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EIB Internal Classification Level: Corporate Use

# **SOUTH-MORAVIA REGIONAL ROLLING STOCK**

Finance Contract

*between the*

European Investment Bank

*and*

Jihomoravský kraj

Brno,	30 September 2020
Luxembourg,	15 October 2020

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**THIS CONTRACT IS MADE BETWEEN:**

The European Investment Bank having its seat at 100 blvd Konrad Adenauer, Luxembourg, L-2950 Luxembourg, represented by Anders Risberg, Head of Division, and Dirk Ellerkmann, head od Division,

(the "**Bank**")

of the first part, and

Jihomoravský kraj (South-Moravia Region), having its address at Žerotínovo nám. 3, 601 82 Brno, for which acts externally JUDr. Bohumil Šimek, hejtman Jihomoravského kraje and Bc. Roman Hanák, náměstek hejtmána Jihomoravského kraje

(the "**Borrower**")

of the second part.

**WHEREAS:**

- (a) The Borrower has stated that it is undertaking a project of acquisition of 37 new passenger trainsets (the “**Project**”) as more particularly described in the technical description (the “**Technical Description**”) set out in Schedule A.

The total cost of the Project, as estimated by the Bank, is CZK 7,143 million (seven billion one hundred and forty three million Czech crowns) and the Borrower has stated that it intends to finance the Project as follows:

<b>Source</b>	<b>Amount (CZK m)</b>
EU Grants/Other sources	4,578
Credit from the Bank	2,565
<b>TOTAL</b>	<b>7,143</b>

- (b) In order to fulfil the financing plan set out in Recital (a), the Borrower has requested from the Bank a credit of CZK 2,565 million (two billion five hundred and sixty five million Czech crowns).
- (c) The Bank considering that the financing of the Project falls within the scope of its functions, and having regard to the statements and facts cited in these Recitals, has decided to give effect to the Borrower’s request providing to it a credit equivalent to CZK 2,565 million (two billion five hundred and sixty five million Czech crowns) under this Finance Contract (the “**Contract**”); provided that the amount of the Bank loan shall not, in any case, exceed 50% (fifty per cent) of the total cost of the Project set out in Recital (a) and total amount Bank loan together with EU Grants shall not, in any case, exceed 100% (one hundred per cent) of the total cost of the Project.
- (d) The Assembly of the Borrower has authorised the borrowing of the sum of CZK 2,565 million (two billion five hundred and sixty five million Czech crowns) represented by this credit on the terms and conditions set out in this Contract; the authorisation referred to in this Recital is attached as Annex I.
- (e) The Statute of the Bank provides that the Bank shall ensure that its funds are used as rationally as possible in the interests of the European Union; and, accordingly, the terms and conditions of the Bank’s loan operations must be consistent with relevant policies of the European Union.
- (f) Part of the investment costs of the Project may be co-financed with the ESI Funds (as defined below), and/or other state subsidies or grants and the provision of such funds has been duly authorised and will be provided in compliance with all relevant legislation of the European Union, including that on state aid.
- (g) The Bank considers that access to information plays an essential role in the reduction of environmental and social risks, including human rights violations, linked to the projects it finances and has therefore established its transparency policy, the purpose of which is to enhance the accountability of the Bank’s group towards its stakeholders and the citizens of the European Union in general.
- (h) The processing of personal data shall be carried out by the Bank in accordance with applicable European Union legislation on the protection of individuals with regard to the processing of personal data by the European Union institutions and bodies and on the free movement of such data.
- (i) On 22 February 2019, the Czech Republic confirmed in writing that the present operation is submitted to the Bank with its agreement.
- (j) The Bank supports the implementation of international and EU standards in the field of anti-money laundering and countering the financing of terrorism and promotes tax good governance standards. It has established policies and procedures to avoid the risk of misuse of its funds for purposes which are illegal or abusive in relation to applicable laws. The EIB Group statement on tax fraud, tax evasion, tax avoidance, aggressive tax planning, money laundering and financing of terrorism is available on the Bank’s website and offers further guidance to EIB contracting counterparties.

**NOW THEREFORE** it is hereby agreed as follows:

## **INTERPRETATION AND DEFINITIONS**

### **Interpretation**

In this Contract:

- (a) references to Articles, Recitals, Schedules and Annexes are, save if explicitly stipulated otherwise, references respectively to articles of, and recitals, schedules and annexes to this Contract;
- (b) references to “law” or “laws” mean (a) any applicable law and any applicable treaty, constitution, statute, legislation, decree, normative act, rule, regulation, judgement, order, writ, injunction, determination, award or other legislative or administrative measure or judicial or arbitral decision in any jurisdiction which is binding or applicable case law, and (b) EU Law;
- (c) references to applicable law, applicable laws or applicable jurisdiction means (a) a law or jurisdiction applicable to the Borrower, its rights and/or obligations (in each case arising out of or in connection with the Contract), its capacity and/or assets and/or the Project; and/or, as applicable, (b) a law or jurisdiction (including in each case the Bank’s Statute) applicable to the Bank, its rights, obligations, capacity and/or assets;
- (d) references to a provision of law or a treaty are references to that provision as amended or re-enacted;
- (e) references to any other agreement or instrument are references to that other agreement or instrument as amended, novated, supplemented, extended or restated, and
- (f) words and expressions in plural shall include singular and vice versa.

### **Definitions**

In this Contract:

“**Accepted Tranche**” means a Tranche in respect of which a Disbursement Offer has been duly accepted by the Borrower in accordance with its terms on or before the Disbursement Acceptance Deadline.

“**Agreed Deferred Disbursement Date**” has the meaning given to it in Article 1.5.A(2)(b).

“**Authorisation**” means an authorisation, permit, consent, approval, resolution, licence, exemption, filing, notarisisation or registration.

“**Authorised Signatory**” means a person authorised to sign individually or jointly (as the case may be) Disbursement Acceptances on behalf of the Borrower and named in the most recent List of Authorised Signatories and Accounts received by the Bank prior to the receipt of the relevant Disbursement Acceptance.

“**Birds Directive**” means Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (this is the codified version of Directive 79/409/EEC as amended), as amended or replaced from time to time.

“**Business Day**” means a day (other than a Saturday or Sunday) on which the Bank and commercial banks are open for general business in Luxembourg.

“**Change-of-Law Event**” has the meaning given to it in Article 4.3.A(3).

“**Compliance Certificate**” means a certificate substantially in the form set out in Schedule E.2.

“**Contract**” has the meaning given to it in Recital (c).

“**Contract Number**” shall mean the Bank generated number identifying this Contract and indicated on the cover page of this Contract after the letters “FI N”.

“**Credit**” has the meaning given to it in Article 1.1.

“**Criminal Offence**” means any of the following criminal offences as applicable: tax crimes (as referred to in the directive (EU) 2015/849 of 20 May 2015), fraud, corruption, coercion, collusion, obstruction, money laundering, financing of terrorism.

“**CZK**” means Czech crown(s), the lawful currency of the Czech Republic.

“**Date of Effectiveness**” has the meaning given to it in Article 11.9.

“**Deferment Indemnity**” means a fee calculated on the amount of disbursement deferred or suspended being the higher of (a) 0.125% (12.5 basis points), per annum, and (b) the percentage rate by which:

- (a) the interest rate net of Margin that would have been applicable to such amount had it been disbursed to the Borrower on the Scheduled Disbursement Date, exceeds
- (b) the Relevant Interbank Rate (one month rate) less 0.125% (12.5 basis points), unless this value is less than zero, in which case it will be set at zero.

Such fee shall accrue from the Scheduled Disbursement Date to the Disbursement Date or, as the case may be, until the date of cancellation of the Accepted Tranche in accordance with this Contract.

“**Disbursement Acceptance**” means a copy of the Disbursement Offer duly countersigned by the Borrower.

“**Disbursement Acceptance Deadline**” means the date and time of expiry of a Disbursement Offer as specified therein.

“**Disbursement Account**” means, in respect of each Tranche, the bank account set out in the most recent List of Authorised Signatories and Accounts.

“**Disbursement Date**” means the date on which disbursement of a Tranche is made by the Bank.

“**Disbursement Offer**” means a letter substantially in the form set out in Schedule C.1.

“**Dispute**” has the meaning given to it in Article 11.2.

“**Disruption Event**” means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with this Contract; or
- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of either the Bank or the Borrower, preventing that party from:
  - (i) performing its payment obligations under this Contract; or
  - (ii) communicating with other parties,

and which disruption (in either such case as per (a) or (b) above) is not caused by, and is beyond the control of, the party whose operations are disrupted.

“**EIA**” means the Environmental Impact Assessment in the meaning of the EIA Directive.

“**EIA Directive**” means the Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment.

“**Environment**” means the following, in so far as they affect human health or social well-being:

- (a) fauna and flora;
- (b) soil, water, air, climate and the landscape; and
- (c) cultural heritage and the built environment,

and includes, without limitation, occupational and community health and safety.

“**Environmental Approval**” means any Authorisation required by Environmental Law.

“**Environmental Claim**” means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law.

“**Environmental Law**” means:

- (a) EU Law, including principles and standards;

- (b) national laws and regulations of the Czech Republic; and
- (c) applicable international treaties,

in each case of which a principal objective is the preservation, protection or improvement of the Environment.

**“ESI Funds”** means any and all European Union's structural and investment funds (including any financial instruments or repayable assistance supported thereby) in the meaning of the Regulation (EU) No. 1303/2013 of the European Parliament and of the Council of 17 December 2013 or a Regulation governing one or more of the ESI Funds listed therein.

**“ESIF Event”** has the meaning given to it in Article 4.3.A(5)(c).

**“EU Grants”** means grants provided for the Project under or pursuant to the EU Law, including ESI Funds.

**“EU Law”** means the *acquis communautaire* of the European Union as expressed through the Treaties of the European Union, the regulations, directives, delegated acts, implementing acts, and the case law of the Court of Justice of the European Union.

**“EUR”** or **“euro”** means the lawful currency of the Member States of the European Union which adopt or have adopted it as their currency in accordance with the relevant provisions of the Treaty on European Union and the Treaty on the Functioning of the European Union or their succeeding treaties.

**“EURIBOR”** has the meaning given to it in Schedule B.

**“Event of Default”** means any of the circumstances, events or occurrences specified in Article 10.1.

**“Final Availability Date”** means the day falling 36 months from the Date of Effectiveness of this Contract.

**“Fixed Rate”** means an annual interest rate including the Margin determined by the Bank in accordance with the applicable principles from time to time laid down by the governing bodies of the Bank for loans made at a fixed rate of interest, denominated in the currency of the Tranche and bearing equivalent terms for the repayment of capital and the payment of interest. Such rate shall not be of negative value.

**“Fixed Rate Tranche”** means a Tranche on which the Fixed Rate is applied.

**“Floating Rate”** means a fixed-spread floating annual interest rate, determined by the Bank for each successive Floating Rate Reference Period equal to the Relevant Interbank Rate plus the Spread. If the Floating Rate for any Floating Rate Reference Period is calculated to be below zero, it will be set at zero.

**“Floating Rate Reference Period”** means each period from one Payment Date to the next relevant Payment Date; the first Floating Rate Reference Period shall commence on the date of disbursement of the Tranche.

**“Floating Rate Tranche”** means a Tranche on which the Floating Rate is applied.

**“Habitats Directive”** means Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, as amended or replaced from time to time.

**“Indemnifiable Prepayment Event”** means a Prepayment Event other than those specified in paragraphs 4.3.A(2) (*Pari Passu to Non-EIB Financing*) or 4.3.A(4) (*Illegality*).

**“Interest Revision/Conversion”** means the determination of new financial conditions relative to the interest rate, specifically the same interest rate basis (**“revision”**) or a different interest rate basis (**“conversion”**) which can be offered for the remaining term of a Tranche or until the next Interest Revision/Conversion Date, if any.

**“Interest Revision/Conversion Date”** means the date, which shall be a Payment Date, specified by the Bank pursuant to Article 1.2.B in the Disbursement Offer.

**“Interest Revision/Conversion Proposal”** means a proposal made by the Bank under Schedule D.

**“Interest Revision/Conversion Request”** means a written notice from the Borrower, delivered at least 75 (seventy-five) days before an Interest Revision/Conversion Date, requesting the Bank to submit to it an Interest Revision/Conversion Proposal. The Interest Revision/Conversion Request shall also specify:

- (a) the Payment Dates chosen in accordance with the provisions of Article 3.1;
- (b) the amount of the Tranche for which the Interest Revision/Conversion shall apply; and any further Interest Revision/Conversion Date chosen in accordance with Article 3.1.

**“List of Authorised Signatories and Accounts”** means a list, in form and substance, satisfactory to the Bank, setting out: (i) the Authorised Signatories accompanied by evidence of signing authority of the persons named on the list and specifying if they have individual or joint signing authority, (ii) the specimen signatures of such persons, and (iii) the bank account(s) to which disbursements may be made under this Contract (specified by IBAN code if the country is included in the IBAN Registry published by SWIFT, or in the appropriate account format in line with the local banking practice), BIC/SWIFT code of the bank and the name of the bank account(s) beneficiary.

**“Loan”** means the aggregate of the amounts disbursed from time to time by the Bank under this Contract.

**“Loan Outstanding”** means the aggregate of the amounts disbursed from time to time by the Bank under this Contract that remains outstanding.

**“Margin”** means the component of the rate of interest quantified in Article 3.1.

**“Market Disruption Event”** means any of the following circumstances:

- (a) there are, in the reasonable opinion of the Bank, events or circumstances adversely affecting the Bank’s access to its sources of funding;
- (b) in the opinion of the Bank, funds are not available from the Bank's ordinary sources of funding in order to adequately fund a Tranche in the relevant currency and/or for the relevant maturity and/or in relation to the reimbursement profile of such Tranche; or
- (c) in relation to a Tranche in respect of which interest would be payable at Floating Rate:
  - (i) the cost to the Bank of obtaining funds from its sources of funding, as determined by the Bank, for a period equal to the Floating Rate Reference Period of such Tranche (i.e. in the money market) would be in excess of the applicable Relevant Interbank Rate; or
  - (ii) the Bank determines that adequate and fair means do not exist for ascertaining the applicable Relevant Interbank Rate for the relevant currency of such Tranche or it is not possible to determine the Relevant Interbank Rate in accordance with the definition contained in Schedule B.

**“Material Adverse Change”** means, any event or change of condition, which, in the opinion of the Bank has a material adverse effect on:

- (a) the ability of the Borrower to perform its obligations under this Contract;
- (b) the business, operations, property, condition (financial or otherwise) or prospects of the Borrower; or
- (c) the legality, validity or enforceability of, or the effectiveness or ranking of, or the value of any security granted to the Bank, or the rights or remedies of the Bank under this Contract.

**“Maturity Date”** means the last Repayment Date of a Tranche specified pursuant to Article 4.1.A(b)(iv).

**“Non-EIB Financing”** has the meaning given to it in Article 4.3.A(2).

**“Payment Date”** means: the annual, semi-annual or quarterly dates specified in the Disbursement Offer until and including the Interest Revision/Conversion Date, if any, or the Maturity Date, save that, in case any such date is not a Relevant Business Day, it means:

- (a) for a Fixed Rate Tranche, the following Relevant Business Day, without adjustment to the interest due under Article 3.1, except for those cases where a payment is made in full and in relation to the Interest Revision/Conversion in accordance with Schedule D, point C and to the final interest payment only, when it shall mean the preceding Relevant Business Day with adjustment to the interest due under Article 3.1; and
- (b) for a Floating Rate Tranche, the next day, if any, of that calendar month that is a Relevant Business Day or, failing that, the nearest preceding day that is a Relevant Business Day, in all cases with corresponding adjustment to the interest due under Article 3.1.

**“Prepayment Amount”** means the amount of a Tranche to be prepaid by the Borrower in accordance with Article 4.2.A or Article 4.3.A, as applicable.

**“Prepayment Date”** means the date, which shall be a Payment Date, on which the Borrower proposes to or is requested by the Bank, as applicable to effect prepayment of a Prepayment Amount.

