

Document comparison by Workshare Professional on 26 July 2013 19:18:39

<b>Input:</b>	
Document 1 ID	interwovenSite://GBDMS/UKMATTERS/50727650/12
Description	#50727650v12<UKMATTERS> - Etihad_GoS_JAT_Investment Agreement
Document 2 ID	interwovenSite://GBDMS/UKMATTERS/50727650/13
Description	#50727650v13<UKMATTERS> - Etihad_GoS_JAT_Investment Agreement
Rendering set	dla standard

<b>Legend:</b>	
<a href="#">Insertion</a>	
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<b>Statistics:</b>	
	Count
Insertions	38
Deletions	56
Moved from	0
Moved to	0
Style change	0
Format changed	1
<b>Total changes</b>	<b>95</b>

1 Workshare Professional comparison of  
interwovenSite://GBDMS/UKMATTERS/50727650/12 and  
interwovenSite://GBDMS/UKMATTERS/50727650/13. Performed on 26/07/2013.

**DATED**

**2013**

**(1) THE GOVERNMENT OF THE REPUBLIC OF SERBIA**

**- and -**

**(2) ETIHAD AIRWAYS PJSC**

**- and -**

**(3) JAT AIRWAYS A.D.**

**INVESTMENT AGREEMENT**

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**THIS INVESTMENT AGREEMENT** is made on [ • ]  
2013

**BETWEEN:**

- (1) **THE GOVERNMENT OF THE REPUBLIC OF SERBIA [• ] ("GoS");**
- (2) **ETIHAD AIRWAYS PJSC**, a company incorporated in the United Arab Emirates acting through its head office at P.O. Box 35566, Khalifa City A, Abu Dhabi, United Arab Emirates ("**Etihad**");
- (3) **JAT AIRWAYS A.D.**, a company incorporated in Serbia acting through its head office at Bulevar Umetnosti 16A, Belgrade, Serbia (the "**Company**" and/or "**JAT**"),

(each a "**Party**" and collectively the "**Parties**").

**BACKGROUND:**

- A The Company is incorporated as a joint stock company under the laws of Serbia and is wholly owned by the GoS. Etihad is the national airline of the capital of the U.A.E., Abu Dhabi.
- B Etihad proposes to provide funding to the Company in aggregate in the amount of US\$100,000,000 (one hundred million US Dollars) on the basis set out in this Agreement.
- C Save as otherwise stated in this Agreement, Etihad has agreed to enter into this Agreement in reliance on the representations, warranties, indemnities and undertakings contained in it.

**IT IS AGREED:**

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement:

**"1998 Purchase Contract"** means the aircraft purchase agreement dated 26 May 1998 between Airbus and the Company concerning eight (8) Airbus A319-100 aircraft;

**"Additional Payment"** has the meaning given to it in clause 9.5;

**"Affiliates"** of a Person (the "**Subject Person**") means (i) in the case of any Subject Person other than a natural person, any other Person that, either directly or indirectly through one or more intermediate Persons, controls, is controlled by or is under common control with the Subject Person, and (ii) in case the Subject Person is a natural person, any other Person that, either directly or indirectly, is controlled by the Subject Person, or the Relatives of such Subject Person, or the trustees of any trust of which the Subject Person or his/her Relative is a beneficiary or in the case of a discretionary trust, is a discretionary object, or any Person who is accustomed to act according to the instructions of the Subject Person. For the purposes of this definition, "**control**" shall mean the power to direct the management or policies of a Person, whether through the ownership of over fifty per cent (50%) of the voting power of such Person, through the power to appoint over half of the members of the board of directors or similar governing body of such Person, through contractual arrangements or otherwise;

**"Agreed Form"**, in relation to a document, means the form initialed for identification purposes only by (or on behalf of) the GoS and Etihad, such documents being listed in schedule 3;

**"Agreement"** means this investment agreement, together with the schedules hereto, as may be amended, modified or supplemented from time to time in accordance with its terms;

**"Anti-Corruption Laws"** means all anti-bribery and anti-corruption Laws (including without limitation the United States Foreign Corrupt Practices Act 1977) and all applicable anti-bribery and anti-corruption regulations and codes of practice;

**"Articles"** means the memorandum and articles of association of the Company in the Agreed Form, as amended or supplemented from time to time in accordance with the Shareholder Agreement;

**"Authorisations"** means all third party consents, agreements, approvals, authorisations, waivers or variations as may be required to preserve all or any rights or benefits enjoyed by the Group on or prior to Closing which may otherwise be withdrawn, terminated or varied directly or indirectly as a result of Closing;

**"Authority"** means any supra-national, national or sub-national authority, commission, department, agency, regulator, regulatory body, court, tribunal or arbitrator in any jurisdiction;

**"Base Payment"** has the meaning given to it in clause 9.5;

**"Board"** means the Board of the Company; ~~*Editor's note : KN comment regarding Supervisory Board under further consideration*~~

**"Borrowings"** means borrowings or indebtedness in the nature of borrowing of any Group Company (including: (i) loans and bank overdrafts; (ii) issued loan capital (including debentures, loan notes and loan stock); (iii) liabilities under acceptances, letters of credit and bank guarantees (otherwise than in respect of normal trade bills), acceptance credits, finance or equivalent leases; and (iv) amounts raised by other transactions having the commercial effect of borrowing, other than trade credit arising in the ordinary and usual course of any Group Company's business;

**"Business"** means (i) the existing business carried on by the Company and (ii) such other business as may from time to time be carried on by the Company in accordance with Applicable Law, subject in each case to obtaining the necessary approvals and licences and to the provisions of the Articles;

**"Business Day"** means a day (other than a Friday, Saturday or Sunday or public holiday in Serbia and/or the United Arab Emirates) on which banks are open for general commercial banking business in Serbia and Abu Dhabi excluding internet banking;

**"Business Intermediary"** means any partner, agent, sales agent, commission agent, distributor, reseller, consultant or representative of a Group Company, or any other third party with whom a Group Company transacts or has transacted business that, in each case, is or was authorised to act in any way on its behalf;

**"Claim"** means any dispute or civil, criminal, regulatory or administrative action, claim, proceeding, suit, investigation, arbitration or any form of alternative dispute resolution or other proceeding or hearing whatsoever in any jurisdiction;

**"Closing"** means closing of the Transaction in accordance with clause 5.2 of this Agreement, and is expected to occur on or after 1 January 2014;

**"Closing Date"** has the meaning given to it in clause 5.1;

**"Company Warranties"** means the warranties set out in part 1 of schedule 4, and **"Company Warranty"** means any of them;

**"Competition Act"** has the meaning given to it in paragraph 19 schedule 2;

**"Competition Commission"** has the meaning given to it in paragraph 19 of schedule 2;

**"Conditions"** means the conditions set out in schedule 2 and **"Condition"** means any of them;

**"Confidential Information"** has the meaning given to it in clause 13.1.1;

**"Confirmation Letter"** means the letter from the Company to Etihad in the form set out in schedule 6;

**"Corporate Governance Code"** means the corporate governance code in the Agreed Form to be adopted by the Board prior to Closing;

**"Conversion Shares"** has the meaning set out in clause 3.1;

**"Convertible Loan Amount"** has the meaning given to it in clause 3.1;

**"Convertible Loan Cancellation Notice"** has the meaning set out in the Convertible Loan Facility;

**"Convertible Loan Facility"** has the meaning given to it in clause 3.1;

**"Convertible Loan Facility Agreement"** means the convertible loan facility agreement to be entered into between the Company, the GoS and Etihad substantially on the basis of the Convertible Loan Term Sheet;

**"Convertible Loan Term Sheet"** means the Convertible Loan Term Sheet of even date herewith;

**"Directors"** means the directors of the Company for the time being, as appointed from time to time in accordance with the terms of the Shareholder Agreement;

**"Dispute"** means any dispute or civil, criminal, regulatory or administrative action, claim, proceeding, suit, investigation, arbitration or any form of alternative dispute resolution or any other proceeding or hearing whatsoever in relation to which the liability or potential liability of any Group Company (excluding interest and costs) exceeds US\$50,000 (fifty thousand US Dollars);

**"Encumbrance"** means:

- (a) any mortgage, charge, pledge, lien, hypothecation, deed of trust, title retention, security interest, deposit by way of security, bill of sale, option, assignment (contingent or otherwise), right to acquire, right of first refusal, drag along right, tag along right, right of pre-emption or agreement for or obligation as to any of

the same, or any other form or right, interest, security, encumbrance or any nature in favour of a third party; or

- (b) any arrangement for exercising voting rights issued in favour of a third party, any proxy or power of attorney issued to any third party for transferring and/or exercising any rights, voting trust agreement, interest, option, right of first refusal, right of first offer, drag along right or other transfer restriction; or
- (c) any adverse possession, or any adverse claim as to title, possession or use etc.;

**"Etihad Warranties"** means the warranties set out in part 3 of schedule 4, and **"Etihad Warranty"** means any of them;

**"Execution Date"** means the date of signing this Agreement;

**"General Assembly"** means the General Assembly of the Company to be convened by the Company to consider and approve the Resolutions;

**"General Assembly Notice"** means the notice in the Agreed Form to be sent to the shareholders of the Company for convening the General Assembly;

**"GoS Warranties"** means the warranties set out in part 2 of schedule 4, and **"GoS Warranty"** means any of them;

**"Group"** means the Company and all its subsidiaries for the time being, and **"Group Company"** means any of them;

**"IFRS"** means the International Financial Reporting Standards;

**"Indemnified Person"** means the person to whom an indemnity is provided as set out in clause 9;

**"Indemnifying Person"** means the person providing an indemnity as set out in clause 9;

**"Issue Price"** means [● ] in respect of each New Share;

**"Judgment"** means any judgment, order, decree, award, demand, ruling, injunction or decision from any Authority;

**"Ketering"** means JAT Ketering d.o.o. Surcin;

**"LCIA Arbitration Rules"** has the meaning given to it in clause 25.2;

**"Long Stop Date"** means 31 December 2013 or such later date as may be agreed in writing by GoS and Etihad;

**"Losses"** means any and all losses, liabilities, obligations, claims, demands, actions, suits, judgments, awards, fines, damages, penalties, Taxes, fees, settlements, proceedings, interest, costs and expenses including legal fees and disbursements in relation thereto and the term **"Loss"** shall be construed accordingly;

