

EXECUTION VERSION

Dated 8 December 2020

**JOINT STOCK COMPANY “RUSSIAN RAILWAYS”**

and

**RZD CAPITAL P.L.C.**

## **LOAN AGREEMENT**

RUB25,000,000,000

**Linklaters**

Linklaters LLP

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**This Agreement** is made on 8 December 2020 **between:**

- (1) **JOINT STOCK COMPANY “RUSSIAN RAILWAYS”**, a joint-stock company established under the laws of the Russian Federation whose registered office is at 2, Novaya Basmannaya St., 107174 Moscow, Russian Federation (the **“Borrower”**); and
- (2) **RZD CAPITAL P.L.C.**, a public limited company incorporated under the laws of Ireland, having its registered office at 2nd Floor, Palmerston House, Fenian Street, Dublin 2, Ireland (the **“Lender”**).

**Whereas:**

The Lender has at the request of the Borrower agreed to make available to the Borrower a loan facility in the amount of RUB25,000,000,000 on the terms and subject to the terms and conditions of this Agreement.

**Now it is hereby agreed** as follows:

## **1 Definitions and Interpretation**

### **1.1 Definitions**

In this Agreement (including the recital), the following terms shall have the meanings indicated:

**“Account”** means the account in the name of the Lender with the Account Bank, with the following account details: 831869 RZD Capital RUB Secured DEC20 CSH (or such other account as may from time to time be agreed between the Lender and the Trustee pursuant to the Trust Deed and notified to the Borrower in writing at least five Business Days in advance of such change);

**“Account Bank”** means The Bank of New York Mellon, London Branch;

**“Account Bank Agreement”** means the secured account bank agreement in respect of the Notes and the Account entered into between the Account Bank, the Trustee and the Issuer and dated on or about the date of this Agreement;

**“Accounting Standards”** means IFRS or any other internationally recognised set of accounting standards deemed equivalent to IFRS by the relevant regulators for the time being;

**“Advance”** means the advance made or to be made by the Lender under Clause 3 of the sum equal to the amount of the Facility, as from time to time reduced by prepayment;

**“Agency Agreement”** means the agency agreement relating to the Notes dated on or around the date hereof between the Lender (as issuer of the Notes), the Trustee, the Principal Paying Agent and the other agents named therein, as from time to time amended or supplemented;

**“Agreement”** means this Agreement as originally executed or as it may be amended or supplemented from time to time;

**“Business Day”** means a day on which commercial banks generally are open for business in Dublin, Moscow, London and in the city where the Specified Office (as defined in the Agency Agreement) of the Principal Paying Agent is located;

**“Change of Control”** means either:

- (i) the Russian Federation (a) ceases to own or control (directly or indirectly) 66.67 per cent. or more of the issued and outstanding voting share capital of the Borrower; or (b) ceases to be able to, directly or indirectly, appoint or remove a majority of the Borrower's board of directors; or
- (ii) a person or Persons Acting In Concert, other than the Russian Federation, becomes the legal or beneficial owner, or gains control (directly or indirectly) of more than 25 per cent. of the issued and outstanding voting share capital of the Borrower;

**"Change of Control Payment Date"** means the date falling four Business Days after the expiration of the Change of Control Put Period or, if such day is not a Business Day, the next following Business Day;

**"Change of Control Put Option"** means the change of control put option granted to Noteholders pursuant to the Conditions;

**"Change of Control Put Period"** has the meaning given to it in the Conditions;

**"Closing Date"** means 10 December 2020 (or such later date not later than 24 December 2020 as may be agreed between the Lender and the Borrower);

**"Comparable OFZ Issue"** means the Russian federal bonds with fixed coupon income (OFZ-PD) having a maturity most nearly equal to (but in any case before) the Repayment Date;

**"Comparable OFZ Price"** means, with respect to any Make Whole Optional Prepayment Date, the average of three, or such lesser number as is obtained by the Determination Agent, Reference OFZ Dealer Quotations for the Make Whole Optional Prepayment Date;

**"Conditions"** means the terms and conditions of the Notes as set out in Schedule 2 to the Trust Deed and **"Condition"** means any of the conditions contained therein;

**"Consolidated Assets"** means the total amount of assets appearing on the consolidated balance sheet of the Group, prepared in accordance with the Accounting Standards, as of the date of the most recently prepared audited consolidated financial statements;

**"Determination Agent"** means a Reference OFZ Dealer which is independent of the Borrower appointed by the Borrower and at the Borrower's expense for the purpose of determining the Make Whole Premium;

**"Event of Default"** has the meaning given to it in Clause 11.1;

**"Facility"** means the RUB25,000,000,000 term loan facility granted by the Lender to the Borrower as specified in Clause 2;

**"Financial Indebtedness"** means any obligation for the payment of money in any currency, whether sole, joint or several, and whether actual or contingent, in respect of:

- (a) moneys borrowed or raised (including the capitalised value of obligations under finance leases and hire purchase agreements which would, in accordance with Accounting Standards in effect prior to 1 January 2019, have been treated as finance or capital leases, but excluding moneys raised by way of the issue of share capital (whether or not for a cash consideration) and any premium on such share capital) and excluding, for the avoidance of doubt, any operating leases being

classified as borrowings in accordance with the Accounting Standards in effect after 1 January 2019;

- (b) any liability under any debenture, bond, note, loan stock or other security or under any acceptance or documentary credit, bill discounting or note purchase facility or any similar instrument;
- (c) any liability in respect of the deferred acquisition cost of property, assets or services to the extent payable after the time of acquisition or possession thereof by the party liable, but not including any such liability in respect of normal trade credit for goods or services supplied;
- (d) any liability under any interest rate or currency hedging agreement (and the amount of such Financial Indebtedness in relation to any such transaction shall be calculated by reference to the mark-to-market valuation of such transaction, at the relevant time);
- (e) any liability under or in respect of any bond facility, guarantee facility or similar facility; and
- (f) (without double counting) any guarantee or other assurance against financial loss in respect of such moneys borrowed or raised, interest, charges or other liability (whether the person liable in respect of such moneys borrowed or raised, interest, charges or other liability is or is not a member of the Group),

but excluding:

- (g) double counting in any calculation of the Group's Financial Indebtedness;
- (h) any indebtedness owing by a member of the Group to another member of the Group;
- (i) subordinated perpetual instruments with deferrable or cancellable interest, including, but not limited to, local bonds and Eurobonds; and
- (j) any pension scheme or other post-employment benefit scheme liabilities;

**"Global Certificate"** means the single, permanent global note certificate in registered form without interest coupons representing the Notes to be issued pursuant to Clause 3.1 of the Trust Deed;

**"Group"** means the Borrower and its Subsidiaries for the time being included in the most recent audited consolidated financial statements of the Borrower prepared under IFRS, taken as a whole;

**"IFRS"** means the International Financial Reporting Standards issued by the International Accounting Standards Board (as amended, supplemented or re-issued from time to time);

**"Interest Payment Date"** means 2 March and 2 September in each year, commencing on 2 March 2021;

**"Interest Period"** has the meaning given to it in Clause 4.2;

**"Lender Agreements"** means the Subscription Agreement, this Agreement, the Agency Agreement, the Trust Deed, the Account Bank Agreement, the Upfront Fee Side Letter and the Ongoing Fees Side Letter;

**“Lien”** means any mortgage, charge, pledge, lien (other than a lien arising solely by operation of law which is discharged within 90 calendar days of arising) or other security interest securing any obligation of any person or any other type of preferential arrangement (including any title transfer and arrangement) having a similar effect;

**“Loan”**, at any time, means an amount equal to the aggregate principal amount of the Facility advanced by the Lender pursuant to this Agreement and outstanding at such time;

**“Make Whole Premium”** means the positive difference calculated as the excess, if any of (a) the amount equal to the sum of the present values of the Loan that is to be prepaid pursuant to Clause 5.5, together with the present values of the scheduled interest payments on such portion of the Loan from the Make Whole Optional Prepayment Date to the Repayment Date in each case, discounted to the Make Whole Optional Prepayment Date on a semi-annual compounded basis at the adjusted OFZ Rate minus 100 basis points, all as determined by the Determination Agent, over (b) the principal amount of the Loan;

**“Material Adverse Effect”** means a material adverse effect on: (a) the financial condition or operations of the Borrower or the Group taken as a whole; (b) the Borrower’s ability to perform its obligations under the RZD Agreements; or (c) the validity, legality or enforceability of the RZD Agreements or the rights or remedies of the Lender under the RZD Agreements;

**“Noteholder”** means, in relation to a Note, the person in whose name such Note is for the time being registered in the register of the Noteholders (or, in the case of a joint holding, the first named holder thereof);

**“Notes”** means the RUB25,000,000,000 6.598 per cent. loan participation notes due 2028 proposed to be issued or issued by the Lender pursuant to the Trust Deed for the purpose of financing the Loan;

**“Officer’s Certificate”** means a certificate signed by an authorised officer of the Borrower who shall be a principal executive officer, principal accounting officer or principal financial officer of the Borrower;

**“OFZ Rate”** means either (i) the rate per annum equal to the yield in respect of the Comparable OFZ Issue as specified on the website of the Moscow Exchange on the fifth business day (in Moscow) prior to the Make Whole Optional Prepayment Date (A) in the table of Zero Coupon Yield Curves (*Значения КБД Московской Биржи*); or, (B) if such table is not available on such business day in the table of Calculated Yields (*Расчетные доходности*); or (ii) if neither of such tables is available on such business day or does not contain such yields, the rate per annum equal to the semi-annual equivalent yield to maturity of the Comparable OFZ Issue (expressed as a percentage of its principal amount) equal to the Comparable OFZ Price for the Make Whole Optional Prepayment Date, in each case calculated on the fifth business day (in Moscow) prior to the Make Whole Optional Prepayment Date, in each case, provided that the equivalent of annual yield rate in the basis of semi-annual compounding will be used;

**“Ongoing Fees Side Letter”** means the letter dated 8 December 2020 from the Trustee and the Agents to the Borrower and the Lender;

**“Opinion of Counsel”** means a written opinion from international reputable legal counsel as reasonably selected by the Borrower and who is acceptable to the Lender and the Trustee;

**“Paying Agent”** has the meaning given to it in the Agency Agreement;

**“person”** means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, company, firm, trust, organisation, government, or any agency or political subdivision thereof, or any other entity, whether or not having a separate legal personality;

**“Persons Acting In Concert”** means a group of persons who (a) knowingly participate in a joint activity or conscious parallel action towards a common goal, whether or not pursuant to an express agreement; or (b) combine or pool voting or other interests in the securities of an issuer for a common purpose pursuant to any contract, understanding, relationship, agreement or other arrangement, whether written or otherwise;

**“Potential Event of Default”** means any event which is, or, but for expiry of any grace period, the giving of notice or after making any determination under this Agreement (or any combination of the foregoing) would be, an Event of Default;

**“PPP Principal Subsidiary”** means a Principal Subsidiary which:

- (a) is a special purpose company established to finance, design, construct or otherwise develop and/or operate a development project supported by the Government and related to an infrastructure asset or a group of such assets, including, but not limited to, on the basis of a concession agreement or any public-private partnership agreement;
- (b) has raised or intends to raise financing for such project in the form of equity capital injections, subordinated and / or senior loans or bond issuance proceeds, and such financing has or is being raised with no or with a limited recourse to the Borrower or any of its other Subsidiaries, and
- (c) did not become a Principal Subsidiary as a result of one or more transfers of assets from any member of the Group;

