriages for the reasons following from the requirements laid down by the relevant legal regulations shall be carried out by the Lessee and at his own expense, unless otherwise agreed by the Parties. The Lessor hereby gives his consent that technical valorisation of the Leased Carriages due to the modifications performed by the Lessee at his own expense shall be depreciated by the Lessee. If modification of the Leased Carriage is needed due to legislative requirements and the Lessor is informed about such requirements by the respective authorities, the Lessor shall be obliged to inform the Lessee in due time of the need to perform such modification. In such case and even despite the fact that the Lessor wasn't informed about such requirements by the respective authorities, the Lessor shall be obliged to agree with the Lessee on the conditions and method of performing such modifications.

#### **Retirement of the Leased Carriage from the Lease**

- 16.29 The Lessor shall notify the Lessee in writing that he considers cost for maintenance or repairs of the respective Leased Carriage needed for its proper, regular and safe operation to be significantly uneconomic and unreasonable. If agreed with the Lessee the Leased Carriage in question shall be retired from the Lease; that fact shall be confirmed in a written amendment hereto. If the number of such retired Leased Carriages exceeds 1% of the total number of the Leased Carriages at the time of commencement of the term of Lease hereunder, the Lessor shall be obliged to provide the Lessee by a replacement railway carriage/carriages from the list of the Railway Carriages set out in Annex No. 1 hereto. Such railway carriage/carriages shall be leased to the Lessee, under the same terms and conditions as stipulated herein, upon a written amendment hereto.

### **Liability for damage to the Leased Carriages**

- 16.30 The Lessee undertakes to protect the Leased Carriages against damage or destruction. In the case of threat of damage to the Leased Carriages, the Lessee undertakes to take actions in order to avert the damage, namely in the way that is adequate to the circumstances of the threat.
- 16.31 The Lessee shall bear any damage to the Leased Carriages (including damage caused by Force Majeure, with the exceptions under Section 16.32 hereof), unless it is proved that the damage was caused by the Lessor or by third parties who were allowed by the Lessor to have access to the Leased Carriages.
- 16.32 Regardless of Section 16.31 hereof the Parties have agreed that:
- 16.32.1 The Lessor shall be liable for any damage occurred to the Leased Carriages **from the day** the Leased Carriage is presented by the Lessee according to Section 16.6 hereof for performance of the Periodic Maintenance and Technical Check I and is taken over by the Lessor (or person/entity designated by the Lessor) **until** the Leased Carriage is presented by the Lessor after completion of the Periodic Maintenance and Technical Check I according to Sections 16.8 or 16.9 hereof and is taken over by the Lessee.
- 16.32.2 The Lessor shall be liable for any damage occurred to the Leased Carriages **from the day** the Leased Carriage is presented by the Lessee for performance of repair which should be secured by the Lessor according to Section 16.11 hereof (Section 16.6 hereof shall apply *mutatis mutandis*) and is taken over by the Lessor (or person/entity designated by the Lessor) **until** the Leased Carriage is presented by the Lessor after completion of such repair (Sections 16.8 and 16.9 hereof shall apply *mutatis mutandis*) and is taken over by the Lessee.

### **Sub-lease**

- 16.33 The Lessee shall be entitled to sublease the Leased Carriages or part thereof to other natural persons or legal entities with prior written consent of the Lessor. The Lessor shall be obliged to give the Lessee his written consent to such sublease of the Leased Carriages or part thereof without undue delay, unless there are any serious reasons due to which the Lessor cannot give such consent to the Lessee. In the case that the Lessee subleases the Leased Carriages or part thereof, the Lessee shall be liable towards the Lessor as if the Leased Carriages were used by the Lessee himself.

### **Placement of advertisements**

- 16.34 The Lessee shall be entitled, with prior written consent of the Lessor, to place advertisements of the Lessee or third parties on the Leased Carriages (placement of inscriptions, posters, advertising boards and the like). The Lessor shall be obliged to give the Lessee his written consent pursuant to the previous sentence without undue

delay, unless there are any serious reasons due to which the Lessor cannot give such consent to the Lessee. All cost related to placement, maintenance and removal of such advertisements shall be borne by the Lessee.

### **Disputes with third parties**

16.35 If the Lessee faces a court or any other proceedings with a third party in connection with the use or sublease of the Leased Carriages hereunder or if such a court or any other proceedings threaten, the Lessee shall inform the Lessor about that. In such case, the Lessor shall provide the Lessee or a person authorized by the Lessee with all the required documents, information and any other cooperation reasonably required by the Lessee in connection with the Leased Carriages for the purpose of using such documents, information and any other cooperation in connection with such court or any other proceedings in favour of the Lessee. The Lessee shall be obliged to compensate cost provably and purposefully spent by the Lessor in order to make copies of such documents required by the Lessee.

### **Other rights and obligations**

16.36 The Lessor undertakes that, without prior written consent of the Lessee, he will not, during the initial 8-year term of Lease according to Section 13.1 hereof, transfer the ownership title, assign or provide any right of use to the Leased Carriages or any part thereof to any third party, merge or fuse with any third party, pledge the Leased Carriages or any part thereof in any way, burden them in any other way by any right of a third party, nor perform any act which lead or might lead to consequences stipulated in this Section 16.36 hereof or to any limitation of the Lessee to use the Leased Carriages or any part thereof under the terms and conditions stipulated in this Agreement. Regardless of the previous sentence the Lessor is entitled:

16.36.1 to pledge the Leased Carriages or any part thereof in favour of the Financing Entity;

16.36.2 to pledge the Leased Carriages or any part thereof in favour of any entity other than the Financing Entity in case that the Lessor decides to refinance any part of funds granted to him by the Financing Entity for the purpose of payment of the Purchase Price hereunder.

16.37 The Parties have agreed that the Lessee shall be liable for damage occurred due to accident event of the Leased Carriages, if:

- (i) it is proved that the accident event was caused by defect of the Leased Carriage/Leased Carriages; and at the same time
- (ii) the Periodic Maintenance and Technical Check I on such Leased Carriage/Leased Carriages was not yet performed by the Lessor following the Transfer Date, except respective Periodic Maintenance and Technical Check I

of the Leased Carriage/Leased Carriages was not performed by the Lessor due to breach of his obligation under this Agreement.

The Parties hereby expressly declare that agreement of the Parties contained in this Section 16.37 hereof represents special arrangement solely for this specific situation and does not give rise to any liability of the Seller/Lessee for defects of the Leased Carriages in excess of the liability of the Seller/Lessee stipulated in Sections 7.1 through 7.4 hereof, and such Sections 7.1 through 7.4 hereof shall not be effected by the agreement of the Parties contained in this Section 16.37 hereof.

- 16.38 The Parties undertake to exert maximum effort in order to provide each other, in good faith, with mutual assistance and cooperation in relation to the performance of this Agreement. Each Party undertakes, in particular, to provide the other Party with cooperation if it is required for effective performance of the rights hereunder by legal regulations of any country or of any international organization and further undertakes to provide the other Party, upon request of the latter, with all information and documents which it has at its disposal and which are required for the performance and fulfilment of this Agreement.
- 16.39 The Lessee undertakes to notify the Lessor about any anticipated or actual Change of Control event as soon as it becomes aware of any intention of the shareholder of the Lessee to take any action, which could result in Change of Control. The Lessee shall also inform the Lessor of any further information regarding identity of the entities, which could obtain control over the Lessee, as soon as it becomes aware of such information. The Lessee shall not be obliged to disclose the identity of the entities, which could obtain control over the Lessee, in case the Lessee is bound by confidentiality towards such entities. The Lessee shall however release the identity of such entities to the Lessor as soon as it ceases to be bound by confidentiality towards such entities.
- 16.40 Each Party undertakes to inform the other Party of any change in the data provided herein.