~~**"Management Services Agreement"** means the Management Services Agreement entered into between the Company, the GoS and Etihad of even date herewith;~~



**"Material Adverse Change"** means:

- (a) an administrator, liquidator, receiver or manager (or similar) having been appointed by any Person in respect of any Group Company and/or over all or any of its assets or formal steps having been taken to initiate such an appointment, save where (in the event of action having been taken by a third party) any Group Company is contesting such action in good faith and such action is discharged or dismissed prior to the Long-Stop Date;
- (b) a petition for a winding up of or other insolvency proceedings of any Group Company having been properly filed and not discharged or dismissed;
- (c) a Group Company having ceased or being obliged to cease its operations as a result of the direction or action of any governmental and/or regulatory authority and/or judicial body;
- (d) Material Litigation being commenced against a Group Company;
- (e) a Material Indemnity Claim;
- (f) any event of default arising pursuant to the terms of any Borrowings;
- (g) any event, condition or item that, individually or in the aggregate, would have an adverse effect on the validity or enforceability of this Agreement or any of the other Transaction Documents or any breach of any Transaction Document;
- (h) any event, act or omission which would constitute a material breach of the Shareholder Agreement as if the Shareholder Agreement had full force and effect from the Execution Date; and
- (i) any event or circumstance which, in the reasonable opinion of Etihad is (individually or in the aggregate) reasonably likely to adversely affect the business, operations, property, assets or condition (financial or otherwise) of the Group in any material respect;

**"Material Litigation"** means any litigation, arbitration, prosecution or injunctive proceedings being properly brought against (by being properly issued and validly served on) or formally threatened in such manner as it would be reasonable to expect that such litigation, arbitration, prosecution or injunction proceeding would result against a Group Company which, in each case, (i) is reasonably expected to cause the Group a liability in excess of US\$5,000,000 (five million US Dollars) and for which the Group would be required to make a provision for, in its annual report and accounts; and (ii) will have a fundamental or long-term material adverse effect on the business, operations or financial condition of the Group taken as a whole; in each case under (i) and (ii), if and to the extent that such liability or impact will not be recoverable under any insurance policy of the Group;

**"Material Indemnity Claim"** means [ • ]: [\[provide/confirm\]](#)

**"National Aviation Authority"** means the Civil Aviation Directorate of the Republic of Serbia;

**"National Aviation Authority Clearance"** means a letter issued by the National Aviation Authority addressed jointly to the Company and Etihad confirming that, having received and reviewed full details of the Transaction, it is satisfied that the Company will continue to comply with the requirements of Serbian Air Transport Law should the Transaction proceed as proposed and, on that basis, it does not propose to (i) revoke, vary, amend or suspend any right or licence held by the Company for the purpose of operating as a domestic and international scheduled and charter airline (engaged in the carriage of passengers and cargo) and continuing to be designated by the Republic of Serbia to operate routes specified in all bilateral air services agreements between the Republic Serbia and third countries, or (ii) make a proposal to any third party body or authority or the Government of the Republic of Serbia for the revocation, variation, amendment, suspension of such right(s) or licence(s);

**"New Shares"** means the ~~[●]~~ new Subscription Shares together with the Conversion Shares to be issued and allotted by the Company to Etihad in accordance with clause 3.2;

**"Notice"** has the meaning given to it in clause 22.1;

**"ordinary course"** in relation any Group Companies, means what would objectively be considered to be conduct in the ordinary and usual course of a solvent domestic and international airline, with a business that was substantially the same as the Business, being managed as a going concern;

**"PDP"** means pre-delivery payment financing;

**"Pre-Contractual Statements"** has the meaning given to it in clause 16.1;

**"Representative"** has the meaning given to it in clause 13.1.3;

**"Resolutions"** has the meaning set out in the Shareholder Agreement;

**"Senior Management Team"** means ~~[●]~~ Dane Kondic (CEO), ~~[●]~~ Gabriel Rusu (CFO) and ~~[●]~~ [●] (COO); **[Please provide/confirm]**

**"Serbian Air Transport Law"** means, collectively, the Serbian Air Transport Law (as published in the Official Gazette of the Republic of Serbia 73/2010, 57/2011 and 93/2012) and directions issued thereunder, as the same may be amended, supplemented and in effect from time to time;

**"Shareholder Agreement"** means the Shareholder Agreement entered into between the Company, the GoS and Etihad of even date herewith;

**"Shares"** means the equity shares of ~~[●]~~ each in the capital of the Company each carrying one vote; **[Please provide/confirm]**

**"State Aid Act"** has the meaning given to it in paragraph 22 of schedule 2;

**"Strategic Plan"** has the meaning given to it in the Management Support Services Agreement;

**"Subscription Amount"** means US\$40,000,000 (forty million US Dollars) less the Convertible Loan Amount;

"**Subscription Shares**" has the meaning given to it in clause 3.2;

"**Su-Port**" means SU-PORT d.o.o Beograd;

"**Support Services Agreement**" means the Support Services Agreement entered into between the Company, the GoS and Etihad of even date herewith;

"**Surviving Provisions**" means clauses 1, 7, 10, 12, 13, 14, 15, 16, ~~17,18~~, 19, 20, 21, 23, 24 and 25; ~~!Please provide/confirm!~~;

"**Tax**" means any form of tax and any duty, withholding, contribution, impost or tariff in the nature of tax, together with all related penalties, fines, levies, charges, payments, assessments, and interest;

"**Tax Authority**" means any Authority competent to impose, assess, collect or administer any Tax;

"**TFA**" means the Transaction Framework Agreement entered into between the Company, the GoS and Etihad of even date herewith;

"**Transaction**" means the investment in the Company by Etihad on the terms and subject to the conditions set out in this Agreement;

"**Transaction Documents**" means this Agreement, the Shareholder Agreement, the ~~Management~~Support Services Agreement, the Convertible Loan Facility Agreement, the Resolutions, agreements relating to the long term commercial arrangements between the Company and Belgrade Airport and NIS or any other entities in which the GoS holds a shareholding whether now or in the future, an Agreement for the Provision of Loans and Grants to the Company by the GoS, a Training Agreement, a Travel Services Agreement, migration of the Company's frequent flyer programme to Etihad Guest and all documents ancillary to them and/or entered into by Etihad and certain Group Companies; and

"**Travel Services Agreement**" has the meaning set out in the TFA;

"**US Dollar**" or "**US\$**" means the lawful currency of the United States of America, as at the date of this Agreement.

1.2 In this Agreement (unless the context requires otherwise), any reference to:

1.2.1 "**including**", "**includes**" or "**in particular**" means including, includes or in particular without limitation;

1.2.2 any gender includes all genders, the singular includes the plural (and vice versa), and "**Persons**" includes individuals, bodies corporate, unincorporated associations, trusts, unions, partnerships and Authorities (whether or not any of them have a separate legal personality);

1.2.3 any professional firm or company includes any firm or company effectively succeeding to the whole, or substantially the whole, of its practice or business;

1.2.4 any reference to a "**subsidiary**" shall have the meaning given to the term in the Companies Law (Official Gazette of the Republic of Serbia, nos. 36/2011 and 99/2011);

- 1.2.5 statutory provisions shall (where the context so admits and unless otherwise expressly provided) be construed as references to those provisions as amended, consolidated, extended or re-enacted from time to time (whether before or after the Execution Date);
- 1.2.6 any time of day or date is to that time or date in Serbia;
- 1.2.7 **"Law" or "Laws"** includes all applicable:
  - 1.2.7.1 laws (whether civil, criminal or administrative), common laws or civil codes, statutes, subordinate legislation, treaties, regulations (including any rule, regulation, standard or requirement of the National Aviation Authority and other relevant authorities, directives and bye-laws in any jurisdiction, in each case for the time being in force (whether before, on or after the Execution Date, except to the extent that any Law made after the Execution Date would increase or extend the liability of the Company and the GoS under or in respect of the Company Warranties and/or the GoS Warranties or Etihad under Etihad Warranties); and
  - 1.2.7.2 binding Judgments;
- 1.2.8 a specific Law or provision of a Law includes:
  - 1.2.8.1 that Law or provision as amended or re-enacted;
  - 1.2.8.2 any Law which that Law or provision re-enacts (with or without modification); and
  - 1.2.8.3 any Law made under it,  
  
in each case for the time being in force (whether before, on or after the Execution Date, except to the extent that any amendment, re-enactment or Law made after the Execution Date would increase or extend the liability of the Company and the GoS under or in respect of the Company Warranties and/or the GoS Warranties or Etihad under Etihad Warranties); and
- 1.2.9 writing or written includes any method of representing or reproducing words in a legible form.
- 1.3 In this Agreement (unless the context requires otherwise), any reference:
  - 1.3.1 to a clause or schedule is to a clause of or schedule to this Agreement;
  - 1.3.2 to a part or paragraph is to a part or paragraph of a schedule to this Agreement;
  - 1.3.3 within a schedule to a part is to a part of that schedule; and
  - 1.3.4 within a part of a schedule to a paragraph is to a paragraph of that part of that schedule.

- 1.4 The contents list, headings and any descriptive notes are for ease of reference only and shall not affect the construction or interpretation of this Agreement.
- 1.5 Unless otherwise expressly provided in this Agreement:
- 1.5.1 any representation, covenant, undertaking, warranty, indemnity or other obligation given or assumed by the GoS or the Company is given or assumed severally; and
- 1.5.2 any representation, covenant, undertaking, warranty, indemnity or other obligation given or assumed by both the GoS and the Company is given or assumed jointly and severally.
- 1.6 In this Agreement, any reference to "**grants**" shall mean any funding provided by the GoS acting in its capacity as the Government of the Republic of Serbia and not in its capacity as a shareholder of the Company which is not repayable, does not carry interest and is not secured.
- 1.7 Any word or phrase defined in the body of this Agreement as opposed to being defined in clause 1 above shall have the meaning assigned to it in such definition throughout this Agreement, unless the contrary is expressly stated or the contrary clearly appears from the context.

