

**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

18. May 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: Ing. Vladimír Lupták, Chairman of the Board of Directors

Ing. Jaroslav Daniška, Vice-Chairman of the Board of Directors

(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: Ing. Libor Briška, Chairman of the Board of Directors

Ing. Pavel Holomek, Member of the Board of Directors

(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 9 October 2014 and on 26 February 2015 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 15 May 2015 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 [REDACTED], IBAN [REDACTED], SWIFT [REDACTED] 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. 35/2015 prepared by the Expert Institution in the matter of determining the general value of the assets according to the state as at 30 November 2014, 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 that will be 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 [REDACTED], IBAN [REDACTED], BIC [REDACTED] 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 1st 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 1st 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 16th 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 46th 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 5th 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 61st 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 31 October 2015;
- 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 31 October 2015;
- 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: [will be notified in written after signing]
title: [will be notified in written after signing]
phone: [will be notified in written after signing]
e-mail: [will be notified in written after signing]

20.1.2 on behalf of the Seller/Lessee:

name: [will be notified in written after signing]
title: [will be notified in written after signing]
phone: [will be notified in written after signing]
e-mail: [will be notified in written after signing]

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.

<p>ON BEHALF OF Železničná spoločnosť Cargo Slovakia, a.s.</p>	<hr/> <p>Name: Ing. Vladimír Lupták Title: Chairman of the Board of Directors</p>
	<hr/> <p>Name: Ing. Jaroslav Daniška Title: Vice-Chairman of the Board of Directors</p>
<p>ON BEHALF OF Cargo Wagon, a.s.</p>	<hr/> <p>Name: Ing. Libor Briška Title: Chairman of the Board of Directors</p>
	<hr/> <p>Name: Ing. Pavel Holomek Title: Member of the Board of Directors</p>