## **ARTICLE 17**

### **TERMINATION OF THE LEASE**

- 17.1 The Lease agreed on the basis of this Agreement shall terminate and the Agreement shall be terminated in the part relating to the Lease:
- 17.1.1 by expiry of the term of Lease according to Section 13.1 hereof for which the Lease was agreed, unless it is prolonged according to Section 13.2 hereof (respectively according to Sections 13.2 and 13.3 hereof, as the case may be);
- 17.1.2 by expiry of the First Prolonged Term of Lease according to Section 13.2 hereof, unless it is prolonged according to Section 13.4 hereof;

- 17.1.3 by expiry of the Second Prolonged Term of Lease according to Section 13.4 hereof;
  - 17.1.4 by written agreement of the Parties to terminate the Lease, as of the date specified in such an agreement;
  - 17.1.5 in respect to the individual Leased Carriage by its total destruction or its retirement according to Section 16.29 hereof or its retirement according to Section 13.5 hereof;
  - 17.1.6 when all the Leased Carriages cease to exist;
  - 17.1.7 by written termination according to Section 17.2, Section 17.3, Section 17.6.1, Section 17.6.2.6 hereof;
  - 17.1.8 by mechanism according to Sections 17.6.2.1 through 17.6.2.5 hereof.
- 17.2 The Lessor shall be entitled to terminate the part of this Agreement that relates to the Lease in the case of material breach of the conditions of the Lease on the part of the Lessee. Only the following cases shall be deemed by the Parties as material breach of the conditions of Lease on the part of the Lessee:
- 17.2.1 if the Lessee delays payment of any of his financial obligation following from this Agreement of more than EUR 2,000,000,- by more than thirty (30) days after the maturity date and after expiry of that deadline, the Lessor informs the Lessee in writing of the possibility of termination and provides the Lessee with an additional thirty (30)-day deadline, but the Lessee fails to pay his due debt towards the Lessor within that deadline;
  - 17.2.2 if the Lessee uses more than 5 % of the Leased Carriages in gross conflict with this Agreement and the Lessee fails to remedy such acting within thirty (30) days from delivery of the Lessor's written notice informing the Lessee of the possibility of termination.
- 17.3 The Lessee shall be entitled to terminate the part of this Agreement that relates to the Lease only in the case of material breach of the conditions of the Lease on the part of the Lessor. Only the following cases shall be deemed by the Parties as material breach of the conditions of the Lease on the part of the Lessor:
- 17.3.1 if the Lessor breaches his obligation following from Section 16.36 hereof;
  - 17.3.2 if the Lessee cannot use more than 25 % of the Leased Carriages for the purpose and in the way according to this Agreement solely due to circumstances for which the Lessor bears liability under this Agreement for a period longer than thirty (30) days, and after such period the Lessee informs

the Lessor, specifies such inability of usage and informs the Lessor of the possibility of termination (all in writing) and provides the Lessor with an additional sixty (60)-day deadline, but the Lessor fails to remedy such situation within that deadline. For the avoidance of doubt any event of Force Majeure shall not allow the Lessee termination under this Section 17.3.2 hereof.

- 17.3.3 if the Lessor delays payment of any of his financial obligation following from this Agreement of more than EUR 200,000,- by more than sixty (60) days and after that deadline, the Lessee informs the Lessor in writing of the possibility of termination and provides the Lessor with an additional thirty (30)-days deadline, but the Lessor fails to pay his due debt towards the Lessee within that deadline.
- 17.4 Termination under Sections 17.2, 17.3.3 hereof shall take effect at the moment of expiry of the notice period. The notice period shall be two (2) months, except for the termination for the reason referred to in Section 17.2.1 hereof when the notice period shall be ten (10) days. The notice period shall start to pass on the first day of calendar month following after the month when the written notice was delivered to the other Party.
- 17.5 In case of termination under Sections 17.3.1 and 17.3.2 hereof the part of this Agreement that relates to the Lease shall terminate at the moment of delivery of the written termination notice to the Lessor with effects as stipulated in Sections 19.6 through 19.8 hereof.
- 17.6 If the Change of Control occurs without the Lessee obtaining prior COC Approval, it shall be considered as breach of this Agreement (hereinafter referred to as "**COC Breach**"). Upon COC Breach, the Lessor shall be entitled to choose and proceed with the actions pursuant to Section 17.6.1 below or alternatively pursuant to Section 17.6.2. below, which could lead to termination of this Agreement or its part relating to the Lease:

#### **Scenario A**

- 17.6.1 Within thirty (30) days after delivery of a written request of the Lessor delivered to the Lessee (hereinafter referred to as the "**Scenario A Notice**"), the Lessee shall be obliged to pay the Lessor deposit for the Rent for all of the Leased Carriages for the whole remaining initial 8-year term of Lease under Section 13.1 hereof (hereinafter referred to as the "**Deposit**"). For the purposes of calculation of the amount of Deposit, the Parties agreed that the amount of the daily Rent for Leased Carriages applicable at the time of delivery of the Scenario A Notice shall be used and furthermore it shall be increased annually by 2% until the end of the initial 8-year term of Lease under Section 13.1 hereof. For the avoidance of any doubts, the Deposit calculated in accordance with previous sentence shall be increased so as to also include the applicable VAT. Within thirty (30) days after the termination

of the Lease by expiry of the initial 8-year term of Lease under Section 13.1 hereof, the Lessor shall prepare a final balance statement showing the actual amount of the Rent that should have been paid under this Agreement (hereinafter referred to as the “**Actual Scenario A Rent**”). Within thirty (30) days after the delivery of the final balance statement according to the previous sentence, (i) the Lessee shall be obliged to pay to the Lessor the difference between the Actual Scenario A Rent and paid Deposit in case the Actual Scenario A Rent is higher than paid Deposit, or (ii) the Lessor shall be obliged to pay to the Lessee the difference between the Actual Scenario A Rent and paid Deposit in case the Actual Scenario A Rent is lower than paid Deposit. For the avoidance of any doubts the Parties explicitly declare that in case the Lease is terminated earlier than by expiry of the initial 8-year term of Lease under Section 13.1 hereof, the Lessee shall have the right to the return of aliquot part of the paid Deposit in respect of real duration of the term of Lease.

By delivery of the Scenario A Notice, the Parties explicitly agreed that Sections 13.2 through 13.6 hereof shall cease to be applicable and the term of Lease shall terminate at the end of the initial 8-year term of Lease under Section 13.1 hereof. The Parties furthermore specifically agreed that by full and due payment of the Deposit by the Lessee, the COC Breach shall be considered as remedied, whereas the Lessor shall not have any further claims arising out of the COC Breach.

In the event the Lessee breaches its obligation to pay the Deposit pursuant to this Section 17.6.1 hereof within thirty (30) days after delivery of the Scenario A Notice, the Lessor shall be entitled to terminate the Agreement in the part relating to the Lease, whereas such termination shall be effective at the moment of delivery of the written termination notice to the Lessee. In such a case of termination of the Agreement in the part relating to the Lease, the Lessor shall be entitled to request from the Lessee and the Lessee in such case shall be obliged to pay a contractual penalty in the same amount as the Deposit, as a result of the COC Breach and as a result of breach of the Lessee to pay the Deposit under this Section 17.6.1 hereof. The Parties confirm that the principal reason of the contractual penalty is to allow the Lessor to satisfy the Financing Entity given the fact that the COC Breach and breach of the Lessee to pay the Deposit under this Section 17.6.1 hereof may result in default of the loan provided by the Financing Entity.