## **2. CONDITIONS**

- 2.1 Closing is conditional on:
- 2.1.1 the Conditions set out in paragraphs 17, 18, 19, 20, 21, 22 and 23 of schedule 2 being satisfied to the reasonable satisfaction of both the GoS and Etihad;
- 2.1.2 all other Conditions being fulfilled to the reasonable satisfaction of Etihad or waived in accordance with clause 2.2.
- 2.2 The Conditions may only be waived by Etihad by written notice to the GoS.
- 2.3 The Company, the GoS and Etihad shall each use all reasonable endeavours to ensure (so far as such lies within its respective powers to do so) that each of the Conditions (to the extent that it is not waived) is fulfilled as soon as possible but in any event before the Long Stop Date.
- 2.4 The Company shall within two Business Days of the Execution Date issue the General Assembly Notice to the shareholders of the Company to convene the General Assembly on or before the 30th day from the Execution Date.
- 2.5 The Company, the GoS and Etihad shall, on request and as soon as reasonably practicable, provide true, correct and complete information reasonably required by the other party in relation to its business and provide all assistance in order to enable the Company and Etihad to make any necessary applications or filings to any Authorities in order to satisfy any of the Conditions. Where a party considers that any information requested by the other party for the purposes of any application or filing is confidential information or contains business secrets, it shall provide the information to the other party's lawyers on a counsel-to-counsel

basis only. The Company and Etihad shall each promptly provide each other with copies of all correspondence received from the Authorities as well as all material details of the proceedings of any meeting or conference call held with the Authorities, in the event the other party is not able to have its authorised representatives or advisors attend the meeting or conference call on its behalf.

- 2.6 Where primary responsibility for corresponding with, and/or applying to, an Authority regarding the fulfilment of the Conditions rests with the Company, the Company shall provide to Etihad in draft form (in a timely manner so as to allow Etihad sufficient time to review and make comments thereon prior to despatch) copies of all proposed correspondence and/or applications regarding all required approvals and the National Aviation Authority Clearance, and the Company shall take reasonable account of such comments when finalising such documents provided that Etihad has supplied its comments in sufficient time to allow the Company to file such documents in a timely manner.
- 2.7 Each party shall bear its own costs in relation to and incidental to each filing in connection with a Condition.
- 2.8 The GoS and Etihad shall each notify the other promptly upon becoming aware that: (i) any Condition has been fulfilled; or (ii) any Condition will not be fulfilled by the Long Stop Date. If the Conditions have not been fulfilled or waived on or before the Long Stop Date and the Closing has not occurred, this Agreement shall terminate.
- 2.9 Notwithstanding clause 2.8:
  - 2.9.1 Etihad may terminate this Agreement prior to the Long Stop Date by written notice if it has been notified by the GoS in accordance with clause 2.8(ii), or if it becomes apparent that a Condition is not capable of being satisfied by the Long Stop Date (and Etihad indicates that it is not prepared to waive such Condition pursuant to clause 2.2); and
  - 2.9.2 the GoS may terminate this Agreement prior to the Long Stop Date by written notice if it has been notified by Etihad in accordance with clause 2.8(ii), or if it becomes apparent that any of the Conditions set out in paragraphs 17, 18, 19, 20, 21, 22 and 23 of schedule 2 is not capable of being satisfied by the Long Stop Date (and Etihad indicates that it is not prepared to waive such Condition pursuant to clause 2.2).
- 2.10 The GoS and Etihad shall provide each other sufficient notice (or, if that is not possible, such notice as is reasonably practicable in the circumstances) of any meeting or conference call scheduled with the Authorities with respect to the approvals required for this Transaction such that the other party can make its authorised representatives and/or advisors available to attend such meeting or conference call. For the avoidance of doubt, a party may meet with the Authorities without the presence of any other party if a meeting or conference call on that basis has been specifically requested by the Authorities or if the authorised representatives and/or advisors of the other party are unavailable, but the party that will be participating in such meeting or conference call shall always inform the other party about the meeting or conference call in advance of the meeting or conference call taking place, and shall promptly report back to the other party the key points discussed at such meeting or conference call.

### 3. EQUITY SUBSCRIPTION

- 3.1 Within fourteen (14) days from the date of this Agreement, Etihad shall provide a convertible loan facility to the Company in the amount of US\$40 million (the "**Convertible Loan Facility**"). The Convertible Loan Facility shall be available for drawdown on terms set out in the Convertible Loan Facility Agreement. Subject to satisfaction or ~~wavier~~waiver of the Conditions, the Company agrees that all ~~such~~principal amounts that remain outstanding under the Convertible Loan Facility immediately prior to Closing (the "**Convertible Loan Amount**") shall be converted into new shares, which shall be allotted and issued at the Issue Price to Etihad at Closing (the "**Conversion Shares**") in consideration for the cancellation of any liability or indebtedness from the Company to Etihad in respect of the Convertible Loan Amount.
- 3.2 Subject to the satisfaction or waiver of the Conditions, any undrawn balance of the Convertible Loan Facility immediately prior to Closing shall be invested in the Company by way of subscription for new shares in the Company (the "**Subscription Shares**"; together with the Conversion Shares, the "**New Shares**"). Etihad agrees to subscribe for and the Company agrees to allot and issue the Subscription Shares at the Issue Price to Etihad at Closing in consideration for the payment of the Subscription Amount, subject to and on the terms of this Agreement.
- 3.3 The Parties acknowledge and agree that Etihad's holding of the New Shares shall be equal to (but will never exceed) 49% of all issued and outstanding shares in the Company (or such lesser number of shares as may be necessary to take account of regulatory requirements applicable to the Company and on terms to be agreed between Etihad and the Company).

### 4. UNDERTAKINGS

- 4.1 Between the date of this Agreement and the date on which the ~~Management~~Support Services Agreement takes effect, save as provided in this Agreement (including where Etihad has given its prior written permission pursuant to paragraph 2 of schedule 5 (pre-completion undertaking)), the Company and the GoS shall, to the extent within their respective powers, procure compliance with schedule 5.
- 4.2 The Company and the GoS undertake to Etihad to notify Etihad as soon as practicable after becoming aware of any fact, circumstance or event which constitutes, or is likely to constitute, a breach of clause 4.1.
- 4.3 Without prejudice to the next sentence, the Company and the GoS shall not directly or indirectly solicit any Person to make an offer for all or any Shares of the Company, or a proposal for the Company to merge with another entity, and the Company and the GoS shall promptly inform Etihad of any approach by a third party to the Board which is likely to lead to such an offer or proposal and will keep Etihad informed of the same.
- 4.4 The GoS and the Company shall meet with and provide to Etihad an update with regard to the Conditions set out in schedule 2 at regular intervals. On fulfilment of the Conditions, the Company shall provide the Confirmation Letter to Etihad. The Company shall issue the Confirmation Letter to Etihad within two (2) Business Days of fulfilment (or waiver, as the case may be) of all the Conditions.

4.5 The Company undertakes that prior to Closing it shall adopt the Corporate Governance Code such that the Corporate Governance Code shall take effect immediately from Closing.

## 5. CLOSING

5.1 Closing shall take place at the office of the [Deputy Prime Minister] in Belgrade (and/or at such other locations as the parties agree) within five (5) Business Days of receipt of the Confirmation Letter by Etihad, provided that all Conditions (other than those which have been waived in accordance with clause 2.2) remain fulfilled at that date to the reasonable satisfaction of Etihad ("**Closing Date**"). **[Please provide full details and confirm]**

5.2 At Closing:

5.2.1 the Company shall effect the following in each case without delay in the order set out below:

5.2.1.1 provide a documentary evidence that a meeting of the General Meeting took place before or on the Closing Date to resolve to approve:

(a) the issue and allotment of the New Shares to Etihad at Closing free and clear of all Encumbrances;

~~(b)~~ **[confirmation from the Central Depository Agency;]** **[Please confirm]**

(b) ~~(e)~~ all acts required to be done to cause the New Shares to be promptly credited to the depository account of Etihad;

(c) ~~(d)~~ the filing of all necessary resolutions and forms with the Registrar of Companies within the time limits prescribed for filing each of them;

(d) ~~(e)~~ the appointment of **[James Hogan, James Rigney, Harsh Mohan Bassam al Mosa and Francois Jozua Oberholzer]** as members of the Board of the Company nominated by Etihad, the appointment of such member(s) of the Board as may be nominated by the GoS in accordance with the Shareholder Agreement and appointing such additional independent members of the Board as may be agreed between the Parties in accordance with the Shareholder Agreement, prior to Closing; **[Please provide/confirm]**

(e) ~~(f)~~ to the extent not effected prior to such date, the resignation of such members of the Board of the Company to ensure the Board is constituted in accordance with the Shareholder Agreement, from Closing; and



- (f) ~~(g)~~ the appointment (or continuation in their current role, as applicable) of persons to each of the following roles - Chief Executive Officer, Chief Financial Officer, Chief Commercial Officer, Chief Operating Officer, Chief People and Performance Officer, and Chief Strategy and Planning Officer;

5.2.1.2 provide confirmation of ownership of Shares by Etihad from the Central Securities Depository and Clearing House;

5.2.1.3 ~~5.2.1.2~~ provision to Etihad of a certified copy of resolutions of the Board authorising the execution and performance of its respective obligations under this Agreement and each of the Transaction Documents and the resolution(s) referred to in clause 5.2.1.1 above;

5.2.1.4 ~~5.2.1.3~~ payment of all Taxes, fees or other charges payable on or in connection with the issue, subscription and delivery of the New Shares to Etihad.

