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**CONCESSION AGREEMENT**

**ON THE TRANSFER OF THE ARMENIAN RAILWAY  
SYSTEM TO THE “SOUTH-CAUCASIAN  
RAILWAY” CLOSED JOINT-STOCK COMPANY  
CREATED BY “RUSSIAN RAILWAYS” CLOSED  
OPEN JOINT-STOCK COMPANY**

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**February 13, 2008**

## CONCESSION AGREEMENT

### ON THE TRANSFER OF THE ARMENIAN RAILWAY SYSTEM TO THE “SOUTH-CAUCASIAN RAILWAY” CLOSED JOINT-STOCK COMPANY CREATED BY “RUSSIAN RAILWAYS” CLOSED OPEN JOINT-STOCK COMPANY

This Agreement is made on the 13<sup>th</sup> day of February of the year 2008 in the city of Yerevan.

BETWEEN:

Republic of Armenia (hereinafter referred to as “Concedent”), represented by Minister of Transport and Communication of the Republic of Armenia Mr. A. Manukyan, acting based on the decree N. 83-A by the Government of the Republic of Armenia dated 07.02.2008, “South-Caucasian railway” closed joint-stock company (hereinafter referred to as the “Concessionaire”), domiciled at Tigran Mets-50, Yerevan, 0005, represented by its General Director Mr. A.P. Kuznetsov and “Russian railways” open joint-stock company (hereinafter referred to as “Guarantor”), domiciled at Novaya Basmanaya-2, Moscow, Russian Federation, 107174, represented by V.I. Yakunin, (hereinafter referred to collectively as “Parties” and separately as “Party”).

Whereas by virtue of the decree N. 17-A by the Government of the Republic of Armenia dated 17.01.2008 “Russian railway” open joint-stock company was declared the winning bidder in tender for the concession of Armenian Railway system and Armenian railway system is transferred to the “South-Caucasian railway” closed joint-stock company under a Concession Agreement,

The Parties have agreed as follows:

#### **PART 1 – MAIN CONCEPTS USED IN THE AGREEMENT**

##### **Article 1-1: Definitions**

In this Agreement:

**Agreement** means this agreement and its schedules;

**Applicable Law** means the legal acts of the Republic of Armenia;

**Authorized Body** means the Ministry of Transport and Communication of the Republic of Armenia;

**Business Day** means any day excluding days defined as non-working according to the Applicable law;

**Date entry into force of this Agreement** means the day, on which this Agreement takes effect for the Parties, which is the date stipulated in Article 3-2 hereof for fulfillment by the Parties of their obligations and which date cannot

exceed the period of one hundred and twenty (120) days from the signing of this Agreement, unless this period is extended as provided under Article 3-3.

**Commencement date of the Concession activities** means the day of starting by the Concessionaire of the Concession activities, which is the day of meeting by the Parties conditions as stipulated under Article 4-1 below and cannot be later than sixty (60) days from the taking effect of this Agreement.

**Concession assets** means railway transport facilities, movable and immovable property transferred to the Concessionaire under this Agreement except for the Rolling stock.

**Concession Activities** means:

- a) the use, management, operation, maintenance, repair and improvement of the Concession Assets;
- b) the conduct of Railway Operations and the provision of Railway Transport Services on the Railway Network;

**Dispute** means any disagreement or difference between the Parties arising out of this Agreement except for disputes related to the licensing, which shall be regulated as provided under the “Law on licensing” of the Republic of Armenia;

**Significant decrease in service** means a situation, where in any period of three years the Concessionaire transports in each given month less than the greatest of the following volumes:

- a) seventy-five (75) per cent of average monthly carriage forwarded by the Concessionaire during a comparable period in previous three (3) years.
- b) seventy-five (75) per cent of average monthly carriage forwarded by “Armenian Railway” closed joint-stock company during a comparable period in 2005-2007.

**Railway Transport Services** means any freight transport services and/or passenger transport services;

**Railway network** means technology complex, which includes railway tracks of general use and other structures, railway stations, power supply facilities, communication networks, signaling systems, engineering facilities, information and traffic control systems, other buildings, facilities, structures and equipment, which account for the performance of activities by such complex.

**Railway Operations** means the technical and commercial operation of the Concession Assets as well as the control of train circulation on the Railway Network;

**Rolling Stock** means any locomotive, coach, wagon or other vehicle that can be used on a railway track;

**Re-tendering Costs** means the reasonable and proper costs incurred by the Concedent in carrying out a tender process to engage a new railway transport service provider;

**Substantial Financial Harm** means an amount equal to or greater than twenty (20) percent of the Gross Revenue earned by «Armenian railway» closed joint-stock company in 2006; and

**Trade Debt** means any sum or payment attributed to “Armenian Railway” closed joint-stock company before Commencement date of Concession activities;

**Unfavorable change in law** means any change in the Applicable law in force on the date, on which this Agreement is signed containing discrimination solely in relation to the Concessionaire and/or railway transport which:

- 1) increases the tax liabilities of the Concessionaire;
- 2) makes Concessionaire subject to additional taxes and/or payments, including obligation to pay customs, import and export duties;
- 3) introduces limitation for foreign currency operations and capital repatriation;
- 4) confiscates the property owned by the Concessionaire;
- 5) imposes restrictions or limitations on the export or import of assets or information to and from the Republic of Armenia;
- 6) limits or denies the Concessionaire’s rights in relation to the Concession Assets;
- 7) introduces new technical standards and regulatory acts;
- 8) imposes any limitations on actions performed under this Agreement or necessary for its implementation.
- 9) makes any changes in the Law of the Republic of Armenia “on Railway Transport” HO-293-N of 28.11.07, which renders impossible earning of reasonable profit by the Concessionaire.

Where as result of such changes in law:

- (i) render any material undertaking of this Agreement becomes impossible or is declared void;
- (ii) make it unlawful for the Concessionaire to make or receive any payment, to perform any of its obligations under this Agreement or make it impossible to enjoy any property right hereunder it;
- (iii) causes the Concessionaire Substantial Financial Harm.

**Secured obligations** means the obligations of the Concessionaire under this Agreement, whose performance is secured by the Guarantor.

**Guarantee** has meaning given under Article 2-10 of this Agreement;

**Payment request** means the written notice of the Concedent to the Guarantor with the request for payment against secured obligations, which are not discharged by the Concessionaire at the time such request is made including the account details, to which such payments are to be transferred. The payment request must specify the amount payable and reasons for seizure.

## **Part 2 – General provisions**

### **Article 2-1: Object of the Concession Agreement**

1. The Concedent undertakes in accordance with this Agreement to transfer to the Concessionaire the right to possess, use, manage, operate, maintain, repair and improve where necessary the Concession Assets, which are the property of the Concedent, whereas the Concessionaire undertakes to possess, use, manage, operate, maintain, repair and improve the Concession assets where necessary.
2. In accordance with this Agreement the Concession Assets are transferred to the Concessionaire by the Concedent according to a delivery-acceptance certificate.
3. The Concedent confirms to the Concessionaire that Concession assets and their supporting documents shall comply with warranties given in Article 2-7 on the day of their transfer.
4. The obligation of the Concedent to transfer the Concession Assets to the Concessionaire is considered to be fulfilled upon the acceptance of those by the Concessionaire and the signing by the parties of the delivery-acceptance certificate.
5. Unjustified refusal to sign the delivery-acceptance certificate by any of the parties is deemed to be a breach of this Agreement.
6. The Concedent transfers to the Concessionaire the documents relating to the Concession Assets, which are necessary for the performance of this Agreement, upon signature of the delivery-acceptance certificate for the transfer of Concession Assets.
7. The property rights of the Concessionaire to the assets included in Concession Assets that require state registration originate from the moment of their state registration in accordance with the Applicable law.