For the avoidance of any doubt, the Parties have expressly agreed that the Lessor is not entitled to require compensation of damage caused by the COC Breach and caused by the breach of the Lessee to pay the Deposit under this Section 17.6.1 hereof, or caused by any of them individually. The Lessor's right to be paid the contractual penalty as a result of the COC Breach and as a result of breach of the Lessee to pay the Deposit under this Section 17.6.1 hereof shall not be affected by the agreement of the Parties stipulated in the previous sentence.

OR

**Scenario B**

17.6.2 In case of COC Breach, at any time the Lessor may deliver to the Lessee a notice that the Lessor initiates the mechanism under this Section 17.6.2 hereof (hereinafter referred to as the “**Scenario B Notice**”), whereas in such case the Parties shall take the actions as follows:

17.6.2.1 Within seven (7) days from delivery of the Scenario B Notice, the Lessee shall be obliged to deliver to the Lessor a list of all Leased Carriages existing as of the date of delivery of the Scenario B Notice which shall be returned to the Lessee (in this Section 17.6.2 hereof hereinafter referred to as the “**Subject of Return**”).

17.6.2.2 Within thirty (30) days from delivery of the Scenario B Notice, (i) the Parties shall enter into escrow agreement with the Financing Entity chosen by the Lessor, in the form and content satisfactory to the Lessor (hereinafter referred to as the “**Scenario B Escrow Agreement**”) and (ii) the Lessee shall deposit into the escrow account in accordance with the Scenario B Escrow Agreement the amount of consideration for Subject of Return calculated pursuant to Annex No. 15 (plus respective VAT, if applicable in compliance with the provisions of Act No. 222/2004 Coll. on Value Added Tax, as amended) (hereinafter referred to as the “**Scenario B Consideration**”).

17.6.2.3 Within thirty (30) days from fulfilment of obligations under Section 17.6.2.2 hereof, (i) the Lessor shall hand over the Subject of Return to the Lessee, namely on days respective Leased Carriages are presented in the Slovak Republic and the Parties shall execute a handover protocol confirming the handover of the Subject of Return satisfactory to the Lessor, under which the Lessee takes over the Subject of Return in the state as is (in Slovak *ako stoja a ležia*) (hereinafter referred to as the “**Scenario B Handover Protocol**”) and (ii) the Lessor shall return to the Lessee all Documents related to the Subject of Return that the Lessor received from the Lessee.

17.6.2.4 Upon receipt of the Scenario B Handover Protocol, but no later than 30 days after depositing of the Scenario B Consideration, the Financing Entity acting as the escrow agent pursuant to the Scenario B Escrow Agreement shall release the Scenario B Consideration to the Lessor in accordance with the Scenario B Escrow Agreement.

17.6.2.5 Upon receipt of the Scenario B Consideration by the Lessor, (i) the ownership title to the Subject of Return shall be acquired by the Lessee, (ii) the Agreement in respect to the Subject of Return shall be



deemed as terminated by the mutual agreement of the Parties and all other rights and obligations of the Parties in respect to the Subject of Return arising out of or in connection with the Agreement shall be deemed settled.

17.6.2.6 In case the Lessee breaches any of its obligations under Sections 17.6.2.1 through 17.6.2.3 hereof and the Lessor does not receive the Scenario B Consideration even within three (3) months after the delivery of the Scenario B Notice, the Lessor shall be entitled to terminate the Agreement in the part relating to the Lease, whereas such termination shall be effective at the moment of delivery of the written termination notice to the Lessee. For the avoidance of doubt, in such case only the Agreement in the part relating to the Lease shall be terminated and the Lessor shall retain the ownership title to the Subject of Return. In such a case of termination of the Agreement in the part relating to the Lease, the Lessor shall be entitled to request from the Lessee and the Lessee in such case shall be obliged to pay a contractual penalty in the amount calculated pursuant to Annex No. 16, as a result of the COC breach and breach of the Lessee of any of its obligations under Sections 17.6.2.1 through 17.6.2.3 hereof.

The Parties confirm that the principal reason of the contractual penalty is to allow the Lessor to satisfy the Financing Entity given the fact that the COC Breach and breach of the Lessee of any of its obligations under Sections 17.6.2.1 through 17.6.2.3 hereof may result in default of the loan provided by the Financing Entity.

For the avoidance of any doubt, the Parties have expressly agreed that the Lessor is not entitled to require compensation of damage caused by the COC Breach and caused by breach of the Lessee of any of its obligations under Sections 17.6.2.1 through 17.6.2.3 hereof, or caused by any of them individually. The Lessor's right to be paid the contractual penalty as a result of the COC Breach and/or breach of the Lessee of any obligations under Section 17.6.2.1 through 17.6.2.3 hereof shall not be affected by the agreement of the Parties stipulated in the previous sentence.

17.6.2.7. The Parties furthermore specifically agreed that by due fulfillment of all obligations of the Lessee under Sections 17.6.2.1 through 17.6.2.3 hereof, the COC Breach shall be considered as remedied, whereas the Lessor shall not have any further claims arising out of the COC Breach.

17.7 In case of termination of the Agreement in the part relating to the Lease under Section 17.2.1 and Section 17.2.2 hereof, the Lessor shall be entitled to request from the Lessee and the Lessee in such case shall be obliged to pay a contractual penalty in the

amount calculated pursuant to Annex No. 17, as a result of the breach of the Lessee of obligation specified in Section 17.2.1 and Section 17.2.2 hereof. The Parties confirm that the principal reason of the contractual penalty is to allow the Lessor to satisfy the Financing Entity given the fact that the breach of the Lessee of obligation specified in Section 17.2.1 and Section 17.2.2 hereof may result in default of the loan provided by the Financing Entity.

- 17.8 For the avoidance of doubt, the Parties have explicitly agree and specifically confirm that for the purpose of termination of the Agreement in the part relating to the Lease pursuant to Sections 17.1.5, 17.1.6, 17.2, 17.6.1 and 17.6.2 hereof, the part of the Agreement relating to the Lease and the part of the Agreement relating to the Transfer are not dependent on each other pursuant to Section 275 of the Commercial Code and not dependent pursuant to Section 19.5 and/or 19.6 hereof, and by termination of the Agreement in the part relating to the Lease only, the Agreement in the part relating to the Transfer shall remain valid, whereas Sections 19.5, 19.6 and 19.8 hereof shall not apply.

## **ARTICLE 18**

### **RETURN OF LEASED CARRIAGES UPON TERMINATION OF THE LEASE ACCORDING TO SECTIONS 17.1.1 THROUGH 17.1.4, 17.2, 17.3.3, 17.6.1 AND 17.6.2.6 HEREOF**

- 18.1 No later than within sixty (60) days after the day of termination of the Lease according to Sections 17.1.1 through 17.1.4, 17.2, 17.3.3, 17.6.1 and 17.6.2.6 hereof, the Lessee shall be obliged to hand over the Leased Carriages to the Lessor in condition suitable for regular and safe operation and free of violent damage according to V 62 – Operating-Technical Regulation for railway carriages and with Periodic Maintenance and Technical Checks II that should have been performed by the Lessee prior to the day of termination of the Lease hereunder. Moreover, the Parties have further agreed that the Lessee shall be obliged to hand over the Leased Carriages type Zxx (tank Leased Carriages) to the Lessor empty, cleaned and evaporated. The Parties have agreed that in case of further usage of tank Leased Carriages by the Lessor for the same substrate as during the Lease, the Lessee shall hand over the tank Leased Carriages empty, but such Leased Carriages do not have to be cleaned and evaporated, based on prior written consent of the Lessor. A written record on handover of the Leased Carriages to the Lessor shall be prepared; the written record shall be signed by both Parties. In the record on handover of the Leased Carriages the Parties shall provide the description of the condition of the Leased Carriages and an evaluation whether the condition of the Leased Carriages corresponds with the condition according to the first sentence in this Section 18.1 hereof (respectively also with the condition according to the second or third sentence in this Section 18.1 hereof, as the case may be). The Lessor undertakes not to refuse to take over any of the Leased Carriages without serious and reasonable reasons. The Lessor accepts that he has no other claims and is not entitled to raise any claims in respect of condition of the Leased Carriages other than stipulated in this Section 18.1 hereof (for the

avoidance of any doubts, right of the Lessor to raise such claims in respect of condition of the Leased Carriages is not limited to the time of takeover of the respective Leased Carriage). For the avoidance of any doubt, requirements related to condition of the Leased Carriages according to the first sentence of this Section 18.1 hereof shall not be applied when the Leased Carriage is returned to the Lessor according to Sections 13.5 or 16.29 hereof.