**“Prepayment Event”** means any of the events described in Article 4.3.A.

**“Prepayment Indemnity”** means in respect of any principal amount to be prepaid or cancelled, the amount communicated by the Bank to the Borrower as the present value (calculated as of the Prepayment Date or the date of cancellation pursuant to Article 1.6.C(2)) of the excess, if any, of:

- (a) the interest net of the Margin, that would accrue thereafter on the Prepayment Amount over the period from the Prepayment Date or the date of cancellation pursuant to Article 1.6.C(2) to the Interest Revision/Conversion Date, if any, or the Maturity Date, if it were not prepaid; over
- (b) the interest that would so accrue over that period, if it were calculated at the Redeployment Rate, less 0.15% (fifteen basis points).

The said present value shall be calculated at a discount rate equal to the Redeployment Rate, applied as of each relevant Payment Date.

**“Prepayment Notice”** means a written notice from the Bank to the Borrower in accordance with Article 4.2.C.

**“Prepayment Request”** means a written request from the Borrower to the Bank to prepay all or part of the Loan Outstanding, in accordance with Article 4.2.A.

**“PRIBOR”** has the meaning given to it in Schedule B.

**“Project”** has the meaning given to it in Recital (a).

**“PSC”** means the public service contract on regional rail passenger services between the Borrower and a railway operator that covers the regional passenger transport services rendered by the operator with the assets that form part of the Project.

**“Redeployment Rate”** means the fixed annual rate determined by the Bank, being a rate which the Bank would apply on the day of the indemnity calculation to a loan that has the same currency, the same terms for the payment of interest and the same repayment profile to the Interest Revision/Conversion Date, if any, or the Maturity Date as the Tranche in respect of which a prepayment or cancellation is proposed or requested to be made. Such rate shall not be of negative value. For the avoidance of doubt the Redeployment Rate shall not include the Margin.

**“Relevant Business Day”** means:

- (a) for EUR, a day on which the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007 (TARGET2) is open for the settlement of payments in EUR; and
- (b) for CZK, a day on which banks are open for general business in Prague.

**“Relevant Interbank Rate”** means:

- (a) EURIBOR for a Tranche denominated in EUR; and
- (b) PRIBOR for a Tranche denominated in CZK.

**“Repayment Date”** shall mean each of the Payment Dates specified for the repayment of the principal of a Tranche in the Disbursement Offer, in accordance with the criteria set out in Article 4.1.

**“Requested Deferred Disbursement Date”** has the meaning given to it in Article 1.5.A(1)(b).

**“Scheduled Disbursement Date”** means the date on which a Tranche is scheduled to be disbursed in accordance with Article 1.2.B.

**“Security”** means any mortgage, pledge, lien, charge, assignment, hypothecation, or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

**“Spread”** means the fixed spread (being of either positive or negative value) to the Relevant Interbank Rate as determined by the Bank and notified to the Borrower in the relevant Disbursement Offer or Interest Revision/Conversion Proposal. The Spread shall include the Margin.

**“Tax”** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

**“Technical Description”** has the meaning given to it in Recital (a).

**“Tranche”** means each disbursement made or to be made under this Contract. In case no Disbursement Acceptance has been received, Tranche shall mean a Tranche as offered under Article 1.2.B.

**ARTICLE 1**  
**Credit and Disbursements**

**1.1 Amount of Credit**

By this Contract the Bank establishes in favour of the Borrower, and the Borrower accepts, a credit in an amount equivalent to CZK 2,565 million (two billion five hundred and sixty five million Czech crowns) for the financing of the Project (the “**Credit**”).

**1.2 Disbursement procedure**

**1.2.A Tranches**

The Bank shall disburse the Credit in up to 20 (twenty) Tranches. The amount of each Tranche shall be in a minimum amount equivalent to CZK 130,000,000.00 (one hundred and thirty million Czech crowns).

**1.2.B Disbursement Offer**

Upon request by the Borrower and subject to Article 1.4.A, provided that no event mentioned in Article 1.5 or Article 1.6.B has occurred and is continuing, the Bank shall send to the Borrower within 5 (five) Business Days after the receipt of such request a Disbursement Offer for the disbursement of a Tranche. The latest time for receipt by the Bank of such Borrower’s request is 15 (fifteen) Business Days before the Final Availability Date. The Disbursement Offer shall specify:

- (a) the currency, amount and CZK equivalent of the Tranche;
- (b) the Scheduled Disbursement Date, which shall be a Relevant Business Day, falling at least 10 (ten) days after the date of the Disbursement Offer and on or before the Final Availability Date;
- (c) the interest rate basis of the Tranche, being: (i) a Fixed Rate Tranche; or (ii) a Floating Rate Tranche, in each case, pursuant to the relevant provisions of Article 3.1;
- (d) the Payment Dates and the first interest Payment Date for the Tranche;
- (e) the terms for repayment of principal for the Tranche, in accordance with the provisions of Article 4.1;
- (f) the Repayment Dates and the first and the last Repayment Date for the Tranche, or the single Repayment Date;
- (g) the Interest Revision/Conversion Date, if requested by the Borrower, for the Tranche;
- (h) for a Fixed Rate Tranche, the Fixed Rate and for a Floating Rate Tranche the Spread, applicable until the Interest Revision/Conversion Date, if any or until the Maturity Date; and
- (i) the Disbursement Acceptance Deadline.

**1.2.C Disbursement Acceptance**

The Borrower may accept a Disbursement Offer by delivering a Disbursement Acceptance to the Bank no later than the Disbursement Acceptance Deadline. The Disbursement Acceptance shall be signed by an Authorised Signatory with individual representation right or two or more Authorised Signatories with joint representation right and shall specify the Disbursement Account to which the disbursement of the Tranche should be made in accordance with Article 1.2.D.

If a Disbursement Offer is duly accepted by the Borrower in accordance with its terms on or before the Disbursement Acceptance Deadline, the Bank shall make the Accepted Tranche available to the Borrower in accordance with the relevant Disbursement Offer and subject to the terms and conditions of this Contract.

The Borrower shall be deemed to have refused any Disbursement Offer which has not been duly accepted in accordance with its terms on or before the Disbursement Acceptance Deadline.

#### **1.2.D Disbursement Account**

Disbursement shall be made to the Disbursement Account specified in the relevant Disbursement Acceptance provided that such Disbursement Account is acceptable to the Bank.

Notwithstanding Article 5.2(e), the Borrower acknowledges that payments to a Disbursement Account notified by the Borrower shall constitute disbursements under this Contract as if they had been made to the Borrower's own bank account.

Only one Disbursement Account may be specified for each Tranche.

#### **1.3 Currency of disbursement**

The disbursement of each Tranche shall be made in EUR or, subject to availability in CZK.

For the calculation of the sums available to be disbursed in EUR, and to determine their equivalent in CZK, the Bank shall apply the rate published by the European Central Bank in Frankfurt am Main, available on or shortly before the date of the Disbursement Offer as the Bank shall decide.

#### **1.4 Conditions of disbursement**

##### **1.4.A Condition precedent to the first request for Disbursement Offer**

The Bank shall have received from the Borrower in form and substance satisfactory to the Bank:

- (a) evidence that the execution of this Contract by the Borrower has been duly authorised and that the person or persons signing this Contract on behalf of the Borrower is/are duly authorised to do so together with the specimen signature of each such person or persons; and
- (b) the List of Authorised Signatories and Accounts;

prior to requesting a Disbursement Offer under Article 1.2.B by the Borrower. Any request for a Disbursement Offer made by the Borrower without the above documents having been received by the Bank in form and substance satisfactory to the Bank shall be deemed not made.

##### **1.4.B First Tranche**

The disbursement of the first Tranche under Article 1.2 is conditional upon receipt by the Bank, in form and substance satisfactory to it, on or before the date falling 5 (five) Business Days before the Scheduled Disbursement Date (and, in the case of deferment under Article 1.5, the Requested Deferred Disbursement Date or the Agreed Deferred Disbursement Date, respectively), of the following documents or evidence:

- (a) evidence that the Borrower has obtained all necessary Authorisations, required in connection with this Contract and the Project;
- (b) a legal opinion on the due execution of this Contract and the relevant documentation by the Borrower and on the legal, valid, binding and enforceable character of the Borrower's obligations under this Contract and the relevant documentation substantially in the form set out in Annex II;
- (c) evidence of completion of the procurement procedure for the Project, in accordance with the applicable public procurement rules. The evidence shall include:
  - (i) a copy of the documents evidencing the purchase of 37 electric multiple units (the "EMUs"), in particular (i) the supply contract for 31 EMUs and (ii) a confirmation that an option for purchase of 6 EMUs of 310 seats was exercised.
  - (ii) a copy of the publication of the award notice in the OJEU,
  - (iii) information concerning any complaints indicating their subject-matter, explanation of the procedure of dealing with the complaint, information on the status of complaints, and
  - (iv) confirmation of the completion of the stand still period;

- (d) evidence that a contract for supervision and commissioning of the rolling stock is in place with a company or individuals with experience in supervision and commissioning commensurate with the size and technical characteristics of the fleet subject to this Project;
- (e) evidence of a committed financing plan for the full Project cost; and
- (f) evidence of compliance by the Borrower with the financial covenants pursuant to Article 6.8.

#### **1.4.C All Tranches**

The disbursement of each Tranche under Article 1.2, including the first, is subject to the following conditions:

- (a) that the Bank has received, in form and substance satisfactory to it, on or before the date falling 5 (five) Business Days before the Scheduled Disbursement Date (and, in the case of deferment under Article 1.5, the Requested Deferred Disbursement Date or the Agreed Deferred Disbursement Date, respectively) for the proposed Tranche, of the following documents or evidence:
  - (i) a certificate from the Borrower in the form of Schedule E.1 signed by an authorised representative of the Borrower and dated no earlier than the date falling 10 (ten) days before the Scheduled Disbursement Date (and, in the case of deferment under Article 1.5, the Requested Deferred Disbursement Date or the Agreed Deferred Disbursement Date, respectively); and
  - (ii) a copy of any other authorisation or other document, opinion or assurance which the Bank has notified the Borrower is necessary or desirable in connection with the entry into and performance of, and the transactions contemplated by, this Contract or the legality, validity, binding effect or enforceability of the same; and
- (b) that on the Scheduled Disbursement Date (and, in the case of deferment under Article 1.5, on the Requested Deferred Disbursement Date or the Agreed Deferred Disbursement Date, respectively) for the proposed Tranche:
  - (i) the representations and warranties which are repeated pursuant to Article 6.10 are correct in all respects; and
  - (ii) no event or circumstance which constitutes or would with the passage of time or giving of notice under this Contract constitute:
    - (1) an Event of Default; or
    - (2) a Prepayment Event
 has occurred and is continuing unremedied or unwaived or would result from the disbursement of the proposed Tranche.

### **1.5 Deferment of disbursement**

#### **1.5.A Grounds for deferment**

##### **1.5.A(1) BORROWER'S REQUEST**

The Borrower may send a written request to the Bank requesting the deferral of the disbursement of an Accepted Tranche. The written request must be received by the Bank at least 5 (five) Business Days before the Scheduled Disbursement Date of the Accepted Tranche and specify:

- (a) whether the Borrower would like to defer the disbursement in whole or in part and if in part, the amount to be deferred; and
- (b) the date until which the Borrower would like to defer a disbursement of the above amount (the "**Requested Deferred Disbursement Date**"), which must be a date:
  - (i) falling not later than 6 (six) months from its Scheduled Disbursement Date; and
  - (ii) falling not later than 30 (thirty) days prior to the first Repayment Date; and
  - (iii) falling not later than the Final Availability Date.

Upon receipt of such a written request, the Bank shall defer the disbursement of the relevant amount until the Requested Deferred Disbursement Date.

#### 1.5.A(2) FAILURE TO SATISFY CONDITIONS TO DISBURSEMENT

- (a) The disbursement of an Accepted Tranche shall be deferred if any condition for disbursement of such Accepted Tranche referred to in Article 1.4 is not fulfilled both:
  - (i) at the date specified for fulfilment of such condition in Article 1.4; and
  - (ii) at its Scheduled Disbursement Date (or, where the Scheduled Disbursement Date has been deferred previously, the date expected for disbursement).
- (b) The Bank and the Borrower shall agree the date until which the disbursement of such Accepted Tranche shall be deferred (the “**Agreed Deferred Disbursement Date**”), which must be a date:
  - (i) falling not earlier than 5 (five) Business Days following the fulfilment of all conditions of disbursement; and
  - (ii) falling not later than the Final Availability Date.
- (c) Without prejudice to the Bank’s right to suspend and/or cancel the undisbursed portion of the Credit in whole or in part pursuant to Article 1.6.B, the Bank shall defer disbursement of such Accepted Tranche until the Agreed Deferred Disbursement Date.

#### 1.5.A(3) DEFERMENT INDEMNITY

If disbursement of an Accepted Tranche is deferred pursuant to paragraphs 1.5.A(1) or 1.5.A(2) above, the Borrower shall pay the Deferment Indemnity.

#### 1.5.B Cancellation of a disbursement deferred by 6 (six) months

If a disbursement has been deferred by more than 6 (six) months in aggregate pursuant to Article 1.5.A, the Bank may notify the Borrower in writing that such disbursement shall be cancelled and such cancellation shall take effect on the date of such written notification. The amount of the disbursement which is cancelled by the Bank pursuant to this Article 1.5.B shall remain available for disbursement under Article 1.2.

### 1.6 Cancellation and suspension

#### 1.6.A Borrower’s right to cancel

The Borrower may send a written notice to the Bank requesting the cancellation of the undisbursed portion of the Credit. The written notice:

- (a) must specify whether the Borrower would like to cancel the undisbursed portion of the Credit in whole or in part and, if in part, the amount of the Credit the Borrower would like to cancel; and
- (b) must not relate to an Accepted Tranche which has a Scheduled Disbursement Date falling within 5 (five) Business Days of the date of the written notice.

Upon receipt of such written notice, the Bank shall cancel the requested undisbursed portion of the Credit with immediate effect.

#### 1.6.B Bank’s right to suspend and cancel

At any time upon the occurrence of the following events, the Bank may notify the Borrower in writing that the undisbursed portion of the Credit shall be suspended and/or (apart from on the occurrence of a Market Disruption Event) cancelled in whole or in part:

- (a) Prepayment Event;
- (b) an Event of Default;
- (c) an event or circumstance which would with the passage of time or giving of notice under this Contract constitute a Prepayment Event or an Event of Default;
- (d) a Material Adverse Change; or

- (e) a Market Disruption Event provided the Bank has not received a Disbursement Acceptance.

On the date of such written notification the relevant undisbursed portion of the Credit shall be suspended and/or cancelled with immediate effect. Any suspension shall continue until the Bank ends the suspension or cancels the suspended amount.

### **1.6.C Indemnity for suspension and cancellation of a Tranche**

#### **1.6.C(1) SUSPENSION**

If the Bank suspends an Accepted Tranche upon the occurrence of an Indemnifiable Prepayment Event or an Event of Default, the Borrower shall pay to the Bank the Deferral Indemnity calculated on the amount of disbursement suspended.

#### **1.6.C(2) CANCELLATION**

- (a) If an Accepted Tranche which is a Fixed Rate Tranche is cancelled:
  - (i) by the Borrower pursuant to Article 1.6.A; or
  - (ii) by the Bank upon an Indemnifiable Prepayment Event or pursuant to Article 1.5.B, the Borrower shall pay to the Bank the Prepayment Indemnity. The Prepayment Indemnity shall be calculated as if the cancelled amount had been disbursed and repaid on the Scheduled Disbursement Date or, to the extent that the disbursement of the Tranche is currently deferred or suspended, on the date of the cancellation notice.
- (b) If the Bank cancels an Accepted Tranche upon the occurrence of an Event of Default, the Borrower shall indemnify the Bank in accordance with Article 10.3.
- (c) Save in the cases (a) or (b) above, no indemnity is payable upon cancellation of a Tranche.

### **1.7 Cancellation after expiry of the Credit**

On the day following the Final Availability Date, and unless otherwise specifically agreed to in writing by the Bank, any part of the Credit in respect of which no Disbursement Acceptance has been received in accordance with Article 1.2.C shall be automatically cancelled, without any notice being served by the Bank to the Borrower and without liability arising on the part of either party.

### **1.8 Sums due under Article 1.5 and 1.6**

Sums due under Articles 1.5 and 1.6 shall be payable in the currency of the Tranche concerned. Sums due under Articles 1.5 and 1.6 shall be payable within 15 (fifteen) days of the Borrower's receipt of the Bank's demand or within any longer period specified in the Bank's demand.