8. The state registration of Concessionaire's property rights in respect of the Concession Assets shall be made at the cost of the Concessionaire.

9. The Concessionaire shall include the Concession Assets on its balance sheet and shall make deductions for depreciation starting from the time of the state registration of the immovable assets.

10. The risk of accidental loss or damage of the Concession Assets shall be borne by the Concessionaire, except for the cases when it is the consequence of force majeure or circumstances beyond the control of the Concessionaire.

11. For the purpose of complying with the terms and conditions of this Agreement, the Concessionaire shall implement the investment program submitted in its Technical Proposal and included as Schedule 1 of this Agreement.

### **Article 2-2: Sale of the Rolling Stock**

The Concedent sells and the Concessionaire purchases the Rolling stock on terms specified under Part 11 of this Agreement in accordance with the Sale and Purchase Agreement.

### **Article 2-3: Provision of Passenger Transport Services**

1. In 2008 the Concessionaire undertakes to provide passenger transport services not less than forwarded by "Armenian Railway" closed joint-stock company during a comparable period in 2007. Beginning from 2009 the Concessionaire shall agree on yearly basis with the Concedent on minimal annual volumes and directions.

2. The Concedent shall subsidize (partially compensate) the annual losses incurred by the Concessionaire in respect of Passenger Transport Services in agreed volumes and directions as evidenced by calculation submitted by the Concessionaire confirmed by an independent auditor. The agreed amount of subsidy for 2009-2010 shall be 10 per cent with 15 per cent for 2011-2012, 20 per cent for 2013, 25 per cent for 2014-2015, and 30 per cent from 2016 to 2038 of the losses incurred on Passenger Transport Services. The Concessionaire shall submit to the Concedent the calculation of the subsidy and its payment account by 1<sup>st</sup> of May following the reporting year. The payment of the subsidy by the Concedent is made by 31<sup>st</sup> of May following the reporting year. In the event of subsidy provided under this clause the amount of annual subsidy cannot exceed or equal the variable annual concession fee announced for that particular year.

### **Article 2-4: Concessionaire to conduct Concession Activities under Applicable Law**

At all times during the Concession Period, the Concessionaire shall be governed by and perform its activities in accordance with the Applicable Law.

## **Article 2-5: Concessionaire to conduct Concession Activities at own cost and risk**

1. Concessionaire hereby acknowledges and agrees that it has carried out its due diligence with respect to the Concession Activities, including the Concession Assets, and any technical or financial information provided by the Concedent and based upon such review has already exercised whatever right or recourse it may have had, including any adjustment in the Concession Fees and the purchase price of the Rolling stock and accepts without reservations the Concession Activities as they exist on the day this Agreement is signed.

2. The Concessionaire shall operate the Freight Transport Services as well as Passenger Transport Services as provided under Article 2-3.

## **Article 2-6: Concessionaire to Obtain Required Consents and Licenses**

1. The Concessionaire shall be responsible at its own cost and risk for implementing in a timely fashion all requirements imposed by the Applicable law and to obtain licenses, approvals, consents, permits as well as perform state registration of its property rights.

2. If necessary the Concedent shall assist the Concessionaire as it can within its powers in obtaining any required consent, license, approval or permission. Any direct justified expenses incurred by the Concedent in rendering such assistance are subject to prompt reimbursement by the Concessionaire.

## **Article 2-7: Warranty as to Undisturbed Possession and Use**

1. The Concedent shall warrant:

a) to grant to the Concessionaire right of possession and use in respect of the Concession Assets for the entire period of the Concession Activity;

b) to sell the Rolling Stock to the Concessionaire in accordance with the provisions of this Agreement;

c) the Concession Assets and the Rolling Stock are owned by the Concedent and can be legally transferred from the Concedent to the Concessionaire and are free from any encumbrances and rights of third parties.

d) neither the Concedent, nor the Authorized Body, nor any authority will take any acts to the detriment of the rights the Concessionaire has under this Agreement in respect of the Concession Assets and the Rolling Stock, except as expressly authorized under this Agreement or Applicable Law;

2. The Concedent shall consider as Special event any breach of the guarantee referred to in paragraph 1 of this Article.

The Concedent will prevent any potential action instituted against the Concessionaire by any third party calling in question the Concedent's ownership and its right to transfer Concession Assets to the Concessionaire.

#### **Article 2-8. Construction and reconstruction of railway transport facilities**

1. The Concessionaire is entitled, upon prior agreement with the Authorized Body to construct and reconstruct railway transport facilities, including Concession Assets in accordance with the Applicable law, except for reconstruction works and cases that result in changing the intended destination of the railway transport facility.

2. The Concessionaire shall apply the following procedure in implementing construction and reconstruction works on the railway transport facilities:

a) the Concessionaire shall submit to the Concedent a written request for approval with enclosure of required documents;

b) the Authorized Body shall review the request and not later than thirty (30) days from receiving such request shall respond to the Concessionaire in writing either approving or rejecting the request. In the event of no response to the said request in the period as provided above, such request shall be considered approved;

c) the Authorized Body shall only be entitled to reject the request if, in the reasonable opinion of the Authorized Body, implementing such request would:

(i) result in a breach of any requirement in the Applicable Law;

(ii) adversely impact the safety of the Concession Assets and Rolling Stock users, employees of the Concessionaire or third parties;

3. If a dispute between the Parties arises regarding the reasons of refusal, such dispute shall be resolved according to Part 18 of this Agreement.

4. The Concessionaire is entitled to engage third parties in the construction and reconstruction of railway transport facilities and shall be responsible for all actions performed by them.

5. The Concessionaire is responsible for preparing at its own cost project documentation necessary for the construction and reconstruction of the railway transport facilities and obtaining all necessary approvals as required under the Applicable Law.

6. In the event of any non-compliance to the Applicable being discovered in the project documentation submitted for the construction or reconstruction of railway transport facilities, the Concessionaire shall immediately inform the Authorized Body and cease the works related to construction/reconstruction until appropriate



changes are made to the project documentation. In this case changes to the project documentation shall be made at the Concessionaire's expense.

7. In the event the Concessionaire discovers that construction, reconstruction and putting into operation of the Concession Assets within the stipulated period is not possible, the Concessionaire shall immediately notify the Authorized Body to obtain approval for further actions.

8. The completion by Concessionaire of the construction and reconstruction of the railway transport facilities shall be formalized through drawing up of a document signed by the parties concerning the fulfillment by the Concessionaire of its obligations for construction/reconstruction of the railway transport facilities.

9. The expenses associated with performing by the Concessionaire of its obligations under this Agreement, including the expenses for the construction and reconstruction of Concession Assets shall be borne by the Concessionaire.

### **Article 2-9: Activities of other operators**

The Concessionaire must provide access to the railway network for other operators in accordance with the Applicable law.