**“Principal Paying Agent”** has the meaning given to it in the Agency Agreement;

**“Principal Subsidiary”** means, at any relevant time, a Subsidiary of the Borrower:

- (a) whose total assets or gross revenues (or, where the Subsidiary in question prepares consolidated accounts, whose total consolidated assets or gross consolidated revenues, as the case may be) after elimination of intra-Group transactions represent not less than 10 per cent. of the Consolidated Assets or the gross consolidated revenues of the Group, all as calculated by reference to the then latest audited accounts (or consolidated accounts, as the case may be) (in each case produced on the basis of Accounting Standards consistently applied) of such Subsidiary and the then latest audited consolidated financial statements of the Borrower (produced on the basis of Accounting Standards consistently applied) and its consolidated Subsidiaries; and/or
- (b) to which are transferred all or substantially all the assets and undertakings of a Subsidiary of the Borrower which immediately prior to such transfer is a Principal Subsidiary;

**“Prospectus”** means the prospectus of even date herewith prepared in connection with the issue of the Notes, which comprises a prospectus for the purposes of Article 8 of

Regulation (EU) 2017/1129, as the same may be amended or supplemented on or before the Closing Date;

**"Rate of Interest"** has the meaning given to it in Clause 4.1;

**"Reference OFZ Dealers"** means any three nationally recognised firms selected by the Determination Agent that are primary Russian federal bonds (OFZ) dealers;

**"Reference OFZ Dealer Quotations"** means with respect to each Reference OFZ Dealer and any Make Whole Optional Prepayment Date, the average, as determined by the Determination Agent, of the bid and asked prices for the Comparable OFZ Issue, expressed in each case as a percentage of its principal amount, quoted in writing to the Determination Agent by such Reference OFZ Dealer at 5:00 p.m., Moscow time on the fifth business day (Moscow) immediately preceding such Make Whole Optional Prepayment Date;

**"Reform Programme"** means the reform programme (including the draft Target Model 2025 (which is currently being developed), the Railway Transportation Strategy in the Russian Federation 2030 and the Government Transportation Development Strategy 2030) enacted from time to time by the Russian authorities to develop the railway transportation market and infrastructure in Russia, as may be amended or supplemented from time to time;

**"Relevant Event"** has the meaning given to it in the Trust Deed;

**"Relevant Indebtedness"** means any Financial Indebtedness which: (a)(i) is in the form of or represented by any bond, note, debenture stock, loan stock, certificate or other debt instrument which is listed or quoted on any stock exchange or (ii) is in the form of a loan to the Borrower or its Principal Subsidiaries which is financed by the issuance of any of the foregoing forms of debt in (a)(i) above, where such issuance is by a special purpose company or a bank or any other entity and the rights to payment of the holders of such forms of debt are limited to payments actually made by either the Borrower or its Principal Subsidiaries pursuant to such loan; and (b) in the case of the debt referred to in (a)(i) above or the debt financing a loan referred to in (a)(ii) above, was initially issued and distributed (as to more than 50 per cent. of the original principal amount of such debt) outside the Russian Federation;

**"Repayment Date"** means 2 March 2028;

**"Reserved Rights"** has the meaning given to it in the Trust Deed;

**"RUB"** or **"Russian Roubles"** means the lawful currency for the time being of the Russian Federation;

**"RZD Agreements"** means this Agreement, the Agency Agreement, the Subscription Agreement and the Ongoing Fees Side Letter;

**"Same-Day Funds"** means same day, freely transferable, clearly identifiable cleared Russian Roubles or such other funds for payment in Russian Roubles as the Lender may at any time reasonably determine to be customary for the settlement of international transactions in London of the type contemplated hereby;

**"Subscription Agreement"** means the subscription agreement relating to the Notes dated on or around the date hereof between the Lender, the Borrower and the joint lead managers named therein (the **"Joint Lead Managers"**);

**“Subsidiary”** means, with respect to any person:

- (a) any corporation, association or other business entity of which more than 50 per cent. of the total voting power entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof or to direct the management, policies and affairs thereof is at the time owned or controlled, directly or indirectly, by such person or one or more of the other Subsidiaries of such person (or any combination thereof); and
- (b) any partnership (i) the sole general partner or the managing general partner of which is such person or a Subsidiary of such person or (ii) the only general partners of which are such person or one or more Subsidiaries of such person (or any combination thereof),

if (in the case of both (a) and (b)) in accordance with Accounting Standards, such corporation, association, other business entity or partnership has been consolidated with such first-named person for the purposes of such first named person’s most recent audited consolidated financial statements;

**“Taxes”** means any taxes (including interest or penalties thereon payable in connection with any failure to pay or any delay in paying any of the same) which are now or at any time hereafter imposed, assessed, charged, levied, collected, demanded, withheld or claimed by the Russian Federation, Ireland or any taxing authority thereof or therein provided, however, that for the purposes of this definition the references to Ireland shall, upon the occurrence of the Relevant Event (as this term is defined in the Trust Deed), be deemed to be references to the jurisdiction in which the Trustee is domiciled for tax purposes, and the term **“Taxation”** shall be construed accordingly;

**“Trust Deed”** means the trust deed relating to the Notes to be dated the Closing Date between the Lender and the Trustee as amended from time to time;

**“Trustee”** means BNY Mellon Corporate Trustee Services Limited, as trustee under the Trust Deed and any successor thereto as provided thereunder;

**“Upfront Fee Side Letter”** has the meaning given to it in the Trust Deed;

**“U.S.\$”** or **“U.S. Dollars”** means the lawful currency for the time being of the United States of America; and

**“VAT”** means value added tax and any other tax of a similar nature.

## **1.2 Other Definitions**

Unless the context otherwise requires, terms used in this Agreement which are not defined in this Agreement but which are defined in, or are defined by cross-reference to definitions in or other provisions of, the Trust Deed, the Notes (including the Conditions), the Agency Agreement or the Subscription Agreement shall have the meanings given to such terms therein.

## **1.3 Interpretation**

Unless the context or the express provisions of this Agreement otherwise require, the following shall govern the interpretation of this Agreement:

- 1.3.1 all references to **“Clause”** are, unless otherwise stated, references to a clause of this Agreement;

- 1.3.2 the terms “**hereof**”, “**herein**”, “**hereunder**” and other words of similar import shall mean this Agreement as a whole and not any particular part hereof;
- 1.3.3 words importing the singular number include the plural and vice versa;
- 1.3.4 all references to “**taxes**” include all present or future taxes, levies, imposts and duties of any nature and the terms “**tax**” and “**taxation**” shall be construed accordingly; and
- 1.3.5 the table of contents and the headings are for convenience only and shall not affect the construction hereof.

## **2 Facility**

### **2.1 Facility**

On the terms and subject to the conditions set forth herein, the Lender hereby agrees to lend the Borrower and the Borrower hereby agrees to borrow from the Lender RUB25,000,000,000.

### **2.2 Purpose**

The net proceeds of the Advance will be used by the Borrower in its ordinary course of business as set out in “*Use of Proceeds*” in the Prospectus, but the Lender shall not be concerned with the application thereof.

## **3 Drawdown**

### **3.1 Drawdown**

On the terms and subject to the conditions of this Agreement, on the Closing Date the Lender shall make the Advance to the Borrower and the Borrower shall make a single drawing in the full amount of the Facility (less any amount to be deducted (if any) in accordance with Clause 9.1.2 of the Subscription Agreement and subject to Clause 3.2).

### **3.2 Facility Fee**

In consideration of the Lender making the Advance to the Borrower, the Borrower hereby agrees to pay to the Lender, in Same-Day Funds, the fee in the amount of RUB100,000,000 (the “**RUB Facility Fee**”) and the fee in the amount of U.S.\$210,397.69 (the “**USD Facility Fee**” and, together with the RUB Facility Fee, the “**Facility Fee**”) for the arrangement of the Facility by 10.00 a.m. (London time) one Business Day prior to the Closing Date. The Facility Fee has been calculated taking into account all reasonable and documented costs incurred by the Lender in connection with the extension of the Loan to the Borrower, including negotiation, preparation and execution of all related documents and other properly incurred costs connected with and necessary for the extension of the Loan. In the event that the Lender has not received from the Borrower one Business Day prior to the Closing Date the full amount of the Facility Fee, the Borrower agrees that an amount equal to the Facility Fee shall be deducted from the amount of the Advance. The Facility Fee shall be applied by the Lender in accordance with the Upfront Fee Side Letter.

The Borrower may at its sole discretion also agree to pay to the Lender an additional fee which shall be applied by the Lender in accordance with further instructions to be provided by the Borrower to the Lender on or about the Closing Date.

### 3.3 Disbursement

Subject to the conditions set forth herein, on the Closing Date the Lender shall transfer the amount of the Advance (less any amount to be deducted (if any) pursuant to Clause 9.1.2 of the Subscription Agreement) in Same-Day Funds to the Borrower's account (account no. 40702810799991184050, JSC Russian Railways as Beneficiary, in PJSC VTB Bank, BIK 044525187, Tax ID: 7708503727, KPP: 997650001 Correspondent Account 30101810700000000187 with Main Office of the Bank of Russia in the Central Federal District, Moscow, Russia, VO Code 41030).

### 3.4 Ongoing Fees and Expenses

In consideration of the Lender supporting the Facility as a continuing facility, the Borrower shall pay, by way of a facility fee, in one or more instalments to the Lender each year or on demand an additional fee in U.S. Dollars (the **"Ongoing Fees"**). The Ongoing Fees shall be calculated taking into account all properly incurred and documented costs, commissions and taxes of the Lender incurred by it including in connection with supporting the Facility (including, without limitation, certain ongoing fees and expenses incurred by the Lender which are payable to the Trustee and the Agents in connection with the performance of their duties) as a continuing facility and as set forth in an invoice from the Lender to the Borrower. Before such payment is made by the Borrower, the Lender shall submit an invoice providing, in reasonable detail, the nature and calculation of the relevant payment or expense. The amounts received by the Lender in respect of the Ongoing Fees shall be applied by the Lender in accordance with the Ongoing Fees Side Letter.

## 4 Interest

### 4.1 Rate of Interest

The Borrower will pay interest in Russian Roubles to the Lender on the outstanding principal amount of the Loan from time to time at the rate of 6.598 per cent. per annum (the **"Rate of Interest"**).

### 4.2 Payment

Interest at the Rate of Interest shall accrue from day to day, starting from (and including) the Closing Date and shall be paid in arrear not later than 10:00 a.m. (London time) two Business Days prior to each Interest Payment Date. Interest on the Loan will cease to accrue from the Repayment Date (or any date upon which the Loan is prepaid pursuant to Clause 5) unless payment of principal due on such date is withheld or refused, in which event interest will continue to accrue (before or after any judgment) at the Rate of Interest to (but excluding) the date on which payment in full of the principal thereof is made.

The amount of interest payable in respect of the Loan for any Interest Period other than the First Interest Period shall be calculated by applying the Rate of Interest to the Loan, dividing the product by two and rounding down the resulting figure to the nearest Russian Rouble. Interest for (i) the First Interest Period or (ii) any period of less than a year, it will be calculated on the basis of a year of 360 days consisting of 12 months of 30 days each and, in the case of an incomplete month, the actual number of days elapsed.