5.2.2 Etihad shall:

5.2.2.1 deliver a Convertible Loan Cancellation Notice and/or (as applicable) to pay or procure payment of the Subscription Amount, in immediately available funds, to such bank account notified by the Company in writing not less than five (5) Business Days prior to Closing and to be credited to such account no later than 11:00 CET on the Closing Date (or such later time as is agreed by the parties in writing); and

5.2.2.2 provide the Company with a certified copy of resolutions of the board of directors of Etihad authorising the execution of and performance of its respective obligations under the Transaction Documents.

5.2.3 All transactions contemplated by this Agreement to be completed on Closing shall be deemed to occur simultaneously and no transaction shall be consummated unless all such transactions are consummated.

5.2.4 Notwithstanding anything to the contrary contained in this Agreement (in particular as regards the timeframe for the confirmation of the satisfaction of any of the Conditions), the GoS shall ensure that the meeting of the Board as referred to in this clause 5 (to be held for the purposes of the allotment of the New Shares) shall be convened and held no later than seven (7) Business Days from the date on which the final condition is satisfied or waived by Etihad.

5.2.5 The Parties agree that the fulfilment of the obligations of the Company set forth in this clause 5 above are conditions precedent to the taking effect of the Convertible Loan Cancellation Notice and/or (as applicable) application of the Subscription Amount for the subscription to the New Shares and that, accordingly any Convertible Loan Amounts released and/or funds disbursed in accordance

with clause 6.2.2.1 shall be held by the Company (for the benefit of and shall not be deemed to have been transferred by Etihad) until the acts set forth in clause 5 above have been performed. If the Company does not perform the acts set forth in this clause 5 above within two (2) Business Days of the Closing Date, then the Company shall, upon Etihad's request, immediately return the funds disbursed in accordance with clause 5.2.2.1 to Etihad, unless otherwise instructed by Etihad.

## **6. POST CLOSING ACTIONS**

- 6.1 The Company shall ensure that the New Shares are credited to the depository account of Etihad within thirty (30) Business Days of Closing.
- 6.2 The Company shall within thirty (30) Business Days of Closing, ensure that the name of Etihad is registered with the competent securities registry in Serbia as the beneficial owner of the New Shares.
- 6.3 The Company shall, and the GoS shall ensure that the Company shall, within the time period permitted under applicable Law, file all necessary forms with the Registrar of Companies, to effect the issuance of New Shares, amendment of Articles and the appointment of directors.
- 6.4 Without prejudice to the other rights of Etihad and notwithstanding anything stated in this Agreement the GoS shall indemnify Etihad in respect of all losses arising consequent to the failure of the Company to fulfill the items and obligations set out in clauses 5 and 6. Etihad shall have the right to exercise any and all rights or legal or equitable remedies of any kind which may accrue to it against the Company and the GoS.
- 6.5 Save for the subscription for the New Shares pursuant to this Agreement, Etihad shall not be required to contribute any debt or equity capital to the Company or to guarantee any debt of the Company or to provide any other funding to the Company, unless stated otherwise in this Agreement or the TFA.

## **7. COSTS AND EXPENSES**

Unless otherwise expressly provided in this Agreement, each party will bear its own costs and expenses incurred in relation to the negotiation, preparation, execution and implementation of each of the Transaction Documents.

## **8. WARRANTIES**

### **8.1 Company Warranties**

- 8.1.1 The Company hereby represents and warrants to Etihad that the Company Warranties are true and correct as on the Execution Date and as on the Closing Date. For the purposes of this clause 8.1.1, any express or implied reference to the date of this Agreement in any statement set out in part 1 of schedule 4 shall be construed as a reference to the date and time at which the Company Warranty is given pursuant to this clause 8.1.1.
- 8.1.2 The Company hereby acknowledges that Etihad is entering into this Agreement and the other Transaction Documents in reliance (amongst other things) on each

Company Warranty, each of which has also been given with the intention of inducing Etihad to enter into this Agreement and the other Transaction Documents.

- 8.1.3 All Company Warranties are valid notwithstanding any information or document furnished to or findings made by Etihad during its due diligence exercise and no such information, document or finding shall limit or narrow the scope of the liability of the Company hereunder unless a release to that effect has been signed by Etihad.
- 8.1.4 Each of the Company Warranties is separate and independent and, unless otherwise expressly provided, Etihad shall have a separate claim and right of action in respect of every breach of every Company Warranty.
- 8.1.5 The Company undertakes to Etihad that it will use its reasonable endeavours to avoid any facts, events or circumstances occurring between the Execution Date and the Closing which would or might constitute a breach of any Company Warranty, unless any such facts, events or circumstances are permitted in accordance with schedule 5.
- 8.1.6 The Company shall promptly notify Etihad if it becomes aware of any facts, events or circumstances which cause any Company Warranty which was given at the Execution Date to be untrue, inaccurate or misleading in any respect at any time before the Closing Date, unless any such facts, events or circumstances are permitted in accordance with schedule 5.

## 8.2 GoS Warranties

- 8.2.1 The GoS hereby represents and warrants to Etihad that the GoS Warranties are true and correct as on the Execution Date and as on the Closing Date. For the purposes of this clause 8.2.1, any express or implied reference to the date of this Agreement in any statement set out in part 2 of schedule 4 shall be construed as a reference to the date and time at which the GoS Warranty is given pursuant to this clause 8.2.1.
- 8.2.2 The GoS hereby acknowledge that Etihad is entering into this Agreement and the other Transaction Documents in reliance on each GoS Warranty, each of which has also been given with the intention of inducing Etihad to enter into this Agreement and the other Transaction Documents.
- 8.2.3 Each of the GoS Warranties is separate and independent and, unless otherwise expressly provided, Etihad shall have a separate claim and right of action in respect of every breach of every GoS Warranty.
- 8.2.4 The GoS undertakes to Etihad that it will use its reasonable endeavours to avoid any facts, events or circumstances occurring before the Closing Date which would or might constitute a breach of any GoS Warranty given by the GoS.
- 8.2.5 The GoS shall each promptly notify Etihad if they become aware of any facts, events or circumstances which cause any GoS Warranty which was given at the

Execution Date to be untrue, inaccurate or misleading in any respect at any time before the Closing Date.

### **8.3 Etihad Warranties**

- 8.3.1 Etihad hereby represents and warrants to the Company and the GoS that Etihad Warranties are true and correct as on the Execution Date and as on the Closing Date. For the purposes of this clause 8.3.1, any express or implied reference to the date of this Agreement in any statement set out in part 3 of schedule 4 shall be construed as a reference to the date and time at which Etihad Warranty is given pursuant to this clause 8.3.1.
- 8.3.2 Etihad acknowledges that the Company and the GoS are entering into this Agreement and the other Transaction Documents in reliance (amongst other things) on each Etihad Warranty, each of which has also been given with the intention of inducing the Company and the GoS to enter into this Agreement and the other Transaction Documents.
- 8.3.3 Each of Etihad Warranties is separate and independent and, unless otherwise expressly provided, the Company and the GoS shall have a separate claim and right of action in respect of every breach of every Etihad Warranty.
- 8.3.4 Etihad undertakes to the Company and the GoS that it will use its reasonable endeavours to avoid any facts, events or circumstances occurring before the Closing Date which would or might constitute a breach of any Etihad Warranty.
- 8.3.5 Etihad shall promptly notify the Company and the GoS if it becomes aware of any facts, events or circumstances which cause any Etihad Warranty which was given at the Execution Date to be untrue, inaccurate or misleading in any respect at any time before the Closing Date.

## **9. INDEMNITIES**

9.1 Nothing in this clause 9 shall have the effect of limiting the undertakings of the GoS under the TFA.

### **9.2 Company indemnity**

9.2.1 Subject to the provisions set out in this clause 9, the GoS hereby agrees to indemnify, defend and hold harmless Etihad from and against (and be responsible for) any and all Losses incurred or suffered by or asserted against Etihad pursuant to any matter inconsistent with or resulting directly or indirectly from all or any of the following:

9.2.1.1 any breach or inaccuracy of any Company Warranty, covenant or agreement made or failure to perform (whether in whole or in part) any obligation required to be performed by the Company in accordance with this Agreement;

9.2.1.2 any fraud or deliberate non-disclosure by the Company; and

9.2.1.3 a reduction in the value of Etihad's shareholding in the Company arising from the litigation between the Company and Herm International USA in relation to all Disputes and Claims arising in connection with the acquisition of the Subsidiaries from the GoS.

9.2.2 Etihad shall not be entitled to indemnification under this agreement unless: (i) the amount of the liability in respect of any Claim (or series of Claims arising from substantially identical facts and circumstances) exceeds US\$25,000 (twenty five thousand US Dollars); and the aggregate cumulative liability of the Company in respect of all such Claims exceeds US\$250,000 (two hundred and fifty thousand US Dollars) in which case the GoS shall be liable for the entire amount of any such claims. The GoS's aggregate liability to indemnify and hold Etihad harmless under this Agreement shall not exceed the Etihad Subscription Amount save in case of:

9.2.2.1 fraud or deliberate non-disclosure by the Company or its agents/employees; or

9.2.2.2 breach of the representations and warranties contained in paragraph 2 and 4 of part 1 of schedule 4 (Company Warranties),

when the aggregate limit on liability shall be US\$100,000,000 (one hundred million US Dollars) plus costs and penalties.

9.2.3 Etihad's aggregate liability to indemnify and hold the Company harmless under this Agreement shall not exceed the Etihad Subscription Amount.

9.2.4 The GoS shall not be liable for a breach of Company Warranty or any other obligations that it may have pursuant to this Agreement or to indemnify and hold Etihad harmless under this Agreement, unless written notice containing details of Etihad's Claim is given to the GoS on or before the date that is five (5) years from the Closing Date.

### **9.3 GoS indemnity**

9.3.1 Subject to the provisions set out in this clause 9, the GoS hereby agrees to indemnify, defend and hold harmless Etihad from and against any and all Losses incurred or suffered by or asserted against Etihad pursuant to any matter inconsistent with or resulting directly or indirectly from:

9.3.1.1 any breach or inaccuracy of any GoS Warranty, covenant or agreement made or failure to perform (whether in whole or in part) any obligation required to be performed by the GoS in accordance with this Agreement; or

9.3.1.2 any fraud by the GoS; or

9.3.1.3 any deliberate non-disclosure by the GoS of any matter to be disclosed by the GoS in respect of GoS Warranty.