### **Article 2-10: Guarantee**

1. Starting from the signing of this Agreement the Guarantor shall provide a guarantee and assume an unconditional and irrevocable obligation to be liable for the performance of secured obligations.
2. In the event of receiving a payment request the Guarantor undertakes unconditionally and irrevocably to pay against the secured obligations not later than within thirty (30) business days to the extent and in aggregate amount not exceeding the amount stipulated under paragraph 5 of this Article.
3. The payment obligations of the Guarantor stipulated under paragraph 2 of this Article shall be made to the account indicated in the payment request submitted by the Concedent by means of transfer of the sum of secured obligations indicated in the payment request.
4. If after submitting the payment request any amount is actually received against the discharge of the secured obligations in part or in full, then the Concedent not later than within fifteen (15) business days shall inform the Guarantor of the receipt and use of the said amount.
5. In the event of default on secured obligations or their inadequate discharge, the Guarantor shall pay to the Concedent under this Agreement an aggregate amount not exceeding 57,000,000 (fifty-seven million) United States dollars.
6. The sum of funds paid by the Guarantor to the Concedent during the term of the guarantee cannot exceed the aggregate amount of 57,000,000 (fifty-seven million) United States dollars.
7. The term of the Guarantee shall terminate along with discharge by the Concessionaire of all its obligations under this Agreement.

8. The Guarantor may not assign, cede or otherwise transfer to other persons in part or in full its rights and obligations under the Guarantee without the consent of the Concedent.
9. If the payments made by the Guarantor under this Article are considered unwarranted in accordance with the Applicable law, the Concessionaire is entitled to set that sum off against its further obligations under this Agreement to the extent of the unwarranted payments made by the Guarantor.

### **Part 3 – Conditions for the entry into force of the Agreement**

#### **Article 3-1: Entry of the Agreement into force**

This Agreement becomes legally binding upon the parties thereto on the day when all of the conditions as set out in Article 3-2 have been met by the parties.

#### **Part 3-2: Conditions for the entry into force of the Agreement**

1. The Concessionaire shall:

a) Sign the Sale and Purchase Agreement and pay the price of the Rolling Stock in accordance with Part 11 hereof;

b) pay the Entry Fee;

c) apply to obtain a license for implementing railway transport activities in accordance with the Applicable Law;

e) submit to the Authorized Body a certified copy of the resolution of the Concessionaire's board of directors authorizing the Concessionaire to enter into this Agreement;

f) sign the delivery-acceptance certificate in respect of the Concession Assets as provided in 2-1 hereunder,

2. The Concedent shall:

a) fulfill its obligations as stipulated under Articles 2-1, 6-3 and 9-4;

b) shall sign on its behalf the Sale and Purchase Agreement for the Rolling Stock;

c) submit a certified copy of the resolution passed by the Government of the Republic of Armenia authorizing to sign this Agreement.

#### **Article 3-3: Postponement of the Date of Entry into Force of this Agreement**

1. If this Agreement does not enter into force within one hundred and twenty (120) days following the signature of this Agreement, the Parties may by mutual agreement postpone the moment of entry into force of this Agreement to a later date or terminate this Agreement. In case such agreement is absent, this Agreement shall terminate.

2. Termination of this Agreement under paragraph 1 of this article shall result in this Agreement being deemed null and void without any liability attaching to either the Concedent or the Concessionaire or the Guarantor. The purchase price of the Rolling Stock or the Entry Fee, if already paid to the Concedent, shall be promptly returned to the Concessionaire. The Rolling stock handed over to the Concessionaire shall be promptly returned to the Concedent.

3. The Concessionaire and the Guarantor acknowledge and agree that nothing of what is provided for in paragraphs 1 and 2 affects the possible forfeiture of the Proposal Security in amount of USD 250,000 required of all bidders under paragraph 2.3 of the Request for Proposals, which is a matter distinct and separate from this Agreement.

#### **Part 4 - Conditions for the Commencement Date of the Concession activities and Concession Period**

##### **Article 4-1: Condition for the commencement of Concession activities**

The conditions for the commencement of Concession activities are :

- a) receipt of the Rolling stock by the Concessionaire.
- b) obtaining by the Concessionaire of a license for railway transport operation;

##### **Article 4-2: Term of this Agreement and Termination Date**

The term of this Agreement is set for a period of thirty (30) years starting from the Commencement date of the Concession activities. Termination Date of this Agreement will fall, unless otherwise extended under the provisions of article 4-3 below, on the day following the thirtieth (30<sup>th</sup>) anniversary of Commencement Date of the Concession activities.

##### **Article 4-3: Extension of the term of this Agreement**

The thirty (30) years term of this Agreement set at article 4-2 above may be extended by mutual consent of the Parties for an additional ten (10) years on such new terms and conditions as agreed by the Parties.

2. The Concessionaire must notify the Concedent or the Concedent must notify the Concessionaire, as the case may be, of its intention to so extend the term of

this Agreement no later than six (6) months prior to the twentieth (20<sup>th</sup>) anniversary of Commencement Date of the Concession activities.

3. In the event the original thirty (30) years term of this Agreement is extended for an additional ten (10) years under paragraph 1 above, the new Termination Date shall be set on the day following the fortieth (40<sup>th</sup>) anniversary of Commencement Date of the Concession activities.

#### **Article 4-4: Transition Period**

During the period between the entry into force of this Agreement and Commencement Date of the Concession activities the Concessionaire shall coordinate with the Authorized Body all aspects of the transfer of the Concession Activities so as to ensure full continuity of Railway Operations and Railway Transport Services as of Commencement Date of the Concession activities.

### **Part 5 – Concession Fees**

#### **Article 5-1: One-time entry fee**

The Concessionaire shall pay to the Concedent a one-time entry fee in the amount of 1,700,000,000 (one billion seven-hundred million) Armenian Drams within thirty (30) business days from signing of this Agreement.

#### **Article 5-2: Annual Variable Fee**

1. The Concessionaire shall pay to the Concedent annual variable fee for each calendar year during the term of this Agreement in the amount of two (2) per cent of the Concessionaire's gross revenue except for revenue earned from Passenger Transport Services. The calculation of the fee is submitted before May 1 of the year following the reporting year and the payment shall be made before May 31. The Concedent is entitled to verify the authenticity of the calculation so submitted by means of invited private auditors and accordingly submit to the Concessionaire a request for additional payment.
2. For the purposes of the application of paragraph 1 above the gross revenue is calculated in accordance with the methodology as provided under the accounting legislation of the Republic of Armenia (where the revenue is considered received irrespective of its payment).

#### **Article 5-3: Late Payments**

If the Concessionaire is late in payment of its Entry Fee and Variable Concession Fee, it shall owe the Concedent interest of 0,01 percent chargeable for each day of delay on the overdue amount from the date the payment became due till the date of actual payment.

### **Part 6 – Personnel of the Concessionaire**

### **Article 6-1: Concessionaire's liability for the selection of personnel**

1. The Concessionaire shall be obliged to employ all the personnel of the “Armenian Railway” closed joint-stock company, except for persons at the retirement age as on Commencement date of the Concession activities, if they meet the minimum professional requirements established by the Concessionaire, which shall be responsible for all kinds of wages, pensions and other payments under the Applicable Law moving forward.
2. The Concessionaire shall be obliged to maintain the number of personnel for the first three years of the Concession activities at the level of 4,300 employees.

### **Article 6-2: Qualified Personnel**

The Concessionaire shall ensure that its employees, its employed contractors and sub-contractors are properly qualified, experienced and competent to perform the work assigned to them and, where appropriate, duly licensed. If so requested by the Authorized Body, the Concessionaire shall provide all necessary evidence of the competency of such persons.

