

Confidential Draft  
Subject to Change

(Operation Number 44630)

**AMENDMENT AGREEMENT NO. 2**

**to the Loan Agreement dated 6 September 2013**

between

**BKK BUDAPESTI KÖZLEKEDÉSI KÖZPONT ZÁRTKÖRŰEN MŰKÖDŐ  
RÉSZVÉNYTÁRSASÁG**

and

**EUROPEAN BANK  
FOR RECONSTRUCTION AND DEVELOPMENT**

**Dated [\_\_\_\_\_] 2017**

**AMENDMENT AGREEMENT NO. 2  
TO THE LOAN AGREEMENT DATED 6 SEPTEMBER 2013**

This amendment agreement, dated [\_\_\_\_\_] 2017, (the "Amendment Agreement") is made by and between:

(1) **BKK BUDAPESTI KÖZLEKEDÉSI KÖZPONT ZÁRTKÖRŰEN MŰKÖDŐ RÉSZVÉNYTÁRSASÁG** a joint stock company organised and existing under the laws of Hungary (the "Borrower"); and

(2) the **EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT**, an international organisation formed by treaty ("EBRD").

**WHEREAS:**

(A) The Borrower entered into a Loan Agreement dated 6 September 2013, as amended by Amendment Agreement No. 1 dated 28 June 2016 (as amended, the "Original Agreement") with EBRD;

(B) The Borrower has established a new Subsidiary that will be responsible for the collection of the Borrower's fare revenues.

(C) The Borrower desires to replace its current account holder bank with a new account holder bank.

(D) The Borrower and EBRD therefore wish to amend the Original Agreement in certain respects subject to the provisions of this Amendment Agreement.

**NOW, THEREFORE**, in consideration of the above the parties hereto agree as follows:

**Section 1. Definitions and Interpretation**

(a) In this Amendment Agreement:-

"Amendments" means the amendments made or to be made pursuant to Section 2 of this Amendment Agreement.

"Amended Agreement" means the Original Agreement, as amended by this Amendment Agreement.

"BKÜ" means Budapesti Közlekedési Ügyfélkapcsolatok Zártkörűen Működő Részvénytársaság (registered seat: H-1075 Budapest, Rumbach Sebestyén utca 19-21.; company registration number: Cg. 01-09-049238), a joint stock company organised and existing under the laws of Hungary and a 100% Subsidiary of the Borrower.

"Effective Date" has the meaning given in Section 3 of this Amendment Agreement.

"Original Agreement" has the meaning given in Recital A.

(b) Terms defined in the Original Agreement (whether directly or by reference to any other agreement or instrument) shall, unless otherwise defined herein, have the same meaning in this Amendment Agreement. The provisions of Section 1.02 of the Original Agreement shall have effect as if set out in this Amendment Agreement in full, *mutatis mutandis*.

**(c) The Original Agreement and this Amendment Agreement shall be read and construed as a single document.**

## **Section 2. Amendment and Continuity**

(a) With effect on and from the Effective Date, the Original Agreement shall be amended by the amendments set out in Schedule 1 to this Amendment Agreement.

(b) The provisions of the Original Agreement shall, save as amended by this Amendment Agreement, continue in full force and effect.

(c) This Amendment Agreement shall constitute a "Financing Agreement" for the purpose of the Original Agreement.

## **Section 3. Effective Date**

The Effective Date shall be the date of this Amendment Agreement.

.

## **Section 4. Representations and Warranties**

(a) The Borrower represents and warrants to EBRD as follows:

(1) It has all requisite power and authority, corporate or otherwise, to execute, deliver and perform all of its obligations under this Amendment Agreement and the Original Agreement as amended by this Amendment Agreement.

(2) It has taken all necessary action to authorise the execution, delivery and performance by it of this Amendment Agreement and the Original Agreement as amended by this Amendment Agreement.

(3) This Amendment Agreement has been duly executed and delivered by it and this Amendment Agreement and the Original Agreement as amended by this Amendment Agreement constitute its valid and legally binding obligations, enforceable against it in accordance with their respective terms.