## **ARTICLE 2**

### **The Loan**

#### **2.1 Amount of Loan**

The Loan shall comprise the aggregate amount of Tranches disbursed by the Bank under the Credit, as confirmed by the Bank pursuant to Article 2.3.

#### **2.2 Currency of repayment, interest and other charges**

Interest, repayments and other charges payable in respect of each Tranche shall be made by the Borrower in the currency in which the Tranche is disbursed.

Other payment, if any, shall be made in the currency specified by the Bank having regard to the currency of the expenditure to be reimbursed by means of that payment.

### **2.3 Confirmation by the Bank**

The Bank shall deliver to the Borrower the amortisation table referred to in Article 4.1, if appropriate, showing the Disbursement Date, currency, the amount disbursed, the repayment terms and the interest rate of and for that Tranche.

## **ARTICLE 3**

### **Interest**

#### **3.1 Rate of interest**

For the purposes of this Contract “**Margin**” means 4 basis points (0.04 %).

##### **3.1.A Fixed Rate Tranches**

The Borrower shall pay interest on the outstanding balance of each Fixed Rate Tranche at the Fixed Rate quarterly, semi-annually or annually in arrear on the relevant Payment Dates as specified in the Disbursement Offer, commencing on the first such Payment Date following the Disbursement Date of the Tranche. If the period from the Disbursement Date to the first Payment Date is 15 (fifteen) days or less then the payment of interest accrued during such period shall be postponed to the following Payment Date.

Interest shall be calculated on the basis of Article 5.1(a).

##### **3.1.B Floating Rate Tranches**

The Borrower shall pay interest on the outstanding balance of each Floating Rate Tranche at the Floating Rate quarterly or semi-annually in arrear on the relevant Payment Dates, as specified in the Disbursement Offer commencing on the first such Payment Date following the Disbursement Date of the Tranche. If the period from the Disbursement Date to the first Payment Date is 15 (fifteen) days or less then the payment of interest accrued during such period shall be postponed to the following Payment Date.

The Bank shall notify the Borrower of the Floating Rate within 10 (ten) days following the commencement of each Floating Rate Reference Period.

If pursuant to Articles 1.5 and 1.6 disbursement of any Floating Rate Tranche takes place after the Scheduled Disbursement Date the Relevant Interbank Rate applicable to the first Floating Rate Reference Period shall apply as though the disbursement had been made on the Scheduled Disbursement Date.

Interest shall be calculated in respect of each Floating Rate Reference Period on the basis of Article 5.1.

##### **3.1.C Revision or Conversion of Tranches**

Where the Borrower exercises an option to revise or convert the interest rate basis of a Tranche, it shall, from the effective Interest Revision/Conversion Date (in accordance with the procedure set out in Schedule D) pay interest at a rate determined in accordance with the provisions of Schedule D.

#### **3.2 Interest on overdue sums**

Without prejudice to Article 10 and by way of exception to Article 3.1, if the Borrower fails to pay any amount payable by it under this Contract on its due date, interest shall accrue on any overdue amount payable under the terms of this Contract from the due date to the date of actual payment at an annual rate equal to:

- (a) for overdue sums related to Floating Rate Tranches, the applicable Floating Rate plus 2% (200 basis points);
- (b) for overdue sums related to Fixed Rate Tranches, the higher of (a) the applicable Fixed Rate plus 2% (200 basis points) or (b) the Relevant Interbank Rate plus 2% (200 basis points); and

- (c) for overdue sums other than under (a) or (b) above, the Relevant Interbank Rate plus 2% (200 basis points),

and shall be payable in accordance with the demand of the Bank. For the purpose of determining the Relevant Interbank Rate in relation to this Article 3.2, the relevant periods within the meaning of Schedule B shall be successive periods of one month commencing on the due date. Any unpaid but due interest may be capitalised in conformity with article 1154 of the Luxembourg Civil Code. For the avoidance of doubt, capitalisation of interest shall occur only for interest due but unpaid for a period of more than one year. The Borrower hereby agrees in advance to have the unpaid interest due for a period of more than one year compounded and that as of the capitalisation, such unpaid interest will in turn produce interest at the interest rate set out in this Article 3.2.

If the overdue sum is in a currency other than the currency of the Loan, the following rate per annum shall apply, namely the relevant interbank rate that is generally retained by the Bank for transactions in that currency plus 2% (200 basis points), calculated in accordance with the market practice for such rate.

### **3.3 Market Disruption Event**

- (a) If at any time
  - (i) from the receipt by the Bank of a Disbursement Acceptance in respect of a Tranche, and
  - (ii) until the date falling either:
    - (1) 30 (thirty) calendar days for Tranches to be disbursed in EUR, or
    - (2) 2 (two) Business Days prior to the Scheduled Disbursement Date for Tranches to be disbursed in CZK,

a Market Disruption Event occurs, the Bank may notify to the Borrower that this clause has come into effect. In such case, the following rules shall apply:

- (b) In the case of an Accepted Tranche to be disbursed in EUR, the rate of interest applicable to such Accepted Tranche until the Maturity Date or the Interest Revision/Conversion Date if any, shall be
  - (i) The Margin and
  - (ii) the rate (expressed as a percentage rate per annum) which is determined by the Bank to be the all-inclusive cost to the Bank for the funding of the relevant Tranche based upon the then applicable internally generated Bank reference rate or an alternative rate determination method reasonably determined by the Bank.

The Borrower shall have the right to refuse in writing such disbursement within the deadline specified in the notice and shall bear charges incurred as a result, if any, in which case the Bank shall not effect the disbursement and the corresponding portion of the Credit shall remain available for disbursement under Article 1.2.B. If the Borrower does not refuse the disbursement in time, the parties agree that the disbursement and the conditions thereof shall be fully binding for both parties.

- (c) In the case of an Accepted Tranche to be disbursed in CZK, the Bank shall notify to the Borrower the EUR equivalent to be disbursed on the Scheduled Disbursement Date and the relevant percentage rate as described above under paragraph (a) applicable to the Tranche until the Maturity Date or the Interest Revision/Conversion Date if any. The Borrower shall have the right to refuse in writing such disbursement within the deadline specified in the notice and shall bear charges incurred as a result, if any, in which case the Bank shall not effect the disbursement and the corresponding portion of the Credit shall remain available for disbursement under Article 1.2.B. If the Borrower does not refuse the disbursement in time, the parties agree that the disbursement in EUR and the conditions thereof shall be fully binding for both parties.
- (d) In each case of (b) or (c), above, the Spread or the Fixed Rate previously accepted by the Borrower shall no longer be applicable.

## ARTICLE 4

### Repayment

#### **4.1 Normal repayment**

##### **4.1.A Repayment by instalments**

- (a) The Borrower shall repay each Tranche by instalments on the Repayment Dates specified in the relevant Disbursement Offer in accordance with the terms of the amortisation table delivered pursuant to Article 2.3.
- (b) Each amortisation table shall be drawn up on the basis that:
  - (i) in the case of a Fixed Rate Tranche without an Interest Revision/Conversion Date, repayment shall be made quarterly, semi-annually or annually by equal instalments of principal or constant instalments of principal and interest;
  - (ii) in the case of a Fixed Rate Tranche with an Interest Revision/Conversion Date or a Floating Rate Tranche, repayment shall be made by equal quarterly, semi-annual or annual instalments of principal;
  - (iii) first Repayment Date of each Tranche shall be a Payment Date falling not earlier than 30 (thirty) days from the Scheduled Disbursement Date and not later than the first Repayment Date immediately following the 4th (fourth) anniversary of the Scheduled Disbursement Date of the Tranche; and
  - (iv) the last Repayment Date of each Tranche shall be a Payment Date falling not earlier than 4 (four) years and not later than 30 (thirty) years from the Scheduled Disbursement Date.

#### **4.2 Voluntary prepayment**

##### **4.2.A Prepayment option**

Subject to Articles 4.2.B, 4.2.C and 4.4, the Borrower may prepay all or part of any Tranche, together with accrued interest and indemnities if any, upon giving a Prepayment Request with at least 30 (thirty) calendar days' prior notice specifying:

- (a) the Prepayment Amount;
- (b) the Prepayment Date;
- (c) if applicable, the choice of application method of the Prepayment Amount in line with Article 5.5.C(a); and
- (d) the Contract Number.

The Prepayment Request shall be irrevocable.

##### **4.2.B Prepayment indemnity**

###### **4.2.B(1) FIXED RATE TRANCHE**

Subject to Article 4.2.B(3) below, if the Borrower prepays a Fixed Rate Tranche, the Borrower shall pay to the Bank on the Prepayment Date the Prepayment Indemnity in respect of the Fixed Rate Tranche which is being prepaid.

###### **4.2.B(2) FLOATING RATE TRANCHE**

Subject to Article 4.2.B(3) below, the Borrower may prepay a Floating Rate Tranche without indemnity on any relevant Payment Date.

###### **4.2.B(3) REVISION/CONVERSION**

Prepayment of a Tranche on its Interest Revision/Conversion Date may be effected without indemnity unless the Borrower has accepted in writing a Fixed Rate under an Interest Revision/Conversion Proposal, as accepted under Article 1.2.C or pursuant to Schedule D.

#### **4.2.C Prepayment mechanics**

Upon presentation by the Borrower to the Bank of a Prepayment Request, the Bank shall issue a Prepayment Notice to the Borrower, not later than 15 (fifteen) days prior to the Prepayment Date. The Prepayment Notice shall specify the Prepayment Amount, the accrued interest due thereon, the Prepayment Indemnity payable under Article 4.2.B or, as the case may be, that no indemnity is due, the method of application of the Prepayment Amount and if a Prepayment Indemnity is applicable, the deadline by which the Borrower may accept the Prepayment Notice.

If the Borrower accepts the Prepayment Notice no later than by the deadline (if any) specified in the Prepayment Notice, the Borrower shall effect the prepayment. In any other case, the Borrower may not effect the prepayment.

The Borrower shall accompany the payment of the Prepayment Amount by the payment of accrued interest and the Prepayment Indemnity, if any, due on the Prepayment Amount, as specified in the Prepayment Notice and the fee under Article 4.2.D.

#### **4.2.D Administrative Fee**

If the Borrower prepays a Tranche on a date other than a relevant Payment Date, or if the Bank exceptionally accepts, solely upon the Bank's discretion, a Prepayment Request with prior notice of less than 30 (thirty) calendar days, the Borrower shall pay to the Bank an administrative fee in such amount as the Bank shall notify to the Borrower.

### **4.3 Compulsory prepayment**

#### **4.3.A Prepayment Events**

##### **4.3.A(1) PROJECT COST**

If:

- (a) the total cost of the Project falls below the figure stated in Recital (a) so that the amount of the Credit exceeds 50% (fifty per cent) of such total cost of the Project; or
- (b) the total amount of the Credit together with EU Grants exceeds 100% (one hundred per cent) of the total cost of the Project,

the Bank may forthwith, by notice to the Borrower, cancel the undisbursed portion of the Credit and/or demand prepayment of the Loan Outstanding up to the amount (a) by which the Credit exceeds 50% (fifty per cent) of the total cost of the Project or (b) by which the total amount of the Credit together with EU Grants exceeds 100% (one hundred per cent) of the total cost of the Project, in each case together with accrued interest and all other amounts accrued and outstanding under this Contract in relation to the proportion of the Loan Outstanding to be prepaid. The Borrower shall effect payment of the amount demanded on the date specified by the Bank, in each case such date being a date falling not less than 30 (thirty) days from the date of the demand and in case of the Prepayment Event under paragraph (b) above, also not later than at the Project Completion Report due date.

##### **4.3.A(2) *PARI PASSU* TO NON-EIB FINANCING**

If the Borrower voluntarily prepays (for the avoidance of doubt, prepayment shall include a repurchase or cancellation where applicable) a part or the whole of any Non-EIB Financing and:

- (a) such prepayment is not made within a revolving credit facility (save for the cancellation of the revolving credit facility);
- (b) such prepayment is not made out of the proceeds of a loan or other indebtedness having a term at least equal to the unexpired term of the Non-EIB Financing prepaid;

the Bank may, by notice to the Borrower, cancel the undisbursed portion of the Credit and/or demand prepayment of the Loan Outstanding, together with accrued interest and all other amounts accrued and outstanding under this Contract in relation to the proportion of the Loan Outstanding to be prepaid. The proportion of the Loan Outstanding that the Bank may require to be prepaid shall be the same as the proportion that the prepaid amount of the Non-EIB Financing bears to the aggregate outstanding amount of all Non-EIB Financing.

The Borrower shall effect payment of the amount demanded on the date specified by the Bank, such date being a date falling not less than 30 (thirty) days from the date of the demand.

For the purposes of this Article, “**Non-EIB Financing**” includes any loan (save for the Loan and any other direct loans from the Bank to the Borrower), credit bond or other form of financial indebtedness or any obligation for the payment or repayment of money originally granted to the Borrower for a term of more than 5 (five) years.

#### 4.3.A(3) CHANGE OF LAW

The Borrower shall promptly inform the Bank if a Change-of-Law Event has occurred or is likely to occur. In such case, or if the Bank has reasonable cause to believe that a Change-of-Law Event has occurred or is about to occur, the Bank may request that the Borrower consult with it. Such consultation shall take place within 30 (thirty) days from the date of the Bank’s request. If, after the lapse of 30 (thirty) days from the date of such request for consultation the Bank is of the opinion that the effects of the Change-of-Law Event cannot be mitigated to its satisfaction, the Bank may by notice to the Borrower, cancel the undisbursed portion of the Credit and/or demand prepayment of the Loan Outstanding, together with accrued interest and all other amounts accrued and outstanding under this Contract.

The Borrower shall effect payment of the amount demanded on the date specified by the Bank, such date being a date falling not less than 30 (thirty) days from the date of the demand.

For the purposes of this Article “**Change-of-Law Event**” means the enactment, promulgation, execution or ratification of or any change in or amendment to any law, rule or regulation (or in the application or official interpretation of any law, rule or regulation) that occurs after the date of this Contract and which, in the opinion of the Bank, would materially impair the Borrower’s ability to perform its obligations under this Contract. This could be, *inter alia*, any law impacting budget (transferring responsibilities without related revenues to compensate for increased expenditures or limiting taxation powers).

#### 4.3.A(4) ILLEGALITY

If it becomes unlawful in any applicable jurisdiction for the Bank to:

- (a) perform any of its obligations as contemplated in this Contract, or
- (b) fund or maintain the Loan,

the Bank shall promptly notify the Borrower and may immediately (i) suspend or cancel the undisbursed portion of the Credit and/or (ii) demand prepayment of the Loan Outstanding, together with accrued interest and all other amounts accrued and outstanding under this Contract on the date indicated by the Bank in its notice to the Borrower.

#### 4.3.A(5) EU EVENT

- (a) The Borrower shall promptly inform the Bank if:
  - (i) it has failed to comply with the Environmental Law or any laws of the European Union and the Czech Republic with respect to state aid or public procurement with respect to the Project;
  - (ii) an ESIF Event has occurred or is likely to occur in relation to the Project; or
  - (iii) the Borrower has applied the proceeds of the Loan to finance the Project that, when applicable, failed to be subject to a relevant EIA procedures or a biodiversity assessment in accordance with the Birds Directive and/or the Habitats Directive.
- (b) If the Borrower notifies the Bank of any event referred to in (a) above, or if the Bank becomes aware of any such event and notifies the Borrower to that effect, then the Borrower shall, within a period of 60 (sixty) days following its giving, or receiving of any such notice take steps to remedy, to the Bank’s satisfaction, the event referred to in (a) above, failing which, the Bank may by further notice to the Borrower demand that the Borrower prepays the Loan Outstanding together with accrued interest and all other amounts accrued and outstanding under this Contract The Borrower shall effect payment of the amount demanded on the date specified by the Bank, such date being a date falling not less than 30 (thirty) days from the date of the demand.

- (c) For the purpose of this Contract, an “**ESIF Event**” means any of the following (whether directly or indirectly) in relation to the Project:
  - (i) the Borrower is required to reimburse or repay any contribution from ESI Funds in whole or in part as a result of a recovery, financial correction or similar procedures triggered by any irregularities in relation to such contribution from ESI Funds; or
  - (ii) otherwise than for the reasons indicated in (i), ESI Funds cease to be available or have been cancelled in full or in part and the financing of the Project from other resources has not been ensured by the Borrower to the satisfaction of the Bank.