**"Interest Period"** means each period beginning on (and including) any Interest Payment Date and ending on (but excluding) the next Interest Payment Date.

**"First Interest Period"** means the period beginning on (and including) the Closing Date and ending on (but excluding) the Interest Payment Date on 2 March 2021.

## **5 Repayment and Prepayment**

### **5.1 Repayment**

Except as otherwise provided herein, the Borrower shall repay the Loan not later than 10:00 a.m. (London time) two Business Days prior to the Repayment Date.

### **5.2 Prepayment in the Event of Taxes or Increased Costs**

If, at any time after the date of this Agreement, as a result of the application of or any amendments or clarification to, or change (including a change in interpretation or application) in, or determination under, the double tax treaty between the Russian Federation and Ireland or the laws or regulations of the Russian Federation or Ireland or of any political sub-division thereof or any authority therein or the enforcement of the security provided for in the Trust Deed, the Borrower would thereby be required to make or increase any payment due hereunder as provided in Clause 6.2 or 6.3 (other than, in each case, where the increase in payment is in respect of any amounts due or paid pursuant to Clause 3), or if (for whatever reason) the Borrower would have to or has been required to pay additional amounts pursuant to Clause 8, and any such additional amounts cannot be avoided by the Borrower taking reasonable measures available to it, then the Borrower may (without premium or penalty), upon not less than 10 days' prior written notice to the Lender (which notice shall be irrevocable), prepay the Loan in whole (but not in part) at any time.

Simultaneously with giving any such notice in the event of an increase in payment pursuant to Clause 6.2, the Borrower shall deliver to the Lender an Officer's Certificate confirming that the Borrower would be required to increase the amount payable, supported by an opinion of an independent tax adviser of international repute addressed to the Lender as to the existence of the circumstances described above.

### **5.3 Prepayment in the Event of Illegality**

If, at any time after the date of this Agreement, by reason of the introduction of or any change in, any applicable law, regulation, regulatory requirement or directive of any agency of any state, the Lender reasonably determines (such determination being accompanied by an Opinion of Counsel at the request of the Borrower with the cost of such Opinion of Counsel being borne solely by the Borrower) that it is or would be unlawful or contrary to such applicable law, regulation, regulatory requirement or directive for the Lender to allow all or part of the Loan or the Notes to remain outstanding or for the Lender to maintain or give effect to any of its obligations in connection with this Agreement and/or to charge or receive or to be paid interest at the rate then applicable to the Loan, then upon notice by the Lender to the Borrower in writing (setting out in reasonable detail the nature and extent of the relevant circumstances), the Borrower and the Lender shall consult in good faith as to a basis that eliminates the application of such circumstances; provided, however, that the Lender shall be under no obligation to continue such consultation if a basis has not been determined within 30 Business Days of the date on which it so notified the Borrower in writing. If such a basis has not been determined within those 30 Business Days, then upon notice by the Lender to the Borrower in writing, the Borrower shall prepay (without premium or penalty) the Loan in whole (but not in part) on the next Interest Payment Date or on such earlier date as the Lender shall (acting reasonably) certify on not less than 15 Business Days' notice to be necessary to comply with such requirements.

## 5.4 Prepayment in the Event of Change of Control

### 5.4.1

- (i) In the case of a Change of Control pursuant to limb (i) of the definition of Change of Control, promptly, and in any event within 10 Business Days after the date of such Change of Control; or
- (ii) in the case of a Change of Control pursuant to limb (ii) of the definition of Change of Control, promptly, and in any event within 10 Business Days after the date on which the Borrower is aware of such Change of Control,

the Borrower shall deliver to the Lender a written notice in the form of an Officer's Certificate, which notice shall be irrevocable, stating that a Change of Control has occurred and stating the circumstances and relevant facts giving rise to such Change of Control.

5.4.2 If, following a Change of Control, any Noteholder has exercised its Change of Control Put Option, the Borrower shall, on the Change of Control Payment Date, prepay the principal amount of the Loan in an amount which corresponds to the aggregate principal amount of the Notes in relation to which the Change of Control Put Option has been duly exercised in accordance with the Conditions.

5.4.3 The Lender shall notify the Borrower not more than three Business Days after receipt of notice thereof from the Principal Paying Agent of the amount of the Loan to be prepaid as a consequence of the exercise of the Change of Control Put Option by any Noteholders.

## 5.5 Optional Prepayment at Make Whole

The Borrower may, at any time, on giving not less than 30 nor more than 60 days' notice to the Lender (which notice shall be irrevocable and shall specify the date fixed for prepayment (the "**Make Whole Optional Prepayment Date**")), prepay the Loan in whole but not in part at the outstanding principal amount of the Loan and accrued and unpaid interest on the Loan so prepaid to but excluding the Make Whole Optional Prepayment Date plus the Make Whole Premium.

## 5.6 Optional Prepayment at Par

The Borrower may, at any time on or after the date three months prior to the Repayment Date, on giving not less than 30 nor more than 60 days' notice to the Lender (which notice shall be irrevocable and shall specify the date fixed for prepayment (the "**Par Optional Prepayment Date**")), prepay the Loan in whole but not in part at its principal amount plus accrued and unpaid interest on the Loan so prepaid to but excluding the Par Optional Prepayment Date.

## 5.7 Reduction of Loan upon Cancellation of Notes

The Borrower or any Subsidiary of the Borrower may from time to time, in accordance with the Conditions, purchase Notes in the open market or by tender or by a private transaction or otherwise at any price and deliver such Notes to the Lender (as issuer of such Notes), having an aggregate principal value of at least RUB60,000,000, together with a request for the Lender to present such Notes to the Registrar for cancellation, and may also from time to time procure the delivery to the Registrar of the Global Certificate with instructions to cancel a specified aggregate principal amount of Notes (being at least RUB60,000,000)

represented thereby (which instructions shall be accompanied by evidence satisfactory to the Registrar that the Borrower is entitled to give such instructions), whereupon the Lender shall promptly, pursuant to Clause 8.1 of the Agency Agreement, request the Registrar to cancel such Notes (or specified aggregate principal amount of Notes represented by the Global Certificate). Upon any such cancellation by or on behalf of the Registrar, the principal amount of the Loan corresponding to the principal amount of such Notes shall be extinguished for all purposes as of the date of such cancellation and no further interest shall be payable on such principal amount of the Loan.

## **5.8 Payment of Other Amounts**

If the Loan is to be prepaid by the Borrower pursuant to any of the provisions of Clause 5.2, 5.3, 5.4, 5.5 or 5.6, the Borrower shall, simultaneously with such prepayment, pay to the Lender accrued, but unpaid, interest (if any) thereon to the date of actual payment and all other sums then due and payable by the Borrower pursuant to this Agreement in relation to the prepaid amount. For the avoidance of doubt, if the principal amount of the Loan is reduced pursuant to the provisions of Clause 5.7, then no interest shall accrue or be payable for the Interest Period in which the Borrower makes the relevant request in respect of the amount by which the Loan is so reduced and the Lender shall not be entitled to any interest in respect of the cancelled Notes.

## **5.9 Provisions Exclusive**

The Borrower shall not prepay or repay all or any part of the amount of the Loan except at the times and in the manner expressly provided for in this Agreement. The Borrower shall not be permitted to re-borrow any amounts prepaid or repaid.

# **6 Payments**

## **6.1 Making of Payments**

Subject to Clauses 5.2, 5.3 and 5.4, all payments of principal, interest and other amounts payable under Clause 6.2 to be made by the Borrower under this Agreement shall be made unconditionally by credit transfer to the Account of the Lender not later than 10:00 a.m. (London time) two Business Days prior to each Interest Payment Date, the Repayment Date, the Make Whole Optional Prepayment Date or the Par Optional Prepayment Date or, for other amounts payable under Clause 6.2, the date of relevant payment (as the case may be) in Same-Day Funds to the Account, or such other account as the Trustee may direct following the occurrence of a Relevant Event.

The Borrower shall upon request of the Principal Paying Agent, confirm to the Principal Paying Agent by e-mail that it has issued or, as the case may be, will be issuing the payment instructions relating to a payment due under this Agreement.

The Lender agrees with the Borrower that it will not deposit any other moneys into the Account and that no withdrawals shall be made from the Account other than as provided for and in accordance with the Trust Deed, the Account Bank Agreement and the Agency Agreement.

## **6.2 No Set-off, Counterclaim or Withholding; Gross-up**

All payments to be made by the Borrower under this Agreement shall be made in full without set-off or counterclaim (including, for the avoidance of doubt, any set-off or counterclaim in respect of any amounts owed to the Borrower under any other loan

agreement) and (except to the extent required by law) free and clear of and without deduction for or on account of any Taxes. If the Borrower shall be required by applicable law to make any deduction or withholding from any payment under this Agreement for or on account of any such Taxes, it shall increase any payment of principal, interest or any other payment due hereunder to such amount as may be necessary to ensure that the Lender receives a net amount in Russian Roubles equal to the full amount which it would have received had payment not been made subject to such Taxes, and shall account to the relevant authorities for the relevant amount of such Taxes so withheld or deducted within the time allowed for such payment under applicable law and shall deliver to the Lender without undue delay evidence of such deduction or withholding and of the accounting therefor to the relevant taxing authority. If the Lender pays any amount in respect of such Taxes, the Borrower shall reimburse the Lender in Russian Roubles for such documented payment on demand within 10 Business Days. For the avoidance of doubt, this Clause 6.2 is without prejudice to any obligations of the Lender contained in Clause 6.5.

### **6.3 Withholding on the Notes**

Without prejudice to the provisions of Clause 6.2, if the Lender notifies the Borrower (setting out in reasonable detail the nature and extent of the obligation with such evidence as the Borrower may reasonably require) that it has become obliged to make any withholding or deduction for or on account of any Taxes from any payment which it is obliged to make, or would otherwise be required to make but for the imposition of any such withholding or deduction for or on account of any such Taxes, under or in respect of the Notes in circumstances where the Lender, subject to receipt thereof, is required to pay additional amounts pursuant to Condition 8 or otherwise or in connection with its funding of the Loan, the Borrower agrees to pay to the Lender not later than 10:00 a.m. (London time) two Business Days prior to the date on which payment is due to the Noteholders or such other party (as the case may be) in Same-Day Funds to the Account, such additional amounts as are equal to the said additional amounts which the Lender must pay pursuant to Condition 8 or in connection with funding the Loan. However, immediately upon receipt by the Lender of any sums paid pursuant to this Clause 6.3, to the extent that the Noteholders or such other party, as the case may be, are not entitled to such additional amounts pursuant to the Conditions, the Lender shall repay such additional amounts to the Borrower (it being understood that neither the Lender, nor the Trustee, nor the Principal Paying Agent, nor any Paying Agent shall have any obligation to determine whether any Noteholder or such other party is entitled to such additional amount).

Any notification by the Lender to the Borrower in connection with this Clause 6.3 shall be given as soon as reasonably practicable after the Lender becomes aware of any obligation on it to make any such withholding or deduction.

### **6.4 Reimbursement**

To the extent that the Lender subsequently obtains and uses any tax credit or allowance or other reimbursements relating to a deduction or withholding with respect to which the Borrower has made a payment pursuant to this Clause 6 or obtains any other reimbursement in connection therewith, it shall pay to the Borrower so much of the benefit received as will leave the Lender in exactly the same position as it would have been had no additional amount been required to be paid by the Borrower pursuant to this Clause 6; provided, however, that the question of whether any such benefit has been received and, accordingly, whether any payment should be made to the Borrower, the amount of any

such payment and the timing of any such payment shall be determined solely by the Lender.