(4) All consents, authorisations and actions of any kind necessary for the valid execution, delivery and performance by it of this Amendment Agreement and for the valid performance of the Original Agreement as amended by this Amendment Agreement have been obtained and are in full force and effect.

(5) The execution and delivery by it of this Amendment Agreement and the performance by it of its obligations under this Amendment Agreement and under the Original Agreement as amended by this Amendment Agreement do not require the consent or approval of any of its creditors and will not conflict with or constitute a breach or default under or violate any provision of its Charter or any agreement, law, rule, regulation, order, writ, judgement, injunction, decree, determination or award applicable to it.

(6) As of the date of this Amendment Agreement, neither the Borrower nor BKÜ are a party to, or committed to enter into, any agreement, other than the Financing Agreements and Project Agreements:

(A) that involves the payment of more than HUF 2,000,000,000 (or the equivalent thereof in other currencies) per year or in the aggregate more than HUF 8,000,000,000 (or the equivalent thereof in other currencies) over the term of such agreement;

(B) that relates to the Project;

(C) that involves any consultancy, agency, financial advisory or similar service contract or arrangement relating to the Project; or

(D) that would or might affect the judgement of a prospective lender considering whether to enter into this Agreement and lend to the Borrower.

(b) All representations and warranties provided by the Borrower in Article II of the Original Agreement (except for those representations and warranties that are provided in such Article II “as of the date of this Agreement”) are hereby deemed repeated by reference to the facts and circumstances existing on the date of this Amendment Agreement.

(c) The Borrower acknowledges that it has made the foregoing representations and warranties with the intention of inducing EBRD to enter into this Amendment Agreement and that EBRD has entered into this Amendment Agreement on the basis of, and in full reliance on, each of such representations and warranties.

## **Section 5. Miscellaneous**

(a) All references to “the Agreement” in the Original Agreement and all reference to the Original Agreement in all instruments and agreements executed thereunder shall refer to the Original Agreement as amended by this Amendment Agreement.

(b) This Amendment Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

## **Section 6. Governing Law and Dispute Resolution**

(a) This Amendment Agreement shall be governed by and construed in accordance with English law.

(b) The provisions of Section 8.09 (*Arbitration and Jurisdiction*) of the Original Agreement are hereby incorporated by reference into, and made a part of, this Amendment Agreement as if fully set forth herein in full, *mutatis mutandis*, and (without prejudice to the generality thereof) as if reference therein to this “Agreement” were to this Amendment Agreement.

(c) Nothing in this Amendment Agreement shall be construed as a waiver by EBRD of any of the privileges, immunities and exemptions granted to EBRD under the Agreement Establishing EBRD, international convention or any applicable law.

**IN WITNESS WHEREOF**, the Parties hereto, acting through their duly authorised representatives, have caused this Amendment Agreement to be executed and delivered on the date first above written.

**BKK BUDAPESTI KÖZLEKEDÉSI KÖZPONT ZÁRTKÖRŰEN MŰKÖDŐ  
RÉSZVÉNYTÁRSASÁG**

By \_\_\_\_\_

Name:

Title:

**EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT**

By \_\_\_\_\_

Name:

Title:

## SCHEDULE 1

### AMENDMENTS TO THE ORIGINAL AGREEMENT

**The Original Agreement shall be amended as follows:**

(a) Section 1.01 of the Original Agreement is hereby amended by deleting the definitions “Framework Agreement”, “Permitted Investments”, “Project Agreements” and “Security Documents” appearing therein and inserting the following definitions in alphabetical order:

**"Balance Order Agreement"** means the balance order agreement to be entered into between the Borrower, BKÜ and the account holder bank regarding the cash pool from the bank accounts of BKÜ to the bank accounts of the Borrower.

**"Bank Account Management Contract"** means the contract to be entered into between the Borrower, BKÜ, EBRD and the account holder bank regarding the management of the Pledged Accounts and the bank accounts of BKÜ.