- 9.3.2 Save as set out in clause 9.5 **Error! Reference source not found.**, in no circumstances shall the aggregate liability of the GoS to indemnify and hold Etihad harmless under this Agreement exceed US\$100,000,000 (one hundred million US Dollars).
- 9.3.3 The GoS shall not be liable for a breach of GoS Warranty or any other obligations that it may have pursuant to this Agreement or to indemnify and hold Etihad harmless under this Agreement, unless written notice containing details of Etihad's Claim is given to the GoS on or before the date that is five (5) years ~~months~~ from the Closing Date.

#### 9.4 Conduct of Claims

- 9.4.1 In the event that any Indemnified Person becomes aware of any matter that it believes is covered under clause 9.2 or 9.3 (as applicable) and such matter involves any Claim made against the Indemnified Person by any Person, the Indemnified Person shall promptly notify the Indemnifying Person of such Claim setting out the amount due to the Indemnified Person under clause 9.2 or 9.3 (as applicable). Payment of all sums due pursuant to the indemnity to the extent mentioned in clause 9.2 or 9.3 (as applicable) shall be made by the Indemnifying Person to the Indemnified Person within thirty (30) days of the Indemnified Person being required to make any payments or incurring any Loss or liability in relation to any Claims.
- 9.4.2 In the case of any Claim or proceeding made against the Company or the Group Companies which is covered by the indemnity set forth in clause 9.2, then the Company may, if it so desires, by notice to Etihad, decide to defend such Claim on its own, but in consultation with Etihad. For the avoidance of doubt, it is hereby clarified that in such an event, the Company shall have the right to control the defence, negotiation or settlement of such Claim or proceeding.
- 9.4.3 In the case of any Claim or proceeding made against any Indemnified Person which is covered by the indemnity set forth in clause 9.2, the Company shall also have the right, at its option and expense, to participate in the defence of such Claim, but not to control the defence, negotiation or settlement thereof (which control shall at all times shall rest with Etihad). Provided that no such settlement shall be made without the prior written consent of the Company (which consent shall not be unreasonably withheld or delayed), if the Company has acknowledged in writing its liability towards Etihad under the Claim proposed to be settled. However, in circumstances where the Company may have a defence or counterclaim in relation to such Claim which the Indemnified Person is not entitled to assert, then to the extent necessary for the Company to assert and maintain such defence or counterclaim, and provided that and upon the Company furnishing satisfactory evidence of its financial ability to indemnify Etihad, the Company may assume such control through counsel of its choice (which counsel shall be satisfactory to the Indemnified Person) at its own expense; provided that the Indemnified Person shall continue to have the right to be represented, at its own expense, by counsel of its choice in connection with the defence, negotiation or settlement of such Claim.
- 9.4.4 If the Company does not assume control of the defence of such Claim, the entire defence, negotiation or settlement of such Claim by the Indemnified Person shall

be deemed to have been consented to by, and shall be binding upon, the Company as fully as though the Company alone had assumed the defence thereof and a judgment had been entered in such Claim in respect of such settlement or judgment.

- 9.4.5 The parties to this Agreement agree to cooperate fully with each other in connection with the defence, negotiation or settlement of any Claim.
- 9.4.6 The failure of the Indemnified Person to notify the Indemnifying Person of a Claim shall not relieve such Indemnifying Person of any indemnification responsibility under this clause 9 unless such failure materially prejudices the ability of the Indemnifying Person to defend such Claim.

## **9.5 Provisions applicable to all indemnities in this clause 9**

- 9.5.1 On an indemnity payment ("**Base Payment**") to the Indemnified Person hereunder by the Indemnifying Person, the Indemnifying Person shall make a further payment (the "**Additional Payment**") to the Indemnified Person so that the sum of the Base Payment and the Additional Payment shall, after deducting from such payments, the amount of all Taxes required to be paid by Etihad or deductible by the Indemnifying Person, in respect of the receipt or accrual of such payments, be equal to the Base Payment provided however that nothing in this clause 9.5.1 shall have the effect of increasing the liability of any Indemnifying Person above the aggregate liability that is specified in clauses 9.2.2 and 9.3.2.
- 9.5.2 The Indemnifying Person shall take all necessary steps, including passing of any resolutions that may be required to ensure that the Indemnifying Person fulfils its indemnification obligations hereunder.
- 9.5.3 At any time, Etihad may assign its right to receive all or any indemnity payments hereunder to its Affiliate or the Company and thereafter the contractual obligations to make indemnity payments will be owed to such Affiliate or the Company and the contractual right to receive such assigned indemnity payments will benefit such Affiliate or the Company.
- 9.5.4 Subject to applicable Law, the Indemnified Persons shall be entitled to set-off any amounts owing by any of the Indemnifying Person to the Indemnified Persons pursuant to this clause 9 or otherwise, against any amounts owed to any of the Indemnifying Persons by the Indemnified Persons.
- 9.5.5 Notwithstanding any investigation conducted before or after the Closing Date, and notwithstanding any actual or implied knowledge or notice of any facts or circumstances which the Indemnified Persons may have as a result of such investigation, the Indemnified Persons shall be entitled to rely upon each Indemnifying Person's representations, warranties, covenants, undertakings and/or agreements set forth in any of the Transaction Documents or in any certificate, schedule or exhibit delivered pursuant hereto or thereto. The Indemnified Persons may bring a Claim for indemnification pursuant to this clause 9 notwithstanding the fact that the Indemnified Persons may have knowledge of the breach or inaccuracy giving rise to such Claim. Furthermore, any knowledge of the Indemnified Persons or the conduct of any investigation in

relation to the Company or the Business (actual, constructive or imputed) shall not in any manner affect or limit the right to indemnification, payment of Losses or other remedies with respect to any matter that is covered by clause 9.

## **9.6 No GoS claims against the Company**

The GoS shall not be entitled to claim restitution from the Company in relation to any payments that may be made by the GoS to Etihad pursuant to the terms hereof. The GoS acknowledge and confirm that any claim made by Etihad against the GoS will not require a claim in respect of the same matter to be made first against the Company and the liability of the GoS pursuant to such a claim shall not be reduced to take account of any liability that would otherwise have been for the Company.

## **9.7 Indemnification shall not limit other remedies**

The remedies set forth in this clause 9 shall be without prejudice to all the rights and remedies that the Indemnified Person may have under Law and shall not be the sole and exclusive remedies of the Indemnified Person for any breach of or any matter relating to any representation or warranty or covenant contained in this Agreement. Etihad shall be entitled to pursue any remedy that is available to it under Law.

## **9.8 Limitation of Liability of the Company and GoS**

9.8.1 Without prejudice to limitation of liability specified in the clauses 9.2.2 and 9.3.2. and save as otherwise expressly provided in this clause 9.8, the provisions of this clause shall operate to limit the liability of the Company, Group Companies or the GoS (as applicable) in respect of any Claim under or in connection with this Agreement.

9.8.2 No liability shall attach to the Company, Group Companies or the GoS (as applicable) in respect of any Claim if and to the extent that such Claim relates to any Losses recoverable and recovered by Etihad pursuant to any insurance policy, subject to clause 9.8.9.

9.8.3 Etihad shall not be entitled to bring any Claim in respect of any act or omission whatsoever carried out at the written request or with the written approval of Etihad prior to the Closing Date or which is expressly authorised by this Agreement.

9.8.4 No liability shall attach to the Company, Group Companies or the GoS (as applicable) in respect of any Claim to the extent that the Claim is based upon a liability which is contingent only or is otherwise not capable of being quantified but only unless and until such liability ceases to be contingent and becomes an actual liability or becomes capable of being quantified, as the case may be.

9.8.5 Etihad shall not be entitled to recover damages or obtain payment, reimbursement, restitution or indemnity more than once for the same Loss.

9.8.6 No liability shall attach to the Company, Group Companies or the GoS (as applicable) in respect of any Claim if and to the extent that the breach giving rise



to such Claim is capable of relief (without cost or loss to Etihad), and such relief is granted.

- 9.8.7 Etihad acknowledges and agrees that, save for the representations, warranties, indemnities and undertakings contained in this Agreement, it has not been induced to enter into this Agreement by, any information, statements, warranties or representations of any description (whether written or oral) made, supplied or given by or on behalf of the Company, Group Company or the GoS (as applicable) or the officers, agents, employees or advisers of any of them in relation to the Business, its value or otherwise.
- 9.8.8 Any reference in schedule 4 to this Agreement, to knowledge or awareness of the Company or the GoS shall be deemed to mean the actual and constructive knowledge of the following persons: in respect of the Company: [●]; and in respect of the GoS: [●]; ("constructive" meaning, for the purposes of this provision, such knowledge as such individual ought to have had taking into account his professional experience and position. *[Please provide]*)
- 9.8.9 Clause 9.8.2 shall not be applicable where the subject insurance forms part of an Etihad insurance programme and a claim against the it will result in a premium increase for Etihad upon renewal of the programme during the one or more of the next three (3) years (regardless of whether such insurance forms part of the renewal(s)) unless the amount of the increase is either not separately identifiable by the relevant insurers (upon request by Etihad) or, if identifiable and identified by the relevant insurers, security is put in place by the GoS to reimburse Etihad in respect of the full cost of such increase(s).
- 9.8.10 Nothing in this clause 9.8 shall operate to limit or exclude any liability of Company, Group Companies or GoS (as applicable) for, or remedy against the Company, Group Companies or GoS (as applicable) in respect of, any fraud, fraudulent misrepresentation, wilful misconduct or wilful concealment on the part of the Company, Group Companies or GoS (as applicable).