### **Article 6-3: Transfer of employees**

1. Not later than sixty (60) Business Days after signing this Agreement, the Concedent shall provide to the Concessionaire the lists of employees of “Armenian Railways” closed joint-stock company including at least the following information regarding each employee:

- a) Name, surname, patronymic, date of birth, place of residence, language proficiency, nationality, education, position, date of employment with «Armenian Railway» closed joint-stock company and list of positions held within the period of employment;
- b) current salary;
- c) social benefits, allowances and other obligations of “Armenian Railway” closed joint-stock company in respect of that employee.

2. On the Commencement Date of the Concession activities the Concessionaire shall furnish to the Authorized Body a list of employees of “Armenian Railway” closed joint-stock company's, which it has selected for employment.

### **Article 6-4: Parties' Obligations in Respect to «Armenian Railway» closed joint-stock company's Former Employees**

1. The Parties agree that any and all payments and benefits owed to Non-Transferring Employees are the responsibility of the Concedent. Payments and benefits owed to the employees transferred to the Concessionaire on the date of

such transfer are also the responsibility of the Concedent irrespective of when those are to be paid.

2. The Concedent shall indemnify the Concessionaire for any costs incurred through claims and liabilities arising through any breach or default by the Concedent in respect of any of its obligations under paragraph 1 hereof, including such claims of the Transferring Employees, which do not relate to circumstances or conditions arising prior to the Commencement Date.

3. In the event the Concessionaire employs within a period of six (6) months from Commencement Date of the Concession activity a Non-Transferring Employee, the Concessionaire shall so inform the Authorized Body and shall pay to the Concedent a sum equivalent to any monies equivalent to the sums paid to that Non-Transferring Employee by virtue of its obligations under paragraph 1 hereof.

#### **Article 6-5: Trade Unions and Employment Contracts**

1. The Concessionaire shall recognize the trade unions representing the interests of Transferring Employees in accordance with the Applicable law.

2. Until such time as the Concessionaire and the Transferring Employees agree on new employment contracts, the Concessionaire shall honor the terms and conditions of the employment contracts of the Transferring Employees with “Armenian Railway” closed joint-stock company as they existed on the date of transfer. The new employment contracts shall comply in all respects with Applicable Law while salaries, entitlements to pension contributions and other payments shall not impair the rights of the transferring employees in comparison with their employment contracts with “Armenian Railway” closed joint-stock company as they existed on the date of transfer.

3. Nothing contained in paragraphs 1 and 2 of this article shall oblige the Concessionaire to employ any Transferring Employee in the same position or level of ranking as the one he or she was employed at by «Armenian Railway» closed joint-stock company on or before Commencement Date.

#### **Part 7 – Previous Contractual Obligations and Liabilities**

##### **Article 7-1: Warranty for Previous Contractual Liabilities**

The Concedent warrants to the Concessionaire that it will assume responsibility for all debts incurred by it or the «Armenian Railway» closed joint-stock company under any contract or agreement entered into with a third party or parties prior to Commencement Date of the Concession activities, including without limitation to the extent that performance by the third party may not be achieved until after the Commencement Date of the Concession activities.

##### **Article 7-2: Obligations of Concessionaire**

Concessionaire shall:

a) perform any obligations of «Armenian Railway» closed joint-stock company which accrue before the Commencement Date of the Concession activities with respect to any contract or agreement listed in Schedule 2 of this Agreement;

b) indemnify the Concedent for any loss, liability and cost (including monies paid as a result of defending or settling a claim), which the Concedent may incur as a result of the Concessionaire's faulty or negligent performance (including non-performance) under sub-paragraph (a) hereof, provided that the Concedent will not be entitled to claim any indemnification from the Concessionaire prior to the Commencement Date of the Concession activities.

### **Article 7-3: Concedent's responsibility to collect its Trade Debt**

The Concedent is responsible at its own cost and risk for collecting any of its Trade Debts.

### **Article 7-4: Material liability**

The Concedent warrants indemnifying the Concessionaire for damages, losses and expenses incurred by the Concessionaire as a result of any suit/claim brought by any third party in relation with the right to transfer the use of Concession assets and/or ownership of the Rolling stock to the Concessionaire.

## **Part 8 – Railway Operations and Railway Transport Services**

### **Article 8-1: Main Obligations of the Concessionaire and performance parameters**

1. Starting from the Commencement Date of the Concession activities and throughout the Concession Period the Concessionaire shall:

a) conduct Railway Operations in accordance with the Applicable Law;

b) provide safe Rail Transport Services of the due quality in accordance with the Applicable Law, and shall endeavor that they are provided in an efficient and timely manner;

c) provide the Passenger Transport Services in accordance with Article 2-3 hereof.

d) carry out the operating plan submitted by the Guarantor in its Technical Proposal and included as Schedule 1 of this Agreement.

2. Concessionaire shall ensure the operational condition of the tracks and trains. Concessionaire shall maintain the level of current average regulation speed at 30 km/h and its gradual increase.

3. No later than within twelve (18) months the Commencement date of the Concession activities, the Concessionaire shall propose to the Authorized Body minimum speed limits for eight (8) separate segments of the Railway Network as agreed previously.

4. The minimal speed limits proposed by the Concessionaire should be agreed on with the Authorized body.

5. Investment programs implemented by the Concessionaire shall be also directed at improving the minimal speed parameters.

6. The Concedent shall supervise on yearly basis the compliance by the Concessionaire with minimal speed parameters as set out in its investment programs.

7. If the minimal speed limits as proposed under paragraph 3 of this Article are not agreed on with the Authorized body in periods stipulated under this Agreement, then the Parties shall submit that matter to the examination of a railway transport council or other railway technical expert in the CIS countries, Latvia, Lithuania, Estonia, Bulgaria and Finland. The expenses associated with such dispute shall be borne by the Concedent and Concessionaire in equal proportions.

#### **Article 8-2: Concessionaire's freedom of activity**

The Concessionaire may implement any business or commercial activity not prohibited by the Applicable Law.

#### **Article 8-3: Freedom to Conduct Business on a Commercial Basis**

The Concessionaire shall be free to determine the nature, configuration, technical and commercial organization, including employment requirements, necessary to carry out its obligations under Article 8-1 in accordance with this Agreement and Applicable Law,.

#### **Article 8-4: Rates for Railway Services**

1. The Concessionaire shall be free to set its own rates for Rail Transport Services, subject to the following exceptions:

a) access charges;

p) state of emergency declared in the Republic of Armenia;

b) rates for strategic commodities carried by railway as indicated in the list established by a decree of the Government of the Republic of Armenia;



c) rates for the international transport of freight by rail from or to Armenia may be regulated under an international treaty, to which the Republic of Armenia is a party.

2. Any unfavorable change in tariff rates set out in subparagraph (a) of paragraph 1 of this Article as compared to tariff rates in effect at the time this Agreement is signed, shall be deemed unfavorable change in law (whether or not these rates are established otherwise in accordance with the Applicable law) and shall result in consequences provided under Part 16 of this Agreement.

#### **Article 8-5: Concedent's Right to Step-In and Conduct Concession Activities**

1. Without prejudice to other rights of the parties under this Agreement, except as a result of a Force Majeure affecting the Concessionaire, the Concedent may step-in and conduct the Concession Activities in lieu and place of the Concessionaire when the latter ceases to provide Rail Transport Services for a period of fifteen (15) consecutive days or fails in any material aspect to observe provisions of Applicable Law or of this Agreement requiring to provide safe Rail Transport Services for the same period of time.

2. If Concedent decides to exercise its rights under paragraph 1 of this Article, it may with a twenty-four (24) hour notice to the Concessionaire take control over the Concession assets and the Rolling stock and operate the railway and provide railway transport services directly or through third persons.