- 18.2 If the condition of the Leased Carriages does not correspond with the condition according to the first sentence in Section 18.1 hereof (respectively also with the condition according to the second or third sentence in Section 18.1 hereof, as the case may be), the Lessee shall be obliged, unless otherwise agreed by the Parties, to restore the Leased Carriages, within a reasonable deadline and at his own expenses, to the condition corresponding with such condition according to the first sentence in Section 18.1 hereof (respectively also with the condition according to the second or third sentence in Section 18.1 hereof, as the case may be).
- 18.3 The Parties have agreed that despite of termination of the Lease, the terms and conditions of the Lease according to this Agreement, including payment of the Rent, shall continue to apply to each of the Leased Carriages until the actual handover of the respective Leased Carriage to the Lessor. Upon payment of the Rent according to the previous sentence, all entitlements of the Lessor in relation to the return of unjustified enrichment for the period of time when the Lessee was using the Leased Carriages after termination of the Lease hereunder shall cease to exist. If the Lessee does not return the Leased Carriages in the period stipulated in Section 18.1 hereof, instead of payment according to first sentence of this Section 18.3 hereof the Lessor shall be entitled to demand from the Lessee payment of a contractual penalty the amount of which shall be determined as the double amount of the Rent for unreturned Leased Carriages calculated from the 61<sup>st</sup> day following the termination of the Lease until the actual return of the Leased Carriages to the Lessor. Upon payment of the contractual penalty to the Lessor, all entitlements of the Lessor in relation to the return of unjustified enrichment for the period of time when the Lessee was using the Leased Carriages after termination of the Lease hereunder shall cease to exist.
- 18.4 The Parties have agreed that the Lessor shall be obliged, as at return of the Leased Carriages to the Lessor, to pay to the Lessee valorisation of the Leased Carriages due to modifications performed by the Lessee if:
- 18.4.1 such modifications of the Leased Carriages were carried out by the Lessee in compliance with Section 16.25 hereof and are fixed part of the Leased Carriages; or
- 18.4.2 such modifications of the Leased Carriages were carried out by the Lessee in compliance with Section 16.28 hereof.
- 18.5 The Parties have agreed that in case the modifications of the Leased Carriages, which are not fixed part of the Leased Carriages, were carried out by the Lessee in

compliance with Section 16.25 hereof, the Lessor shall be obliged to pay to the Lessee valorisation of the Leased Carriages due to such modifications, unless the Lessor asks the Lessee in writing to remove such modification from the Leased Carriages.

- 18.6 Unless otherwise agreed by the Parties, for the purpose of Sections 18.4 and 18.5 hereof, the amount of the valorisation of the Leased Carriages, which the Lessor is obliged to pay to the Lessee not later than within thirty (30) days after the day of termination of the Lease according to Sections 17.1.1 through 17.1.4, 17.2, 17.3.3, 17.6.1, and 17.6.2.6 hereof, shall at least represent the amount of the residual value of such valorisation of the Leased Carriages.
- 18.7 In case of termination of the Agreement in the part relating to the Lease under Section 17.1.5 and/or Section 17.1.6 hereof which has not been caused by circumstances for which the Lessor bears liability under this Agreement, within 30 days after the termination under Section 17.1.5 and/or Section 17.1.6 hereof, the Lessee shall be obliged to (A) secure a transfer for no remuneration into the ownership of the Lessor of a replacement railway carriage of the same type and materially in the similar state (at least in state as required under Section 18.1 hereof) as the Leased Carriage in respect to which the Lease has been terminated under Section 17.1.5 and/or Section 17.1.6 hereof (hereinafter referred to as the **"Replacement Carriage"**) and (B) at the same time the Replacement Carriage shall become a subject of Lease under the same terms and conditions applicable under this Agreement and (C) pay to the Lessor a compensation fee for every Leased Carriage in respect to which the Lease Contract has been terminated under Section 17.1.5 and/or Section 17.1.6 hereof, calculated as the amount of the Rent that the Lessee would be otherwise obliged to pay to the Lessor in respect to such Leased Carriage from the date of termination of the Lease under Section 17.1.5 and/or Section 17.1.6 hereof until the transfer of the Replacement Carriage according to letter (A) of this sentence. In case the Lessee fails to fulfil his obligations under the previous sentence, the Lessee shall be obliged to pay to the Lessor a compensation fee for every Leased Carriage in respect to which the Lease Contract has been terminated under Section 17.1.5 and/or Section 17.1.6 hereof, calculated as the total of (i) the actual amount of the Rent (without any rent adjustments from the date of termination under Section 17.1.5 and/or Section 17.1.6 hereof) that the Lessee would be otherwise obliged to pay to the Lessor in respect to such Leased Carriage until the end of initial 8-year term of Lease under Section 13.1 hereof, (ii) the residual value of that specific Leased Carriage as recorded in the books of the Lessor at the date of the termination of the Lease under Section 17.1.5 and/or Section 17.1.6 hereof in respect to the Lease Carriage in question and calculated as at the last day of the initial 8-year term of Lease under Section 13.1 hereof and (iii) the residual value of the Periodic Maintenance and Technical Checks I in respect to such Leased Carriage as recorded in the books of the Lessor at the date of the termination of the Lease under Section 17.1.5 and/or Section 17.1.6 hereof in respect to the Periodic Maintenance and Technical Check I in question calculated as at the last day of the initial 8-year term of Lease under Section 13.1 hereof.

For the avoidance of any doubts, this Section 18.7 hereof shall not be applied in case of retirement of the Leased Carriage from the Lease according to Sections 16.29 or 13.5 hereof.

## **PART IV**

### **COMMON PROVISIONS**

#### **ARTICLE 19**

#### **TERMINATION OF AGREEMENT AND DEPENDENCE OF TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT**

- 19.1 This Agreement shall take effect on the day of its signing by both Parties and shall enter into force on the day following the later of the following days: (i) the day of publication of this Agreement in compliance with the provisions of Act No. 211/2000 Coll. on Free Access to Information and on Modifications and Supplements to Certain Acts (the Freedom of Information Act), as amended; or (ii) the day of filing this Agreement and the Expert Opinion with the collection of documents kept by the Companies Register in compliance with Section § 59a of the Commercial Code.
- 19.2 Unless otherwise expressly stipulated in this Agreement, no Party shall be entitled to unilaterally terminate this Agreement in any form or to withdraw from this Agreement. The Parties have agreed that this Agreement shall terminate:
- 19.2.1 by written agreement of both Parties;
  - 19.2.2 by withdrawal from this Agreement on the part of the Seller, solely in the case that the entire Purchase Price under Section 5.1 hereof is not paid by the Buyer in the way and under the terms stipulated in Section 5.3 hereof not later than by [•];
  - 19.2.3 by withdrawal from this Agreement by any of the Parties, solely in the case that the Transfer Date does not take place not later than by [•];
  - 19.2.4 by a mechanism pursuant to Sections 17.6.2.1 through 17.6.2.5 hereof.
- 19.3 Withdrawal under Sections 19.2.2 and 19.2.3 hereof shall take effect at the moment of delivery of the written notice of withdrawal from this Agreement to the other Party.
- 19.4 The Parties are aware of the fact that this Agreement contains two types of contracts, namely a purchase contract according to Section 409 et seq. of the Commercial Code, where the subject matter of the purchase contract is transfer of the Railway Carriages from the Seller to the Buyer for consideration, and a contract on lease of means of transport pursuant to Section 630 et seq. of the Commercial Code, where the subject

matter of the lease contract is lease of the Leased Carriages to the Lessee for consideration.