**"BKK-BKÜ Framework Agreement"** means the Framework Agreement Regarding the Accomplishment of Tasks and Public Services dated 1 May 2017 and made between BKÜ and the Borrower.

**"BKÜ"** means Budapesti Közlekedési Ügyfélkapcsolatok Zártkörűen Működő Részvénytársaság (registered seat: H-1075 Budapest, Rumbach Sebestyén utca 19-21.; company registration number: Cg. 01-09-049238), a joint stock company organised and existing under the laws of Hungary and a 100 % Subsidiary of the Borrower.

**"Commitment Period"** means the period commencing on the date of this Agreement and terminating on the earliest of the date [four years] from the date of this Agreement, 31 December 2018 and the date the obligation of EBRD to make Disbursements hereunder terminates in accordance with the terms of this Agreement.

**"Escrow Agreement"** means the escrow agreement to be entered into between the Borrower, BKÜ, EBRD and the account holder bank regarding the bank accounts of BKÜ in which the Borrower's fare revenues will be collected.

**"Framework Agreement"** means the Framework Agreement Regarding the Accomplishment of Tasks and Public Services dated 1 April 2016 between the City and the Borrower, as amended by various amendments through and including Amendment No. 3 that entered into effect on 12 April 2017.

**"Lender's Supervisor"** means an external technical consultant, acceptable to EBRD, which will supervise the Project implementation and quality. The lenders supervisor will for the purpose of each disbursement provide a sign off confirming the following:

- (a) The Project is within the pre-agreed budget (or the amount of cost overruns incurred, which need to be approved by Budapest City) and that sufficient undrawn funding is available to complete the Project;
- (b) The Project is within the pre-agreed schedule (or timing delays in implementation) and is on-line to achieve completion by an agreed date;
- (c) Confirm the loan drawdowns are in line with the progress of the Project and that funds have been used for their intended purpose.

In addition, the Lender Supervisor will advise the Bank on Change Orders and provide to the Bank quarterly progress reports linked to phase closings during Project Implementation Phase (as defined in the DBOM contract) as well as a final sign off confirming that Project Implementation Phase has been satisfactorily completed.

The Lender's Supervisor's costs will be funded by the EBRD until the signing of this Amendment and by the Borrower thereafter. The cost of the Lender's Supervisor can be financed from the Loan.

**"Project"** means the development, supply, installation, operation and maintenance of an automated fare collection system for public transport in the City of Budapest. The Project scope of works will be reduced and exclude the gate installations on the M3 line as it is currently under refurbishment. The gate installations on this line will be undertaken once refurbishment is completed and will be financed under a separate project.

**"Permitted Investments"** means:

(a) the Subsidiaries listed in the Letter of Information;

(b) investments and Subsidiaries financed by committed funding obtained by the Borrower from the City, the Hungarian state or European Union grants, in each case for the purpose of such investments or Subsidiaries;

(c) investments in short-term investment grade marketable securities solely to give temporary employment to the Borrower's idle resources; and

(d) BKÜ.

**"Project Agreements"**

means:

(a) the Framework Agreement,

(b) the Public Service Contract,

(c) the DBOM Contracts,

(d) the BKK-BKÜ Framework Agreement,

(e) the Balance Order Agreement, and

(f) any other agreements entered between the Borrower and any other party in connection with the Project and designated as a Project Agreement by EBRD and the Borrower.

**"Project Milestone Date"**

means the date on which all of the following have occurred:

(a) the Borrower shall have delivered to EBRD a notice, in form and substance satisfactory to EBRD, signed by an authorised representative of the Borrower, certifying that the Project shall have been completed substantially in the manner set out in the DBOM Contracts;

(b) the Borrower shall have delivered to EBRD a notice, in form and substance satisfactory to EBRD, signed by an authorised representative of the Borrower, certifying that at least EUR 100 million (or the equivalent in Forints) of ticket revenues have been collected in a 12 month period by the Project's automated fare collection system; and



(c) the Borrower shall have delivered to EBRD a notice, in form and substance satisfactory to EBRD, signed by an authorised representative of the Borrower, certifying that the Borrower is in compliance with the covenants contained in Section 5.11 and Section 5.12 and will continue to be in compliance with such covenants on the proposed Project Milestone Date;

(d) EBRD shall have delivered to the Borrower a notice confirming that EBRD is satisfied that all of the above requirements have been fulfilled.