The Lender shall use its best endeavours to obtain any credits or refunds available to it and shall notify the Borrower of any tax credit or allowance or other reimbursement it receives.

If as a result of a failure to obtain relief from deduction or withholding of any tax imposed by the Russian Federation or Ireland (i) such tax is deducted or withheld by the Borrower and pursuant to this Clause 6 an increased amount is paid by the Borrower to the Lender in respect of such deduction or withholding; and (ii) following the deduction or withholding of tax as referred to above the Lender (upon instructions by the Borrower) applies to the relevant Russian or Irish tax authorities for a tax refund and such tax refund is credited by the Russian or Irish tax authorities to a bank account of the Lender, the Lender shall as soon as reasonably possible notify the Borrower of the receipt of such tax refund and (upon instructions by the Borrower) promptly transfer the amount equal to the entire amount of the tax refund actually received by the Lender to a bank account of the Borrower specified for that purpose by the Borrower.

## **6.5 Mitigation**

If at any time either party hereto becomes aware of circumstances which would or might, then or thereafter, give rise to an obligation on the part of the Borrower to make any deduction, withholding or payment as described in Clause 6.2 or 6.3, then, without in any way limiting, reducing or otherwise qualifying the Lender's rights, or the Borrower's obligations, under such Clauses, such party shall as soon as reasonably practicable upon becoming aware of such circumstances notify the other party, and thereupon the parties shall consider and consult with each other in good faith with a view to finding, agreeing upon and implementing a method or methods by which any such obligation may be avoided or mitigated and, to the extent that both parties can do so without taking any action which in the reasonable opinion of such party is prejudicial to its own position, take such reasonable steps as may be available to it to avoid such obligation or mitigate the effect of such circumstances. The Borrower agrees to reimburse the Lender upon receipt of an original demand for payment for all properly documented and incurred costs and expenses (including but not limited to legal fees) incurred by the Lender in connection with this Clause 6.5.

## **7 Conditions Precedent**

The obligation of the Lender to make the Advance shall be subject to the condition precedent that as at the Closing Date the Lender shall have received the full amount of the proceeds from the issue of the Notes pursuant to the Subscription Agreement.

## **8 Change in Law or Increase in Cost**

### **8.1 Compensation**

In the event that after the date of this Agreement there is any change in or introduction of any tax, law, regulation, regulatory requirement or official directive (whether or not having the force of law but, if not having the force of law, the observance of which is in accordance with the generally accepted financial practice of financial institutions in the country concerned) or in the interpretation or application thereof by any person charged with the administration thereof and/or any compliance by the Lender in respect of the Loan with any request, policy or guideline (whether or not having the force of law but, if not having the

force of law, the observance of which is in accordance with generally accepted financial practice of financial institutions in the country concerned) from or of any central bank or other fiscal, monetary or other authority, agency or any official of any such authority, which:

- 8.1.1** subjects or will subject the Lender to any Taxes with respect to payments of principal of or interest on the Loan or any other amount payable under this Agreement (other than any Taxes payable by the Lender on its overall net income or any Taxes referred to in Clause 6.2 or 6.3); or
- 8.1.2** increases or will increase the taxation of or changes or will change the basis of taxation of payments to the Lender of principal of or interest on the Loan or any other amount payable under this Agreement (other than any such increase or change which arises by reason of any increase in the rate of tax payable by the Lender on its overall net income or as a result of any Taxes referred to in Clause 6.2 or 6.3); or
- 8.1.3** imposes or will impose on the Lender any other condition affecting this Agreement or this Loan,

and, if as a result of any of the foregoing:

- (i) the cost to the Lender of making, funding or maintaining this Loan is increased;
- (ii) the amount of principal, interest or other amount payable to or received by the Lender under this Agreement is reduced; or
- (iii) the Lender makes any payment or foregoes any interest or other return on or calculated by reference to the gross amount of any sum receivable by it from the Borrower hereunder or makes any payment or foregoes any interest or other return on or calculated by reference to the gross amount of the Loan, then subject to the following, and in each such case:
  - (a) the Lender shall, as soon as practicable after becoming aware of such increased cost, reduced amount or payment made or foregone, give written notice to the Borrower, together with a certificate signed by two directors of the Lender or by any person empowered by the authorised signatories of the Lender on behalf of the Lender describing in reasonable detail the introduction or change or request which has occurred and the country or jurisdiction concerned and the nature and date thereof and describing the connection between such introduction, change or request and such increased cost, reduced amount or payment made or foregone, and setting out in reasonable detail the basis on which such amount has been calculated, and providing all relevant reasonable supporting documents evidencing the matters set out in such written notice; and
  - (b) the Borrower, in the case of Clauses 8.1.3(i) and 8.1.3(iii) above, shall, on demand by the Lender, pay to the Lender such additional amount as shall be necessary to compensate the Lender for such increased cost, and, in the case of Clause 8.1.3(ii) above, at the time the amount so reduced would otherwise have been payable, pay to the Lender such additional amount as shall be necessary to

compensate the Lender for such reduction, payment or foregone interest or other return,

provided that this Clause 8.1 will not apply to or in respect of any matter for which the Lender has already been compensated under Clause 6.2 or 6.3.

## **8.2 Mitigation**

In the event that the Lender becomes entitled to make a claim pursuant to Clause 8.1, the Lender shall consult in good faith with the Borrower and shall use reasonable efforts (based on the Lender's reasonable interpretation of any relevant tax, law, regulation, requirement, official directive, request, policy or guideline) to reduce, in whole or in part, the Borrower's obligations to pay any additional amount pursuant to such Clause except that nothing in this Clause 8.2 shall oblige the Lender to incur any costs or expenses in taking any action hereunder which, in the reasonable opinion of the Lender, is prejudicial to it unless the Borrower agrees to reimburse the Lender such costs or expenses.

## **9 Representations and Warranties**

### **9.1 The Borrower's Representations and Warranties**

The Borrower represents and warrants to the Lender, with the intent that such shall form the basis of this Agreement at the date hereof and shall be deemed to be repeated by the Borrower on the Closing Date, that:

- 9.1.1** it is duly organised and incorporated and validly existing under the laws of the Russian Federation and has the power and legal right to own its property, to conduct its business as currently conducted and to enter into and to perform its obligations under this Agreement and to borrow the Advance;
- 9.1.2** the Borrower has taken all necessary corporate, legal and other action required to authorise the borrowing of the Advance on the terms and subject to the conditions of this Agreement and to authorise the execution and delivery of this Agreement and all other documents to be executed and delivered by it in connection with this Agreement, and the performance of this Agreement in accordance with its terms;
- 9.1.3** other than GEFCO S.A., the Borrower does not have any Principal Subsidiaries;
- 9.1.4** this Agreement has been duly executed and delivered by the Borrower and constitutes a legal, valid, binding and enforceable obligation of the Borrower, subject to applicable bankruptcy, insolvency, moratorium and similar laws affecting creditors' rights generally, and subject, as to enforceability: (i) to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law); and (ii) to the fact that certain gross-up provisions may not be enforceable under Russian law;
- 9.1.5** the execution, delivery and performance of this Agreement by the Borrower does not conflict with or result in any breach or violation of: (i) any law or regulation or any order of any governmental, judicial or public body or authority in the Russian Federation; (ii) the constitutive documents, rules and regulations of the Borrower; or (iii) any agreement or other undertaking or instrument to which the Borrower is a party or which is binding upon the Borrower or any of its assets (save where the breach or violation of such agreement or other undertaking or instrument would not have a Material Adverse Effect), nor result in the creation or imposition of any Lien

on any of its assets pursuant to the provisions of any such agreement or other undertaking or instrument;

- 9.1.6 all consents, authorisations or approvals of, or filings with, any governmental, judicial or public bodies or authorities of the Russian Federation required by the Borrower in connection with the execution, delivery, performance, legality, validity, enforceability and, subject to Russian legal requirements, admissibility in evidence of this Agreement have been obtained or effected and are in full force and effect;
- 9.1.7 no Potential Event of Default, Event of Default or a default under any agreement or instrument evidencing any Financial Indebtedness of the Borrower has occurred and is continuing, and no such event will occur as a result of making the Advance;
- 9.1.8 there are no judicial, arbitral or administrative actions, proceedings or claims pending or, to the knowledge of the Borrower, threatened against the Borrower, the adverse determination of which could have a Material Adverse Effect;
- 9.1.9 subject to Liens of the types permitted in Clause 10.1 and Liens arising in the ordinary course of business, the Borrower has the right of ownership or use (as that expression is defined under the laws of the Russian Federation) to its property free and clear of all Liens which if existing would have a Material Adverse Effect;
- 9.1.10 the Borrower's obligations under the Loan rank at least *pari passu* with all its other unsecured and unsubordinated Financial Indebtedness (apart from any obligations mandatorily preferred by law);
- 9.1.11 the most recent audited consolidated financial statements of the Borrower:
  - (i) were prepared in accordance with Accounting Standards, as consistently applied; and
  - (ii) save as disclosed in the audited consolidated financial statements or in the relevant auditors' report relating to such audited consolidated financial statements, present fairly in all material respects the assets and liabilities as at that date and the results of operations of the Group during the relevant financial year;
- 9.1.12 except as disclosed in the Prospectus, there has been no material adverse change since the date of the last audited consolidated financial statements of the Borrower in the financial condition or business operations of the Borrower or the Group taken as a whole;
- 9.1.13 the execution, delivery and enforceability of this Agreement is not subject to any tax, duty, fee or other charge, including, without limitation, any registration or transfer tax, stamp duty or similar levy, imposed by or within the Russian Federation or any political subdivision or taxing authority thereof or therein (other than state duty paid on any claim filed with a Russian court);
- 9.1.14 neither the Borrower nor its property has any right of immunity from suit, execution, attachment or other legal process on the grounds of sovereignty or otherwise in respect of any action or proceeding relating in any way to this Agreement, other than pursuant to the Resolution of the Government of the Russian Federation No. 57 dated 6 February 2004, which relates to assets such as, *inter alia*, infrastructure objects which serve national security purposes;

- 9.1.15 the Borrower is in compliance with all applicable provisions of law in the jurisdictions where the Borrower conducts its business or operations, except where failure to be so in compliance would not have a Material Adverse Effect;
- 9.1.16 the Borrower has not taken any corporate action nor have any other steps been taken or legal proceedings started or threatened in writing against the Borrower for its bankruptcy, winding-up, dissolution, external administration or re-organisation (save for any internal corporate reorganisation of the Group undertaken in the normal course of business or pursuant to the Reform Programme) (whether by voluntary arrangement, scheme of arrangement or otherwise) or for the appointment of a receiver, administrator, administrative receiver, conservator, custodian, trustee or similar officer of it or of any or all of its or their assets or revenues;
- 9.1.17 there are no strikes or other employment disputes against the Borrower which are pending and which could have a Material Adverse Effect;
- 9.1.18 in the event of any proceedings taken in the Russian Federation in relation to this Agreement, the choice of English law as the governing law of this Agreement, the agreement to arbitrate and any arbitration award obtained in England pursuant to Clause 17.2 in relation to this Agreement are recognisable and enforceable in the Russian Federation after compliance with the applicable procedural rules and all other legal requirements in the Russian Federation;
- 9.1.19 subject to Clause 10.5.1, under the laws of the Russian Federation effective as of the date hereof, it should not be required to make any deduction or withholding from any payment it may make hereunder;
- 9.1.20 the execution of this Agreement, and its exercise of its rights and performance of its obligations thereunder, constitute private and commercial acts done and performed for private and commercial purposes;
- 9.1.21 the Borrower has no overdue tax liabilities which would be reasonably likely to have a Material Adverse Effect other than those which it is contesting in good faith;
- 9.1.22 all licences, consents, examinations, clearances, filings, registrations and authorisations which are or may be necessary to enable the Borrower to own its assets and carry on its business are in full force and effect and, if not, the absence of which would be reasonably likely to not have a Material Adverse Effect;
- 9.1.23 the Borrower maintains insurance of the types and in amounts that are, in the judgment of the management of the Borrower, adequate for its business; and the Borrower has no reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business;
- 9.1.24 the Borrower is not in violation of, and has been and is in compliance with any applicable law, rule, regulation, ordinance, code, policy or rule of civil or common law or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent, decree or judgment, relating to pollution or protection of human health, the environment or wildlife, which violation would have a Material Adverse Effect; and

- 9.1.25 the Borrower owns or possesses adequate trademarks, trade names and other rights to inventions, know-how, patents, copyrights, confidential information and other intellectual property necessary to conduct the business now operated by it, or presently employed by it.