## 10. TERMINATION

- 10.1 This Agreement can only be terminated in accordance with clauses 2.8, 2.9, and this clause ~~10.1~~ *[Please confirm]* 10.
- 10.2 If at any time before Closing a Material Adverse Change has occurred after entry into this Agreement, then Etihad may terminate this Agreement by Notice to the Company.
- 10.3 If this Agreement is terminated pursuant to clauses 2.8, 2.9 or 10.2:
- 10.3.1 this Agreement (other than the Surviving Provisions) shall cease to have any effect from the date of termination; and
- 10.3.2 no party shall have any claim against any other party (except for accrued rights arising from any earlier breach of this Agreement or under the Surviving Provisions).

- 10.4 Notwithstanding clause 10.1, if after 18 months from the Closing Date, the proposed strategic partnership between the Company and Etihad has not achieved any of the key performance indicators specified in the Strategic Plan, Etihad shall be entitled to terminate the proposed strategic partnership and the ~~Management~~Support Services Agreement and require the GoS to buy all of Etihad's shares in the Company at a price no less than the Etihad Subscription Amount (as defined in the Shareholder Agreement), unless failure to achieve the key performance indicators can be attributed to Etihad.
- 10.5 The right to terminate shall be without prejudice to any other rights that the party terminating this Agreement may have against the other parties under applicable Law, including without limitation, the right to seek, as an alternative to termination, specific performance of obligations under the Agreement or to terminate the Agreement and seek Losses for breach by any party committed during the period prior to such termination. Upon the termination of this Agreement, Etihad shall not be obliged to subscribe to the New Shares.

## **11. FURTHER ASSURANCES**

- 11.1 So far as it is legally able, each party hereby agrees to take all actions and execute all documents and exercise all voting rights and powers (direct or indirect) available to them as may be reasonably required to ensure that the provisions of this Agreement are completely and punctually fulfilled, observed and performed and generally that full effect is given to the provisions set out in this Agreement and to any amendment to this Agreement.
- 11.2 In the event that any of the National Aviation Authorities indicates, that it may no longer be satisfied that the Company meets the requirement that substantial ownership and effective control of the Company is vested with the GoS by reason of the Transaction Documents and information provided by the Company about the transactions contemplated by those documents, on receipt of notification thereof Etihad, the GoS and the Company shall consult in good faith about how best to defend, intervene in or respond thereto or as regards making alternative arrangements to best effect the transactions contemplated by such documents and, after such consultation the parties shall, if appropriate and agreed, enter into a supplemental agreement varying the arrangements between them to implement such alternative arrangements.

## **12. NO PARTNERSHIP OR AGENCY**

Nothing in this Agreement shall constitute any legal partnership or profit share arrangements between the Parties, other than the joint venture developed pursuant to this Agreement arising solely in connection with the common ownership of shares in the capital of the Company. Given Etihad's and the Company's strategic partnership and the Shareholder Agreement it is not the intention that the commercial co-operation between the parties will involve any additional sharing of revenues or profits, save as specifically provided in this Agreement, the Shareholder Agreement .

### 13. CONFIDENTIALITY

13.1 For the purposes of this clause 13:

13.1.1 **"Confidential Information"** means:

13.1.1.1 (in relation to Etihad) any information received or held by Etihad (or any of its Representatives) which it may have or acquire before or after the date of this Agreement in relation to any member of the Group or any customers, business, assets or affairs of any Group Company; or

13.1.1.2 (in relation to each Group Company) any information received or held by such Group Company (or any of its Representatives, as defined below) which it may have or acquire before or after the date of this Agreement in relation to Etihad or any of its customers, business, assets or affairs; and

13.1.1.3 and information relating to the provisions of, and negotiations leading to, the Transaction Documents;

13.1.2 and includes written information and information transferred or obtained orally, visually, electronically or by any other means;

13.1.3 **"Representatives"** means, in relation to a party, members of its group and each member of such group's officers, employees, agents and professional and other advisers, and **"Representative"** means any of them.

13.2 Each party undertakes that it shall (and, where relevant, undertakes to procure that its Representatives shall):

13.2.1 keep confidential at all times;

13.2.2 not permit or cause the disclosure of; and

13.2.3 not use for any purposes other than as may be reasonably necessary to enable each of the GoS, the Company and Etihad to perform and enjoy the benefits of the Transaction Documents (to the extent to which they are a party thereto) and Etihad to monitor and make investment decisions (subject always to applicable Laws and regulation regarding the use of inside information) regarding its investment in the Company,

the Confidential Information. In performing its obligations under this clause 13, each party shall apply confidentiality standards and procedures at least as stringent as those it applies generally in relation to its own confidential information.

13.3 The obligations under clause 13.2 do not apply to:

- 13.3.1 information which at the date of disclosure is within the public domain (otherwise than as a result of a breach of this clause 13 or of the Confidentiality Letter from Etihad to the Company dated [●] April 2013; ***[Please provide/confirm]***
  - 13.3.2 the disclosure of information to the extent required to be disclosed by Law, regulation or any regulatory or governmental Authority (including any Tax Authority) having applicable jurisdiction (provided that the disclosing party shall first, to the extent lawful and reasonably practicable, inform the other party of its intention to disclose such information and take into account the reasonable comments of the other party);
  - 13.3.3 information which is independently developed by the relevant person from information provided or obtained other than pursuant to or in connection with this Agreement to the extent that it is acquired with the right to disclose or use the same;
  - 13.3.4 the disclosure by any party in confidence to its Representatives or, of information reasonably required to be disclosed for a purpose reasonably incidental to this Agreement;
  - 13.3.5 disclosure of Confidential Information which was lawfully in the possession of that party or any of its Representatives (in either case as evidenced by written records) without any obligation of secrecy prior to its being received or held;
  - 13.3.6 disclosure of Confidential Information which is required for the purpose of any arbitral or judicial proceedings arising out of this Agreement;
  - 13.3.7 any announcement made in accordance with the terms of clause 14;
  - 13.3.8 any information provided pursuant to any of the other Transaction Documents, to the extent that such Transaction Document contains a confidentiality undertaking and/or provides for use of such Confidential Information by a recipient, in order to give the intended effect to such agreement(s).
- 13.4 Each party shall inform any person to whom it provides Confidential Information pursuant to clause 13.3, that such information is confidential and, in the case of disclosure pursuant to clause 13.3.4, shall only provide such Confidential Information to such person if they agree:
- 13.4.1 to keep it confidential on the terms of and otherwise to comply with, this clause 13; and
  - 13.4.2 not to disclose it to any third party (other than those persons to whom it has already been disclosed in accordance with the terms of this Agreement),
- or otherwise with the consent of the other party.
- 13.5 The disclosing party shall at the request of the other parties enforce this clause 13 against any person to whom it has disclosed the Confidential Information.

13.6 This clause 14 shall survive termination of this Agreement and shall expire three years after the date of termination of this Agreement.

#### **14. ANNOUNCEMENTS**

14.1 Subject to clause 14.2, no public announcement of any kind in connection with the signature or subject matter of this Agreement shall be made by any party hereto without the prior consent of the other.

14.2 If any party is required by Law or by any stock exchange or by any governmental or regulatory authority to make any announcement in connection with the signature or subject matter of this Agreement, the relevant party shall give the other reasonable opportunity (if such an opportunity exists) to comment on such announcement before it is made (provided that this shall not have the effect of preventing the party making the announcement from complying with its legal and/or regulatory obligations).

#### **15. ASSIGNMENT AND SUCCESSORS**

15.1 Unless otherwise expressly provided in this Agreement, no party may assign, transfer, grant any Encumbrance over, declare any trust over or deal in any way with any of its rights under this Agreement without the prior consent of the other party.

15.2 This Agreement shall be binding on and continue for the benefit of the respective heirs, executors, administrators, successors and permitted assignees of each party.

#### **16. ENTIRE AGREEMENT**

16.1 In this clause 16, "**Pre-Contractual Statements**" means any representation, statement, assurance, covenant, undertaking, warranty, indemnity, guarantee or commitment (whether contractual or otherwise) made or given before the date of this Agreement.

16.2 Save as set out in clause 16.3, this Agreement supersedes and extinguishes all previous agreements, arrangements and understandings between, or Pre-Contractual Statements given by, the parties relating to the subject matter of this Agreement.

16.3 Each party acknowledges and represents to the others that it has not relied on, or been induced to enter into this Agreement by, any Pre-Contractual Statement given by any person (whether a party to this Agreement or not), other than the Pre-Contractual Statements set out in this Agreement.

16.4 This clause 16 shall not exclude or limit any liability arising as a result of any fraud, wilful misstatement, wilful misconduct or wilful concealment.

#### **17. RELATIONSHIP WITH OTHER TRANSACTION DOCUMENTS**

17.1 If any of the provisions of this Agreement at any time conflict with any of the provisions of any other Transaction Documents then the provisions of this Agreement shall prevail.

## **18. AGREEMENT CONTINUES IN FORCE**

Each provision of this Agreement which is not fully performed at Closing (but which remains capable of performance) shall remain in full force and effect despite Closing, and, in particular, the rights and remedies of Etihad in respect of any breach of the Company Warranties shall not be affected by Closing or the completion of any other matters and arrangements referred to in or contemplated by this Agreement. For the avoidance of doubt, with effect from Closing, clause 2.1 shall be deemed to have been satisfied for all purposes.

## **19. SEVERANCE**

19.1 If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect, that shall not affect or impair the legality, validity or enforceability of any other provision of this Agreement.

19.2 If any illegal, invalid or unenforceable provision of this Agreement would be legal, valid or enforceable if some part or parts of it were deleted, such provision shall apply with the minimum deletion(s) necessary to make it legal, valid or enforceable.

## **20. VARIATION**

No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each party.

## **21. WAIVER AND CUMULATIVE REMEDIES**

21.1 The rights and remedies of each party under or in respect of this Agreement may be waived only by express notice. Any waiver shall apply only in the instance and for the purpose for which it is given.

21.2 No right or remedy under or in respect of this Agreement shall be precluded, waived or impaired by:

21.2.1 any failure or delay in exercising it;

21.2.2 any failure to exercise or delay in exercising it;

21.2.3 any single or partial exercise of it;

21.2.4 any earlier waiver of it, whether in whole or in part; or

21.2.5 any failure to exercise, delay in exercising, single or partial exercise of or waiver of any other such right or remedy.