#### **4.3.B Prepayment mechanics**

Any sum demanded by the Bank pursuant to Article 4.3.A, together with any interest or other amounts accrued or outstanding under this Contract including, without limitation, any indemnity due under Article 4.3.C, shall be paid on the date indicated by the Bank in its notice of demand.

#### **4.3.C Prepayment indemnity**

In the case of an Indemnifiable Prepayment Event, the indemnity, if any, shall be determined in accordance with Article 4.2.B.

### **4.4 General**

#### **4.4.A No prejudice to Article 10**

This Article 4 shall not prejudice Article 10.

#### **4.4.B No reborrowing**

A repaid or prepaid amount may not be reborrowed.

## **ARTICLE 5**

### **Payments**

#### **5.1 Day count convention**

Any amount due by way of interest or indemnity from the Borrower under this Contract, and calculated in respect of a fraction of a year, shall be determined on the following respective conventions:

- (a) in respect of interest and indemnities due under a Fixed Rate Tranche, a year of 360 (three hundred and sixty) days and a month of 30 (thirty) days; and
- (b) in respect of interest and indemnities due under a Floating Rate Tranche, a year of 360 (three hundred and sixty) days and the number of days elapsed.

#### **5.2 Time and place of payment**

- (a) Unless otherwise specified in this Contract or in the Bank’s demand, all sums other than sums of interest, indemnity and principal are payable within 15 (fifteen) days of the Borrower’s receipt of the Bank’s demand.
- (b) Each sum payable by the Borrower under this Contract shall be paid to the relevant account notified by the Bank to the Borrower. The Bank shall notify the account not less than 15 (fifteen) days before the due date for the first payment by the Borrower and shall notify any change of account not less than 15 (fifteen) days before the date of the first payment to which the change applies. This period of notice does not apply in the case of payment under Article 10.
- (c) The Borrower shall indicate the Contract Number in the payment details for each payment made hereunder.
- (d) A sum due from the Borrower shall be deemed paid when the Bank receives it.

- (e) Any disbursements by and payments to the Bank under this Contract shall be made using account(s) acceptable to the Bank. Any account in the name of the Borrower held with a duly authorised financial institution in the jurisdiction where the Borrower is incorporated or where the Project is undertaken is deemed acceptable to the Bank.

### **5.3 No set-off by the Borrower**

All payments to be made by the Borrower under this Contract shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

### **5.4 Disruption to Payment Systems**

If either the Bank determines (in its discretion) that a Disruption Event has occurred or the Bank is notified by the Borrower that a Disruption Event has occurred:

- (a) the Bank may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of this Contract as the Bank may deem necessary in the circumstances;
- (b) the Bank shall not be obliged to consult with the Borrower in relation to any changes mentioned in paragraph (a) if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes; and
- (c) the Bank shall not be liable for any damages, costs or losses whatsoever arising as a result of a Disruption Event or for taking or not taking any action pursuant to or in connection with this Article 5.4.

### **5.5 Application of sums received**

#### **5.5.A General**

Sums received from the Borrower shall only discharge its payment obligations if received in accordance with the terms of this Contract.

#### **5.5.B Partial payments**

If the Bank receives a payment that is insufficient to discharge all the amounts then due and payable by the Borrower under this Contract, the Bank shall apply that payment:

- (a) firstly, in or towards pro rata to each of any unpaid fees, costs, indemnities and expenses due under this Contract;
- (b) secondly, in or towards payment of any accrued interest due but unpaid under this Contract;
- (c) thirdly, in or towards payment of any principal due but unpaid under this Contract; and
- (d) fourthly, in or towards payment of any other sum due but unpaid under this Contract.

#### **5.5.C Allocation of sums related to Tranches**

- (a) In case of:
  - (i) a partial voluntary prepayment of a Tranche that is subject to a repayment in several instalments, the Prepayment Amount shall be applied pro rata to each outstanding instalment, or, at the request of the Borrower, in inverse order of maturity; or
  - (ii) a partial compulsory prepayment of a Tranche that is subject to a repayment in several instalments, the Prepayment Amount shall be applied in reduction of the outstanding instalments in inverse order of maturity.
- (b) Sums received by the Bank following a demand under Article 10.1 and applied to a Tranche, shall reduce the outstanding instalments in inverse order of maturity. The Bank may apply sums received between Tranches at its discretion.
- (c) In case of receipt of sums which cannot be identified as applicable to a specific Tranche, and on which there is no agreement between the Bank and the Borrower on their application, the Bank may apply these between Tranches at its discretion.

## ARTICLE 6

### **Borrower undertakings and representations**

The undertakings in this Article 6 remain in force from the date of this Contract for so long as any amount is outstanding under this Contract or the Credit is in force.

#### **A. PROJECT UNDERTAKINGS**

##### **6.1 Use of Loan and availability of other funds**

The Borrower shall use all amounts borrowed by it under this Contract for the execution of the Project.

The Borrower shall ensure that it has available to it the other funds listed in Recital (a) and that such funds are expended, to the extent required, on the financing of the Project.

##### **6.2 Completion of Project**

The Borrower shall carry out the Project in accordance with the Technical Description as may be modified from time to time with the approval of the Bank, and complete it by the final date specified therein.

##### **6.3 Increased cost of Project**

If the total cost of the Project exceeds the estimated figure set out in Recital (a), the Borrower shall obtain the finance to fund the excess cost without recourse to the Bank, so as to enable the Project to be completed in accordance with the Technical Description. The plans for funding the excess cost shall be communicated to the Bank without delay.

##### **6.4 Procurement procedure**

The Borrower shall purchase equipment, secure services and order works for the Project (a) in so far as they apply to it or to the Project, in accordance with European Union law in general and in particular with the relevant European Union Directives and (b) in so far as European Union Directives do not apply, by procurement procedures which, to the satisfaction of the Bank, respect the criteria of economy and efficiency and, in case of public contracts, the principles of transparency, equal treatment and non-discrimination on the basis of nationality.

##### **6.5 Continuing Project undertakings**

The Borrower shall:

- (a) **Maintenance:** maintain, repair, overhaul and renew all property forming part of the Project as required to keep it in good working order;
- (b) **Project assets:** unless the Bank shall have given its prior consent in writing retain title to and possession of all or substantially all the assets comprising the Project or, as appropriate, replace and renew such assets and maintain the Project in substantially continuous operation in accordance with its original purpose; the Bank may withhold its consent only where the proposed action would prejudice the Bank's interests as lender to the Borrower or would render the Project ineligible for financing by the Bank under its Statute or under article 309 of the Treaty on the Functioning of the European Union;
- (c) **Insurance:** insure all works and property forming part of the Project with first class insurance companies in accordance with the most comprehensive relevant industry practice;
- (d) **Rights and Permits:** maintain in force all rights of way or use and all Authorisations necessary for the execution and operation of the Project;
- (e) **Environment:**
  - (i) implement and operate the Project in compliance with Environmental Law;

- (ii) obtain and maintain requisite Environmental Approvals for the Project; and
  - (iii) comply with any such Environmental Approvals;
- (f) **Integrity:** take, within a reasonable timeframe, appropriate measures in respect of any member of its management bodies who has been convicted by a final and irrevocable court ruling of a Criminal Offence perpetrated in the course of the exercise of his/her professional duties, in order to ensure that such member is excluded from any Borrower's activity in relation to the Credit, Loan or the Project, and
- (g) **Integrity Audit Rights:** ensure that all contracts under the Project to be procured after the date of signature of this Contract in accordance with EU Directives on procurement provide for:
- (i) the requirement that the relevant contractor promptly informs the Bank of a genuine allegation, complaint or information with regard to Criminal Offence related to the Project;
  - (ii) the requirement that the relevant contractor keeps books and records of all financial transactions and expenditures in connection with the Project; and
  - (iii) the Bank's right, in relation to an alleged Criminal Offence, to review the books and records of the relevant contractor in relation to the Project and to take copies of documents to the extent permitted by law.
- (h) **State Aid:** implement and operate the Project in conformity with any and all laws of the European Union and the Czech Republic regarding state aid;
- (i) **No Double Financing:** ensure that the Project is not financed under loans provided to the Borrower by the Bank other than the Loan; and
- (j) **ESI Funds:**
- (i) when available, upon the Bank's request, provide the Bank with a certified copy of an official application of the Borrower or the Borrower's contributory for the ESI Funds in respect of the Project and inform the Bank periodically on the progress of the grant application process; and
  - (ii) ensure that all terms and conditions regarding the ESI Funds (whether contractual or statutory) are complied with.
- (k) **Supervision and Commissioning Services:** have in place supervision and commissioning services throughout the delivery period of the rolling stock. These services are to be provided by a company or individuals with experience in supervision and commissioning commensurate with the size and technical characteristics of the fleet subject to this Project. Every time there is a change in the arrangements for supervision and commissioning services of the rolling stock, the Borrower shall provide evidence satisfactory to the Bank that such a contract for supervision and commissioning is in place.
- (l) **Maintenance Supervision Services:** have in place maintenance supervision services throughout the period of the maintenance contract, i.e. from the placing into operation of the first rolling stock until 30 years after placing into operation of the last rolling stock which is subject to this Project. These services are to be provided by a company or individuals with experience in rolling stock maintenance commensurate with the size and technical characteristics of the fleet subject to this Project. Not later than 30 days before the placing into operation of the first unit, the Borrower shall provide a confirmation satisfactory to the Bank that such a contract for supervision of maintenance activities is in place. The terms of reference and the experience of the supervising team shall be to the satisfaction of the Bank. Arrangements where access to specialists with specific maintenance experience may be ensured by means of a framework contract with an external provider.

## B. GENERAL UNDERTAKINGS

### **6.6 Disposal of assets**

- (a) The Borrower shall not either in a single transaction or in a series of transactions whether related or not and whether voluntarily or involuntarily dispose of any part of its assets.
- (b) Paragraph (a) above does not apply to any disposal of assets for fair market value and at arm's length:
  - (i) where the higher of the market value or consideration (when aggregated with the higher of the market value or consideration for any other sale, lease, transfer or other disposal, other than any permitted disposal under paragraphs (i) to (iv) below) does not exceed during the life of the Loan, 10% of Borrower's total fixed net assets in aggregate less the book value of all permitted Security established by the Borrower in accordance with Article 7.1; or
  - (ii) made in the ordinary course of trading of the disposing entity; or
  - (iii) made in exchange for other assets comparable or superior as to type, value and quality; or
  - (iv) made with the prior written consent of the Bank,

in each case other than assets forming part of the Project pursuant to Article 6.5(b) and all shares in subsidiaries holding assets forming part of the Project which may not be disposed of.

For the purposes of this Article, "**dispose**" and "**disposal**" includes any act effecting sale, transfer, lease or other disposal.

### **6.7 Compliance with laws**

The Borrower shall comply in all respects with all laws and regulations to which it or the Project is subject.

### **6.8 Financial covenants**

So long as the Loan is outstanding, the Borrower shall maintain a sound financial situation, and in particular, shall maintain each financial year:

- (i) a ratio of no more than 50% of Total Debt to Annual Operating Revenues;
- (ii) a ratio of no more than 15% of Total Debt Service Obligations to Annual Operating Revenues; and
- (iii) a ratio of no less than 150% of Gross Operating Surplus to interest payments.

The ratios under (i) to (iii) above shall be calculated based on the budget statements delivered by the Borrower to the Bank pursuant to Article 8.2 (a) and (b).

The definitions included in this Article 6.8 shall have the following meaning:

**"Annual Operating Revenues"** means the aggregate of the Borrower's: (i) tax and fee revenues, (ii) non-tax revenues, (iii) operating subsidies and (iv) received non-investment transfers.

**"Total Debt"** means the aggregate of the total outstanding financial indebtedness of the Borrower including any guarantee granted by the Borrower in relation to the financial indebtedness of any third party.

**"Total Debt Service Obligations"** means the aggregate amount of the Borrower's: (i) total principal repayments on the Borrower's Total Debt; and (ii) interest payments and other similar charges on the Borrower's Total Debt.

**"Gross Operating Surplus"** means the aggregate of the Borrower's Annual Operating Revenues minus the Borrower's operating expenditures net of interest payments and other similar charges on financial indebtedness.

## **6.9 Financial projections model**

The Borrower shall establish, in agreement with the Bank and for the purpose of monitoring future fulfilment of the financial covenants under Article 6.8, a financial projections model which shall be based on its historical annual budget statements, the budget for the current financial year and the annual budget projections for the following three financial years (as provided by the Borrower to the Bank under Article 8.2).

So long as there is Loan Outstanding, the Borrower shall provide to the Bank annually, without undue delay after the approval of its budget for the following financial year but in any case by 30 June of such following year, the relevant financial projections derived from such model. The Borrower shall update the relevant financial projections every time when any of the ratios under Article 6.8 indent (i) to (iii) threaten to be materially deteriorated and provide such up-dated financial projections to the Bank without undue delay.

## **6.10 General Representations and Warranties**

The Borrower represents and warrants to the Bank that:

- (a) it is validly existing as “*kraj*” under the laws of the Czech Republic and it has power to carry on its business as it is now being conducted and to own its property and other assets;
- (b) it has the power to execute, deliver and perform its obligations under this Contract and all necessary action has been taken to authorise the execution, delivery and performance of the same by it;
- (c) this Contract constitutes its legally valid, binding and enforceable obligations;
- (d) the execution and delivery of, the performance of its obligations under and compliance with the provisions of this Contract do not and will not contravene or conflict with:
  - (i) any applicable law, statute, rule or regulation, or any judgement, decree or permit to which it is subject;
  - (ii) any agreement or other instrument binding upon it which might reasonably be expected to have a material adverse effect on its ability to perform its obligations under this Contract;
- (e) the latest available consolidated audited accounts of the Borrower have been prepared on a basis consistent with previous years and have been approved by its auditors or the Ministry of Finance of the Czech Republic as representing a true and fair view of the results of its operations for that year and accurately disclose or reserve against all the liabilities (actual or contingent) of the Borrower;
- (f) there has been no Material Adverse Change since 7 November 2019;
- (g) no event or circumstance which constitutes a Prepayment Event or an Event of Default has occurred and is continuing unremedied or unwaived;
- (h) no litigation, arbitration, administrative proceedings or investigation is current or to its knowledge is threatened or pending before any court, arbitral body or agency which has resulted or if adversely determined is reasonably likely to result in a Material Adverse Change, nor is there subsisting against it or any of its subsidiaries any material unsatisfied judgement or award;
- (i) it has obtained all necessary Authorisations in connection with this Contract and in order to lawfully comply with its obligations hereunder, and the Project and all such Authorisations are in full force and effect and admissible in evidence;
- (j) its payment obligations under this Contract rank not less than *pari passu* in right of payment with all other present and future unsecured and unsubordinated obligations under any of its debt instruments except for obligations mandatorily preferred by law applying to companies generally;
- (k) it is in compliance with Article 6.5(e) and to the best of its knowledge and belief (having made due and careful enquiry) no Environmental Claim has been commenced or is threatened against it;
- (l) no loss of rating clause is concluded with any other creditor of the Borrower;

- (m) no financial covenants concluded with any other creditor of the Borrower are more restrictive than the ones contained in this Contract;
- (n) it is in compliance with all undertakings under this Article 6;
- (o) at the date of this Contract, no Security exists over its assets save as listed in Schedule F (Existing Security); and
- (p) to the best of its knowledge having made all reasonable enquiries, no funds invested in the Project by the Borrower or by its controlling entities are of illicit origin, including products of money laundering or linked to the financing of terrorism. The Borrower shall promptly inform the Bank if at any time it becomes aware of the illicit origin of any such funds.

The representations and warranties set out above shall survive the execution of this Contract and are, with the exception of the representation set out in paragraph (f) above, deemed repeated on each date of Disbursement Acceptance, date of Compliance Certificate, Disbursement Date and on each Payment Date.