3. If the Concedent exercises its rights under paragraph 1, then the Concessionaire shall be obliged to indemnify the Concedent for all reasonable expenses incurred to exercise its step-in rights in the amount of actual gross proceeds collected from the users of the Concession assets and Rolling stock. The Concedent shall indemnify the Concessionaire for any damage caused to the Concession assets or Rolling stock, which occurred during the step-in period through negligent railway operation.

4. In the event the Concedent exercises its rights under paragraph 1 hereof, it will jointly negotiate with the Concessionaire, as soon as practical, the modalities of an end to the exercise of its step-in rights and the date and conditions upon which the Concessionaire will be entitled to resume the Concession Activities. If the circumstances set out in paragraph 1 above terminate before expiry of the agreed step-in period, the Concedent shall immediately cease exercising of its step-in right and all rights of the Concessionaire under this Agreement shall be restored.

5. If Parties do not agree otherwise, the Concedent shall be obliged to ensure collection of fees and payments from the users of the Concession assets and Rolling stock during the step-in period in the same manner and with the same diligence as the Concessionaire. The Concessionaire shall be obliged to transfer in full and without remuneration such payments to the account of the Concessionaire within ten (10) business days from receiving such payments except for expenses stipulated under paragraph 3 of this Article.

6. If the Concessionaire has exercised its step-in right unwarrantedly, then it shall be obliged to indemnify the Concessionaire for damages and losses caused by its actions, including lost profit.

## **Part 9 – Ownership and Management of Assets**

### **Article 9-1: Ownership of the Immovable Assets**

1. The Concedent is the owner of the Concession Assets.
2. The Concessionaire may sell the property included into the Concession assets with a written approval of the Authorized body, and proceeds from such sales of the Concession assets are to be transferred to the Concedent, except for reasonable expenses incurred to set up such sale.
3. The Concessionaire may sell recovered, restored and raw materials made available as a result of any maintenance, repair or improvement to the Concession Assets. Proceeds of such sales belong to the Concessionaire.
4. The Concessionaire may sell with consent of the Concedent the property included into the Concession assets and invest the proceeds from such sales into the development of the infrastructure.

### **Article 9-2: Maintenance, repairs and necessary improvements**

The Concessionaire is responsible for performing at its expense maintenance, repair and improvement of Concession Assets in compliance with the requirements of the Applicable law and in accordance with Schedule 1 to this Agreement.

### **Article 9-3: Return of Concession Assets in Good Condition**

1. On Termination Date, the Concessionaire shall return to the Concedent the Concession Assets in such condition as to enable uninterrupted continuation of Railway Operations and Rail Transport Services for a period of at least three (3) years without investment other than normal maintenance. One hundred and eighty (180) days prior to the termination of this Agreement the Concessionaire shall submit to the Concedent the list of Concession assets, which it is still using, which shall at least include details of their location and condition.
2. If the Concedent reasonably considers that the Concession Assets have been returned in a condition that does not meet the conditions set out in paragraph 1 hereof, the Concessionaire will be obliged to carry out at its own expense such necessary repair and reconstruction as will be requested by the Concedent.
3. All costs and expenses associated with the handback of the Concession Assets shall be borne by the Concessionaire.

### **Article 9-4: Procedure for providing land parcels to Concessionaire**

1. The Concedent undertakes to sign or assist in the signing of contracts with the Concessionaire on the free use of land parcels and provide such land parcels before the Commencement Date of the Concession activities.

2. The description of land parcels granted to the Concessionaire with a right of free use, the state registration number of rights to these land parcels, their size, location, as well as the list of documents certifying the Concedent's rights to the same will be provided to the Concessionaire on the Commencement date of the Concession activities.

3. The Concedent warrants that the land parcels mentioned in paragraph 1 above :

a) are free from any encumbrances or rights of third persons,

c) may be used in accordance with Applicable Law by the Concessionaire under this Agreement without any additional acts or conditions relating to legal or factual status of such land parcels.

c) in case any physical obstacle to use are discovered, it will eliminate such obstacles in accordance with the Applicable law.

4. The term of contracts on the right of free use of land parcels granted to the Concessionaire shall coincide with the term of this Agreement.

5. The Concessionaire may lease land granted to it with a right of use without the consent of the Authorized body.

6. Termination of this Agreement is a legal basis for terminating the contract on granting the Concessionaire the right of free use of such land parcels.

7. As stipulated under article 2-8, the Concessionaire may with approval of the Concedent do construction and other development activities on the land parcel made available to it.

#### **Article 9-5: Acquisition by the Concessionaire of other Immoveable Property**

The acquisition of other immoveable property by the Concessionaire is not subject to regulation by this Agreement. Any contract related to the said acquisitions is independent of this Agreement.

#### **Part 10 – Use of Concession Assets by Third Parties**

##### **Article 10-1: Lease (Use) of Concession Assets**

The Concessionaire may transfer the Concession assets for lease and use to a third party without agreeing on such decision with the Authorized body.

##### **Article 10-2: Railway Crossings**

1. The Concessionaire shall be responsible for the maintenance of all existing rail, road and utility crossings which were the responsibility of «Armenian railway» closed joint-stock company before the Commencement date of the Concession activities.
2. Rail, road or utility crossings to be constructed or modified after Commencement Date of the concession activities shall be governed by Applicable Law.
3. In this Article the expression “utility crossing” means a wire, cable, pipe or other means of providing goods, energy or services.

## **Part 11 – Rolling Stock**

### **Article 11-1: Sale of Rolling Stock**

1. The Concedent and the Concessionaire shall conclude a sale and purchase agreement for the Rolling stock not later than within ninety (90) days from signing this Agreement.
2. The Concessionaire shall pay to the Concedent the residual value of the rolling stock reflected in the accounting report as of the day when the sale and purchase agreement is signed.

### **Article 11-2: Acquisition of other Rolling stock by the Concessionaire**

1. The Concessionaire may at any time lease (use) or purchase any additional rolling stock. Any contract related to these acquisitions is independent of this Agreement.
2. Any new rolling stock to be leased (used) or purchased by the Concessionaire under paragraph 1 shall conform to the requirements of the Applicable Law particularly in terms of its safety.

### **Article 11-3: Concedent’s Right to Purchase Rolling Stock**

1. One hundred and eighty (1) Business Days prior to Termination Date of this Agreement, the Concessionaire shall offer the Concedent to purchase its Rolling Stock. Such offer will remain open until the Termination Date of this Agreement.
2. If the Concedent exercises its right under paragraph 1 hereof and expresses its wish to purchase the Rolling Stock or a part of it, then the Concessionaire must sell the Rolling Stock at its residual value, which shall be estimated by an independent appraiser in accordance with the Applicable Law.

## **Part 12 – Insurance Coverage**

### **Article 12-1: Insurance Coverage**

Not later than within sixty (60) days from signing of this Agreement the Concessionaire shall be required to obtain:

a) adequate insurance against liabilities to third parties for its railway operations and railway transport services.

b) adequate insurance for the Concession assets in the form of "All risk property insurance".

#### **Article 12-2: Use of the Insurance Proceeds**

1. In the event of loss or damage to any Concession Asset covered by the insurance policy referred to in paragraph (b) of Article 12-1, the Concessionaire shall use the insurance proceeds to replace or repair that Concession Asset.

2. The Concessionaire shall not be required under paragraph 1 of this Article to replace or repair any Concession asset, which by the agreement of the Concedent and Concessionaires was fully worn-out and not having material value for the Concession activities before its loss or damage.