21.3 Unless otherwise expressly provided in this Agreement, the rights and remedies under this Agreement are in addition to, and do not exclude, any rights or remedies provided by Law.

## 22. COUNTERPARTS

- 22.1 This Agreement may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart.
- 22.2 Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute one and the same agreement.

## 23. NOTICES

- 23.1 Any notice or other communication to be given or made to a party under this Agreement ("**Notice**"):

23.1.1 shall be in writing and in English;

23.1.2 shall be sent to the postal address and for the attention of the person specified in clause 23.2 (or such other address or person as each party may notify to the other in accordance with clause 23.6); and

23.1.3 may be served on or delivered to the relevant party:

23.1.3.1 personally or by hand delivery; or

23.1.3.2 by prepaid first class or special (or other recorded) delivery post.

- 23.2 The postal addresses of the parties for the purposes of clause 23.1.2 are:

**The Company:**

***[Please confirm/provide]***

**For the attention of:**

**The Company Secretary**

**Address:**

**Bulevar Umetnosti 16A**

**Belgrade**

**Serbia**

**Etihad:**

For the attention of:

General Counsel

Address:

P.O. Box 35566  
Khalifa City A  
Abu Dhabi  
United Arab Emirates

**GoS:**

***[Please confirm/provide]***

**For the attention of:**

**[ • ]**

**Address:**

**[ • ]**

23.3 Any Notice which has been served or delivered in accordance with clause 23.1 shall be deemed to have been served or delivered:

23.3.1 if served or delivered personally or by hand, at the time of service or delivery; or

23.3.2 if posted, at 10.00 am on the second Business Day after the date of posting unless there is evidence of earlier receipt,

23.4 provided that if, under clause 23.3.1, any Notice would be deemed to have been served or delivered after 5.00 pm on a Business Day and before 9.00 am on the next Business Day, such Notice shall be deemed to have been served or delivered at 9.00 am on the second of such Business Days.

23.5 In proving service or delivery of a Notice, it shall be sufficient to prove that the Recipient has acknowledged the Notice or:

23.5.1 that service or delivery personally or by hand was made; or

23.5.2 in the case of posting, that the envelope containing the Notice was properly addressed and posted by prepaid first class or special (or other recorded) delivery post.

23.6 A party may notify the other party of a change to its name, postal address or relevant contact for the purposes of clause 23.1.2. Such notice shall be effective on the fifth Business Day after the date on which such notice is deemed to have been served or delivered in accordance with this clause 23, or such later date as may be specified in the notice.

23.7 All notices or formal communications under or in connection with this Agreement shall be in the English language or, if in any other language, accompanied by a translation into English. In the event of any conflict between the English text and the text in any other language, the English text shall prevail.

23.8 In this clause 23, references to times of day are in each case to London time.

## **24. THIRD PARTY RIGHTS**

Save in respect of an Indemnified Person, a person who is not a party to this Agreement shall have no right under the Contract (Rights of Third Parties) Act 1999 to enforce its terms.



## 25. GOVERNING LAW AND JURISDICTION

- 25.1 This Agreement and any non-contractual obligations arising out of or in connection with this Agreement shall be governed by and interpreted in accordance with English law.
- 25.2 Any dispute or differences arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, and all contractual and non-contractual claims arising out of or in connection with this Agreement shall be referred to and finally resolved by arbitration under the London Court of International Arbitration Rules ("~~LCIA Arbitration Rules~~"), which LCIA Rules are deemed to be incorporated by reference into this clause.
- 25.3 The number of arbitrators shall be three, of which one arbitrator shall be appointed by Etihad, one arbitrator shall be appointed collectively by the GoS and the Company and the third arbitrator shall be appointed jointly by the two arbitrators so appointed.
- 25.4 The seat, or legal place, of arbitration shall be London.
- 25.5 The language to be used in the arbitral proceedings shall be English. The arbitral proceedings shall be held in camera with full confidentiality of the proceedings and of any and all materials, documents and information submitted in such proceedings.
- 25.6 The arbitration awards shall be reasoned awards and shall be final and binding on the disputing parties. The existence or subsistence of a dispute between parties, or the commencement or continuation of arbitration proceedings, shall not, in any manner, prevent or postpone the performance of those obligations of the parties under the Agreement which are not in dispute, and the arbitrators shall give due consideration to such performance, if any, in making a final award.
- 25.7 In addition, in connection with any dispute or claim, Etihad shall have the right, in its sole discretion, to apply to the courts of Serbia for interim or other relief to protect or enforce its rights under this Agreement pending the commencement of an arbitration and/or the appointment of any arbitral tribunal and any such order of the Serbian courts shall remain in full force and effect unless and until substituted by an order of the arbitral tribunal pursuant to LCIA Rule 25 (or such LCIA Rule as may replace it from time to time) and/or the order of the Serbian courts has been varied or withdrawn by those courts upon the application of one of the parties to the dispute or claim.
- 25.8 ~~25.7~~ The parties hereto acknowledge that monetary damages for breach of the terms of this Agreement may not be an adequate remedy and that any party hereto may be entitled to equitable remedies, including injunctive relief and specific performance.
- 25.9 ~~25.8~~ The GoS irrevocably:
- 25.9.1 ~~25.8.1~~ consents generally in accordance with the State Immunity Act 1978 to relief being given against it in England or any other jurisdiction by way of injunction or order for specific performance or for the recovery of any property whatsoever or other provisional or protective measures and to its property being subject to any process for the enforcement of a judgement or any process effected in the course or as a result of any action in rem; and

25.9.2 ~~25.8.2~~ waives and agrees not to claim any immunity from suits and proceedings (including actions in rem) in England or any other jurisdiction and from all forms of execution, enforcement or attachment to which it or its property is now or may hereafter become entitled under the laws of any jurisdiction and declares that such waiver shall be effective to the fullest extent permitted by such laws, and in particular the United States Foreign Sovereign Immunities Act of 1976.

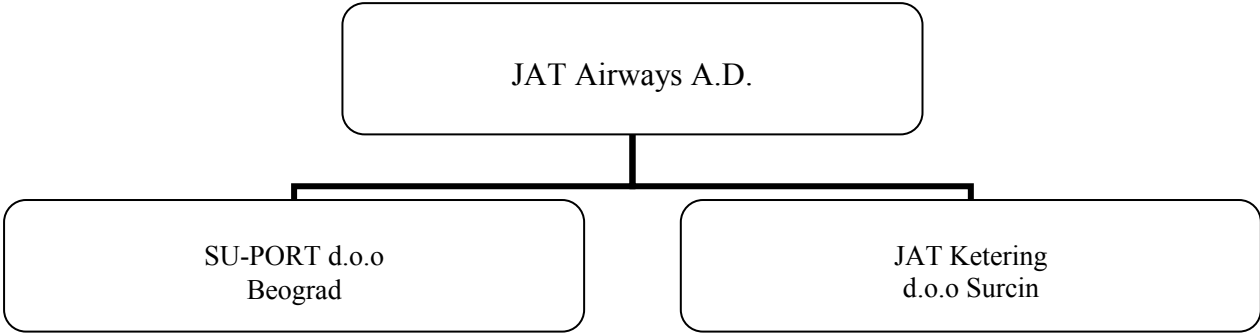
**AS WITNESS this Agreement has been signed by the duly authorised representatives of the parties the day and year first before written.**

## SCHEDULE 1: COMPANY DETAILS

### Part 1: Current details of the Company

<b>Date of Incorporation:</b>	29 February 1992
<b>Company Identification Number:</b>	07044275
<b>Registered Address:</b>	Bulevar umetnosti 16A, Belgrade, Serbia
<b>Issued Share Capital:</b>	16,864,350,000.0 Serbian Dinars
<b>Board of Directors</b>	Velibor Vukašinović, Mihailo Jovanović, Dobrivoje Glavonić, Ana Jović, Gmitar Dugalić, Miroslav Stanojević, Velibor Slavuj, Dragan Đoković, Slobodan Živković, Stevica Spajić
<b>Financial Year End</b>	31 December
<b>Auditors</b>	[●] <i>[Please provide]</i>
<b>Company Secretary</b>	[●] <i>[Please provide]</i>
<b>Registrar</b>	Serbian Business Registrars Agency

**Part 2: Group Structure Chart**



## SCHEDULE 2: CONDITIONS

Closing shall be conditional on the following Conditions having been fulfilled or waived in accordance with this Agreement:

### *Due diligence*

1. Etihad being satisfied with the result of commercial, financial, legal and forensic due diligence on the Group Company and Katering;

### *Audit*

2. completion by KPMG of an audit which is fully compliant with IFRS accounting principles of financial statements for the year ending 31 December 2013, of the Group Companies and Katering;

### *Pre-Closing reorganisation*

3. share transfer documents to effect the transfer of the entire issued share capital of Katering to the Company and appropriate documentary evidence of the issue of new shares to the GoS to be provided to Etihad, in order for Etihad to be satisfied that the transfer of Katering and issue of new shares have been implemented in accordance with Serbian law;
4. Etihad being satisfied as to the level of progress that has been achieved with respect to the Company's light and line maintenance capacity and as to the basis on which the Company has been granted a licence to undertake light and line maintenance for its existing and future operations by no later than 31 December 2013;
5. incorporation of a wholly owned subsidiary contemplated in and entry into the Travel Services Agreement;
6. Etihad being granted a licence permitting it to undertake airport catering, and a licence to undertake airport handling and airport cargo handling and to provide maintenance services at Belgrade Airport;

### *Synergies*

7. Etihad being satisfied with the Company's and Etihad's respective abilities to realise the required commercial synergies arising from the Transaction;

### *Transaction Documents*

8. Etihad being satisfied that the Transaction Documents are on terms necessary to put into effect the terms of this Agreement and the Transaction;
9. Etihad being satisfied with the satisfaction of any conditions to Closing which are to be included in the Transaction Documents, including any requisite governmental and/or parliamentary approvals;