## **ARTICLE 7**

### **Security**

#### **7.1 Negative pledge**

- (a) The Borrower shall not create or permit to subsist any Security over any of its assets.  
For the purposes of this Article 7.1, the term Security shall also include any arrangement or transaction on assets or receivables or money (such as the sale, transfer or other disposal of assets on terms whereby they are or may be leased to or re-acquired by the Borrower, the sale, transfer or other disposal of any receivables on recourse terms or any arrangement under which money or the benefit of a bank account or other account may be applied or set-off or any preferential arrangement having a similar effect) in circumstances where the arrangement or transaction is entered into primarily as a method of raising credit or of financing the acquisition of an asset.
- (b) Paragraph (a) above does not apply to any Security, listed below:
  - (i) any Security listed in Schedule F (Existing Security) except to the extent the principal amount secured by that Security exceeds the amount stated in that Schedule;
  - (ii) any netting or set-off arrangement entered into in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;
  - (iii) any payment or close out netting or set-off arrangement pursuant to any hedging transaction entered into for the purpose of:
    - (1) hedging any risk to which it is exposed in its ordinary course of trading; or
    - (2) its interest rate or currency management operations which are carried out in the ordinary course of business and for non-speculative purposes only, excluding, in each case, any Security under a credit support arrangement in relation to a hedging transaction;
  - (iv) any security interest or preference arising by operation of law and in the ordinary course of trading;
  - (v) any Security over or affecting any asset acquired after the date of this Contract if:
    - (1) the Security was not created in contemplation of the acquisition of that asset;
    - (2) the principal amount secured has not been increased in contemplation of or since the acquisition of that asset; and
    - (3) the Security is removed or discharged within 12 (twelve) months of the date of acquisition of such asset;
  - (vi) any Security entered into pursuant to this Contract;

- (vii) any Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to in the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission;
- (viii) any Security securing indebtedness the principal amount of which (when aggregated with the principal amount of any other indebtedness which has the benefit of Security other than any permitted under paragraphs (i) to (vii) above) does not exceed the level of 10% of Borrower's total fixed net assets less the value of all assets disposed by the Borrower in accordance with Article 6.6.

## **7.2 Pari passu ranking**

The Borrower shall ensure that its payment obligations under this Contract rank, and will rank, not less than *pari passu* in right of payment with all other present and future unsecured and unsubordinated obligations under any of its debt instruments except for obligations mandatorily preferred by law applying to companies generally.

## **7.3 Clauses by inclusion**

If the Borrower concludes with any other financial creditor a financing agreement that includes a loss-of-rating clause or a covenant or other provision regarding its financial ratios, if applicable, that is not provided for in this Contract or is more favourable to the relevant financial creditor than any equivalent provision of this Contract is to the Bank, the Borrower shall promptly inform the Bank and shall provide a copy of the more favourable provision to the Bank. The Bank may request that the Borrower promptly executes an agreement to amend this Contract so as to provide for an equivalent provision in favour of the Bank.

## **7.4 Cash collateral and substitution with guarantee**

### **7.4.A Alternative Security**

If, at any time while there is Loan Outstanding, the Borrower is in breach of Article 6.8, then the Bank may request the Borrower to consult it within 15 (fifteen days) from the date of the Bank's request at the venue specified in the request.

By a notice delivered to the Borrower not earlier than 16 (sixteen) or later than 30 (thirty) days from the date of such request, the Bank may demand that, within a reasonable period specified in such notice, the Borrower:

- (a) shall provide the Bank with a duly issued guarantee (herein the "**Guarantee**") whereby the guarantor (the "**Guarantor**") or guarantors (the "**Guarantors**") unconditionally guarantee the due performance of the Borrower's financial obligations under this Contract. Any such Guarantor shall be a Qualifying Guarantor; or
- (b) shall make, with a bank approved by the Bank, a cash collateral deposit in CZK or EUR, as specified by the Bank in its notice, charged in favour of the Bank on such terms as the Bank may reasonably require, as security for the Borrower's financial obligations under this Contract; or
- (c) shall execute other security offering protection in manner, form and substance acceptable to the Bank.

If none of the foregoing actions is taken within the period specified by the Bank in its relevant notice and to its satisfaction, the Borrower shall, upon demand by the Bank, immediately prepay to the Bank the Loan Outstanding together with all unpaid interest accrued to the date of prepayment on the amount prepaid, a compensation, if any, calculated in accordance with Article 4.2.B and any other sums then payable under this Contract on the amount prepaid.

The provisions of this Article 7.4.A shall not in any way limit or restrict the right of the Bank to demand prepayment of the Loan pursuant to Article 10.

The non-exercise by the Bank of the right to demand the issuance of the Guarantee, or to demand the making of a cash collateral deposit or the execution of other securities shall not be deemed to be a waiver of the Bank's right hereunder.

#### **7.4.B Qualifying Guarantor**

For the purpose of this Article 7.4, “**Qualifying Guarantor**” means a bank or other financial institution which satisfies one of the following conditions:

- (a) at the time of issue of the guarantee agreement, or, as the case may be, at the time it accedes to the Guarantee, and during the life of the Loan, each credit rating that it holds, in respect of its most recent unsecured and unsubordinated long-term issue on any capital market, is not lower than: BBB+ if the rating is assigned by Standard and Poor's Corporation or its successor; Baa1 if the rating is assigned by Moody's Investors Services Inc. or its successor; and BBB+ if the rating is assigned by Fitch Ratings Limited or its successor; and that such bank or other financial institution is otherwise acceptable to the Bank; or
- (b) is accepted by the Bank by notice in writing, with copy to the Borrower, subject to the conditions the Bank may in its discretion deem appropriate, and to the acceptance thereof by the relevant Guarantor and acknowledgement by the Borrower.

#### **7.4.C Substitution of Guarantor**

If an event of the nature described in Article 10.1(A)(c) to (i) inclusive occurs to any Guarantor or any rating specified in Article 7.4.B falls below the specified threshold, the Borrower shall replace such Guarantor with a Qualifying Guarantor. If the Borrower fails to demonstrate to the Bank, promptly upon the latter's request, that it has a reasonable prospect of replacing such Guarantor or if, in any case, the Borrower does not, following demand by the Bank, replace the Guarantor, within 30 days of the date when the said event occurred, the Bank may require the Borrower to prepay immediately all or part of the Loan Outstanding, together with all unpaid interest accrued to the date of prepayment on the amount prepaid, as well as an indemnity calculated on the amount to be prepaid in accordance with Article 4.2.B and all other sums accrued payable under this Contract on the amount prepaid.

### **ARTICLE 8**

#### **Information and Visits**

#### **8.1 Information concerning the Project**

The Borrower shall:

- (a) deliver to the Bank:
  - (i) the information in content and in form, and at the times, specified in Schedule A.2 or otherwise as agreed from time to time by the parties to this Contract; and
  - (ii) any such information or further document concerning the financing, procurement, implementation, operation and environmental matters of or for the Project as the Bank may reasonably require within a reasonable time;

provided always that if such information or document is not delivered to the Bank on time, and the Borrower does not rectify the omission within a reasonable time set by the Bank in writing, the Bank may remedy the deficiency, to the extent feasible, by employing its own staff or a consultant or any other third party, at the Borrower's expense and the Borrower shall provide such persons with all assistance necessary for the purpose;
- (b) submit for the approval of the Bank without delay any material change to the Project, also taking into account the disclosures made to the Bank in connection with the Project prior to the signing of this Contract, in respect of, inter alia, the price, design, plans, timetable or to the expenditure programme or financing plan for the Project;
- (c) provide regular information about the amount of EU Grants received with each Project Progress Report and provide formal statement of the total amount of EU Grants received for the Project not later than 13 months after completion of the Project.

- (d) provide, after expiry of the current PSC and every time there is a change of operator of the rolling stock, information concerning the operation arrangements, including confirmation of compliance of the new PSC with the EU law relating to procurement of contracts for provision of passenger railway services, in particular with the Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road, to the satisfaction of the Bank.
- (e) If, before the delivery of the Project Completion Report, construction of new depots or modification of existing depots is undertaken for the purpose of the maintenance of rolling stock acquired in this Project, the Borrower shall:
  - (i) request the contractor to submit prior to the commencement of the works, and make best endeavours to be obtain the following documents from other sources:
    - (1) evidence of conformity with the EIA Directive (as applicable, the corresponding EIA report(s) and the environmental consent(s) issued by the Competent Authority or evidence that no EIA is required), and
    - (2) evidence of absence of significant impact on Natura 2000 sites (Form A or equivalent), and
  - (ii) submit the above evidence and declaration to the Bank within 5 days from its receipt and make best endeavours for providing them before the commencement of the works; and
- (f) promptly inform the Bank of:
  - (i) any action or protest initiated or any objection raised by any third party or any genuine complaint received by the Borrower or any material Environmental Claim that is to its knowledge commenced, pending or threatened against it with regard to environmental or other matters affecting the Project;
  - (ii) any fact or event known to the Borrower, which may substantially prejudice or affect the conditions of execution or operation of the Project;
  - (iii) a genuine allegation, complaint or information with regard to Criminal Offence related to the Project;
  - (iv) any non-compliance by it with any applicable Environmental Law;
  - (v) any suspension, revocation or modification of any Environmental Approval;
  - (vi) any suspension of payments or infringement procedures initiated by the European Commission related to the implementation of the Project under this Contract and of initiation of any legal proceedings by the European Commission before the Court of Justice for non-compliance with EU law of the Project under this Contract;
  - (vii) any material modifications to the Borrower's development strategies;

and set out the action to be taken with respect to such matters and with respect to point (vii) send to the Bank a copy of the new development strategies and other related documents.

## **8.2 Information concerning the Borrower**

The Borrower shall:

- (a) deliver to the Bank in the English language or with English translation:
  - (i) each year as soon as available and in any event within seven months after the end of each financial year, a copy of a summary of the executed consolidated budget statement, consolidated balance sheet and profit and loss account at the end of and for that financial year of the Borrower, and a summary balance sheet and profit and loss account, at the end of and for that financial year, for the Borrower's contributory organisations; and
  - (ii) at the Bank's request, a copy of the full version of said annual budget statement;

- (b) deliver to the Bank in the English language or with English translation, as soon as available and in any event prior to 28 February of the relevant financial year, a copy of the consolidated annual budget for such financial year, as approved by the Borrower's Assembly or, if not approved, deliver to the Bank, prior to 28 February of the relevant financial year, a copy of a pro-forma annual budget for that financial year and a copy of the approved annual budget prior to 30 June of the relevant financial year;
- (c) deliver to the Bank in the English language or with English translation no later than 31 October each year, its annual budget projections including capital expenditures and investment plan for each of the following three years;
- (d) submit (x) with each budget statement delivered under Article 8.2(a) a certificate from the Borrower's external auditors or the Ministry of Finance of the Czech Republic and (y) with each budget statement delivered under Article 8.2(b) a certificate signed by a person or persons duly authorised to act on behalf of the Borrower declaring compliance by the Borrower with Financial Covenants pursuant to Article 6.8; each such certificate, in a form satisfactory to the Bank, shall include the computations necessary to demonstrate the said compliance;
- (e) deliver to the Bank, such further information, evidence or document concerning:
  - (i) its general financial situation or such certificates of compliance with the undertakings of Article 6; and
  - (ii) the compliance with the due diligence requirements of the Bank, including, but not limited to "know your customer" (KYC) or similar identification procedures when requested and within a reasonable time,
 as the Bank may deem necessary or may reasonably require to be provided within a reasonable time;
- (f) ensure that its accounting records fully reflect the operations relating to the financing, execution and operation of the Project; and
- (g) inform the Bank immediately of:
  - (i) any material change in the laws or regulatory environment in the Czech Republic or any material change in the Borrower's activities, which may affect its ability to complete the Project or service the Loan;
  - (ii) any fact which obliges it to prepay any financial indebtedness or any European Union funding;
  - (iii) any event or decision that constitutes or may result in a Prepayment Event;
  - (iv) any intention on its part to grant any Security over any of its assets in favour of a third party;
  - (v) any intention on its part to relinquish ownership of any material component of the Project;
  - (vi) any fact or event that is reasonably likely to prevent the substantial fulfilment of any obligation of the Borrower under this Contract;
  - (vii) any Event of Default having occurred or being threatened or anticipated;
  - (viii) unless prohibited by law, any material litigation, arbitration, administrative proceedings or investigation carried out by a court, administration or similar public authority, which, to the best of its knowledge and belief, is current, imminent or pending against the Borrower or its controlling entities or members of the Borrower's management bodies in connection with Criminal Offence related to the Credit, the Loan or the Project;
  - (ix) any measure taken by the Borrower pursuant to Article 6.5(f) of this Contract;
  - (x) any litigation, arbitration or administrative proceedings or investigation which is current, threatened or pending and which might if adversely determined result in a Material Adverse Change.

### **8.3 Visits by the Bank**

The Borrower shall allow persons designated by the Bank, as well as persons designated by other institutions or bodies of the European Union when so required by the relevant mandatory provisions of European Union law,

- (a) to visit the sites, installations and works comprising the Project,
- (b) to interview representatives of the Borrower, and not obstruct contacts with any other person involved in or affected by the Project; and
- (c) to review the Borrower's books and records in relation to the execution of the Project and to be able to take copies of related documents to the extent permitted by the law.

The Borrower shall provide the Bank, or ensure that the Bank is provided, with all necessary assistance for the purposes described in this Article.

The Borrower acknowledges that the Bank may be obliged to communicate information relating to the Borrower and the Project to any competent institution or body of the European Union in accordance with the relevant mandatory provisions of European Union law.

## **ARTICLE 9**

### **Charges and expenses**

#### **9.1 Taxes, duties and fees**

The Borrower shall pay all Taxes, duties, fees and other impositions of whatsoever nature, including stamp duty and registration fees, arising out of the execution or implementation of this Contract or any related document and in the creation, perfection, registration or enforcement of any Security for the Loan to the extent applicable.

The Borrower shall pay all principal, interest, indemnities and other amounts due under this Contract gross without any withholding or deduction of any national or local impositions whatsoever required by law or under an agreement with a governmental authority or otherwise. If the Borrower is obliged to make any such withholding or deduction, it shall gross up the payment to the Bank so that after withholding or deduction, the net amount received by the Bank is equivalent to the sum due.

#### **9.2 Other charges**

The Borrower shall bear all charges and expenses, including professional, banking or exchange charges incurred in connection with the preparation, execution, implementation, enforcement and termination of this Contract or any related document, any amendment, supplement or waiver in respect of this Contract or any related document, and in the amendment, creation, management, enforcement and realisation of any security for the Loan.

#### **9.3 Increased costs, indemnity and set-off**

- (a) The Borrower shall pay to the Bank any costs or expenses incurred or suffered by the Bank as a consequence of the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or compliance with any law or regulation which occurs after the date of signature of this Contract, in accordance with or as a result of which (i) the Bank is obliged to incur additional costs in order to fund or perform its obligations under this Contract, or (ii) any amount owed to the Bank under this Contract or the financial income resulting from the granting of the Credit or the Loan by the Bank to the Borrower is reduced or eliminated.
- (b) Without prejudice to any other rights of the Bank under this Contract or under any applicable law, the Borrower shall indemnify and hold the Bank harmless from and against any loss incurred as a result of any full payment or partial discharge that takes place in a manner other than as expressly set out in this Contract.

- (c) The Bank may set off any matured obligation due from the Borrower under this Contract (to the extent beneficially owned by the Bank) against any obligation (whether or not matured) owed by the Bank to the Borrower regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Bank may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off. If either obligation is unliquidated or unascertained, the Bank may set off in an amount estimated by it in good faith to be the amount of that obligation.

## ARTICLE 10

### Events of Default

#### **10.1 Right to demand repayment**

The Borrower shall repay all or part of the Loan Outstanding (as requested by the Bank) forthwith, together with accrued interest and all other accrued or outstanding amounts under this Contract, upon written demand being made by the Bank in accordance with the following provisions.