- 19.5 The Parties have explicitly agreed that the contract on lease of means of transport contained in this Agreement, i.e. the provisions of this Agreement regulating the Lease (hereinafter referred to as the "**Lease Contract**") shall be dependent on the purchase contract contained in this Agreement, i.e. the provisions of this Agreement governing the Transfer (hereinafter referred to as the "**Purchase Contract**"). Therefore the Parties have agreed and declare that the duration and existence of the Lease Contract is dependent on the duration and existence of the Purchase Contract and by termination or by invalidity of the Purchase Contract the Lease Contract shall become null and void with *ex tunc* effect.
- 19.6 The Parties have explicitly agreed that the Purchase Contract shall be dependent on the Lease Contract in cases (and only in these cases) when (i) the Lease Contract is terminated according to Sections 17.3.1 or 17.3.2 hereof; or (ii) the Lease Contract is or becomes invalid. Therefore the Parties have agreed and declare that by termination of the Lease Contract according to Sections 17.3.1 or 17.3.2 hereof or by invalidity of the Lease Contract the Purchase Contract shall be automatically cancelled with *ex tunc* effect.
- 19.7 Expiry of this Agreement pursuant to Section 19.2 hereof, termination of the Lease pursuant to Section 17.1 hereof, invalidity of the Purchase Contract, and/or invalidity of the Lease Contract shall have no influence on the validity and effectiveness of Articles 2, 17, 18, 19, 21, 22, 23 and 25 hereof.
- 19.8 The Parties have further explicitly agreed that in any of the following cases:
- (i) the Purchase Contract is or becomes invalid and the Lease Contract becomes null and void with *ex tunc* effect due to their mutual dependence according to Section 19.5 hereof; and/or
  - (ii) the Lease Contract is terminated according to Sections 17.3.1 or 17.3.2 hereof and the Purchase Contract is cancelled with *ex tunc* effect due to their mutual dependence according to Section 19.6 hereof; and/or
  - (iii) the Lease Contract is or becomes invalid and the Purchase Contract is cancelled with *ex tunc* effect due to their mutual dependence according to Section 19.6 hereof;

the rights and obligations of the Parties arising from such invalidity, termination and/or cancellation of the Purchase Contract and arising from such invalidity, termination and/or cancellation of the Lease Contract shall be settled in the full extent upon fulfilment of all of the following terms and conditions:

- 19.8.1 With regard to the Purchase Contract:

- 19.8.1.1 The Buyer shall be obliged to return to the Seller (i) all of the Leased Carriages which are subject of the Lease at the time of settlement; and (ii) all of the Non-Leased Carriages which exist at least as the Carriage Unit and are at the Buyer's disposal at the time of settlement (hereinafter referred to as the "**Subject of Return**"), namely within the reasonable period determined by the Seller. For the avoidance of doubt the Parties agreed that the Buyer shall in no case be obliged to fulfil any his obligations under Sections 19.8.1.1 and 19.8.1.2 hereof, unless the Consideration (as defined in Section 19.8.1.3 hereof) or amount under Section 19.8.1.4 hereof (as the case may be) has been duly paid by the Seller to the Buyer.
- 19.8.1.2 The Buyer shall be obliged to return to the Seller all documents related to the Subject of Return at least in the extent of the Documents as were handed over by the Seller to the Buyer, updated to the day of handover pursuant to the Section 19.8.1.1 hereof, namely within the reasonable period determined by the Seller.
- 19.8.1.3 If any of the situations specified above in this Section 19.8 under the letters (i) or (ii) hereof occurs the Seller shall be obliged to return to the Buyer part of the Purchase Price adequate to the Subject of Return (hereinafter referred to as the "**Consideration**"). The Parties have agreed that such obligation of the Seller shall be deemed as fulfilled in full extent by payment of the Consideration in the amount equal to the sum of value/prices of the railway carriages forming the Subject of Return as stated in the Expert Opinion. To avoid any doubts the Parties hereby declare and confirm that for purposes of such situation they agreed such amount of Consideration regardless the real value of the Subject of Return. The Parties declare that payment of the Consideration in the amount stipulated in the this Section 19.8.1.3 hereof shall be considered as fair settlement of the Parties in respect to the obligation to return part of the Purchase Price adequate to the Subject of Return. The Consideration shall be payable and due within ten (10) Business Days after the request of the Buyer is delivered to the Seller.
- 19.8.1.4 The Parties have agreed that if situation specified above in this Section 19.8 under the letter (iii) hereof occurs, the amount of unjust enrichment adequate to the Subject of Return shall be calculated and paid according to Annex No. 18 hereof and under conditions and terms stipulated in this Section 19.8.1.4 hereof. The Parties have agreed that such obligation of the Seller to return unjust enrichment shall be deemed as fulfilled in full extent by payment of the amount:

- (i) corresponding Annex No. 18, whereas the balances under letters A and B of the Annex No. 18 shall be calculated to the day when the Financing Entity: (a) declares default of the Facilities Agreement in writing due to the situation under Section 19.8 under the letter (iii) hereof and (b) provably sends such written declaration of default to the Buyer by means of Slovak Post Office (*Slovenská pošta, a.s.*); and
- (ii) reduced by all amounts claimed by the Financing Entity and the shareholders of the Buyer solely from the breach of the obligations of the Buyer to fulfill duly and timely any of his obligations towards the Financing Entity and/or the shareholders of the Buyer, which has any impact on such amount, unless breach of the obligations of the Buyer was caused due to circumstances caused by the Seller.

For the avoidance of any doubts the Parties declare that they acknowledge that the amount specified in Annex No. 18 hereof changes over time depending on the fulfilment of the respective obligations of the Buyer towards the Financing Entity and/or the shareholders of the Buyer. The amount of unjust enrichment according to this Section 19.8.1.4 shall be payable and due within ten (10) Business Days after the request of the Buyer is delivered to the Seller.

- 19.8.1.5 Other claims of the Seller towards the Buyer to pay financial compensation related to the Non-Leased Carriages not included in the Subject of Return and claims of the Buyer towards the Seller to return part of the Purchase Price/unjust enrichment adequate to the Non-Leased Carriages not included in the Subject of Return shall cease in the full extent by their mutual setting off.
- 19.8.1.6 The Seller shall file an application for registration of change in ownership of the railway carriages forming the Subject of Return in the National Register of Carriages. In relation to the Leased Carriages the cost connected with registration of change of ownership shall be borne by the Parties equally. In relation to the Non-Leased Carriages the cost connected with registration of change of ownership shall be fully borne by the Buyer.
- 19.8.1.7 Agreement of the Parties relating to their mutual settlement with regard to the Purchase Contract in case of invalidity of the Lease Contract and cancellation of the Purchase Contract with *ex*



*tunc* effect due to their mutual dependence according to Section 19.6 hereof contained in Sections 19.8.1.1, 19.8.1.2, 19.8.1.4 through 19.8.1.6 and in Annex No. 18 hereof represents comprehensive regulation and any of such provisions is inseparable from the other. The invalidity of any of such provisions stipulating the terms and conditions for mutual settlement of the Parties in this situation with regard to Purchase Contract shall result in invalidity of all provisions contained in Section 19.8.1.1, 19.8.1.2, 19.8.1.4 through 19.8.1.6 hereof and in Annex No. 18 hereof. Provisions of this Section 19.8.1.7 hereof shall prevail provisions of first sentence of Section 25.6 hereof. For the avoidance of doubt, the Section 25.7 shall remain unaffected.