(e) Lender Supervisor sign off required confirming that the Project Implementation Phase has been satisfactorily completed.

**"Security Documents"** means the Bank Account Pledge, the Security Deposit, the Bank Account Management Contract, the Escrow Agreement and the Insurance Assignment.

(b) Section 2.01(b) and 2.01 (c) of the Original Agreement is hereby amended by deleting such section in its entirety and inserting in lieu thereof the following:

**2.01(b) Estimated Project Costs.** As of the date of this Agreement, the total estimated cost of the Project is approximately EUR 71,510,000 as follows:

<b>Item</b>	<b>EUR (million)</b>
Automated fare collection system fixed assets, software installation and maintenance services	[54.50 ]
Communication campaign	[3.11 ]
Project management, inc. Lenders Supervisor, etc.	[13.90 ]
<b>Total Project Cost</b>	<b>[71.51 ]</b>

**2.01 (c) Financing Plan.** The anticipated sources of financing the Project are as follows:

<b>EUR (million)</b>	
<b>Equity</b>	<b>[17,01]</b>
<b>Long-term Debt</b>	
EBRD	54.50
<b>Total Long-term Debt</b>	<b>54.50</b>
<b>Total Financing</b>	<b>[71.51 ]</b>

(c) Section 2.02(b) of the Original Agreement is hereby amended by deleting such section in its entirety and inserting in lieu thereof the following:

**(b) Subsidiaries.** The Borrower has no Subsidiaries other than BKÜ, Budapesti Önkormányzati Követeléskezelő Korlátolt Felelősségű Társaság (100% owned by the Borrower, registered capital: HUF 3,000,000,) Budapest Közút Zártkörűen Működő Részvénytársaság (100% owned by the Borrower, registered capital: HUF 1,500,000,000), and Budapesti Közlekedési Zártkörűen Működő Részvénytársaság (100% owned by the City, however the Company is entitled to control of this company under the provisions of an engagement agreement, registered capital: HUF 127,000,000,000) and each of its Subsidiaries is duly organised, validly existing, and, if applicable, in good standing under the laws of the jurisdiction in which it is organised and registered, to the extent required in accordance with applicable law, with all relevant registration bodies in any jurisdiction in which it carries on business or owns assets and has full power to own the properties which it owns or will own for the purposes of the Project and to carry out the businesses which it carries out or will carry out for the purposes of the Project.

(d) Section 2.02(h) of the Original Agreement is hereby amended by deleting such section in its entirety and inserting in lieu thereof the following:

**(h) Compliance with Law.** Neither the Borrower nor BKÜ is in violation of any law applicable to it and currently in effect. To the best of the Borrower's Knowledge, no law has been proposed or is expected which may have a Material Adverse Effect. All tax returns and reports of the Borrower and BKÜ required by law to be filed have been duly filed and all Taxes upon each of the Borrower and BKÜ, and each of their respective properties and income, which are due and payable, have been paid, other than those currently payable without penalty or interest. The Borrower and BKÜ are in compliance with all applicable laws concerning money laundering. Neither the Borrower nor any officers, directors, authorised employees, Affiliates, agents or representatives of the Borrower has committed or engaged in any Prohibited Practice with respect to the Project or any transactions contemplated by this Agreement.

(e) Section 2.02(i) of the Original Agreement is hereby amended by deleting such section in its entirety and inserting in lieu thereof the following:

**(i) No Default.** Neither the Borrower nor BKÜ is in default under any agreement, obligation or duty to which it is a party or by which it or any of its properties or assets is bound except to the extent such default would not have a Material Adverse Effect and there exists no Default.