## **9.2 Lender's Representations and Warranties**

The Lender represents and warrants to the Borrower as follows:

- 9.2.1 the Lender is duly incorporated under the laws of Ireland as a public limited company and has full power and capacity to execute this Agreement and to undertake and perform the obligations expressed to be assumed by it herein and the Lender has taken all necessary action to approve and authorise the same;
- 9.2.2 the execution of this Agreement and the undertaking and performance by the Lender of the obligations expressed to be assumed by it herein will not conflict with, or result in a breach of or default under, the laws of Ireland, any agreement or instrument to which it is a party or by which it is bound or in respect of Indebtedness in relation to which it is a surety or the constitutive documents of the Lender;
- 9.2.3 the Lender is a company duly incorporated under Irish law which at the date hereof is a resident solely of Ireland for taxation purposes, is subject to taxation in Ireland on the basis of its registration as a legal entity, location of its management body or another similar criterion and it is not subject to taxation in Ireland merely on income from sources in Ireland or connected with property located in Ireland. The Lender will be able to obtain a certificate confirming its tax residence in Ireland from the relevant Irish authority;
- 9.2.4 the Lender has no intention to effect any corporate actions or reorganisations or change of its tax residency jurisdiction that would result in the Lender ceasing to be a tax resident of Ireland or ceasing to be subject to taxation in Ireland;
- 9.2.5 as at the date hereof, the Lender does not have a permanent establishment or presence outside Ireland, including, in particular, in the Russian Federation, save for any which may be created solely as a result of the Lender entering into and performing its obligations under the Lender Agreements, the Notes or any documents in relation to any previous issue of loan participation notes. In particular:
- (i) the Lender does not have a branch, representation, division, bureau, office, agency or any other economically autonomous subdivision or other place of business in any other country than Ireland through which the business of the Lender is wholly or partially carried out;
  - (ii) the Lender did not explicitly grant authority to and is not aware of an implied authority for the Borrower or any other Person located outside Ireland to negotiate key parameters of any contracts or sign any contracts on behalf of the Lender, bind the Lender to any contracts by other means or otherwise represent the Lender in dealings with third parties;
  - (iii) the Lender has its central management and control in Ireland. The Lender's place of effective management is only in Ireland; and

- (iv) the directors of the Lender are tax resident in Ireland and shall at all times act independently and exercise their authority from and within Ireland by taking all key decisions relating to the Lender in the Ireland.

For the purposes of this representation in relation to Russia a branch, representation, division, bureau, office or an agency shall be understood to mean any fixed place in Russia at which the Lender possesses or rents premises.

For the purposes of this representation in relation to Russia an economically autonomous subdivision shall be understood to mean any subdivision which is located in separate territory from the Lender at the location of which permanent workplaces are equipped. A workplace may be created only to an extent there is an employment relationship between an entity and an individual. A workplace shall be deemed to be permanent if it is created for more than one month;

- 9.2.6 this Agreement and the Subscription Agreement have been, and the Trust Deed and the Agency Agreement will on the Closing Date be, duly executed by and constitute legal, valid and binding obligations of the Lender enforceable in accordance with its terms, subject to applicable bankruptcy, examinership, insolvency, liquidation, administration, moratorium, re-organisation and similar laws affecting creditors' rights generally, and subject, as to enforceability, to general principles of equity;
- 9.2.7 all authorisations, consents and approvals required under Irish law by the Lender for or in connection with the execution of this Agreement, the Trust Deed, the Agency Agreement and the Subscription Agreement and the performance by the Lender of the obligations expressed to be undertaken by it herein and therein have been obtained and are in full force and effect;
- 9.2.8 the Notes and the Loan will be fully accounted for by the Lender on its balance sheet, meaning that the Loan will be treated as an asset of the Lender under accounting guidance applicable to the Lender while the Notes will be treated as a liability of the Lender;
- 9.2.9 the Lender is liable to Irish corporate income tax at the applicable standard rates in respect of all its taxable profits derived from the transactions contemplated pursuant to the Lender Agreements, computed in accordance with the applicable Irish generally accepted accounting practice, where interest and other income on the Loan receivable by the Lender will be treated as taxable income for Irish tax purposes;
- 9.2.10 the Lender does not own, either directly or indirectly, any shares of the Borrower;
- 9.2.11 the Lender has taken no action (other than entering into loan arrangements with the Borrower and the transactions and documents connected therewith) which would cause it to become registered in Russia for tax purposes; and
- 9.2.12 there is no reference to the territory of Russia as the actual place of the Lender's activity in the constitution of the Lender.

## **10 Covenants**

So long as the Loan or any other sum owing hereunder remains outstanding:

## **10.1 Negative Pledge**

The Borrower shall not create or permit to subsist any Lien upon or in respect of any of its undertakings, property, income, assets or revenues, present or future, to secure any Relevant Indebtedness unless, at the same time or prior thereto, the Borrower's obligations hereunder are secured equally and rateably therewith or benefit from such other security or other arrangements, as the case may be, to the satisfaction of the Trustee, provided that there will be no such requirement to secure the Borrower's obligations hereunder at any time that the aggregate principal amount of Relevant Indebtedness outstanding at such time that is secured by any such Lien does not exceed 10 per cent. of Consolidated Assets.

## **10.2 Mergers**

The Borrower shall: (i) not enter into any reorganisation (by way of a merger, accession, division, separation or transformation, or other bases or procedures for reorganisation contemplated or as may be contemplated from time to time by Russian legislation as these terms are construed by applicable Russian legislation); and (ii) ensure that no Principal Subsidiary enters into any reorganisation (whether by way of a merger, accession, division, separation or transformation as these terms are construed by applicable legislation) if, in the case of (i) or (ii) above, any such reorganisation or other type of corporate reconstruction could reasonably be expected to result in a Material Adverse Effect, other than (x) any merger, accession or transformation pursuant to the Reform Programme and/or any other legislative or regulatory acts adopted by Russian authorities and applicable to the Group, provided that the surviving entity will be the Borrower or, if different, the surviving entity will succeed to and fully assume the obligations of the Borrower under this Agreement and all other RZD Agreements; or (y) any merger, accession or transformation between two or more of Joint Stock Company Federal Freight, United Transportation and Logistics Company and(or) Joint Stock Company TransTelecom.

## **10.3 Financial and Other Information**

**10.3.1** The Borrower will furnish to the Lender, within nine months of the relevant year-end, audited annual financial statements prepared in accordance with applicable Accounting Standards as consistently applied, including a report thereon by the Borrower's auditors.

**10.3.2** At the same time as delivering its audited annual financial statements to the Lender pursuant to Clause 10.3.1 and also within 10 Business Days of any request by the Lender, the Borrower shall deliver to the Lender a written notice in the form of an Officer's Certificate (in the form or substantially in the form set out in the Schedule hereto) stating whether, to the best of the knowledge, information and belief of such officers as at the date of the certificate, having made all reasonable enquiries, since the date of the last such certificate or (if none) the date of this Agreement, the Borrower has been in compliance and, as of the date of such Officer's Certificate, complies with its obligations under this Agreement and whether a Potential Event of Default or Event of Default or Change of Control has occurred, its status and what action the Borrower is taking or proposes to take with respect thereto.

**10.3.3** At any time when the Borrower or any of its Subsidiaries shall have purchased any Notes and retained such Notes for its own account or for the account of any other company, the Borrower will notify the Lender to that effect and thereafter deliver to the Lender as soon as practicable after being so requested in writing by the Lender

an Officer's Certificate setting out the total number of Notes which, at the date of such Officer's Certificate, are beneficially held by or on behalf of the Borrower or any of its Subsidiaries and are not cancelled.

- 10.3.4** The Borrower will, on written request of the Lender, promptly (and in any event within 15 Business Days after such request) provide the Lender with such further information (and substantially in such form as requested by the Lender) including, but not limited to, information about the business and financial condition of the Borrower and its Principal Subsidiaries (including as to those of the Borrower's Subsidiaries which are, at the date of such request, Principal Subsidiaries), other than information containing state secrets and/or commercial secrets as defined in Federal Law No. 5485-1 dated 21 July 1993 (as amended) and Federal Law No. 98-F7 dated 29 July 2004 (as amended), respectively, as the Lender may reasonably require. Without prejudice to the foregoing, on each Interest Payment Date or promptly upon request by the Lender (and in any event within 15 Business Days after such request), the Borrower shall deliver to the Lender, a written notice in the form of an Officer's Certificate listing its Principal Subsidiaries.
- 10.3.5** Following the occurrence of any matter or event specified in this Agreement where this Agreement provides for a determination of whether such matter or event has or will have a Material Adverse Effect, or if requested in writing by the Lender, the Borrower shall provide the Lender with an Officer's Certificate certifying whether or not such matter or event has or will have a Material Adverse Effect and setting out such additional information as may be required to support such determination. The Lender shall be entitled, without liability to any person, to rely solely on an Officer's Certificate from the Borrower, certifying whether or not such matter has or will have a Material Adverse Effect.
- 10.3.6** The Borrower shall deliver within 10 Business Days of receipt of any written request by the Lender: (i) an Officer's Certificate as to any fact or matter *prima facie* within the knowledge of Borrower as sufficient evidence thereof and (ii) a like certificate to the effect that any particular dealing or transaction or step or thing is, in the opinion of the person so certifying, expedient as sufficient evidence that it is expedient, and the Lender shall not be bound in any such case to call for further evidence or be responsible for any loss that may be occasioned by its failing so to do.

#### **10.4 Compliance with Terms of Trust Deed**

The Lender agrees that it will observe and comply with its obligations set out in the Trust Deed and will not agree to any amendment to the terms of the Trust Deed without prior consultation if reasonably practicable with the Borrower and, with regard to any amendment of the Terms and Conditions of the Notes or Provisions for Meetings of the Noteholders as set out in schedules 2 and 4 to the Trust Deed, respectively, without prior written consent of the Borrower. In addition, the Lender agrees that it will only exercise its power to appoint a new Trustee pursuant to Clause 26 of the Trust Deed with the consent of the Borrower (such consent not to be unreasonably withheld or delayed).