19.8.2 With regard to the Lease Contract:

19.8.2.1 Receivable of the Lessee towards the Lessor for return of the Rent paid by the Lessee hereunder and the receivable of the Lessor towards the Lessee for payment of unjustified enrichment shall be considered equal and therefore shall cease in the full extent by their mutual setting off, whereas:

- (i) The Parties have agreed and declare that the amount of the Rent as agreed by the Parties herein represents and is equal to the usual rent in the respective place and time. For the purpose of the settlement the amount of the Rent as agreed by the Parties herein shall be considered as adequate considering all circumstances of the Lease, in particular:
  - total number of the Leased Carriages;
  - duration of the term of Lease;
  - conditions stipulated for usage of the Leased Carriages by the Lessee;
  - obligation of the Lessee to provide for common repairs of the Leased Carriages, at his own expense;
  - obligation of the Lessee to provide for the Periodic Maintenance and Technical Checks II, at his own expense;
  - liability of the Lessee for damage to the Leased Carriages *etc.*
- (ii) The Parties further declare that any repairs and maintenance of the Leased Carriages (including the Periodic Maintenance and Technical Checks I and the Wheelset Exchanges) are carried out to maintain the Leased Carriages in condition enabling their proper operation and their usage for which these means of transport usually

serve, i.e. such repairs and maintenance shall not be considered as technical evaluation of the Leased Carriages.

19.8.3 The Parties hereby expressly declare that all rights and obligations of the Parties arising or following from or related to any of the situations specified above in Section 19.8 under the letters (i), (ii) or (iii) hereof are settled in full extent upon fulfilment of all of the terms and conditions stipulated in Section 19.8.1 and 19.8.2 hereof and such fulfilment of all of the terms and conditions stipulated in Section 19.8.1 and 19.8.2 hereof represents full and complete settlement of all rights and obligations of the Parties arising or following from or related to any of the situations specified above in Section 19.8 under the letters (i), (ii) or (iii) hereof and there are no other outstanding unsettled rights, obligations or relations of the Parties.

## ARTICLE 20

### AUTHORIZED PERSONS

20.1 The Parties have agreed that in addition to the statutory bodies of the Parties, also the following persons shall be authorized to make the acts relating to the performance of this Agreement (except for any approval acts for which a prior written consent of the other Party is required):

20.1.1 on behalf of the Buyer/Lessor:

name: [•]  
title: [•]  
phone: [•]  
e-mail: [•]

20.1.2 on behalf of the Seller/Lessee:

name: [•]  
title: [•]  
phone: [•]  
e-mail: [•]

20.2 Solely the statutory bodies of the Parties or persons authorized by them to that end shall be entitled to make the acts that affect the validity, effectiveness and/or contents of this Agreement, and acts in court, administration, arbitration or any other proceedings conducted in front of public authorities.

## ARTICLE 21

### CONFIDENTIAL INFORMATION

- 21.1 Both Parties shall be obliged to maintain confidentiality of the Confidential Information, unless otherwise implied by this Agreement or the relevant generally binding legal regulations.
- 21.2 The Parties undertake that without prior written consent of the other Party they will not use the Confidential Information for themselves and/or for third parties, and they will not provide third parties with access or allow third parties to have access to the Confidential Information. Third parties shall not include members of bodies of the Parties, employees of the Parties who are in contact with the Confidential Information in the extent necessary during performance of their occupation, auditors or legal consultants of the Parties who are in relation to the information disclosed to them bound by the obligation to maintain confidentiality by virtue of the relevant generally binding legal regulations.
- 21.3 The obligation to maintain confidentiality of the Confidential Information shall not apply to:
- 21.3.1 the information that is publicly known or can be obtained from commonly available information sources already on the day of signing of this Agreement;
  - 21.3.2 the information that becomes publicly known after signing of this Agreement or which can be obtained from commonly available information sources after that day;
  - 21.3.3 the cases when according to the relevant generally binding legal regulations or on the basis of an obligation imposed by a procedure according to the generally binding legal regulations a Party is obliged to provide the Confidential Information to third parties. In such a case, the affected Party shall be obliged to inform the other Party of origin of the obligation to provide the Confidential Information, indicating the extent of that obligation, namely without undue delay;
  - 21.3.4 the cases of provision of Confidential Information to professional consultants of the Parties, to person which are in the position of controlling or controlled entity in relation to any of the Parties or to banks providing financing;
  - 21.3.5 the cases of provision of Confidential Information to potential investors who are interested in acquiring ownership title to shares or interests in any of the Parties, if such a person assumes the obligation to maintain confidentiality according to Article 21 hereof;

- 21.3.6 the use of the required Confidential Information in the case of court, arbitration, administration or any other proceedings conducted in order to exercise the rights hereunder.
- 21.4 The Parties are aware of the fact that this Agreement and single Invoices issued on the basis of this Agreement are subject to mandatory publication pursuant to Section 5a of Act No. 211/2000 Coll. on Free Access to Information, as amended, and that pursuant to Section 59a of the Commercial Code this Agreement and the Expert Opinion will be filed in the collection of documents kept by the Companies Register.

## ARTICLE 22

### COMMUNICATION AND CORRESPONDENCE

- 22.1 Unless otherwise provided herein, all Written documents have to be executed in written form and delivered to the address of the other Party referred to in the heading hereof and/or to any other address to be notified by that Party to the other Party. A Written document shall be deemed to have been delivered under the following terms and conditions:
- 22.1.1 in the case of delivery in person, upon handover of the Written document to the authorized person referred to in Section 20.1 hereof or to any other person authorized to receive Written documents on behalf of that Party and in the moment when such a person has attached own signature to the notice of delivery and/or copy of the delivered Written document or upon refusal of such a person to receive the Written document, where the refusal shall be demonstrated by a statement of such a person or of at least two persons who were present when that person refused to receive the Written document;
- 22.1.2 in the case of delivery by means of Slovak Post Office (*Slovenská pošta, a.s.*) or any other courier, upon delivery to the address of the Party and, in the case of registered mail, upon handover of the Written document to the person authorized to receive Written documents on behalf of that Party and in the moment when such a person has attached own signature to the notice of delivery, however, not later than upon expiry of three (3) Business Days after the day stated in the certificate of posting, namely regardless of success of the delivery.
- 22.2 Regular communication between the Parties (except for any approval acts where prior written consent of the Party is required) can also be made by means of electronic mail. In the case of delivery by means of electronic mail, a Written document shall be deemed to have been delivered upon receipt of the other Party's confirmation of delivery of the Written document.

## ARTICLE 23

### GOVERNING LAW AND DISPUTES

23.1 **Governing law.** The rights and obligations following from or related to this Agreement, including the issues of breach, validity or interpretation of this Agreement shall be governed by the laws of the Slovak Republic, namely preferentially by the Commercial Code according to the will of the Parties and by other legal regulations of the Slovak Republic.

23.2 **Conciliation procedure.** The Parties have agreed that any disputes arisen in connection with this Agreement shall be preferentially resolved by means of negotiations in good faith.

In the case of a dispute, either Party can invite the other Party to negotiate for the purpose of resolving the dispute. If the dispute is not resolved within 30 days following delivery of notice of the dispute to the relevant Party, the dispute shall be resolved and finally settled in the way referred to in Section 23.3 hereof.