(f) Section 2.02(k) of the Original Agreement is hereby amended by deleting such section in its entirety and inserting in lieu thereof the following:

**(k) Litigation.** Neither the Borrower nor BKÜ is engaged in, or, to the best of the Borrower's knowledge, threatened by, any litigation, arbitration or administrative proceeding, the outcome of which might have a Material Adverse Effect.

(g) Section 3.04 of the Original Agreement is hereby amended by inserting the following:

**(e) The Borrower will pay EBRD a restructuring fee of EUR 545,000 to cover the costs associated with the Amendment to the Loan Agreement.**

(h) Section 5.01 of the Original Agreement is hereby amended by inserting the following:

**(c) Borrower to provide the Lender's Supervisor with all required information and progress reports and co-operate with the Lender's Supervisor to facilitate the monitoring of the Project.**

(i) Section 5.02 of the Original Agreement is hereby amended by deleting such section in its entirety and inserting in lieu thereof the following:

**Section 5.02. Maintenance and Continuity of Business**

**The Borrower shall maintain, and shall procure that BKÜ maintains, its corporate existence in compliance with all applicable laws. The Borrower shall conduct, and shall procure that BKÜ conducts, its business with due diligence and efficiency, in accordance with sound engineering, financial and business practices and in compliance with all applicable laws, including all money laundering laws.**

(j) Section 5.07 of the Original Agreement is hereby amended by deleting such section in its entirety and inserting in lieu thereof the following:

**Section 5.07. Security**

**The Borrower shall create, perfect, maintain and, as appropriate, renew the Security in a manner satisfactory to EBRD and shall procure that that BKÜ creates, perfects, maintains and, as appropriate, renews the Security in a manner satisfactory to EBRD.**

(k) Section 5.08 of the Original Agreement is hereby amended by deleting such section in its entirety and inserting in lieu thereof the following:

**Section 5.08. Compliance with Other Obligations**

**The Borrower shall comply, and shall procure that BKÜ complies, in all material respects with all material agreements to which it is a party or by which it or any of its properties or assets is bound.**

(l) Section 5.09 of the Original Agreement is hereby amended by deleting such section in its entirety and inserting in lieu thereof the following:

**Section 5.09. Taxes**

**(a) The Borrower shall pay, and shall procure that BKÜ pays, when due all of its Taxes, including any Taxes against any of its properties, other than Taxes which are being contested in good faith and by proper proceedings and as to which adequate reserves have been set aside for the payment thereof. The Borrower shall make, and shall procure that BKÜ makes, timely filings of all Tax returns and governmental reports required to be filed or submitted under any applicable law.**

**(b) The Borrower shall pay, and shall procure that BKÜ pays, all Taxes payable on, or in connection with, the execution, issue, delivery, registration or notarisation of any Financing Agreement, any Project Agreement or any other document related to this Agreement. Upon notice from EBRD, the Borrower shall pay to EBRD, or reimburse EBRD for, an amount equal to any such Taxes levied on or paid by EBRD.**

(m) Section 5.10 of the Original Agreement is hereby amended by deleting such section in its entirety and inserting in lieu thereof the following:

**Section 5.10. Project Agreements**

**The Borrower shall maintain, and shall procure that BKÜ maintains, all Project Agreements to which the Borrower or BKÜ (as applicable) is a party in full force and effect without modification (other than any Immaterial Modification to the Framework Agreement or any modification to the Public Service Contract or any modification required by Hungarian law to the extent such modification required by Hungarian law has been made after consultation with and the prior approval by EBRD) and perform its obligations under, and not commit any breach of or default under, any such Project Agreement.**

(n) Section 5.12(a) of the Original Agreement is hereby amended by deleting such section in its entirety and inserting in lieu thereof the following:

**Section 5.12. Debt Service Account; Pledge of Accounts**

**(a) The Borrower shall establish and maintain one or more bank accounts denominated in Forints at such banks as may be proposed by the Borrower and approved by EBRD, which accounts shall collect all of the Borrower's fare revenues (directly or, as provided below, from BKÜ) and which accounts shall be pledged to EBRD as security for all amounts payable by the Borrower under the Financing Agreements. For the avoidance of doubt, the**

**Borrower may deposit revenues from sources other than fares into bank accounts that are not pledged to EBRD. The Borrower may procure that BKÜ establishes and maintains one or more bank accounts denominated in Forints at such banks as may be proposed by the Borrower and approved by EBRD, which accounts shall collect some or all of the Borrower's fare revenues directly before such fare revenues are transferred on a daily basis to one or more bank accounts of the Borrower referred to above and pledged to EBRD. Any bank accounts of BKÜ that collect any of the Borrower's fare revenues shall be either pledged to EBRD or be an escrow account to which EBRD is a party, in each case as security for all amounts payable by the Borrower under the Financing Agreements and any such bank accounts shall be subject to the Bank Account Management Contract.**

(o) Section 5.13 of the Original Agreement is hereby amended by deleting such section in its entirety and inserting in lieu thereof the following:

**Section 5.13. Further Documents**

**The Borrower shall execute, and shall procure that BKÜ executes, all such other documents and instruments and do all such other acts and things as EBRD may determine are necessary or desirable to give effect to the provisions of the Financing Agreements and the Project Agreements and to cause the Financing Agreements and the Project Agreements to be duly registered, notarised and stamped in any applicable jurisdiction. The Borrower hereby irrevocably appoints and constitutes EBRD as the Borrower's true and lawful attorney with right of substitution (in the name of the Borrower or otherwise) to execute such documents and instruments and to do such acts and things in the name of and on behalf of the Borrower in order to carry out the provisions hereof and EBRD shall notify the Borrower whenever EBRD takes any such action on behalf of the Borrower pursuant to such appointment.**

(p) Section 5.14 of the Original Agreement is hereby amended by inserting the following:

**(c) The Borrower shall pay for all cost overruns with regards to the Project (by increasing the Equity)**

(q) Section 5.15 of the Original Agreement is hereby amended by inserting at the end thereof the following:

**(n) as soon as available but, in any event, not later than 15 days after they are received by the Borrower, the Borrower shall furnish to EBRD the quarterly and annual reports of BKÜ on the performance of BKÜ under the BKK-BKÜ Framework Agreement as set out in Section 8 of the BKK-BKÜ Framework Agreement.**

(r) Section 5.16 Clause (d) of the Original Agreement is hereby amended by inserting the following:

**(d) “All contracts shall be subject to the review procedures set out in the Procurement Policies and Rules and shall be subject to prior review and no objection by EBRD until the completion of the Project Implementation Phase (as defined in the DBOM Contract) has been confirmed by the Lender’s Supervisor.”**

(s) Section 6.02 of the Original Agreement is hereby amended by deleting such section in its entirety and inserting in lieu thereof the following:

**Section 6.02. Capital Expenditures**

**Neither the Borrower nor BKÜ shall incur expenditures or commitments for expenditures for fixed and other non-current assets (other than Permitted Capital Expenditures) in an aggregate amount in excess of EUR 10,000,000 (or the equivalent thereof in other currencies at then current rates of exchange) in any Financial Year.**

(t) Section 6.03 of the Original Agreement is hereby amended by deleting such section in its entirety and inserting in lieu thereof the following:

**Section 6.03. Leases**

**Neither the Borrower nor BKÜ shall enter into any agreement or arrangement to acquire by lease the use of any property or equipment of any kind, except to the extent that the aggregate payments by the Borrower and BKÜ in respect of such leases do not exceed EUR 3,500,000 (or the equivalent thereof in other currencies at then current rates of exchange) in any Financial Year except for the rolling stock depots to be leased by the Borrower from BKV.**

(u) Section 6.04 of the Original Agreement is hereby amended by deleting such section in its entirety and inserting in lieu thereof the following:

**Section 6.04. Financial Debt**

**(a) Neither the Borrower nor BKÜ shall incur, assume or permit to exist any Financial Debt except:**

**(1) that provided in the Financing Plan, including the Loan; and**

**(2) Subordinated Debt, overdraft financing and supplier financing in an aggregate amount for the Borrower and BKÜ not to exceed EUR 20,000,000 (or the equivalent thereof in other currencies at then current rates of exchange).**

**(b) Neither the Borrower nor BKÜ shall enter into any agreement or arrangement to guarantee or, in any way or under any condition, to become obligated for all or any part of any financial or other obligation of another person.**

(v) Section 6.05 of the Original Agreement is hereby amended by deleting such section in its entirety and inserting in lieu thereof the following:

**Section 6.05. Liens**

**Neither the Borrower nor BKÜ shall create or permit to exist any Lien on any property, revenues or other assets, present or future, of the Borrower or BKÜ, except Permitted Liens.**

(w) Section 6.06 of the Original Agreement is hereby amended by deleting such section in its entirety and inserting in lieu thereof the following:

**Section 6.06. Derivative Transactions**

**Neither the Borrower nor BKÜ shall enter into any interest rate or currency swap, interest rate cap or collar, forward rate agreement or other interest rate, currency or commodity hedge or similar derivative transaction, except in the ordinary course of business with an aggregate open position not to exceed EUR 5,000,000 or the equivalent thereof in other currencies at then current rates of exchange.**

(x) Section 6.07 of the Original Agreement is hereby amended by deleting such section in its entirety and inserting in lieu thereof the following:

**Section 6.07. Arm's Length Transactions**

**Neither the Borrower nor BKÜ shall enter into any transaction with any person except in the ordinary course of business, on ordinary commercial terms and on the basis of arm's-length arrangements, or enter into any transaction whereby the Borrower or BKÜ would pay more than the ordinary commercial price for any purchase or would receive less than the full ex-works commercial price (subject to normal trade discounts) for its products or services.**

(y) Section 6.08 of the Original Agreement is hereby amended by deleting such section in its entirety and inserting in lieu thereof the following:

**Section 6.08. Profit-sharing Arrangements**

**Neither the Borrower nor BKÜ shall enter into any partnership, profit-sharing or royalty agreement or other similar arrangement whereby the**

**income or profits or the Borrower or BKÜ, as the case may be are, or might be, shared with any other person.**

(z) Section 6.09 of the Original Agreement is hereby amended by deleting such section in its entirety and inserting in lieu thereof the following:

**Section 6.09. Investments**

**Neither the Borrower nor BKÜ shall form or have any Subsidiary, or make or permit to exist loans or advances to, or deposits (other than deposits in the ordinary course of business with reputable banks) with, other persons or investments in any person or enterprise except Permitted Investments.**

(aa) Section 6.10 of the Original Agreement is hereby amended by deleting such section in its entirety and inserting in lieu thereof the following:

**Section 6.10. Project Agreements**

**Neither the Borrower nor BKÜ shall terminate, amend or grant any waiver in respect of any provision of any Project Agreement to which it is a party (other than any Immaterial Modification to the Framework Agreement or any modification to the Public Service Contract or any modification required by Hungarian law to the extent such modification required by Hungarian law has been made after consultation with and the prior approval by EBRD) or consent to any assignment of any Project Agreement by any other party thereto.**

(bb) Section 6.11(a) of the Original Agreement is hereby amended by deleting such section in its entirety and inserting in lieu thereof the following:

**Section 6.11. Changes in Business, Capital and Charter**

**(a) Neither the Borrower nor BKÜ shall make material changes, or permit material changes to be made, to the nature of its business or operations, including with respect to the Borrower its role as the entity responsible for transport organisation, road management and other similar public service tasks in the City, or change the nature or scope of the Project.**

(cc) Section 6.12 of the Original Agreement is hereby amended by deleting such section in its entirety and inserting in lieu thereof the following:

**Section 6.12. Prepayment of Long-term Debt**

**Neither the Borrower nor BKÜ shall (whether voluntarily or involuntarily) make any prepayment, repurchase or early redemption of any Long-term Debt or make any repayment of any Long-term Debt pursuant to any provision of any agreement or note which provides directly or indirectly**



**for acceleration of repayment in time or amount, unless in any such case, if EBRD so requires, the Borrower contemporaneously makes a proportionate prepayment of the principal amount then outstanding of the Loan in accordance with the provisions of Section 3.09 (except that there shall be no prepayment fee and no minimum amount or notice period for such prepayment).**

(dd) Section 6.13 of the Original Agreement is hereby amended by deleting such section in its entirety and inserting in lieu thereof the following:

**Section 6.13. Sale of Assets; Merger**

**(a) Neither the Borrower nor BKÜ shall sell, transfer, lease or otherwise dispose of all or a substantial part of its assets (whether in a single transaction or in a series of transactions, related or otherwise) except for the lease by the Borrower of rolling stock to BKV and the lease or transfer by the Borrower to other service providers or other parties of other assets financed by committed funding obtained by the Borrower from the City, the Hungarian state or European Union grants in each case for the purpose of purchasing such assets.**

**(b) Neither the Borrower nor BKÜ shall undertake or permit any merger, consolidation or reorganisation except for mergers and demergers to be done in connection with the transfer by the Borrower to BKV or another service provider of assets financed by committed funding obtained by the Borrower from the City, the Hungarian state or European Union grants in each case for the purpose of purchasing such assets on behalf of such service provider.**

(ee) Section 7.01(d) of the Original Agreement is hereby amended by deleting such section in its entirety and inserting in lieu thereof the following:

**(d) Representations. Any representation or warranty made or confirmed by the Borrower, BKÜ or the City in any Financing Agreement or Project Agreement was false or misleading in any material respect when made or repeated.**

(ff) Section 7.01(e) of the Original Agreement is hereby amended by deleting such section in its entirety and inserting in lieu thereof the following:

**(e) Nationalisation.** Any Governmental Authority condemns, nationalises, seizes or otherwise expropriates all or any substantial part of the property or other assets of the Borrower or BKÜ, or assumes custody or control of such property or other assets or of the business or operations of the Borrower or BKÜ or takes any action for the dissolution or disestablishment of the Borrower or BKÜ or any action that would prevent the Borrower or BKÜ or their officers from carrying on the business or operations of the Borrower or BKÜ or a substantial part of either thereof.

(gg) Section 7.01(f) of the Original Agreement is hereby amended by deleting such section in its entirety and inserting in lieu thereof the following:

**(f) Bankruptcy.** A decree or order by a court is entered against the Borrower or BKÜ adjudging the Borrower or BKÜ bankrupt or insolvent or ordering the winding up or liquidation of the affairs of the Borrower or BKÜ; or a petition is filed seeking reorganisation, administration, arrangement, adjustment, composition or liquidation of or in respect of the Borrower or BKÜ under any applicable law (except for any petition which is frivolous or vexatious and which is settled or discharged within ten days or in the reasonable opinion of EBRD is being contested diligently and in good faith by the Borrower or BKÜ, as the case may be); or a receiver, administrator, liquidator, assignee, trustee, sequestrator, secured creditor or other similar official is appointed over or in respect of the Borrower or BKÜ or any substantial part of the property or assets of the Borrower or BKÜ; or the Borrower or BKÜ institutes proceedings to be adjudicated bankrupt or insolvent, or consents to the institution of bankruptcy or insolvency proceedings against it, or files a petition or answer or consent seeking reorganisation, administration, relief or liquidation under any applicable law, or consents to the filing of any such petition or to the appointment of a receiver, administrator, liquidator, assignee, trustee, sequestrator, secured creditor or other similar official of the Borrower or BKÜ or of any substantial part of the property of the Borrower or BKÜ, or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due; or any other event occurs which under any applicable law would have an effect analogous to any of the events listed in this paragraph.