#### **10.5 Withholding Tax Exemption**

- 10.5.1** The Lender shall use its best endeavours to provide the Borrower, not later than 20 calendar days prior to the date of the first Interest Payment Date (and thereafter as soon as possible at the beginning of each calendar year, but not later than 20

Business Days prior to the first Interest Payment Date in that year), with a certificate, issued and/or certified by the competent Irish authorities, confirming that the Lender is tax resident in Ireland (the “**Residency Certificate**”), provided that the Residency Certificate shall be properly legalised or apostilled by the Lender. The Lender shall not be liable for any failure to provide, or any delays in providing, the Residency Certificate as a result of any action or inaction of the competent Irish authorities, but shall notify the Borrower without delay about any such failure or delay with a written description of the actions taken by the Lender to obtain the Residency Certificate. In the event that the Lender has not complied with its duty to provide the Residency Certificate as set out in this Clause 10.5, the Borrower may, in accordance with the Trust Deed, require the substitution of the Lender as lender under this Agreement and as issuer of the Notes.

- 10.5.2** The Borrower and the Lender (using its best endeavours and in accordance with applicable law) agree that should the Russian legislation regulating the procedure for obtaining an exemption from Russian income tax withholding or the interpretation thereof by the relevant competent authority change, then the procedure referred to in Clause 10.5.1 will be deemed changed accordingly.
- 10.5.3** The Lender shall use its best efforts to within 20 days of the request of the Borrower (to the extent it is able to do so under applicable law including Russian law), deliver to the Borrower such other information or forms to be duly completed and delivered as may be needed to obtain a tax refund if a relief from deduction or withholding of Russian taxes has not been obtained. If required, the other forms referred to in this Clause 10.5 shall be duly signed by the Lender and stamped or otherwise approved by the competent tax authority in Ireland and any requisite power of attorney issued by the Lender to the Borrower shall be duly signed and apostilled or otherwise legalised. The Lender shall provide the Borrower with all assistance it may reasonably require to ensure that the Borrower can deliver to the tax authorities the information or forms specified in this Clause 10.5. If a relief from deduction or withholding of Russian Tax under this Clause 10.5 has not been obtained and further to an application of the Borrower to the relevant Russian taxing authorities the latter requests the Lender’s Rouble bank account details, the Lender shall, at the request of the Borrower, (x) use reasonable efforts to procure that such Rouble bank account of the Lender is duly opened and maintained and (y) thereafter furnish the Borrower with the details of such Rouble bank account. The Borrower shall pay for all costs, if any, associated with opening and maintaining such Rouble bank account. The Lender shall not be obliged to take any step under this Clause 10.5 if, in the reasonable opinion of the Lender, such step would be materially prejudicial to it (other than incurring of costs and expenses of an administrative nature).
- 10.5.4** The Borrower shall advise the Lender as soon as reasonably practicable of any modification to or development in Russian tax laws and regulations which affect or are capable of affecting the relief of the Lender from Russian withholding tax in respect of payments under this Agreement in order to ensure that, prior to the first Interest Payment Date and at the beginning of each calendar year, the Lender can provide the Borrower with the documents required under applicable Russian law for the relief of the Lender from Russian withholding tax in respect of payments under this Agreement.

## 10.6 Lender's Shareholders

The Lender shall notify the Borrower of any modification after the date of this Agreement to its shareholders (including ultimate beneficial owners) and directors within five Business Days following any such modification having occurred.

## 11 Events of Default

**11.1** If one or more of the following events of default (each, an “**Event of Default**”) shall occur, the Lender shall be entitled to the remedies set forth in Clause 11.3.

**11.1.1** The Borrower fails to pay within ten Business Days either the principal amount under the Loan or any amount of interest payable under this Agreement as and when such amount becomes payable in the currency and in the manner specified therein.

**11.1.2** The Borrower fails to pay within fifteen Business Days any other amount payable under this Agreement as and when such amount becomes payable in the currency and in the manner specified therein, provided that such default will not be an Event of Default if such amount is paid within 25 Business Days after such amount becomes payable if such delay is caused by a technical difficulty affecting transfer of funds due from the Borrower.

**11.1.3** The Borrower fails to perform or observe any of its other obligations under this Agreement and (except where in any such case that failure is not capable of remedy) that failure continues for the period of 45 calendar days upon the earlier of the Borrower becoming aware or the Lender giving notice thereof, provided however that the Borrower's failure to comply with Clause 2.2 (*Purpose*) shall not constitute an Event of Default.

**11.1.4** (i) The Borrower or any of its Principal Subsidiaries fails to pay any of its Financial Indebtedness as and when such Financial Indebtedness becomes due and payable, taking into account any applicable grace period; or (ii) any Financial Indebtedness becomes due and payable prior to its stated maturity other than at the option of the Borrower or such Principal Subsidiary or (provided that no event of default, howsoever described, has occurred) any person or entity entitled to such Financial Indebtedness; provided that the total amount of such Financial Indebtedness unpaid or becoming due and payable exceeds U.S.\$75,000,000 (or its equivalent in another currency) and further provided that this Clause 11.1.4 shall not apply to (i) any PPP Principal Subsidiary and (ii) any bilateral credit facilities entered into between any of the Borrower's Principal Subsidiaries and a third party creditor (being a creditor that is not a member of the Group).

**11.1.5** The occurrence of any of the following events: (i) the Borrower or any of the Principal Subsidiaries seeking or consenting to the introduction of proceedings for its liquidation or the appointment of a liquidation commission (*likvidatsionnaya komissiya*) or a similar officer; (ii) the presentation or filing of a petition in respect of the Borrower or any of the Principal Subsidiaries in any court of competent jurisdiction, arbitration court or before any agency alleging, or for, the bankruptcy, insolvency, dissolution, liquidation (or any analogous proceedings) of the Borrower or any of the Principal Subsidiaries (ignoring any petition that is not accepted by such court or agency for review on its merits), unless such petition is demonstrated to the reasonable satisfaction of the Lender to be vexatious or frivolous; (iii) the institution of supervision (*nablyudeniye*), financial rehabilitation (*finansovoye*

*ozdorovleniye*), external management (*vneshneye upravleniye*) or bankruptcy management (*konkursnoye proizvodstvo*) over the Borrower or any of the Principal Subsidiaries; (iv) entry by the Borrower or any of the Principal Subsidiaries into, or the agreement by the Borrower or any of the Principal Subsidiaries to enter into, amicable settlement (*mirovoye soglashiye*) with its creditors, as such terms are defined in the Federal Law of Russia No. 127-FZ "On Insolvency (Bankruptcy)" dated 26 October 2002 (as amended or replaced from time to time); and/or (v) any judicial liquidation in respect of the Borrower or any of the Principal Subsidiaries.

- 11.1.6** The Borrower or any of its Principal Subsidiaries is unable or admits inability to pay its debts as they fall due, generally suspends making payments on its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with its creditors generally with a view to rescheduling any of its Financial Indebtedness or makes a general assignment for the benefit of or a composition with its creditors generally; and/or a moratorium is declared in respect of any Financial Indebtedness of the Borrower or any of the Principal Subsidiaries (provided that, for the purposes of this Clause 11.1.6, in the case of a Principal Subsidiary only the same could have a Material Adverse Effect).
- 11.1.7** Any governmental authorisation necessary for the performance of any obligation of the Borrower under this Agreement fails to be in full force and effect and, without prejudice to any other provision of this Clause 11.1, such failure has not been remedied within 30 Business Days after the occurrence thereof.
- 11.1.8** Any governmental authority or court takes any action that has a material adverse effect on the Borrower's ability to perform its obligations under this Agreement or the validity or enforceability of this Agreement or the rights or remedies of the Lender under this Agreement (other than such rights and remedies of the Lender which are dealt with pursuant to Clause 5.3 above), save where such action is being contested in good faith by the Borrower and is removed, paid out, stayed or discharged within 60 calendar days of such action being taken.
- 11.1.9** Any execution or distress is levied against, or an encumbrancer takes possession of, the whole or any material part (in the reasonable opinion of the Lender) of, the assets of the Borrower or any event occurs which under the laws of any jurisdiction has a similar or analogous effect and the same could have a Material Adverse Effect unless such execution, distress, enforcement of a Lien or similar or analogous event is being contested in good faith by the Borrower and is removed, paid out, stayed or discharged within 45 days of such execution, distress being levied, taking of possession or similar or analogous act, as the case may be.
- 11.1.10** There are unsatisfied final judgments, decrees or orders of courts of competent jurisdiction or other appropriate and competent law-enforcement bodies for the payment of money against the Borrower and its Principal Subsidiaries which could have a Material Adverse Effect and there is a period of 60 calendar days following the entry thereof during which such judgment, decree or order is not appealed, discharged, waived or the execution thereof stayed and such default continues for 20 calendar days after the notice specified in Clause 11.2 or, if later, the expiry of the 60 day period referred to above.
- 11.1.11** Any seizure, compulsory acquisition, expropriation, nationalisation without appropriate compensation or renationalisation after the date of this Agreement by

or under the authority of a government authority of all or part (the book value of which is 15 per cent. or more of the book value of the whole, as determined under IFRS) of the assets of the Borrower or any Principal Subsidiary, provided that, in the case of a Principal Subsidiary, the same could have a Material Adverse Effect.

**11.1.12** The Borrower ceases to carry on the principal business activities it carries on as at the date of this Agreement.

**11.1.13** At any time it is or becomes unlawful for the Borrower to perform or comply with any or all of its material (in the Lender's reasonable opinion) obligations under this Agreement or any of such material obligations (subject as provided in Clause 9.1.3) are not, or cease to be, legal, valid, binding and enforceable.

**11.1.14** Any event occurs which under the laws of Ireland or the Russian Federation or, in the case of a Principal Subsidiary, the jurisdiction of its incorporation has an analogous effect to any of the events referred to in Clauses 11.1.5 and 11.1.9, subject to the same thresholds, qualifications and cure periods as set out in the relevant clauses above.

## **11.2 Notice of Potential Event of Default**

The Borrower shall deliver to the Lender and the Trustee: (i) within 10 Business Days of any written request by the Lender or the Trustee; or (ii) promptly upon becoming aware thereof, written notice in the form of an Officer's Certificate stating whether any Potential Event of Default or an Event of Default has occurred, its status and what action the Borrower is taking or proposes to take with respect thereto.

## **11.3 Default Remedies**

If any Event of Default occurs and is continuing, the Lender and/or the Trustee as applicable in accordance with the Trust Deed may, by notice in writing to the Borrower: (a) declare the obligations of the Lender under this Agreement to be immediately terminated, whereupon such obligations shall terminate; and (b) declare all amounts payable under this Agreement by the Borrower that would otherwise be due after the date of such termination to be immediately due and payable, whereupon all such amounts shall become immediately due and payable, all without diligence, presentment, demand of payment, protest or notice of any kind, which are all expressly waived by the Borrower; provided, however, that if any event of any kind referred to in Clause 11.1.5 occurs, the obligations of the Lender under this Agreement shall immediately terminate, and all amounts payable under this Agreement by the Borrower that would otherwise be due after the occurrence of such event shall become immediately due and payable, all without diligence, presentment, demand of payment, protest or notice of any kind, which are all expressly waived by the Borrower.