#### **10.1.A Immediate demand**

The Bank may make such demand immediately without prior notice (*mise en demeure préalable*) or any judicial or extra judicial step:

- (a) if the Borrower does not pay on the due date any amount payable pursuant to this Contract at the place and in the currency in which it is expressed to be payable, unless (i) its failure to pay is caused by an administrative or technical error or a Disruption Event and (ii) payment is made within 3 (three) Business Days of its due date;
- (b) if any information or document given to the Bank by or on behalf of the Borrower or any representation, warranty or statement made or deemed to be made by the Borrower in, pursuant to or for the purposes of entering into this Contract or in connection with the negotiation or performance of this Contract is or proves to have been incorrect, incomplete or misleading in any material respect;
- (c) if, as a result of an event of default (however described) in relation to any loan, or any obligation arising out of any financial transaction, other than the Loan,
- (i) the Borrower is required or is capable of being required or will, following expiry of any applicable contractual grace period, be required or be capable of being required to prepay, discharge, close out or terminate ahead of maturity such other loan or obligation, or
- (ii) any financial commitment for such other loan or obligation is cancelled or suspended;
- (d) if the Borrower is unable to pay its debts as they fall due, or suspends its debts, or makes or seeks to make a composition with its creditors;
- (e) if any corporate action, legal proceedings or other procedure or step is taken in relation to the suspension of payments, a moratorium of any indebtedness, dissolution, administration or reorganisation (by way of voluntary arrangement or otherwise), including in particular without limitation to bankruptcy (*faillite*), controlled management (*gestion contrôlée*), suspension of payments (*sursis de paiement*) arrangement with creditors (*concordat préventif de la faillite*) and judicial liquidation (*liquidation judiciaire*) proceedings or any analogous procedure or step is taken under any applicable law in any jurisdiction or an order is made or an effective resolution is passed for the winding up of the Borrower, or if the Borrower takes steps towards a substantial reduction in its capital, is declared insolvent or ceases or resolves to cease to carry on the whole or any substantial part of its business or activities, or any situation similar to any of the above occurs under any applicable law;
- (f) if an encumbrancer takes possession of, or a receiver, liquidator, administrator, administrative receiver or similar officer is appointed, whether by a court of competent jurisdiction or by any competent administrative authority or by any person, of or over, any part of the business or assets of the Borrower or any property forming part of the Project;

- (g) if the Borrower defaults in the performance of any obligation in respect of any other loan granted by the Bank or financial instrument entered into with the Bank;
- (h) if the Borrower defaults in the performance of any obligation in respect of any other loan made to it from the resources of the Bank or the European Union;
- (i) if any expropriation, attachment, arrestment, distress, execution, sequestration or other process is levied or enforced upon the property of the Borrower or any property forming part of the Project and is not discharged or stayed within 14 (fourteen) days;
- (j) if a Material Adverse Change occurs, as compared with the Borrower's condition at the date of this Contract; or
- (k) if it is or becomes unlawful for the Borrower to perform any of its obligations under this Contract or this Contract is not effective in accordance with its terms or is alleged by the Borrower to be ineffective in accordance with its terms.

#### **10.1.B Demand after notice to remedy**

The Bank may also make such demand immediately without prior notice (*mise en demeure préalable*) or any judicial or extra judicial step (without prejudice to any notice referred to below):

- (a) if the Borrower fails to comply with any provision of this Contract (other than those referred to in Article 6.7 or Article 10.1.A); or
- (b) if the Borrower fails to comply in a material respect with Article 6.7; or
- (c) if any fact related to the Borrower or the Project stated in the Recitals materially alters and is not materially restored and if the alteration either prejudices the interests of the Bank as lender to the Borrower or adversely affects the implementation or operation of the Project,

unless the non-compliance or circumstance giving rise to the non-compliance is capable of remedy and is remedied within a reasonable period of time specified in a notice served by the Bank on the Borrower.

#### **10.2 Other rights at law**

Article 10.1 shall not restrict any other right of the Bank at law to require prepayment of the Loan Outstanding.

#### **10.3 Indemnity**

##### **10.3.A Fixed Rate Tranches**

In case of demand under Article 10.1 in respect of any Fixed Rate Tranche, the Borrower shall pay to the Bank the amount demanded together with the indemnity on any amount of principal due to be prepaid. Such indemnity shall (i) accrue from the due date for payment specified in the Bank's notice of demand and be calculated on the basis that prepayment is effected on the date so specified, and (ii) be for the amount communicated by the Bank to the Borrower as the present value (calculated as of the date of the prepayment) of the excess, if any, of:

- (a) the interest net of Margin that would accrue thereafter on the amount prepaid over the period from the date of prepayment to the Interest Revision/Conversion Date, if any, or the Maturity Date, if it were not prepaid; over
- (b) the interest that would so accrue over that period, if it were calculated at the Redeployment Rate, less 0.15% (fifteen basis points).

The said present value shall be calculated at a discount rate equal to the Redeployment Rate, applied as of each relevant Payment Date of the applicable Tranche.

##### **10.3.B Floating Rate Tranches**

In case of demand under Article 10.1 in respect of any Floating Rate Tranche, the Borrower shall pay to the Bank the amount demanded together with a sum equal to the present value of 0.15% (fifteen basis points) per annum calculated and accruing on the amount of principal due to be prepaid in the same manner as interest would have been calculated and would have accrued, if

that amount had remained outstanding according to the applicable amortisation schedule of the Tranche, until the Interest Revision/Conversion Date, if any, or the Maturity Date.

The value shall be calculated at a discount rate equal to the Redeployment Rate applied as of each relevant Payment Date.

#### **10.3.C General**

Amounts due by the Borrower pursuant to this Article 10.3 shall be payable on the date specified in the Bank's demand.

#### **10.4 Non-Waiver**

No failure or delay or single or partial exercise by the Bank in exercising any of its rights or remedies under this Contract shall be construed as a waiver of such right or remedy. The rights and remedies provided in this Contract are cumulative and not exclusive of any rights or remedies provided by law.

### **ARTICLE 11**

#### **Law and jurisdiction, miscellaneous.**

#### **11.1 Governing Law**

This Contract and any non-contractual obligations arising out of or in connection with it shall be governed by the laws of Luxembourg.

#### **11.2 Jurisdiction**

- (a) The courts of Luxembourg-City have exclusive jurisdiction to settle any dispute (a "**Dispute**") arising out of or in connection with this Contract (including a dispute regarding the existence, validity or termination of this Contract or the consequences of its nullity) or any non-contractual obligation arising out of or in connection with this Contract.
- (b) The parties agree that the courts of Luxembourg-City are the most appropriate and convenient courts to settle any Disputes between them and, accordingly, that they will not argue to the contrary.
- (c) This Article 11.2 is for the benefit of the Bank only. As a result and notwithstanding Article 11.2(a), it does not prevent the Bank from taking proceedings relating to a dispute (including a dispute relating to the existence, validity or termination hereof or any non-contractual obligation arising out of or in connection with this Contract) in any other courts with jurisdiction. To the extent allowed by law, the Bank may take concurrent proceedings in any number of jurisdictions.

#### **11.3 Place of performance**

Unless otherwise specifically agreed by the Bank in writing, the place of performance under this Contract, shall be the seat of the Bank.

#### **11.4 Evidence of sums due**

In any legal action arising out of this Contract the certificate of the Bank as to any amount or rate due to the Bank under this Contract shall, in the absence of manifest error, be prima facie evidence of such amount or rate.

#### **11.5 Entire Agreement**

This Contract constitutes the entire agreement between the Bank and the Borrower in relation to the provision of the Credit hereunder, and supersedes any previous agreement, whether express or implied, on the same matter.

## **11.6 Invalidity**

If at any time any term of this Contract is or becomes illegal, invalid or unenforceable in any respect, or this Contract is or becomes ineffective in any respect, under the laws of any jurisdiction, such illegality, invalidity, unenforceability or ineffectiveness shall not affect:

- (a) the legality, validity or enforceability in that jurisdiction of any other term of this Contract or the effectiveness in any other respect of this Contract in that jurisdiction; or
- (b) the legality, validity or enforceability in other jurisdictions of that or any other term of this Contract or the effectiveness of this Contract under the laws of such other jurisdictions.

## **11.7 Amendments**

Any amendment to this Contract shall be made in writing and shall be signed by the parties hereto.

## **11.8 Counterparts**

This Contract may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument.

## **11.9 Effectiveness of this Contract**

This Contract is conditional upon and shall become effective only after receipt by the Bank, in a form and substance acceptable to the Bank, of:

- (a) Duly counter-signed originals of this Contract and
- (b) the evidence that the Borrower has duly published this Contract in the registry of contracts (in Czech: *registr smluv*), as required by the applicable Czech law, within 30 (thirty) calendar days after the Borrower received this Contract signed by all parties hereto.

This Contract shall not become effective until the Bank sends to the Borrower a letter confirming fulfilment of each of the above mentioned conditions of effectiveness and providing the date that this Contract becomes effective (the “**Date of Effectiveness**”), and such letter shall be conclusive evidence that this Contract has become effective.

For the avoidance of doubt, until the Date of Effectiveness neither the Borrower nor the Bank shall have any claims against each other or have any liability whatsoever under or in connection with this Contract.

If the Date of Effectiveness does not occur within 3 (three months) from the date of this Contract, this Contract shall not come into force and no further action shall be necessary or required.

## **ARTICLE 12**

### **Final clauses**

## **12.1 Notices**

### **12.1.A Form of Notice**

- (a) Any notice or other communication given under this Contract must be in writing and, unless otherwise stated, may be made by letter and electronic mail.
- (b) Notices and other communications for which fixed periods are laid down in this Contract or which themselves fix periods binding on the addressee, may be made by hand delivery, registered letter or by electronic mail. Such notices and communications shall be deemed to have been received by the other party:
  - (i) on the date of delivery in relation to a hand-delivered or registered letter; or
  - (ii) in the case of any electronic mail, only when actually received in readable form and only if it is addressed in such a manner as the Bank and the Borrower shall specify for this purpose.

- (c) Any notice provided by the Borrower to the Bank by electronic mail shall:
  - (i) mention the Contract Number in the subject line; and
  - (ii) be in the form of a non-editable electronic image (.pdf, .tif or other common non editable file format agreed between the parties) of the notice signed by an Authorised Signatory with individual representation right or by two or more Authorised Signatories with joint representation right of the Borrower, attached to the electronic mail.
- (d) Notices issued by the Borrower pursuant to any provision of this Contract shall, where required by the Bank, be delivered to the Bank together with satisfactory evidence of the authority of the person or persons authorised to sign such notice on behalf of the Borrower and the authenticated specimen signature of such person or persons.
- (e) Without affecting the validity of electronic mail or communication made in accordance with this Article 12.1, the following notices, communications and documents shall also be sent by registered letter to the relevant party at the latest on the immediately following Business Day:
  - (i) Disbursement Acceptance;
  - (ii) any notices and communication in respect of the deferment, cancellation and suspension of a disbursement of any Tranche, interest revision or conversion of any Tranche, Market Disruption Event, Prepayment Request, Prepayment Notice, Event of Default, any demand for prepayment, and
  - (iii) any other notice, communication or document required by the Bank.
- (f) The parties agree that any above communication (including via electronic mail) is an accepted form of communication, shall constitute admissible evidence in court and shall have the same evidential value as an agreement under hand (*sous seing privé*).

#### 12.1.B Addresses

The address and electronic mail address (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication to be made or document to be delivered under or in connection with this Contract is:

For the Bank	Attention: OPS/CSEE-3 PUB SEC (CZ,HU,SK)  100 boulevard Konrad Adenauer L-2950 Luxembourg E-mail address: <a href="mailto:contactline-89989@eib.org">contactline-89989@eib.org</a>
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For the Borrower	Attention: Head of Department of Economy Žerotínovo nám. 3 601 82 Brno Czech Republic E-mail address: <a href="mailto:eib@kr-jihomoravsky.cz">eib@kr-jihomoravsky.cz</a>
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#### 12.1.C Notification of communication details

The Bank and the Borrower shall promptly notify the other party in writing of any change in their respective communication details.

## **12.2 English language**

- (a) Any notice or communication given under or in connection with this Contract must be in English.
- (b) All other documents provided under or in connection with this Contract must be:
  - (i) in English; or
  - (ii) if not in English, and if so required by the Bank, accompanied by a certified English translation and, in this case, the English translation will prevail

## **12.3 Changes to parties**

- (a) The Borrower shall not assign or transfer any of its rights or obligations under this Contract without the prior written consent of the Bank.
- (b) The Bank may assign all or part of its rights and benefits or transfer (by way of novation, sub-participation or otherwise) all or part of its rights, benefits and obligations under this Contract:
  - (i) to another bank or financial institution prior to occurrence of an Event of Default; or
  - (ii) to any other third party upon occurrence of an Event of Default.

## **12.4 Recitals, Schedules and Annexes**

The Recitals and following Schedules form part of this Contract:

Schedule A	Project Specification and Reporting
Schedule B	Definitions of Relevant Interbank Rates
Schedule C	Forms for Borrower
Schedule D	Interest Rate Revision and Conversion
Schedule E	Certificates to be provided by the Borrower
Schedule F	Existing Security

The following Annexes are attached hereto:

Annex I	Resolution of Assembly of Borrower and authorisation of signatory
Annex II	Form of legal opinion
Annex III	Form A

The parties hereto have caused this Contract to be executed in 4 originals in the English language.

At Brno, this 30 September 2020

At Luxembourg, this 15 October 2020

Signed for and on behalf of  
**EUROPEAN INVESTMENT BANK**

The acceptance of this Credit and the execution of this Contract was approved by the Assembly of the South-Moravia Region on 17 September 2020 in its 33th meeting, by Resolution No 2975/20/Z33, in accordance with Section 36 i) of the Act No. 129/2000 Coll., on Regions (regional establishment), as amended.

Signed for and on behalf of  
**Jihomoravský kraj (South-Moravia Region)**

Anders Risberg

Dirk Ellerkmann

JUDr. Bohumil Šimek

Bc. Roman Hanák

Head of Division

Head of Division

hejtman  
Jihomoravského kraje

náměstek hejtmána  
Jihomoravského kraje

**Project Specification and Reporting**A.1 Technical Description (Article 6.2)**Purpose, Location**

The Project consists of acquisition by South-Moravia Region of 37 passenger trainsets of the following types:

- 31 EMUs of minimum capacity 310 seats (EMU 310);
- 6 EMUs of minimum capacity 140 seats (EMU 140);

South-Moravia Region shall make these units available to the operator(s) of the Public Service Contract(s) (PSC(s)) for South-Moravia regional and suburban rail services.

**Description**

The rolling stock shall have the following technical characteristics:

	<b>EMU 310</b>	<b>EMU 140</b>
<b>1. CAPACITY</b>		
1.1. Number of seats	Min. 310	Min. 140
1.2. Number of tip up seats	10% (Min. 279 fixed seats)	10% of 140 (Min. 126 fixed seats)
1.3. Other equipment	Space for: 20 bicycles 2 wheelchairs 4 strollers/prams	Space for: 10 bicycles* 2 wheelchairs 2 strollers/prams Space for fewer bicycles is allowed, provided EMU 310+EMU 140 composition has space for 30 bicycles.
<b>2. MAIN TECHNICAL CHARACTERISTICS</b>		
2.1. Length of unit (max.)	170 m for a composition of EMU 310+EMU 140	
2.2. Number of doors per side	8	4
2.3. Number of units in multiple operation	2 (EMU 310+EMU 140) 2 (EMU 140+EMU 140)	
2.4. Track gauge	1435 mm	1435 mm
2.5. Maximum design speed	Min. 160 km/h	Min. 160 km/h
2.6. Traction system	25 kV 50 Hz	25 kV 50 Hz
2.7. Regenerative braking	Yes	Yes

3. EQUIPMENT ON BOARD	Air conditioner CCTV Passenger information system Passenger counting system Wi-Fi Prepared for installation of ticketing equipment 2 WC (1 WC PRM accessible)	Air conditioner CCTV Passenger information system Passenger counting system Wi-Fi Prepared for installation of ticketing equipment 1 WC PRM accessible
4. CONTROL-COMMAND AND SIGNALLING ON BOARD	ETCS L2 Baseline 3 Release 2 LS GSM-R TRS	
5. CONFORMITY WITH TSI	The rolling stock will be compliant with TSIs including: Regulation 2014/1302 (Loc&Pass) Regulation 2014/1300 (PMR) Regulation 2014/1303 (Safety in rail tunnels) Regulation 2014/1304 (Noise) Regulation 2016/919 (CCS)	

The rolling stock shall have all relevant certification and authorisation for placing in service, be ready for passenger service, and shall be supplied with the relevant insurance spare parts or appropriate arrangements for availability of such insurance spare parts.

### Calendar

The Project shall be completed, including placing all trainsets in passenger service, by end March 2023.