#### **Part 13 – Environmental Protection**

##### **Article 13-1: Compliance with Environmental Requirements**

The Concessionaire shall comply with environmental requirements under the Applicable Law.

##### **Article 13-2: Exception**

The Concessionaire shall not be held responsible for environmental contamination to any Concession Asset, whose source or cause were acts or omissions which occurred prior to Commencement Date of the Concession activities.

#### **Part 14 – Supervision**

##### **Article 14-1: Supervision performed by the Concedent**

1. The Concedent shall immediately inform the Concessionaire of the change of the Authorized Body.
2. Within the term of this Agreement the representatives of the Authorized Body may perform examinations of the Concessionaire once in six months for the purpose of inquiring into the compliance by the Concessionaire to the terms of this Agreement and the requirements of the Applicable law, including examination of the Concession assets, documents and any indicators with prior notice of at least fifteen (15) days in advance.

3. The Concessionaire shall not interfere with the activities of the Authorized Body's representatives performed for the purposes referred to in the paragraph 2 of this Article.

## **Article 14-2: Obligation of the Concessionaire**

1. The Concessionaire shall:

a) provide to the Authorized Body at its request any document covering its compliance with contractual obligations;

b) submit copies of quarterly and annual reports on results of implementation of this Agreement and annual financial reports validated by an independent auditing company by twenty-fifth (25<sup>th</sup>) day of the month following the reporting period.

d) submit to the Authorized Body by the tenth (10<sup>th</sup>) day of each month reports on the statistics of Rail Transport Services;

f) obtain prior approval of the Concedent for any changes of founders and/or shareholders of the Concessionaire;

2. The information referred to in this Article shall be submitted to the Authorized Body in writing unless another form of notification is requested by the Authorized Body.

3. Information on the implementation of the terms of the investment plan according to this Agreement shall be submitted to the Authorized Body by January 31 of each year.

## **Article 14-3: Obligations of the Authorized Body**

**1. The Authorized Body shall not:**

a) interfere with the commercial activities of the Concessionaire;

b) disclose information constituting a commercial secret of the Concessionaire, of which the Concessionaire has informed the Authorized Body in writing in transferring such information to the latter.

## **Article 14-4: Exchange of information**

1. Each of the Parties shall promptly notify the other Party about any circumstance, which has become known to it and which can have an adverse impact on the performance of the contractual obligations by the Parties.

2. Upon receipt of the information referred to in paragraph 1, the party so informed shall submit to the other Party a written reply on whether it agrees or disagrees with the received information within ten (10) days from the receipt of any such information.

## **Part 15 – Force Majeure**

### **Article 15-1: General Principles**

The Parties shall not be liable for any failure to perform under this Agreement to the extent that such performance is prevented or delayed by any event or circumstance of Force Majeure which is not within the control of the Party affected.

#### **Article 15-2: Definition**

1. The expression “Force Majeure” shall include, but not be limited to, any of the following events or circumstances, provided, however, that such event or circumstance could not have been prevented, overcome or remedied, in whole or in part, by the affected Party by means of appropriate measures:

a) natural phenomena of an unpredictable nature, including lightning, fire, earthquake, flood, storm, snowdrifts, tempest, flood and other extreme weather disturbances;

b) explosions, radiation and chemical contaminations;

c) any act of war (whether declared or undeclared) with a foreign enemy, domestic insurrection and armed conflict, acts of terrorism, blockage or embargo;

d) riots and civil commotion, strikes or labor actions by the Concessionaire’s employees or railway workers in neighboring countries.

t) declaration of state of emergency in the Republic of Armenia:

2. If any event of Force Majeure is simultaneously qualified as a Special event, then a Special event regime shall apply:

#### **Article 15-3: Notification Obligations**

Should any party be wholly or partially unable to carry out its obligations under this Agreement due to force majeure, the Party so affected shall:

a) give the other Party a notice as soon as possible once it becomes aware of Force Majeure;

b) no later than twenty-four (24) hours after the affected Party has given the first notice, give the other Party a second notice describing the Force Majeure in reasonable detail and, to the extent that can be reasonably determined at the time of the second notice, providing a preliminary evaluation of the obligations affected and a preliminary estimate of the period of time that the affected Party will be unable to perform its obligations.

#### **Article 15-4: End of Force Majeure**

The affected Party shall also provide notice to the other Party, as soon as possible, of:

- a) the cessation of Force Majeure, when dealing with an ongoing Force Majeure;
- b) the ability of the affected Party to recommence performance of its obligations.

#### **Article 15-5: Mitigation of consequences of Force Majeure**

Each of the Parties shall use their best endeavors to end the Force Majeure or mitigate its effects, including, but not limited to, the payment of all reasonable sums of money to third parties.

### **Part 16 – Special events**

#### **Article 16-1: List of Special events**

1. Any event quoted below shall be considered as a Special event;

a) Violation by the Concedent of this Agreement in respect of Concession assets, Rolling stock and land parcels in consideration of warranties made by the Concedent.

b) Unfavorable change in legislation;

c) Violation of the Applicable law by state authorities and/or municipalities of the Republic of Armenia,

d) Any accidental loss or damage to the land parcels, Concession assets and the Rolling stock.

e) Failure in power supply;

2. Events arising (whether directly or indirectly) out of action or inaction by the Concessionaire or any of its contractors shall not be viewed as Special events.

#### **Article 16-2: Consequences pursuant to Special Events**

1. If the Special event:

a) is the direct cause of delays in construction, reconstruction of railway transport facilities or provision of railway transport services,

b) adversely affects the capacity of the Concessionaire to meet any of its obligations under this Agreement,

In such event the Concessionaire may request from the Concedent to postpone the exercise of its rights provided under Part 17 of this Agreement and Concessionaire's obligations under this Agreement, and propose to the Concedent to review the terms of this Agreement.

2. If the Special event as provided in subparagraphs (a) and (b) of paragraph 1 of Article 16, except for increases of the Concessionaire's



tax burden, is a direct cause of any damage, expense or loss incurred by the Concession, then the Concessionaire may request from the Concedent indemnification under this Agreement.

3. In order to request from the Concedent an adjournment for the discharge of its obligations, an indemnification, the non-application of Concedent's rights under part 17 of this Agreement or to propose to the Concedent to review the terms of this Agreement, the Concessionaire shall:

a) serve a notice of Special event on the Concedent (notice of Special event) including all available information regarding the nature, time span and possible duration of the Special event as soon as possible, but not later than within ten (10) Business days from the time of Concessionaire's becoming aware of the Special event, which has caused damage, delay in discharge of obligations and/or default by the Concessionaire on its obligations.

b) Provide to the Concedent a reasonable justification:

1) that the event referred to by the the Concessionaire is qualified as Special event under this Agreement;

2) that the Concessionaire and its contractors could not avoid that particular event or circumstance and made all reasonable efforts that would be expected from them.

3) that the Concessionaire made all possible efforts to discharge its obligations under this Agreement;

4) for obligations of the Concessionaire at the time of the Special event and duration of adjournment for such obligations, if the Concessionaire requests adjournment for the discharge of its obligations.

5) for sum of expenses incurred in connection with the loss, which are subject to indemnification, if so requested by the Concessionaire.