## **11.4 Rights Not Exclusive**

The rights provided for herein are cumulative and are not exclusive of any other rights, powers, privileges or remedies provided by law.

# **12 Indemnity**

## **12.1 Indemnification**

The Borrower undertakes to the Lender that if the Lender or any director, officer, employee or agent (other than the Principal Paying Agent or any of the Paying Agents) of the Lender

(each an “**Indemnified Party**”) incurs any loss, liability, cost, claim, charge, expense (including all legal fees properly incurred) demand or damage (the “**Loss**”) which may be properly incurred in respect of this Agreement (or enforcement thereof), and/or the issuance, constitution, sale, listing and/or enforcement of the Notes and/or the Notes being outstanding (excluding the Loss that is the subject of the undertakings contained in Clauses 3.4, 8 and 12.5 (it being understood that the Lender may not recover twice in respect of the same Loss)) the Borrower shall pay to the Indemnified Party on demand an amount equal to such Loss (as evidenced by an invoice issued to the Borrower by the Lender in accordance with Clause 15) unless, in any such case, such Loss was either caused by such Indemnified Party’s negligence or wilful misconduct or arose out of a breach of the representations and warranties of the Lender contained herein or in the Subscription Agreement. It is understood that the amount of Loss that is to be paid pursuant to the preceding provisions of this Clause 12.1, provided such amount is duly documentarily evidenced, will be paid by the Borrower on the basis of an itemised invoice distributed to the Borrower by the Lender on the letterhead of the latter and a delivery and acceptance act signed by the parties.

## **12.2 Notice and Payment of Loss, Defence of Action and Settlement**

If any proceeding (including a governmental investigation), claim or demand shall be instituted involving an Indemnified Party, it shall promptly notify the Borrower in writing and the Borrower shall have the right to assume the defence thereof and appoint lawyers which are acceptable to the Indemnified Party (acting reasonably in assessing acceptability) and shall be liable to pay the fees and expenses of such lawyers related to such proceeding. In any proceeding, the Indemnified Party shall have the right to retain its own lawyers, but the fees and expenses of such lawyers shall be at the expense of the Indemnified Party unless (i) the Borrower and the Indemnified Party shall have mutually agreed to the retention of such lawyers; (ii) the named parties to any such proceeding (including any joined parties) include the Borrower and the Indemnified Party and representation of both parties by the same lawyers (in the reasonable opinion of the Indemnified Party) would be inappropriate due to actual or potential differing interests between them; (iii) pursuant to the previous sentence the Borrower has elected to assume the defence itself but has within a reasonable time after the notification of the institution of such action failed to appoint lawyers as contemplated above; or (iv) pursuant to the previous sentence the Borrower has elected not to assume such defence itself and the Indemnified Party has assumed such defence and retained lawyers in respect thereof. It is understood that the Borrower shall reimburse such fees and expenses as they are incurred in respect of (i), (ii), (iii) and (iv) above. The Borrower shall not be liable for any settlement of any such proceeding, claim or demand effected without its written consent (provided that such consent shall not be unreasonably withheld or delayed), but if settled with such consent (or without such consent in circumstances where such consent shall have been unreasonably withheld or delayed as aforesaid) or if there be a final judgment for the Indemnified Party, the Borrower agrees to indemnify the Indemnified Party from and against any loss or liability by reason of such settlement or judgment. The Borrower will not settle any proceeding in respect of which indemnity may be sought pursuant to Clause 12.1 without the written consent of the relevant Indemnified Party, unless such settlement includes an unconditional release of each Indemnified Party from all liability arising out of such proceeding, claim or demand.

### **12.3 Independent Obligation**

Clause 12.1 constitutes a separate and independent obligation of the Borrower from its other obligations under or in connection with this Agreement or any other obligations of the Borrower in connection with the issue of the Notes by the Lender and shall not affect, or be construed to affect, any other provision of this Agreement or any such other obligations.

### **12.4 Evidence of Loss**

A certificate of the Lender, supported by relevant documentation, setting forth the amount of Loss and specifying in full detail the basis therefor shall, in the absence of manifest error, be conclusive evidence of the amount of such Loss.

### **12.5 Currency Indemnity**

To the fullest extent permitted by law, the obligations of the Borrower under this Agreement in respect of any amount due in the currency (the “**first currency**”) in which the same is payable shall, in the event of any payment made by the Borrower in any other currency (the “**second currency**”) (whether pursuant to a judgment or otherwise), be discharged only to the extent of the amount in the first currency that the Lender may, acting reasonably and in accordance with normal banking procedures, purchase with the sum paid in the second currency (after any premium and costs of exchange) on the Business Day immediately following the day on which the Lender receives such payment. If the amount in the first currency that may be so purchased for any reason falls short of the amount originally due (the “**Due Amount**”), the Borrower hereby agrees to indemnify and hold harmless the Lender against any deficiency in the first currency. Any obligation of the Borrower not discharged by payment in the first currency shall, to the fullest extent permitted by applicable law, be due as a separate and independent obligation and, until discharged as provided in this Agreement, shall continue in full force and effect. If the amount in the first currency that may be purchased by the Lender exceeds the Due Amount the Lender shall promptly pay the amount of the excess to the Borrower.

## **13 Survival**

The obligations of the Borrower pursuant to Clauses 6.2, 6.3, 12 and 14.1 shall survive the execution and delivery of this Agreement, the drawdown of the Facility and the repayment of the Loan, in each case by the Borrower.

## **14 General**

### **14.1 Stamp Duties**

**14.1.1** The Borrower shall pay all stamp, registration and documentary taxes or similar charges (if any) imposed on the Borrower by any person in the Russian Federation or Ireland which may be payable or determined to be payable in connection with the execution, delivery, performance, enforcement, or admissibility into evidence of this Agreement and shall make a payment to the Lender calculated on the basis of all properly documented costs which may be incurred or suffered by the Lender with respect to, or resulting from, delay or failure by the Borrower to pay such taxes or similar charges.

**14.1.2** The Borrower agrees that if the Lender incurs a liability to pay any stamp, registration and documentary taxes or similar charges (if any) imposed by any person in the Russian Federation or Ireland which may be payable or determined to be payable in connection with the execution, delivery, performance,

enforcement, or admissibility into evidence of this Agreement and any documents related hereto, the Borrower shall repay the Lender on demand an amount equal to such stamp or other documentary taxes or duties and shall make a payment to the Lender in the amount equal to all costs and expenses properly documented and connected with the payment of such amounts.

#### **14.2 Waivers**

No failure to exercise and no delay in exercising, on the part of the Lender or the Borrower, any right, power or privilege hereunder and no course of dealing between the Borrower and the Lender shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. The rights and remedies provided herein are cumulative and not exclusive of any rights or remedies provided by applicable law.

#### **14.3 Prescription**

In the event that any Notes become void pursuant to Condition 11, the Lender shall forthwith repay to the Borrower the principal amount of such Note and the interest accrued thereon, subject to the Lender having previously received from the Borrower a corresponding amount in respect of principal and interest pursuant to this Agreement. If requested by the Borrower in such circumstances, the Lender and the Borrower shall enter into an amendment to this Agreement providing for such repayment and the corresponding reduction of the Loan in form satisfactory to the Borrower.

#### **14.4 No Unlawful Payments**

The Lender undertakes with the Borrower as follows:

- (a) While performing their obligations under this Agreement, the parties hereto, their affiliates, employees and intermediaries shall not pay, or offer to pay, or permit the payment of, whether directly or indirectly, any funds or valuables to any persons in order to influence the actions or decisions of such persons for the purposes of obtaining any unlawful benefit or for other unlawful purposes.
- (b) While performing their obligations under this Agreement, the parties hereto, their affiliates, employees and intermediaries shall not carry out any action which may be, under the law applicable to this Agreement, considered the giving or taking of bribes, commercial bribery, or any other action breaching applicable law or international anticorruption acts.
- (c) In the event that any party suspects that the other party or its affiliates, employees and intermediaries have breached the provisions of paragraph (a) or (b) above or any anti-bribery or anti-corruption laws applicable to that party in connection with its performance of any obligations under this Agreement (the “**Breach**”), such party (the “**Notifying Party**”) will notify the other party of the Breach as below:

Contact details of the Borrower to be used:

+7 (499) 262-71-61, +7 (499) 262-43-86, fact@center.rzd.ru,  
kravcovaaa@center.rzd.ru, www.rzd.ru (official website on which the relevant form  
can be completed).

Contact details of the Lender to be used:

Fax: +353 1 905 8029

Postal address: 2nd Floor, Palmerston House, Fenian Street, Dublin 2, Ireland

- (d) The Notifying Party shall provide the other party with information and evidence reasonably requested by the latter in connection with the Breach, but in no event shall the Notifying Party be required to disclose any information in connection with the Breach which violates any confidentiality, regulatory or legal restrictions on the disclosure of such information.
- (e) The parties hereby warrant to each other that, having being notified of any Breach, they will not take any adverse action in retaliation for such notification of the Breach in respect of the Notifying Party or any employee of the Notifying Party.
- (f) A party having being notified of any Breach by the Notifying Party shall review the relevant notice and inform the Notifying Party of the results of such review within thirty (30) calendar days of receiving such notice. The parties warrant to each other to carry out a proper investigation of the facts of any Breach with due regard for confidentiality and taking their best efforts to mitigate any possible dispute.
- (g) If a party is in Breach and/or the other party does not receive a response to the notice required paragraph (f) of this sub-clause 14.4, such other party may unilaterally terminate this Agreement out of court by a written notice at least thirty (30) calendar days prior to the date of such termination.

## **15 Notices**

All notices (including in connection with any arbitration proceedings), requests, demands or other communications to or upon the respective parties hereto shall be given or made in the English language by fax or electronic communication or otherwise in writing (by hand or by courier) and shall be deemed to have been duly given or made (if delivered by hand or courier) at the time of delivery, (if sent by facsimile transmission or by airmail) at the time, in the case of a facsimile transmission, when the relevant delivery receipt is received by the sender or (if by electronic communication) when the relevant receipt of such communication being read is given, or where no read receipt is requested by the sender, at the time of sending, provided that no delivery failure notification is received by the sender within 24 hours of sending such communication, and, in each case, provided that any communication that is received (or deemed to take effect in accordance with the foregoing) outside business hours or on a non-business day in the place of receipt shall be deemed to take effect at the opening of business on the next following business day in such place, to the party to which such notice, request, demand or other communication is required or permitted to be given or made under this Agreement addressed as follows:

if to the Borrower:

Joint Stock Company "Russian Railways"  
2, Novaya Basmannaya St.  
107174 Moscow  
Russian Federation

Fax: +7 495 262 9280, +7 499 260 0186  
E-mail: fact@center.rzd.ru, kravcovaaa@center.rzd.ru  
Attention: Corporate Finance Department

if to the Lender:

RZD Capital P.L.C.  
2nd Floor, Palmerston House  
Fenian Street  
Dublin 2  
Ireland

Fax: +353 1 905 8029  
Email: RZDcapital@caficointernational.com  
Attention: The Directors

If to the Trustee:

BNY Mellon Corporate Trustee Services Limited  
One Canada Square,  
London E14 5AL,  
United Kingdom  
Fax: +44 20 7964 2509  
Attention: Trustee Administration Manager

or to such other postal address, facsimile number or electronic address as any party may hereafter specify in writing to the other.