## A.2 Information Duties under Article 8.1

### 1. Dispatch of information: designation of the person responsible

The information below has to be sent to the Bank under the responsibility of:

	<b>Financial Contact</b>	<b>Technical Contact</b>
Company	Jihomoravský kraj	Jihomoravský kraj
Contact person	Ing. Ludmila Hrachovinová	Ing. Rostislav Snovický
Title	odbor ekonomický	odbor dopravy
Function / Department financial and technical	vedoucí odboru ekonomického	vedoucí odboru dopravy
Address	Žerotínovo náměstí 3, Brno	Žerotínovo náměstí 3, Brno
Phone	541 651 291	541 651 351
Fax		
Email	hrachovinova.ludmila@kr-jihomoravsky.cz	snovicky.rostislav@kr-jihomoravsky.cz

The above-mentioned contact persons are the responsible contacts for the time being.  
The Borrower shall inform the Bank immediately in case of any change.

### 2. Information on specific subjects

The Borrower shall deliver to the Bank the following information at the latest by the deadline indicated below.

<b>Document / information</b>	<b>Deadline</b>
Information concerning the operation arrangements, including confirmation of compliance of the new PSC with the EU law relating to procurement of contracts for provision of passenger railway services.	After expiry of the current PSC and every time there is a change of operator of the rolling stock
Presentation of the proposed organisation of supervision and commissioning services of the rolling stock. These services are to be provided by a company or individuals with experience in supervision and commissioning commensurate with the size and technical characteristics of the fleet subject to this Project.	Before the first disbursement and every time there is a change in the arrangement in relation to supervision and commissioning.
Evidence that a contract for supervision of maintenance activities is in place. These services are to be provided by a company or individuals with experience in rolling stock maintenance commensurate with the size and technical characteristics of the fleet subject to this Project. The terms of reference and the experience of the supervising team will be to the satisfaction of the Bank. Arrangements where access to specialists with specific maintenance experience may be ensured by means of a framework contract with an external provider.	Not later than 30 days before the placing into operation of the first unit and every time there is a change in these arrangements.

3. Information on the Project's implementation

The Borrower shall deliver to the Bank the following information on Project progress during implementation at the latest by the deadline indicated below.

Document / information	Deadline	Frequency of reporting
<p>Project Progress Report</p> <ul style="list-style-type: none"> <li>- A brief update on the Technical Description, explaining the reasons for significant changes vs. initial scope;</li> <li>- Update on the date of completion of each of the main Project's components, explaining reasons for any possible delay;</li> <li>- Update on the cost of the Project and spending to date, explaining reasons for any possible cost variations vs. initial budgeted cost;</li> <li>- Update on the amount of EU Grants approved and received to date</li> <li>- Description of the arrangements concerning the supervision of commissioning as well as supervision of maintenance</li> <li>- A description of any major issue with impact on the environment;</li> <li>- Update on the Project's demand (in particular number of passengers, passenger x km) and usage (train x km, seat x km, mileage of trains) and comments;</li> <li>- Update of the operator of the rolling stock and potential plans in that regard; information about PSC contracts signed or planned</li> <li>- Any significant issue that has occurred and any significant risk that may affect the Project's operation;</li> <li>- Any legal action concerning the Project that may be on-going;</li> <li>- Non-confidential Project-related pictures, if available.</li> </ul>	<p>31<sup>st</sup> March</p>	<p>Annual</p>

4. Information on the end of works and first year of operation

The Borrower shall deliver to the Bank the following information on Project completion and initial operation at the latest by the deadline indicated below.

Document / information	Date of delivery to the Bank
<p>Project Completion Report, including:</p> <ul style="list-style-type: none"> <li>- A final Technical Description of the Project as completed, explaining the reasons for any significant change compared to the Technical Description in A.1.;</li> <li>- European Vehicle Numbers of the rolling stock units financed by the Bank;</li> <li>- The date of completion of each of the main Project's components, explaining reasons for any possible delay;</li> <li>- The final cost of the Project, explaining reasons for any possible cost variations vs. initial budgeted cost;</li> <li>- Update on the amount of EU Grants approved and received to date</li> <li>- Employment effects of the Project: person-days required during implementation as well as permanent new jobs created;</li> <li>- A description of any major issue with impact on the environment or social impacts;</li> <li>- Description of the arrangements concerning the supervision of commissioning as well as supervision of maintenance</li> <li>- Update of the operator of the rolling stock and potential plans in that regard; information about PSC contracts signed or planned</li> <li>- Any significant issue that has occurred and any significant risk that may affect the Project's operation;</li> <li>- Any legal action concerning the Project that may be on going.</li> <li>- Non-confidential Project-related pictures, if available.</li> <li>- An update on the following Monitoring Indicators: <ul style="list-style-type: none"> <li>o Rolling stock units purchased;</li> <li>o Beneficiaries (number of passengers and passenger x km);</li> <li>o Time savings.</li> <li>o Annual train x km</li> <li>o Annual seat x km</li> <li>o Mileage per type of units.</li> </ul> </li> </ul>	<p>15 months after Project completion</p>

**Definitions of Relevant Interbank Rates****A. EURIBOR**

“**EURIBOR**” means:

- (a) in respect of a relevant period of less than one month, the Screen Rate (as defined below) for a term of one month;
- (b) in respect of a relevant period of one or more months for which a Screen Rate is available, the applicable Screen Rate for a term for the corresponding number of months; and
- (c) in respect of a relevant period of more than one month for which a Screen Rate is not available, the rate resulting from a linear interpolation by reference to two Screen Rates, one of which is applicable for a period next shorter and the other for a period next longer than the length of the relevant period,

(the period for which the rate is taken or from which the rates are interpolated being the “**Representative Period**”).

For the purposes of paragraphs (b) and (c) above:

“**available**” means the rates, for given maturities, that are calculated and published by Global Rate Set Systems Ltd (GRSS), or such other service provider selected by the European Money Markets Institute (EMMI), under the sponsorship of EMMI and EURIBOR ACI, or any successor to that function of EMMI and EURIBOR ACI as determined by the Bank; and

“**Screen Rate**” means the rate of interest for deposits in EUR for the relevant period as published at 11h00, Brussels time, or at a later time acceptable to the Bank on the day (the “**Reset Date**”) which falls 2 (two) Relevant Business Days prior to the first day of the relevant period, on Reuters page EURIBOR 01 or its successor page or, failing which, by any other means of publication chosen for this purpose by the Bank.

If such Screen Rate is not so published, the Bank shall request the principal euro-zone offices of four major banks in the euro-zone, selected by the Bank, to quote the rate at which EUR deposits in a comparable amount are offered by each of them as at approximately 11h00, Brussels time, on the Reset Date to prime banks in the euro-zone interbank market for a period equal to the Representative Period. If at least 2 (two) quotations are provided, the rate for that Reset Date will be the arithmetic mean of the quotations.

If fewer than 2 (two) quotations are provided as requested, the rate for that Reset Date will be the arithmetic mean of the rates quoted by major banks in the euro-zone, selected by the Bank, at approximately 11h00, Brussels time, on the day which falls 2 (two) Relevant Business Days after the Reset Date, for loans in EUR in a comparable amount to leading European banks for a period equal to the Representative Period.

If no rate is available as provided above, EURIBOR shall be the rate (expressed as a percentage rate per annum) which is determined by the Bank to be the all-inclusive cost to the Bank for the funding of the relevant Tranche based upon the then applicable internally generated Bank reference rate or an alternative rate determination method reasonably determined by the Bank.

**B. PRIBOR**

“**PRIBOR**” means:

- (a) in respect of a relevant period of less than one month, the Screen Rate (as defined below) for a term of one month;
- (b) in respect of a relevant period of one or more months for which a Screen Rate is available, the applicable Screen Rate for a term for the corresponding number of months; and
- (c) in respect of a relevant period of more than one month for which a Screen Rate is not available, the rate resulting from a linear interpolation by reference to two Screen Rates, one of which is applicable for a period of next shorter and the other for a period next longer than the length of the relevant period,

(the period for which the rate is taken or from which the rates are interpolated being the “**Representative Period**”).

For the purposes of paragraphs (b) and (c) above, “available” means the rates of interest that are commonly quoted for the relevant maturity.

“**Screen Rate**” means the rate of interest for deposits in CZK for the relevant period as published at 11h00, Prague time, or at a later time acceptable to the Bank on the day (the “**Reset Date**”) which falls two Prague Business Days prior to the first day of the relevant period, on Reuters page PRIBOR= or its successor page or, failing which, by any other means of publication chosen for this purpose by the Bank.

If such Screen Rate is not so published, the Bank shall request the principal Prague offices of four major banks in the Czech Crown interbank market, selected by the Bank, to quote the rate at which CZK deposits in a comparable amount are offered by each of them as at approximately 11h00, Prague time, on the Reset Date to prime banks in the Czech Crown interbank market for a period equal to the Representative Period. If at least 2 (two) quotations are provided, the rate for that Reset Date will be the arithmetic mean of the quotations.

If fewer than two quotations are provided as requested, the rate for that Reset Date will be the arithmetic mean of the rates quoted by major banks in the Czech Crown interbank market, selected by the Bank, at approximately 11:00 a.m. Prague time on the day which falls 2 (two) Prague Business Days after the Reset Date, for loans in CZK in a comparable amount to leading European banks for a period equal to the Representative Period.

If no rate is available as provided above, PRIBOR shall be the rate (expressed as a percentage rate per annum) which is determined by the Bank to be the all-inclusive cost to the Bank for the funding of the relevant Tranche based upon the then applicable internally generated Bank reference rate or an alternative rate determination method reasonably determined by the Bank.

### **C. GENERAL**

For the purposes of the foregoing definitions:

- (a) All percentages resulting from any calculations referred to in this Schedule will be rounded, if necessary, to the nearest one hundredth (in respect of PRIBOR) or one thousandth (in respect of EURIBOR) of a percentage point, with halves being rounded up.
- (b) The Bank shall inform the Borrower without delay of the quotations received by the Bank.
- (c) If any of the foregoing provisions becomes inconsistent with provisions adopted under the aegis of EMMI and EURIBOR ACI in respect of EURIBOR (or any successor to that function of the EMMI and EURIBOR ACI as determined by the Bank) or of the Czech Financial Benchmark Facility (CFBF) (or any successor to that function of the CFBF, as determined by the Bank) in respect of PRIBOR, the Bank may by notice to the Borrower amend the provision to bring it into line with such other provisions.

**Forms for Borrower**C.1 Form of Disbursement Offer/Acceptance (Articles 1.2.B and 1.2.C.)

To: Jihomoravský kraj (South-Moravia Region)  
 From: European Investment Bank  
 Date:  
 Subject: Disbursement Offer/Acceptance for the Finance Contract between European Investment Bank and Jihomoravský kraj (South-Moravia Region) dated ● (the "**Finance Contract**")  
 Serapis number 2018-0572 FI number 89989

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Dear Sirs,

We refer to the Finance Contract. Terms defined in the Finance Contract have the same meaning when used in this letter.

Following your request for a Disbursement Offer from the Bank, in accordance with Article 1.2.B of the Finance Contract, we hereby offer to make available to you the following Tranche:

- (a) Currency and amount to be disbursed and its EUR equivalent:
- (b) Scheduled Disbursement Date:
- (c) Interest rate basis:
- (d) Interest payment periodicity:
- (e) Payment Dates:
- (f) Terms for repayment of principal:
- (g) The Repayment Dates and the first and the last Repayment Date for the Tranche:
- (h) The Interest Revision/Conversion Date:
- (i) The Fixed Rate or Spread, applicable until the Interest Revision/Conversion Date if any, or until the Maturity Date.

To make the Tranche available subject to the terms and conditions of the Finance Contract, the Bank must receive a Disbursement Acceptance in the form of a copy of this Disbursement Offer duly signed on your behalf, to the following e-mail [ ] no later than the Disbursement Acceptance Deadline of [time] Luxembourg time on [date].

The Disbursement Acceptance below must be signed by an Authorised Signatory and must be fully completed as indicated, to include the details of the Disbursement Account.

If not duly accepted by the above stated time, the offer contained in this document shall be deemed to have been refused and shall automatically lapse.

If you do accept the Tranche as described in this Disbursement Offer, all the related terms and conditions of the Finance Contract shall apply, in particular, the provisions of Article 1.4.

Yours faithfully,

EUROPEAN INVESTMENT BANK

We hereby accept the above Disbursement Offer:

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for and on behalf of Jihomoravský kraj (South-Moravia Region)

Date:

Account to be credited:

Account N°: .....

Account Holder/Beneficiary: .....

(please, provide IBAN format if the country is included in IBAN Registry published by SWIFT, otherwise an appropriate format in line with the local banking practice should be provided)

Bank name and address: .....

Bank identification code (BIC): .....

Payment details to be provided: .....

Please transmit information relevant to:

Name(s) of the Borrower's Authorised Signatory(ies):

.....

Signature(s) of the Borrower's Authorised Signatory(ies):

**IMPORTANT NOTICE TO THE BORROWER:**

**BY COUNTERSIGNING ABOVE YOU CONFIRM THAT THE LIST OF AUTHORISED SIGNATORIES AND ACCOUNTS PROVIDED TO THE BANK WAS DULY UPDATED PRIOR TO THE PRESENTATION OF THE ABOVE DISBURSEMENT OFFER BY THE BANK.**

**IN THE EVENT THAT ANY SIGNATORIES OR ACCOUNTS APPEARING IN THIS DISBURSEMENT ACCEPTANCE ARE NOT INCLUDED IN THE LATEST LIST OF AUTHORISED SIGNATORIES AND ACCOUNTS RECEIVED BY THE BANK, THE ABOVE DISBURSEMENT OFFER SHALL BE DEEMED AS NOT HAVING BEEN MADE.**

**Interest Rate Revision and Conversion**

If an Interest Revision/Conversion Date has been included in the Disbursement Offer for a Tranche, the following provisions shall apply.

**A. Mechanics of Interest Revision/Conversion**

Upon receiving an Interest Revision/Conversion Request the Bank shall, during the period commencing 60 (sixty) days and ending 30 (thirty) days before the Interest Revision/Conversion Date, deliver to the Borrower an Interest Revision/Conversion Proposal stating:

- (a) the Fixed Rate or the Spread that would apply to the Tranche, or of its part indicated in the Interest Revision/Conversion Request pursuant to Article 3.1; and
- (b) that such rate shall apply until the Maturity Date or until a new Interest Revision/Conversion Date, if any, and that interest is payable quarterly, semi-annually or annually in accordance with Article 3.1, in arrear on designated Payment Dates.

The Borrower may accept in writing an Interest Revision/Conversion Proposal by the deadline specified therein.

Any amendment to the Contract requested by the Bank in this connection shall be effected by an agreement to be concluded not later than 15 (fifteen) days prior to the relevant Interest Revision/Conversion Date.

Fixed Rates and Spreads are available for periods of not less than 4 (four) years or, in the absence of a repayment of principal during that period, not less than 3 (three) years.

**B. Effects of Interest Revision/Conversion**

If the Borrower duly accepts in writing a Fixed Rate or a Spread in respect of an Interest Revision/Conversion Proposal, the Borrower shall pay accrued interest on the Interest Revision/Conversion Date and thereafter on the designated Payment Dates.

Prior to the Interest Revision/Conversion Date, the relevant provisions of the Contract and Disbursement Offer and Disbursement Acceptance shall apply to the Tranche in its entirety. From and including the Interest Revision/Conversion Date onwards, the provisions contained in the Interest Revision/Conversion Proposal relating to the new Fixed Rate or Spread shall apply to the Tranche (or any part thereof, as indicated in the Interest Revision/Conversion Request) until the new Interest Revision/Conversion Date, if any, or until the Maturity Date.

**C. No or Partial Interest Revision/Conversion**

If the Borrower does not submit an Interest Revision/Conversion Request or does not accept in writing the Interest Revision/Conversion Proposal for the Tranche or if the parties fail to effect an amendment requested by the Bank pursuant to paragraph A above, the Borrower shall repay the Tranche (or the part thereof, as indicated in the Interest Revision/Conversion Request) on the Interest Revision/Conversion Date, without indemnity.

In case of a partial Interest Revision/Conversion, the Borrower will repay, without indemnity, on the Interest Revision/Conversion Date any part of the Tranche which was not covered by the Interest Revision/Conversion Request and which is therefore not subject to the Interest Revision/Conversion.