4. If the Concessionaire has complied with its obligations as provided under paragraph 3 of this Article, and the Concedent has acknowledged the occurrence of the Special event, then:

a) The Concessionaire shall not be held liable for not discharging its obligations for the period of their adjournment;

b) The Concedent shall not terminate this Agreement as provided under Part 17 of this Agreement;

c) if the event the Concessionaire has called for indemnification, Concedent shall pay such indemnification within one hundred and twenty (120) business days from receiving a notice thereon, unless parties agree otherwise.

5. The Concessionaire shall be obliged to notify the Concedent, if it receives any additional information at any time in relation to the Special Event by indicating in such notice detailed information, if this communication is new or if previous communication contained errors or was inaccurate.

6. If Parties do not come to an agreement in respect of non-application of rights under the Part 17 of this Agreement, adjournment for discharge of liabilities, review for the terms of this Agreement, indemnification or if Concedent does not agree that a Special event has occurred, then the Parties shall resolve such matter as provided under Part 18 of this Agreement.

## **Part 17 – Termination of the Agreement**

### **Article 17-1: Events of Termination of this Agreement**

The Parties agree that beside termination of this Agreement at the end of its term, it can be terminated at any time before the end of its term:

- a) by means of notification based on a default by one of the Parties, pursuant to Articles 17-4 and 17-5;
- b) as a result of Force Majeure pursuant to Article 17-6;
- c) by consent of the Parties pursuant to Article 17-7.

### **Article 17-2: Consequences Attaching to the Termination of this Agreement**

1. If this Agreement is terminated based on the grounds provided for in article 17-1, including the end of the term of this Agreement, then:

- a) the Concessionaire shall surrender to the Concedent the ownership of the Concession Assets not later than thirty (30) Business Days since such termination takes effect;
- c) each Party shall forthwith pay to the other Party all monies that it owed to the other under this Agreement, which payment shall be made no later than within sixty (60) Business Days after the termination of this Agreement takes effect;
- c) the Concessionaire shall assign to the Concedent all of its rights and obligations under existing contracts and agreements with third parties, to the extent concluded by the Concessionaire in order to implement its rights and fulfill obligations under this Agreement.

2. If this Agreement is terminated by the Concedent, the Concessionaire shall be entitled to call for indemnification from the Concedent against expenses incurred to meet the obligations of the Concessionaire under this Agreement and the difference (if any) on the aggregate amount of revenues earned by the Concessionaire before the termination date of this Agreement provided the Concessionaire has discharged its obligations under this Agreement.

### **Article 17-3: Continuity of Services and Operations**

In the event of premature termination of this Agreement the parties shall continue to perform their contractual obligations, as well as any other actions, which may be necessary to ensure uninterrupted and continuous operation of railway transport, provided that the Concessionaire shall be relieved from any such obligations within thirty (30) Business Days from the termination of this Agreement.

### **Article 17-4: Circumstances constituting Default**

Unless otherwise set out in this Agreement:

- a) any failure by a Party to perform obligations under this Agreement constitutes an event of default.
  
- (b) the Party in default shall indemnify the other Party for real damages incurred by such other Party to the extent such damages are a direct result of such event of default and excluding any lost profit, indirect or consequential damages.

### **Article 17-5: Circumstances which Constitute Default**

The following events constitute a default:

#### 1. by the Concedent:

- a) if the Concedent performs any activity, which materially disrupts the conduct by the Concessionaire of its Railway Operations or the provision of its Railway Transport Services or cause the Concessionaire Substantial Financial Harm;
  
- b) If at any time the yearly subsidy for passenger transport services under article 2-3 above, or any portion thereof, is in arrears and unpaid for a period of six (6) months;
  
- c) if the Concedent does not comply with its obligations as provided under Part 16.

#### 2. by the Concessionaire, if:

- a) if at any time the Variable Concession Fee, or any portion thereof, payable by the Concessionaire is in arrears and unpaid for a period of six (6) months;
  
- b) if the Concessionaire fully or materially ceases conducting Railway Operations and providing Rail Transport Services, for the a period of thirty (30) days or more;
  
- c) if at any time during the Concession Period a Material Reduction in Services takes place;
  
- d) if the Concessionaire is declared insolvent or bankrupt by a court of competent jurisdiction;

e) if the Concessionaire assigns this Agreement without prior approval of the Concedent.

3. by the Guarantor:

f) if the Concedent does not receive payment under the Guarantee within three (3) months after it has become due.

#### **Article 17-6: Absence of Default**

The circumstances stipulated in the Article 17-5 of this Agreement shall be not deemed to be default, if such circumstances were caused by Force Majeure or by a Special event.

#### **Article 17-7: Consequences pursuant to Events of Default**

1. If one of the Parties reasonably believes that an Event of Default has occurred or is continuing, such Party must serve a notice of default on the defaulting Party, stating:

a) the nature of the Event of Default;

b) the steps reasonably required to remedy the event of default or improper discharge of obligations;

c) a reasonable grace period, not less than three (3) Business Days, within which the Event of Default must be remedied.

2. The Party affected by the event default may at any time, prior to the deadline for remedying the event default, withdraw such notice upon being reasonably satisfied that the relevant event of default remedied by the defaulting Party.

3. If the defaulting Party fails to remedy the Event of Default within the period specified in the notice thereon, the other Party may, at any time thereafter, serve a notice of termination upon the defaulting Party, specifying the day and time on which termination is to take effect.

4. The Parties must continue to perform their obligations under this Agreement until the day and time of termination indicated in the termination notice.

#### **Article 17-8: Consequences of Termination Pursuant To Default**

1. If the Concedent terminates this Agreement on the basis of default by the Concessionaire:

a) The Concedent may claim from the Concessionaire indemnification calculated as the sum of three variable concession fees for three (3) previous years as of the Termination date of this Agreement or threefold average annual amount for the whole Concession period, if this Agreement is dissolved earlier than within three (3) years from the Commencement date.

b) The Concessionaire shall indemnify for Re-tendering costs not exceeding the sum of two million (2,000,000) United States Dollars, which shall be based on actual costs incurred.

c) The Concedent shall purchase the Rolling stock owned by the Concessionaire by paying its residual value as calculated by an independent appraiser in accordance with the Applicable law.

d) The Concedent shall pay to the Concessionaire fifty (50) per cent of the difference of the aggregate amount of investments made into infrastructure and aggregate profit earned as of the Termination date of this Agreement, validated by an independent auditor.

The Concedent may use the Concession assets and Rolling stock immediately after the Termination date prior to disbursing to the Concessionaire the sum so payable.

2. If the Concessionaire terminates this Agreement on the basis of default by the Concedent, the Concessionaire may claim indemnification from the Concedent for:

a) costs and losses incurred as a result of early termination of this Agreement;

b) aggregate profit earned in three (3) previous years preceding the Termination date of this Agreement or threefold amount of average annual profits for the whole Concession period, if this Agreement is dissolved earlier than within three (3) years from its Commencement date.

g) difference of aggregate investments into infrastructure made by the Concessionaire to meet its obligations under this Agreement and aggregate profit earned as of the Termination date of this Agreement.

4. Concedent shall purchase the Rolling Stock owned by the Concessionaire by paying its residual value as calculated by an independent appraiser in accordance with the Applicable law.

#### **Article 17-9: Termination of the Agreement as consequence of Force Majeure**

Force Majeure, lasting more than six (6) months, entitles the Party affected by it to terminate this Agreement unilaterally.

#### **Article 17-10: Mutual termination**

The Parties may terminate this Agreement by mutual consent at any time. Exact consequences of such mutually-agreed early termination shall also be left to the discretion of the Parties.