23.3 **Arbitration proceedings.** Any dispute, controversy or claim arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, which cannot be resolved within conciliation proceedings under Section 23.2 hereof, shall be submitted to Arbitration Court and shall be finally settled under the Rules of Arbitration Court (hereinafter referred to as the “**Rules**”), which Rules are deemed to be incorporated by reference into this Section. Notwithstanding that the Parties agree that any matter excluded from jurisdiction of the Arbitration Court under applicable law shall be finally resolved within the jurisdiction of general courts of the Slovak Republic.

23.4 **Appointment of arbiters.** The tribunal shall consist of three arbitrators appointed in accordance with the Rules, save that the third arbitrator who shall act as president of the arbitral tribunal shall be nominated by the two party-nominated arbitrators.

23.5 **Language.** The language of the arbitration proceedings shall be the English language.

23.6 **Venue of Arbitration Proceedings.** Vienna, Austria shall be the venue of arbitration proceedings.

23.7 **Consolidation of arbitration proceedings.** If more than one arbitration is commenced under this Agreement, and any Party contends that two or more such arbitrations raise similar issues of law or fact and that the issues should be resolved in one set of proceedings, then:

- (i) the parties to such arbitrations shall agree to consolidation and jointly request the Arbitration Court to consolidate them pursuant to Article 10, paragraph (a) of the Rules; or

- (ii) where the parties to such arbitrations fail to make the joint request under this Section 23.7 letter i) above within 15 days of one party making the above contention, any party to such arbitrations may request the Arbitration Court to consolidate them pursuant to Article 10 of the Rules.

If the Arbitration Court decides to consolidate two or more arbitrations following the request made pursuant to this Section 23.7 or otherwise in accordance with the Rules, the tribunal in such consolidated proceedings shall be selected as follows:

- (i) the parties to the consolidated proceedings shall agree on the composition of the tribunal; and
- (ii) failing such agreement within 30 days of consolidation being decided by the Arbitration Court, they shall be consolidated into the arbitration that commenced first in accordance with Article 10 of the Rules.

Any Party to the consolidated proceedings shall be bound by the award rendered, even if it chooses not to participate in the consolidated proceedings.

23.8 **Severability of the arbitration clause.** The validity and effect of this Agreement shall have no influence on the validity and effect of this arbitration clause.

23.9 **Costs of proceedings.** Each Party shall bear itself the costs of arbitration proceedings, including the costs of legal representation. The Arbitration Court shall decide on the compensation of costs, including the costs of legal representation.

## ARTICLE 24

### FORCE MAJEURE

24.1 Unless otherwise stipulated herein, the Parties have agreed that the Lessor shall bear no liability whatsoever in case of Force Majeure and such liability shall be borne by the Lessee (with the exception in Section 16.32 hereof). For the purpose hereof, the term Force Majeure shall be governed by the publication “Force Majeure and Hardship” issued by the International Chamber of Commerce – ICC under No. 421, where such events shall include fire, earthquake, accident, flood, strike, embargo, administrative measure of a state and any such events and, therefore, obstacles which occurred independently of the will of the Parties and which prevent them from the meeting of their obligations if it cannot be reasonably presumed that the Parties could avert or overcome such an obstacle and consequences thereof and could not foresee such an obstacle and consequences thereof in the time of origin of the obligation and that they could not prevent such an obstacle and consequences thereof if using usual means and measures. The effects excluding liability of the Parties hereunder shall only last during the period of existence of the circumstances of Force Majeure, as it is defined in this Article 24 hereof.

- 24.2 The Parties shall be obliged to inform each other of the start and cessation of any of the events of Force Majeure in writing and without undue delay.

## **ARTICLE 25**

### **FINAL PROVISIONS**

- 25.1 Unless stipulated otherwise herein, the Parties have expressly agreed that any of claims of the Parties following from this Agreement may be set off solely based on mutual written agreement of the Parties.
- 25.2 This Agreement, documents mentioned herein and all contracts to be concluded between the Parties on the basis of this Agreement shall constitute the entire agreement of the Parties concerning the transactions contemplated herein and shall replace all previous agreements of the Parties, whether oral or written, regarding such transactions.
- 25.3 The provisions of this Agreement, unless otherwise stipulated herein, can only be modified and/or supplemented in the form of written amendments signed by both Parties.
- 25.4 The Parties are aware that the SÚNV Regulation and/or V 62- Operating- Technical Regulation for railway carriages may be modified or amended by the Seller/Lessee from time to time. The Seller/Lessee undertakes to inform the Buyer/Lessor in writing of such modifications or amendments without undue delay. Modifications and amendments to SÚNV Regulation and/or V 62- Operating- Technical Regulation for railway carriages shall become effective towards the Buyer/Lessor only upon written acceptance of the Buyer/Lessor of such modification or amendments of the SÚNV Regulation and/or V 62- Operating- Technical Regulation for railway carriages. For the avoidance of doubt, any change of SÚNV Regulation and/or V 62- Operating- Technical Regulation for railway carriages which is not approved in advance by the Lessor, shall not be binding on the Lessor when arranging the Periodic Maintenance and Technical Check I.
- 25.5 The rights and obligations not expressly regulated herein shall be governed by the relevant provisions of the Commercial Code.
- 25.6 Unless otherwise stipulated herein, in the event that any provision hereof is or becomes null and void and/or unenforceable, the validity, effectiveness and/or enforceability of other provisions hereof shall not be affected, unless the nature of such provision itself excludes it within the meaning of the applicable legal regulations. The Parties undertake, without unnecessary delay after they have found out that any of the provisions hereof is null and void and/or unenforceable, to replace the provision in question by a new provision, the content of which will, as much as

possible, correspond to the will of the Parties at the time of the Agreement conclusion.

- 25.7 Agreement of the Parties regarding their mutual settlement contained in Sections 19.5 through 19.8 hereof is separable from other provisions hereof. The validity, effectiveness and/or enforceability of Sections 19.5 through 19.8 hereof stipulating the terms and conditions for mutual settlement of the Parties shall not be effected by invalidity of any other part of this Agreement.
- 25.8 This Agreement has been executed in six (6) counterparts in Slovak and in English language; each Party shall receive three (3) counterparts in each language version. In case of any discrepancies or disputes on interpretation between the English and Slovak version, the English version shall prevail.
- 25.9 The following Annexes constitute an integral part of this Agreement:
- 25.9.1 Annex No. 1 – Railway Carriages;
  - 25.9.2 Annex No. 2 – Leased Carriages;
  - 25.9.3 Annex No. 3 – V 62 - Operation-Technical Regulation for railway carriages
  - 25.9.4 Annex No. 4 – SÚNV – Regulation for periodic maintenance which defines the system of maintenance of freight carriages;
  - 25.9.5 Annex No. 5 – Expert Opinion;
  - 25.9.6 Annex No. 6 – Handover Protocol of the Leased Carriages;
  - 25.9.7 Annex No. 7 – Partial Handover Protocol;
  - 25.9.8 Annex No. 8 – Final Handover Protocol;
  - 25.9.9 Annex No. 9 – Schedule of Partial Handover Procedures;
  - 25.9.10 Annex No. 10 - List of Documents part A;
  - 25.9.11 Annex No. 11 - List of Documents part B;
  - 25.9.12 Annex No. 12 – List of Lease and Sublease Contracts;
  - 25.9.13 Annex No. 13 – Rent in the First Prolonged Term of Lease – Methodology;
  - 25.9.14 Annex No. 14 – Maintenance Plan;
  - 25.9.15 Annex No. 15 - Scenario B Consideration;
  - 25.9.16 Annex No. 16 - Scenario B Penalty;
  - 25.9.17 Annex No. 17 – Contractual Penalty for Breach of Lessee;
  - 25.9.18 Annex No. 18 – Unjust Enrichment in case of Section 19.8 (iii).