## **16 Assignment**

### **16.1 General**

This Agreement shall inure to the benefit of and be binding upon the parties, their respective successors and any permitted assignee or transferee of some or all of a party's rights or obligations under this Agreement. Any reference in this Agreement to any party shall be construed accordingly and, in particular, references to the exercise of rights and discretions by the Lender or the forming of an opinion or the making of any determination, following notification to the Borrower of the assignment and/or enforcement of the security, each as referred to in Clause 16.3, shall include references to the exercise of such rights or discretions or the forming of an opinion or the making of any determination by the Trustee (as Trustee). Notwithstanding the foregoing, the Trustee shall not be entitled to participate in any determinations by the Lender, or any discussions between the Lender and the Borrower or any agreements of the Lender or the Borrower, pursuant to Clause 6.4, 6.5 or 8.2.

### **16.2 By the Borrower**

The Borrower shall not be entitled to assign or transfer all or any part of its rights or obligations hereunder to any other person.

### **16.3 By the Lender**

Subject to the provisions of Clause 16 of the Trust Deed, the Lender may not assign or transfer, in whole or in part, any of its rights and benefits or obligations under this Agreement other than the Reserved Rights except: (i) the charge by way of first fixed charge granted by the Lender in favour of the Trustee (as Trustee) of certain of the Lender's rights and benefits under this Agreement; and (ii) the absolute assignment by the Lender to the Trustee of certain rights, interests and benefits under this Agreement, in each case pursuant to Clause 4 of the Trust Deed. Nothing herein shall prevent the Trustee from

assigning or transferring any rights held by it in relation to or under this Agreement, provided that any such assignment or transfer is in accordance with Clause 26 of the Trust Deed.

## **17 Law and Arbitration**

### **17.1 Governing Law**

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law.

### **17.2 Arbitration**

The parties irrevocably agree that any dispute arising out of or in connection with this Agreement, including a dispute as to the validity, existence or termination of this Agreement or the consequences of its nullity and/or this Clause 17.2 (a “**Dispute**”), shall be resolved by arbitration in London, England, conducted in the English language by three arbitrators, in accordance with the rules set down by the LCIA (formerly the London Court of International Arbitration) (“**LCIA Rules**”) (such arbitration to also be administered by the LCIA in accordance with the Rules), which rules are deemed to be incorporated by reference into this Clause, save that Article 5.6 of the LCIA Rules shall be amended as follows: unless the parties agree otherwise, the third arbitrator, who shall act as chairman of the tribunal, shall be nominated by the two arbitrators nominated by or on behalf of the parties. If he is not so nominated within 30 days of the date of nomination of the later of the two party-nominated arbitrators to be nominated, he shall be chosen by the LCIA. Notwithstanding the above, and for the avoidance of doubt, in the event that more than two parties are involved in the dispute, and the disputant parties have not agreed that they represent two separate sides for the formation of the tribunal, LCIA Rule 8.1 shall apply. Where disputes arise under this Agreement and/or under any other RZD Agreement, in the event of any further dispute(s) under this Agreement and/or any other RZD Agreement, the first LCIA tribunal to be appointed in any of the disputes shall have the power, upon request of any party to any dispute, to order that the proceedings to resolve the further dispute(s) be consolidated with the arbitration proceedings pursuant to which the first LCIA tribunal has been appointed (whether or not proceedings to resolve the further dispute(s) have yet been instituted), if the further dispute(s) are so closely connected that it is efficient and appropriate to resolve them in the same proceedings and provided that no date for exchange of witness statements has been fixed in the proceedings pursuant to which the first LCIA tribunal has been appointed. If the LCIA tribunal so orders, the parties to each dispute which is a subject of its order shall be treated as having consented to that dispute being finally decided:

- (i) by the LCIA tribunal that ordered the consolidation unless the LCIA decides that any arbitrator would not be suitable or impartial; and
- (ii) in accordance with the procedure, at the seat and in the language specified in the arbitration agreement in the contract under which the LCIA tribunal that ordered the consolidation was appointed, save as otherwise agreed by all parties to the consolidated proceedings or, in the absence of such agreement, ordered by the LCIA tribunal in the consolidated proceedings.

In any such arbitration, in the event of a declared public health emergency by either the World Health Organisation (the “**WHO**”) or a national Government, as a consequence of

which it is inadvisable or prohibited for the parties and/or their legal representatives to travel to, or attend any hearing ordered by the tribunal, the following shall apply:

- (i) any such hearing shall be held via video or telephone conference upon the order of the tribunal;
- (ii) the parties agree that no objection shall be taken to the decision, order or award of the tribunal following any such hearing on the basis that the hearing was held by video or telephone conference; and
- (iii) in exceptional circumstances only the tribunal shall have the discretion to order that a hearing shall be held in person, but only after full and thorough consideration of the prevailing guidance of the WHO and any relevant travel or social distancing restrictions or guidelines affecting the parties and/or their legal representatives and the implementation of appropriate mitigation.

### **17.3 Waiver of Immunity**

To the extent that the Borrower or the Lender may, in relation to any Dispute, claim in any jurisdiction, for itself or its assets or revenues, immunity from the jurisdiction of any court or tribunal, service of process, injunctive or other interim relief, or any process for execution of any award or judgment against its property, the Borrower and the Lender irrevocably waive such immunity, other than, in relation to the Borrower only, pursuant to the Resolution of the Government of the Russian Federation No. 57 dated 6 February 2004, which relates to assets such as, *inter alia*, infrastructure objects which serve national security purposes.

### **18 Severability**

If any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

### **19 Contracts (Rights of Third Parties) Act 1999**

Other than the Trustee who shall have such third party rights, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

### **20 Language**

The language which governs the interpretation of this Agreement is the English language.

### **21 Amendments**

Except as otherwise provided by its terms, this Agreement may not be varied except by an agreement in writing signed by the parties hereto.

### **22 Counterparts**

This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which when so executed shall constitute one and the same binding agreement between the parties hereto.

## **23 Limited Recourse and Non-Petition**

### **23.1 Non-Petition**

Neither the Borrower nor any other person acting on its behalf shall be entitled at any time to institute against the Lender, or join in any institution against the Lender of, any bankruptcy, administration, moratorium, reorganisation, controlled management, arrangement, insolvency, examinership, winding-up or liquidation proceedings or similar insolvency proceedings under any applicable bankruptcy or similar law in connection with any obligation of the Lender under this Agreement, save for lodging a claim in the liquidation of the Lender which is initiated by another party or taking proceedings to obtain a declaration or judgment as to the obligations of the Lender.

### **23.2 Limited Recourse**

The Borrower hereby agrees that it shall have recourse in respect of any claim against the Lender only to sums in respect of principal, interest or other amounts (if any), as the case may be, received (after deduction or withholding of such taxes or duties as may be required to be made by the Lender by law in respect of such sum or in respect of the Notes and for which the Lender has not received a corresponding payment (also after deduction or withholding of such taxes or duties as may be required to be made by the Lender in respect thereof) pursuant to this Agreement) by or for the account of the Lender pursuant to this Agreement (the "**Lender Assets**"), subject always (i) to the Security Interests (as defined in the Trust Deed) and (ii) to the fact that any claims of the Joint Lead Managers under the Subscription Agreement shall rank in priority to any claims of the Borrower hereunder, and that any such claim by any and all such Joint Lead Managers or the Borrower shall be reduced pro rata so that the total of all such claims does not exceed the aggregate value of the Lender Assets after meeting claims secured on them. The Trustee having realised the same, neither the Borrower nor any person acting on its behalf shall be entitled to take any further steps against the Lender to recover any further sums and no debt shall be owed by the Lender to such person in respect of any such further sum. In particular, neither the Borrower nor any person acting on its behalf) shall be entitled at any time to institute against the Lender, or join with any other person as instituting or joining, insolvency proceedings (or any proceedings mentioned in the paragraph above) against the Lender.

The Borrower shall have no recourse against any director, shareholder, or officer of the Lender in respect of any obligations, covenants or agreement entered into or made by the Lender in respect of this Agreement, except to the extent that any such person acts in bad faith or is negligent in the context of its obligations.

The provisions of this Clause 23 shall survive the termination of this Agreement.

**Schedule**  
**Form of Officer's Certificate under Clause 10.3.2 of the Loan Agreement**

[ON THE HEADED PAPER OF THE BORROWER]

RZD Capital P.L.C.  
2nd Floor, Palmerston House  
Fenian Street  
Dublin 2  
Ireland

CC: BNY Mellon Corporate Trustee Services Limited

[Date]

Dear Sirs

**RUB25,000,000,000 6.598 per cent. Loan Participation Notes due 2028 issued by, but with limited recourse to, RZD Capital P.L.C. for the sole purpose of funding a loan to Joint Stock Company "Russian Railways"**

This certificate is delivered to you in accordance with Clause 10.3.2 of the Loan Agreement dated 8 December 2020 (the "**Loan Agreement**") and made between RZD Capital P.L.C. (the "**Lender**"), and Joint Stock Company "Russian Railways" (the "**Borrower**"). All words and expressions defined in the Loan Agreement shall (save as otherwise provided herein or unless the context otherwise requires) have the same meanings herein.

- (a) As at [●]<sup>1</sup>, no Event of Default or Potential Event of Default existed [other than [●]]<sup>2</sup> and no Event of Default or Potential Event of Default had existed at any time since [●]<sup>3</sup> [the date of the last certificate delivered under Clause 10.3.2<sup>4</sup> [other than [●]]]<sup>5</sup>;
- (b) As at [●], there has been no Change of Control as defined in the Loan Agreement; and
- (c) From and including [●]<sup>3</sup> [the date of the last certificate delivered under Clause 10.3.2]<sup>4</sup> to and including [●]<sup>1</sup>, the Borrower confirms that it is complying with its obligations under the Loan Agreement.

**JOINT STOCK COMPANY "RUSSIAN RAILWAYS"**

By:

Title:

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<sup>1</sup> The date of delivery of the certificate.

<sup>2</sup> If any Event of Default or Potential Event of Default did exist, give details (including its status and what action the Borrower is taking or proposes to take with respect thereto); otherwise delete.

<sup>3</sup> Insert date of Loan Agreement in respect of the first certificate delivered under Clause 10.3.2, otherwise delete.

<sup>4</sup> Include unless the certificate is the first certificate delivered under Clause 10.3.2, in which case delete.

<sup>5</sup> If any Event of Default or Potential Event of Default did exist, give details (including its status and what action the Borrower is taking or proposes to take with respect thereto); otherwise delete.

**Signature Page to the Loan Agreement**

**In witness whereof**, the parties hereto have caused this Agreement to be executed in Ireland and elsewhere in counterpart on the date first written above.

For and on behalf of **JOINT STOCK COMPANY "RUSSIAN RAILWAYS"**:

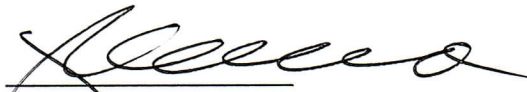
By: \_\_\_\_\_

Name: *Vladimir Mikhaylov*

Title: *First Deputy CEO*

**Signature Page to the Loan Agreement**

Signed by a duly authorised attorney of **RZD CAPITAL P.L.C.:**

By:   
Name: Rolando Ebuna  
Title: Director