**Certificates to be provided by the Borrower**

**E.1 Form of Certificate from Borrower (Article 1.4.C)**

To: European Investment Bank  
From: Jihomoravský kraj (South-Moravia Region)  
Date:  
Subject: SOUTH-MORAVIA REGIONAL ROLLING STOCK Finance Contract between European Investment Bank and Jihomoravský kraj (South-Moravia Region) dated ● (the "**Finance Contract**")  
Serapis number 2018-0572 FI number 89989

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Dear Sirs,

Terms defined in the Finance Contract have the same meaning when used in this letter.

For the purposes of Article 1.4 of the Finance Contract we hereby certify to you as follows:

- (a) no Prepayment Event has occurred and is continuing unremedied or unwaived;
- (b) we are in compliance with the financial covenants pursuant to Article 6.8 and attached is evidence of such compliance and related calculations;
- (c) no security of the type prohibited under Article 7.1 has been created or is in existence;
- (d) there has been no material change to any aspect of the Project or in respect of which we are obliged to report under Article 8.1, save as previously communicated by us;
- (e) no event or circumstance which constitutes or would with the passage of time or giving of notice under the Finance Contract constitute an Event of Default has occurred and is continuing unremedied or unwaived;
- (f) no litigation, arbitration administrative proceedings or investigation is current or to our knowledge is threatened or pending before any court, arbitral body or agency which has resulted or if adversely determined is reasonably likely to result in a Material Adverse Change, nor is there subsisting against us or any of our subsidiaries any unsatisfied judgement or award;
- (g) the representations and warranties to be made or repeated by us under Article 6.10 are true in all respects; and
- (h) no Material Adverse Change has occurred, as compared with the situation at the date of the Finance Contract.

Yours faithfully,

For and on behalf of Jihomoravský kraj (South-Moravia Region)

Date:

E.2 Form of Compliance Certificate

To: European Investment Bank

From: Jihomoravský kraj (South-Moravia Region)

Date:

Subject: SOUTH-MORAVIA REGIONAL ROLLING STOCK Finance Contract between European Investment Bank and Jihomoravský kraj (South-Moravia Region) dated ● (the “**Finance Contract**”)

Serapis number 2018-0572

FI number 89989

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Dear Sirs,

We refer to the Finance Contract. This is a Compliance Certificate. Terms defined in the Finance Contract have the same meaning when used in this Compliance Certificate.

We hereby confirm:

- (a) on a [insert the date of calculation of the financial covenants], [insert financial covenant name and repeat for every financial covenant] amounts to [insert number] compared to [minimum / maximum] level of [insert number];
- (b) [no asset disposal prohibited under Article [6.6] has taken place] / [insert information regarding asset disposal];
- (c) [no security of the type prohibited under Article 7.1 has been created or is in existence;]
- (d) [no event or circumstance which constitutes or would with the passage of time or giving of notice under the Finance Contract constitute an Event of Default has occurred and is continuing unremedied or unwaived. [If this statement cannot be made, this certificate should identify any potential event of default that is continuing and the steps, if any, being taken to remedy it].

Yours faithfully,

For and on behalf of Jihomoravský kraj (South-Moravia Region) / [auditor of the Borrower]

[director]

[director]

**Existing Security**

- Contributory organisation Leisure time centre Hodonín, creditor DIAMÍR, s.r.o.; value of EUR 14 111; immovable property.
- Guarantee for loan of South Moravia Regional Development Agency in the amount of CZK 3 000 000, the unpaid amount of the loan as of 31. 12. 2019 was CZK 577 092.
- Guarantee for loan for European projects of Center of Tourism – South Moravia in the amount of CZK 23 000 000. the unpaid amount of the loan as of 31. 12. 2019 was CZK 0.
- Guarantees for loans of Borrower's contributory organizations:
  - (a) Hospital Hustopeče investment loan in the amount of CZK 8 500 000, unpaid amount of the loan as of 31.12.2019 was CZK 3 224 128.

**Resolution of Assembly of Borrower and authorisation of signatory**

# V Ý P I S

## usnesení z 33. zasedání Zastupitelstva Jihomoravského kraje konaného dne 17.9.2020

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### **Bod č. 27**

### **Smlouva o financování mezi Evropskou investiční bankou a Jihomoravským krajem**

#### **Usnesení č. 2975/20/Z33:**

Zastupitelstvo Jihomoravského kraje v souladu s ustanoveními § 35 odst. 1 a § 36 písm. i) zákona č. 129/2000 Sb., o krajích (krajské zřízení), ve znění pozdějších předpisů,

a) **s c h v a l u j e** uzavření Smlouvy o financování mezi Evropskou investiční bankou, se sídlem 100 blvd Konrad Adenauer, Lucemburk, L-2950 Lucembursko (dále jen „Evropská investiční banka“) a Jihomoravským krajem na financování Železničních vozidel pro Jihomoravský kraj ve výši 2.565 mil. Kč, jejíž návrh je přílohou zápisu a čerpání úvěru do výše 2.565 mil. Kč od Evropské investiční banky za podmínek stanovených tímto návrhem smlouvy,

b) **u k l á d á** Radě Jihomoravského kraje rozhodovat o jednotlivých žádostech o čerpání úvěrové linky, na základě kterých Evropská investiční banka připraví jednotlivé nabídky čerpání,

**T: průběžně po dobu trvání smlouvy**

c) **u k l á d á** Radě Jihomoravského kraje rozhodovat o jednotlivých nabídkách čerpání od Evropské investiční banky.

**T: průběžně po dobu trvání smlouvy**

**Hlasování č. 29: 53 – 0 – 0**

JUDr. Bohumil Šimek  
hejtman

Ověřovatelé zápisu:

\_\_\_\_\_  
JUDr. Jana Pejchalová

\_\_\_\_\_  
Ing. Jiří Hlavenka

\_\_\_\_\_  
Mgr. Vladimír Šmerda

\_\_\_\_\_  
Radomír Pavlíček

\_\_\_\_\_  
Ing. Jiří Němec



# V Ý P I S Z E Z Á P I S U

o průběhu ustavujícího zasedání Zastupitelstva Jihomoravského kraje,  
konaného dne 16.11.2016 ve velké zasedací síni sídla Jihomoravského kraje,  
Žerotínovo nám. 3, Brno

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## **Bod č. 4**

### **Volba náměstků hejtmána**

#### **Usnesení č. 5/16/Z1:**

Zastupitelstvo Jihomoravského kraje

**s t a n o v u j e** počet náměstků hejtmána na 5.

**Hlasování:** 53 – 0 – 11

#### **Volba č. 2/16/Z1**

- počet vydaných hlasovacích lístků: 63
- počet odevzdaných platných i neplatných hlasovacích lístků: 63
- počet neodevzdaných hlasovacích lístků: 0
- počet platných hlasů odevzdaných pro kandidáta: 46

Předseda volební komise konstatoval, že náměstkem hejtmána Jihomoravského kraje byl zvolen Bc. Roman Hanák.

#### **Volba č. 3/16/Z1**

- počet vydaných hlasovacích lístků: 64
- počet odevzdaných platných i neplatných hlasovacích lístků: 64
- počet neodevzdaných hlasovacích lístků: 0
- počet platných hlasů odevzdaných pro kandidáta: 46

Předseda volební komise konstatoval, že náměstkyní hejtmána Jihomoravského kraje byla zvolena Mgr. Ing. Taťána Malá.

#### **Volba č. 4/16/Z1**

- počet vydaných hlasovacích lístků: 64
- počet odevzdaných platných i neplatných hlasovacích lístků: 64
- počet neodevzdaných hlasovacích lístků: 0
- počet platných hlasů odevzdaných pro kandidáta: 45

Předseda volební komise konstatoval, že náměstkem hejtmána Jihomoravského kraje byl zvolen Mgr. Marek Šlapal.

#### **Volba č. 5/16/Z1**

- počet vydaných hlasovacích lístků: 64
- počet odevzdaných platných i neplatných hlasovacích lístků: 64
- počet neodevzdaných hlasovacích lístků: 0
- počet platných hlasů odevzdaných pro kandidáta: 40

Předseda volební komise konstatoval, že náměstkem hejtmana Jihomoravského kraje byl zvolen Ing. Jan Vitula.

**Volba č. 6/16/Z1**

- počet vydaných hlasovacích lístků: 64
- počet odevzdaných platných i neplatných hlasovacích lístků: 64
- počet neodevzdaných hlasovacích lístků: 0
- počet platných hlasů odevzdaných pro kandidáta: 48

Předseda volební komise konstatoval, že náměstkem hejtmana Jihomoravského kraje byl zvolen Mgr. Martin Maleček.

JUDr. Bohumil Šimek v. r.  
hejtman

Ověřovatelé zápisu:

Ing. Petr Hýbler v. r.

JUDr. Helena Sýkorová v. r.

Mgr. Vladimír Šmerda v. r.

Ing. Petr Kunc v. r.

Mgr. Jan Grolich v. r.

Radomír Pavlíček v. r.

Igor Chlup v. r.

Ing. Jiří Hlavenka v. r.

Za správnost vyhotovení: Michaela Kováčová, odbor kancelář hejtmana KrÚ JMK  
V Brně dne 19. října 2018

## Signature Pattern – South-Moravia Regional Rolling Stock

**JUDr. Bohumil Šimek**

Governor of the South-Moravia Region

*signature*

**Bc. Roman Hanák**

Deputy Governor of the South-Moravia Region

*signature*

**Form of legal opinion**

European Investment Bank  
 98-100 Blvd. Konrad Adenauer  
 L-2950 Luxembourg  
 Grand Duchy of Luxembourg

To the attention of the Legal Department – Operations 1

</>, </>

**Re: Finance Contract for SOUTH-MORAVIA REGIONAL ROLLING STOCK**

Dear Sirs,

I am acting as counsel to Jihomoravský kraj (the “Borrower”) in connection with the finance contract (the “**Finance Contract**”) for SOUTH-MORAVIA REGIONAL ROLLING STOCK in an amount of CZK </>, made on </> between the European Investment Bank (the “**Bank**”) and the Borrower. I am giving this opinion pursuant to Article 1.4.B of the Finance Contract. All terms used herein and not otherwise defined shall have the same meaning as in the Finance Contract.

I have examined an original of the Finance Contract and such laws, documents and other matters as I have deemed necessary or appropriate for the purposes of giving this opinion.

This opinion is confined to matters of Czech law and no opinion is expressed as to the laws of any other jurisdiction.

Subject to the foregoing, I am of the opinion that:

1. The Borrower is a region (“*kraj*”) validly existing under the laws of the Czech Republic and has full powers to own the properties which it owns and to carry out the administration which it carries out.
2. The Borrower has the corporate power to enter into and perform the Finance Contract.
3. Pursuant to </>, the </> is the competent organ to authorize the Borrower to enter into the Finance Contract and such organ has authorized the execution of the Finance Contract.
4. The Finance Contract has been duly executed and delivered on behalf of the Borrower by </>, </> by virtue of the powers given to them by </>.
5. The entry into the Finance Contract and the compliance with its terms:
  - (i) will not result in violation of the Borrower’s constitutional documents or any provision contained in any law applicable to the Borrower;
  - (ii) will not conflict with or result in the breach of any provision of, or require any consent under, or result in the imposition of any Security (as defined in the Finance Contract) under, any agreement or instrument to which the Borrower is a party or by which the Borrower or any of its assets is bound; and
  - (iii) will not constitute a default or an event that, with the giving of notice or the passing of time or both, would constitute a default under any such agreement or instrument.
6. No provision exists in the Czech Republic which would make it necessary that the Finance Contract be filed, recorded or enrolled with any court or authority in order to ensure its legality, validity or enforceability and the Finance Contract was duly registered in the registry of contracts (in Czech: *registr smluv*).
7. The Finance Contract constitutes a direct, unconditional obligation of the Borrower which ranks in priority of payment at least *pari passu* with all other present and future indebtedness of the Borrower other than indebtedness mandatorily preferred by law.
8. To the best of my knowledge after due inquiry:
  - (i) the Borrower is not in violation of any present statute, regulation, judgment or order applicable to it in the Czech Republic;

- (ii) no statute or regulation has been proposed and no judgment or order is expected which may have any materially adverse effect on the Borrower's business prospects or financial condition;
  - (iii) the Borrower is not engaged in, or threatened by, any litigation, arbitration or administrative proceeding the outcome of which may materially and adversely affect its business prospects or financial condition;
  - (iv) the Borrower is not in default under any material agreement, obligation or duty to which it is a party or by which it or any of its properties or assets is bound; and
  - (v) there exists no event of default (as set out in Article 10.1 of the Finance Contract) and no event which, with the giving of notice, the passage of time or the making of any determination, or any combination thereof, could become such an event of default.
9. The choice of Luxembourg law as the law governing the Finance Contract is valid and enforceable.
10. Pursuant to Article 11.2 of the Finance Contract, the Courts of Luxembourg City shall have jurisdiction in connection with any claim or dispute between the Borrower and the Bank, and any judgment of such courts pertaining to the Finance Contract can be enforced in the Czech Republic in accordance with the Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters.
11. No taxes, duties, fees or other charges, including, without limitation, any registration or transfer tax, stamp duty or similar levy, imposed by the Czech Republic or any political subdivision or taxing authority thereof or therein are payable in connection with the execution and delivery of the Finance Contract, nor in connection with any payment to be made by the Borrower to the Bank pursuant to the same Finance Contract.
12. All exchange control consents which may be necessary pursuant to the laws of the Czech Republic to receive disbursements, to repay the same and to pay interest and all other amounts due under the Finance Contract are in full force and effect.

Based on the foregoing, I am of the opinion that all requirements currently applicable to the Borrower and governing the Finance Contract in relation to the laws of the Czech Republic have been complied with and that the Finance Contract constitutes legally valid and binding obligations of the Borrower enforceable in the Czech Republic in accordance with their terms.

Yours faithfully,

**Form A – No Appropriate Assessment required by Article 6(3) was required**

**DECLARATION BY THE AUTHORITY RESPONSIBLE FOR MONITORING  
SITES OF NATURE CONSERVATION IMPORTANCE<sup>1</sup>**

Responsible Authority: .....

Having examined the project application<sup>2</sup> .....

Which is to be located at: .....

Declares that the project is not likely to have significant effect on a NATURA 2000 site on the following grounds:

Therefore an appropriate assessment required by Article 6(3) was not deemed necessary.

A map at scale of 1:100.000 (or nearest possible scale) is attached, indicating the location of the project as well as the NATURA 2000 sites concerned, if any.

Date (dd/mm/yyyy):

Signed: .....

Name: .....

Position: .....

Organisation: .....

(Authority responsible for monitoring NATURA 2000 sites)

Official Seal:

<sup>1</sup> This includes sites protected as part of the Natura 2000 network (including Special Areas of Conservation and Special Protection Areas), potential Natura 2000 sites, Ramsar sites, Important Bird Areas, sites of the Emerald Network, or others as relevant.

<sup>2</sup> Taking into account the requirements of Art. 6(3) of Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.

**Form A – Assessment of Effects on NATURA 2000 - No risk of significant effect**

**DECLARATION BY THE AUTHORITY RESPONSIBLE FOR MONITORING  
SITES OF NATURE CONSERVATION IMPORTANCE<sup>3</sup>**

Responsible Authority .....

Having examined the project application<sup>4</sup> .....

Which is to be located at .....

Declares that following an appropriate assessment required by Article 6(3) of Directive 92/43/EEC, the project will not have significant effects on a site of nature conservation importance<sup>1</sup>.

Please provide a summary of the conclusions of the appropriate assessment carried out according to Article 6(3) of Directive 92/43/EEC:

Please provide a summary of the mitigation measures required for the project:

A map at scale of 1.100.000 (or the nearest possible scale) is attached, indicating the location of the project as well as the sites of nature conservation importance.

Signed:

Name and Position:

Organisation (Authority responsible for monitoring NATURA 2000 sites)

Official Seal:

<sup>3</sup> This includes sites protected as part of the Natura 2000 network (including Special Areas of Conservation and Special Protection Areas), potential Natura 2000 sites, Ramsar sites, Important Bird Areas, sites of the Emerald Network, or others as relevant.

<sup>4</sup> Taking into account the requirements of Art. 6(3) of Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.