## **Part 18 – Settlement of Disputes**

### **Article 18-1: Amicable Settlement**

1. The Concedent and the Concessionaire hereby agree to make efforts to settle any Dispute arising between them by means of a mutual agreement.

If any of the Parties believes that a Dispute has arisen between the Parties, then such Party is entitled to send to the other Party a notification on the occurrence of the Dispute, mentioning therein the essence of the Dispute and suggestions concerning its settlement (hereafter: notification on the occurrence of a Dispute).

3. The Parties are obligated to negotiate and make all reasonable efforts to settle the Dispute amicably within 30 (thirty) days from the receipt of the notification on the occurrence of a Dispute, unless the Parties agree in writing on another period.

4. If unsuccessful to come to an agreement during the negotiations, the Party, which has notified the existence of a Dispute by notification on the occurrence of a Dispute, shall send to the other Party a written request, to which the other Party must reply within 30 /thirty/ days from receiving the latter.

5. In case a Party supposes that its request is not fully or partially satisfied in the reply or if no reply is received concerning the written request, then the respective party may submit the Dispute to arbitration.

### **Article 18-2: Arbitration**

1. If the dispute between the parties cannot be resolved by mutual agreement as provided under paragraph 1 of Article 18-2, then the Parties agree to resolve such dispute through arbitration in accordance with the arbitration regulation of UN International Commercial Law Commission as will be in effect at the time of arbitration.

The arbitration tribunal shall consist of three arbitrators appointed as follows – the Concedent shall appoint one arbitrator, the Concessionaire shall also appoint one arbitrator and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator. If any of the Parties does not appoint an arbitrator within thirty (30) days from submitting such request by the other Party or if the appointed arbitrators cannot agree on appointing a third arbitrator, then such appointment shall be made by the International Chamber of Commerce in Paris.

3. The place of arbitration shall be Paris (France). The language to be used in the arbitral proceedings shall be English unless the Parties agree otherwise.

4. Pending the submission of or decision on Dispute and until the arbitral award is made, the Parties shall continue to perform their respective obligations under this Agreement.

5. The parties hereby agree and confirm that this Agreement is a civil legal contract and all relationships arising out of this agreement shall be deemed to be of commercial nature and shall be lie beyond public legal regulation applicable to the actions of state entities.

### **Article 18-3: Retention of Rights and Obligations**

No dispute or its settlement shall suspend any of the rights and obligations of the Parties under this Agreement

### **Article 18-4: Applicable Law**

The interpretation of this Agreement and any dispute, which arises under it shall be governed in accordance with the Applicable Law.

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## **Part 19 – Miscellaneous Provisions**

### **Article 19-1: Modifications and amendments**

The Parties may from time to time agree in writing to add, substitute, cancel or vary any of the provisions of this Agreement, including any time limit set therein.

### **Article 19-2: Waiver**

The failure of a Party to enforce at any time any of the provisions of this Agreement shall in no way be interpreted to constitute a waiver of such provisions or of the right by that Party to enforce any time thereafter such provisions.

### **Article 19-3: Severability**

If in virtue of the Applicable Law, judgment of court or decision by a competent governmental body any provision of this Agreement becomes invalid, such provision shall not be applicable and the remainder of this Agreement shall remain binding upon, and enforceable by, the Parties.

### **Article 19-4: Further Acts**

The Parties shall execute such documents and do such acts that lie within their power and which are necessary to give full effect to this Agreement.

### **Article 19-5: No Assignment**

The Concessionaire may not assign this Agreement, nor its rights and obligations thereunder to any other person, without the prior written consent of the Concedent.

### **Article 19-6: Entire Agreement**

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter thereof and supersedes all prior and present agreements, understandings and negotiations, both written and oral, between the Parties with respect to the subject matter of this Agreement.

#### **Article 19-7: No Holding Out**

Save as permitted in writing by the Concedent, the Concessionaire shall not hold itself out as being the servant or agent of the Concedent or as being authorized to enter into any agreement on behalf of it.

#### **Article 19-8: Approvals**

1. Unless provided otherwise in this Agreement and Applicable Law, the procedure for coordinating with the Authorized body under this Agreement shall be as follows:

a) The Concessionaire submits its request in writing to the Authorized body.

b) The Authorized body discusses the request of the Concessionaire within thirty (30) days and, if no additional discussions and negotiations with the Concessionaire are necessary, presents to the Concessionaire in writing its consent or disapproval.

c) In case no response is presented to the Concessionaire within thirty (30) Business days, such consent shall be deemed to have been granted by the Authorized body.

2. In the event additional discussions and negotiations are required in respect of proposal made by the Concessionaire, the period of thirty (30) Business days may be extended by the Authorized body by another fifteen (15) Business days with a notification to the Concessionaire to that effect.

3. If proposals made by the Concessionaire under this Agreement need to be agreed upon with the Concedent, then the agreement procedure set out in the paragraph 1 of this article shall be applied except for terms stipulated under subparagraphs (b) and (c), which cannot exceed forty-five (45) business days, if not otherwise provided under this Agreement or Applicable law.

#### **Article 19-9: Currency of payment and procedure for settlements**

1. All settlements under this Agreement shall be made in Armenian Drams.
2. If any payment is to be made to any of the Parties under this Agreement and if not otherwise provided hereunder, such payment shall be made to a separate account, which is to be submitted to the address of the payer and shall be subject to payment within a reasonable period of time from the receipt, however not later than within sixty (60) business days.

#### **Article 19-10: Language and interpretation of the Agreement**



This Agreement is executed in six (6) original copies, three (3) in Armenian and three (3) in Russian. In case of discrepancy between Armenian and Russian versions, Russian version shall prevail.

#### **Article 19-11: Notices**

1. Any notice or other communication to be given under this Agreement shall be in writing and shall be delivered by hand or sent by prepaid post or by facsimile transmission to the party to be served at that party's address or facsimile number given below, or to such other address or facsimile number as the Party to be served may from time to time elect by prior notice to other parties.

For the Concedent

Ministry of Transport and Communications of the Republic of Armenia

Address: Nalbandyan-28, Yerevan, Republic of Armenia, 0010

Fax: +(37410) 560528

To the attention of: Minister of Transport and Communication of the Republic of Armenia Mr. A. Manukyan

For the Concessionaire

“South-Caucasian railway” closed joint-stock company

Address: Tigran Mets av. 50, Yerevan, Republic of Armenia, 0005

Fax: +(37410) 573630

To the attention of: General Director A.P.Kuznetsov

For Guarantor

“Russian railways” open joint-stock company

Address: Novaya Basmannaya-2, Moscow, Russian Federation, 107174

Fax: +(7495) 2626692

To the attention of: President V.I. Yakunin

2. Any such notice or other communication shall be deemed to have been received by the party to whom it is addressed as follows:

a) if delivered by hand on the day when the notice is left at the address of the Party to be served;

b) if transmitted by fax on the day of transmission:

where written confirmation of the transmission shall be deemed to be a sufficient proof of service of notice.

3. In the event of changes being made to the addresses of the parties, the changing party shall notify thereon the other party, as provided under this Article.

This agreement is signed at Yerevan, this 13<sup>th</sup> day of February of year 2008 in the city of Yerevan, Republic of Armenia.

**Signed**

**For and on behalf of the Concedent**

**by A.E. Manukyan**

**Signed**

**For and on behalf of the Guarantor**

**by V.I. Yakunin**

**Signed**

**For and on behalf of the Concessionaire**

**by. A.P. Kuznetsov**