Annexes are executed in English and Slovak language, except for Annexes No. 3, 4, 5 and 11 which are executed in Slovak language.

- 25.10 The Parties represent that they have read this Agreement carefully, have understood the contents of this Agreement and the contents represent their actual and free will, free of any misunderstanding. The Parties consider their expressions of will contained in this Agreement to be certain and clear, not expressed in distress or under considerably unfavourable conditions. The Parties are not aware of any circumstance which would cause invalidity of any of the provisions of this Agreement. In witness of their consent to the contents of this Agreement, the Parties have hereunto set their own hand.



[A PAGE CONTAINING SIGNATURES OF THE PARTIES FOLLOWS]

In **WITNESS OF THEIR CONSENT**, the duly authorized representatives of the Parties have attached their own signatures hereunto on the day mentioned on the first page.

<b>ON BEHALF OF Železničná spoločnosť Cargo Slovakia, a.s.</b>	<hr/> Name: Title:
	<hr/> Name: Title:
<b>ON BEHALF OF Cargo Wagon, a.s.</b>	<hr/> Name: Title:
	<hr/> Name: Title:

## ANNEX No. 15

### **to the Agreement on Transfer of Movable Assets for Consideration and Subsequent Lease Back of Means of Transport dated [•]**

#### **SCENARIO B CONSIDERATION**

The terms defined in the Agreement shall have the same meaning in this Annex.

Under Section 17.6.2.2, the amount of Scenario B Consideration to be paid by the Seller to the Buyer is a total of A+B+C where:

- A= outstanding amount of payments in respect to Facility A of the Facilities Agreement to be made to the Financing Entity funding the Buyer in order to buy the Railway Carriages including but not limited to principal, accrued interest, default interest, early redemption penalties and break funding costs, any costs in respect to hedging arrangements, and other related costs linked directly or indirectly to the financing, such amounts to be evidenced by a “final statement of account” issued by the Financing Entity; calculated to the moment of occurrence of the Change of Control, as if the Financing Entity accelerated the loan as a result of the respective event of default.
- B= outstanding unpaid principal and accrued interest of the shareholder loans granted to the Buyer based on the EUR 10,000,000 Loan Agreement concluded by the Seller as the lender and the Buyer as the borrower on [•] and the EUR 20,000,000 Loan Agreement concluded by the company AAE Wagon a.s. as the lender and the Buyer as the borrower on [•], calculated to the moment of occurrence of the Change of Control, For the purposes of calculation of the amount under this letter B, the Parties shall take into account the wording of the loan agreements described in this letter B in their initial signed wording, unless agreed otherwise.
- C= €10,400,000 plus accrued interest from the Transfer Date at an assumed rate of 15% *per annum* less any dividends paid to the shareholders of the Buyer by the Buyer in that same time period.

## **ANNEX No. 16**

### **to the Agreement on Transfer of Movable Assets for Consideration and Subsequent Lease Back of Means of Transport dated [•]**

#### **SCENARIO B PENALTY**

The terms defined in the Agreement shall have the same meaning in this Annex.

Under Section 17.6.2.6 of the Agreement, the amount of contractual penalty to be paid by the Seller to the Buyer should be calculated as the outstanding amount of payments in respect to Facility A of the Facilities Agreement to be made by the Buyer to the Financing Entity funding the Buyer in order to buy the Railway Carriages including but not limited to principal, accrued interest, default interest, early redemption penalties and break funding costs, any costs in respect to hedging arrangements, and other related costs linked directly or indirectly to the financing, such amounts to be evidenced by a “final statement of account” issued by the Financing Entity; calculated to the moment of occurrence of the Change of Control as if the Financing Entity accelerated the loan as a result of the respective event of default.

## ANNEX No. 17

### **to the Agreement on Transfer of Movable Assets for Consideration and Subsequent Lease Back of Means of Transport dated [•]**

#### **CONTRACTUAL PENALTY FOR BREACH OF LESSEE**

The terms defined in the Agreement shall have the same meaning in this Annex.

Under Section 17.7, the amount of the contractual penalty to be paid by the Seller to the Buyer is a total of A+B where:

A= outstanding amount of payments to be made to the Financing Entity by the Buyer funding the Buyer in order to buy the Railway Carriages including but not limited to principal, accrued interest, default interest, early redemption penalties and break funding costs, any costs in respect to hedging arrangements, and other related costs linked directly or indirectly to the financing, such amounts to be evidenced by a “final statement of account” issued by the Financing Entity; calculated to the moment of the breach of the Lessee that allows the Lessor to terminate the Agreement in the part relating to the Lease; as if the Financing Entity accelerated the loan as a result of the respective event of default

B= amount representing the amount of Rent valid at the due date of the contractual penalty under Section 17.7 for all Leased Carriages for a period of four calendar months

The Parties agreed that in case of due and timely payment of the contractual penalty under Section 17.7 by the Lessee to the Lessor (and only in such case), within 6 months from payment of the contractual penalty to the Lessor, the Lessor shall be obliged to return to the Lessee an amount calculated as  $(C \times D) - (C \times E)$ , where

C= total tonnage of metal components in the Expert Opinion in respect to the Leased Carriages returned by the Lessee to the Lessor in accordance with Section 18.1

D= value of scrap enumerated in EUR/t corresponding to the Scrap price index (demolition scrap) issued by EUROFER – The European Steel Association published on the website: <http://www.eurofer.org/Facts%26Figures/Scrap%20price%20index.fhtml#demoscrap> for the period in which the Leased Carriages have been returned by the Lessee to the Lessor in accordance with Section 18.1

E= EUR 25 (twenty-five euro)

The Parties furthermore agreed that the amount to be returned by the Lessor to the Lessee as stated above shall never exceed the amount of figure A as described above.

## ANNEX No. 18

### to the Agreement on Transfer of Movable Assets for Consideration and Subsequent Lease Back of Means of Transport dated [•]

#### UNJUST ENRICHMENT IN CASE OF 19.8 (iii)

The terms defined in the Agreement shall have the same meaning in this Annex.

Under Section 19.8.1.4, the amount to be paid by the Seller to the Buyer is a total of A+B+C where:

- A= outstanding amount of payments to be made by the Buyer to the Financing Entity funding the Buyer in order to buy the Railway Carriages including but not limited to principal, accrued interest, default interest, early redemption penalties and break funding costs, any costs in respect to hedging arrangements, and other related costs linked directly or indirectly to the financing, such amounts to be evidenced by a “final statement of account” issued by the Financing Entity calculated to the day when the Financing Entity: (a) declares default of the Facilities Agreement in writing due to the situation under Section 19.8 under the letter (iii) hereof and (b) provably sends such written declaration of default to the Buyer by means of Slovak Post Office (*Slovenská pošta, a.s.*).
- B= outstanding unpaid principal and accrued interest of the shareholder loans granted to the Buyer based on the EUR 10,000,000 Loan Agreement concluded by the Seller as the lender and the Buyer as the borrower on [•], and the EUR 20,000,000 Loan Agreement concluded by the company AAE Wagon a.s. as the lender and the Buyer as the borrower on [•]; calculated to the day when the Financing Entity: (a) declares default of the respective loan agreement in writing due to the situation under Section 19.8 under the letter (iii) hereof and (b) provably sends such written declaration of default to the Buyer by means of Slovak Post Office (*Slovenská pošta, a.s.*). For the purposes of calculation of the amount under this letter B, the Parties shall take into account the wording of the loan agreements described in this letter B in their initial signed wording, unless agreed otherwise.
- C= €10,400,000 plus accrued interest from the Transfer Date at an assumed rate of 15% *per annum* less any dividends paid to the shareholders of the Buyer by the Buyer in that same time period.