10. Etihad being satisfied with receipt by 31 December 2013 of all requisite regulatory approvals and clearances (in Serbia and all other relevant jurisdictions) necessary for the full implementation of the terms of the Transaction Documents, and any additional funding agreed by Etihad;

#### ***Material Adverse Change***

11. no Material Adverse Change having occurred;

#### ***GoS funding***

12. Etihad being satisfied that the GoS has discharged all of its funding obligations as the same may fall due to be performed before Closing;

#### ***Approval of the shareholder of the Company***

13. the GoS (in its capacity as shareholder) having approved the Resolutions set out in the General Assembly Notice;

#### ***Etihad approvals***

14. authorisation to enter into the Transaction Documents by the Board of Directors of Etihad and, if required, any approvals the Government of Abu Dhabi;

#### ***No Acceleration; consents from third party lenders***

15. in the event that, in respect of any Borrowings of any Group Company and/or Katering, any event of default arising whereby the provider of such financial indebtedness is or may be entitled to take formal steps to exercise any right of cancellation of any commitment, place any demand, or accelerate prior to maturity any such financial indebtedness there being in full force and effect (i) a standstill agreement; or (ii) a waiver, pursuant to which such provider has agreed not to exercise any such right;
16. in respect of any Borrowings of any Group Company and/or Katering, receipt by any Group Company and/or Katering and, as applicable, of such consents and approvals as may be required in connection with such Borrowings to such aspects of the Transaction including in respect of the entry by any such Group Company and/or Katering, as applicable, into the Transaction Documents and/or definitive agreements pursuant to the Transaction Documents;

#### ***Competition***

17. the approval of ~~each of the Serbian Competition Commission ("**Competition Commission**") under the Competition Protection Act ("Official Gazette of the RS", no. 51/2009) Competition Commissions (or equivalent bodies or any appellate administrative or court authority having appropriate jurisdiction) of Serbia, Montenegro, Germany and / or any other merger filing jurisdiction ("**Competition Commission**") acting in accordance with the applicable competition law in its respective jurisdiction~~ (including any statutory modification or re-enactment thereof) ("**Competition Act**") and the rules and regulations thereunder ~~having been obtained upon the occurrence of the first of any of the following and the Competition Commission (or any appellate authority in Serbia having appropriate jurisdiction ("**Competition Law**")~~ having either:

- 17.1 granted approval to:

- 17.1.1 the implementation of the ~~Management~~Support Services Agreement;
  - 17.1.2 the consummation of the acquisition of the New Shares; and
  - 17.1.3 the implementation of the arrangements provided for in each other Transaction Document (including, for the avoidance of doubt, the ~~Management~~Support Services Agreement and any agreements entered into pursuant to the TFA),
- in each case, in a form and substance reasonably satisfactory to Etihad; or
- 17.2 been deemed to have granted approval to:
    - 17.2.1 the implementation of the ~~Management~~Support Services Agreement;
    - 17.2.2 the acquisition of the New Shares; and
    - 17.2.3 the implementation of the arrangements provided for in each Transaction Document (including, for the avoidance of doubt, the ~~Management~~Support Services Agreement and any agreements entered into pursuant to the TFA),

through the expiration of time periods available for the Competition Commission's investigation provided under the Competition Act.
- 18. the approval of the Competition Commission having been obtained of all requests for individual exemptions of restrictive agreements, which are necessary in connection with the Transaction;
  - 19. all material merger notifications and filings which are necessary in connection with the Transaction having been made, all necessary waiting periods and other time periods (including any extensions of such waiting and other time periods) under any applicable legislation or regulation of any relevant jurisdiction having expired, lapsed or been terminated (as appropriate) and all statutory or regulatory obligations in any relevant jurisdiction having been complied with, in each case where the absence of such notification, filing or application would have a material adverse effect on Etihad or the Company taken as a whole;
  - 20. all Authorisations which are necessary in any relevant jurisdiction for or in respect of the Transaction having been obtained, in terms and in form reasonably satisfactory to Etihad, from all appropriate Authorities and all such Authorisations remaining in full force and effect at the time the Transaction becomes wholly unconditional and there being no intention to revoke, suspend, restrict modify or not renew any Authorisation;

***State Aid***

- 21. ~~the approval~~all necessary approvals of the Commission for State Aid under the State Aid Act ("Official Gazette of the RS" no. 51/09) (including any statutory modification or re-enactment thereof) ("**State Aid Act**") and the rules and regulations thereunder having been obtained ~~upon the occurrence of [●]~~; ***[Please provide/confirm]***;

### ***National Aviation Authority***

22. the National Aviation Authority having:
  - 22.1 issued the National Aviation Authority Clearance;
  - 22.2 repealed or suspended, pending accession of the Republic of Serbia to the European Union the airline licensing requirements set out in Chapter II of EC Regulation 1008/2008 transposed into Serbian law by the National Aviation Authority's Rulebook on the Operative License and Common Rules for Air Transport ("Official Gazette of the RS" no. 54/2012); and
  - 22.3 obtained from third countries with whom Serbia has bilateral air services agreements all clearances or approvals necessary for the Company to be eligible to exercise the traffic rights specified therein as being available to an airline designated by the Republic of Serbia including, if necessary, by means of designating the Company to exercise such rights and/or by seeking amendments of such agreements to obtain the benefit of such rights for the Company;

### ***Transaction Documents***

23. the Transaction Documents becoming or being deemed to be unconditional as at Closing in accordance with their terms;

### ***Company Warranties***

24. receipt from the Company of the Confirmation Letter (in the form set out in schedule 6);

### ***Amendment of Articles***

25. the Articles having been amended pursuant to the Resolutions;

### ***Management Team***

26. the receipt of all approvals required for the appointment of the Senior Management Team in form and substance reasonably satisfactory to Etihad;

### ***Subscriber Actions***

27. opening of a depository account by Etihad and all details pertaining to the depository account as may be required by the Company to credit the New Shares into the depository account in accordance with the terms of this Agreement having been provided by Etihad at least ten (10) Business Days prior to the Closing.



### **SCHEDULE 3: AGREED FORM DOCUMENTS**

1. Articles of Association.
2. General Assembly Notice (incorporating the Resolutions).

## SCHEDULE 4: WARRANTIES

### Part 1: Company Warranties

#### 1. Enforceability of Transaction Documents

##### 1.1 The Company:

1.1.1 has the right, power and authority to enter into and perform its obligations under each Transaction Document to be entered into by it on or after the date of this Agreement; and

1.1.2 has taken, or will by Closing have taken, all necessary corporate or other action to authorise the execution of, and performance by it of its obligations under each Transaction Document.

1.2 Each Transaction Document to be entered into by a Group Company will constitute obligations binding on it in accordance with its terms.

1.3 Other than as contemplated by this Agreement, no approval, waiver, registration, consultation or notification is required to be obtained or made by a Group Company in connection with the execution, performance or enforceability by or against a Group Company of a Transaction Document entered into or to be entered into by it.

1.4 Neither the execution (and in the case of a deed, delivery) by a Group Company of a Transaction Document nor the performance by a Group Company of any of its obligations under a Transaction Document will violate or conflict with:

1.4.1 a provision in an agreement or instrument which is binding on it; or

1.4.2 an order or judgment of a court, tribunal or governmental or regulatory body which is binding on it,

1.4.3 which, in each case, would be material for completion of the issuance of New Shares to Etihad in accordance with its terms or the Group taken as a whole.

1.5 A complete and accurate list of all third parties whose consent is required or who are entitled to terminate any agreement or arrangement to which any Group Company is party as a result of Closing is attached to the Disclosure Letter with specific relevant to this warranty 1.5.

#### 2. Corporate and constitutional matters

2.1 Each Group Company is properly incorporated or organised and validly existing under the Laws of the jurisdiction of its incorporation and has full power to conduct its business as conducted at the date of this Agreement.

2.2 No Group Company is the legal or beneficial owner of, or has entered into a binding agreement to acquire, any shares, securities or other interests in, any other company or undertaking.

2. 3 ~~{~~Since ~~1~~ 1 January 2011, no Group Company has repaid, redeemed or purchased any of its own shares, reduced its share capital or capitalised any reserves or profits, or agreed to do any of such things. ~~{Please provide/confirm}~~
2. 4 The Company is not a party to any subsisting voting agreements with shareholders of the Company in relation to such shareholder's interests in the Company's Shares.
2. 5 The Company is not aware of any voting agreements between shareholders in relation to the Company.
2. 6 All information contained in schedule 1 is accurate.

### **3. Share capital**

3. 1 None of the owners or holders of any of the share capital of any Group Company has any rights, in his capacity as such, in relation to that Group Company other than as set out in Law and in the articles of association of that Group Company.
3. 2 There are in force no options or other agreements or arrangements which call for the issue of, or accord to any person the right to call for the issue of, in either case, whether conditionally or unconditionally, any shares or other securities of any Group Company.
3. 3 Each Group Company has not issued any non-voting shares or other securities or instruments or entered into any financial or other arrangements that have the indirect effect of providing economic benefits to any Person.
3. 4 Except as contemplated by this Agreement and the Transaction Documents, no Person has any security, instrument or right, contingent or otherwise (including any options or warrants) to subscribe for any Shares or other securities of the Company, and the Company has not granted any stock options or other equity rights nor have they issued or agreed to issue any security convertible into share capital.
3. 5 Each Group Company is not in breach of applicable Law in relation to the issuance of its shares and each Group Company has procured all requisite approvals, consents or waivers from any Authorities in relation to the issuances of its shares.
3. 6 No security, encumbrance or right of pre-emption has been granted over any shares in the capital of any Group Company.

### **4. Issue of New Shares**

4. 1 The New Shares to be issued pursuant to this Agreement will be issued fully paid and free from third party rights in respect thereto (including rights of pre-emption) of any nature whatsoever and free from all Encumbrances.
4. 2 The issue of the New Shares will not infringe or exceed any limits, powers or restrictions in, or the terms of, any contract, obligation or commitment or other arrangement binding on any Group Company, other than in respect of the necessary amendments to the Articles for completion of the Transaction.
4. 3 The New Shares will, as from the date on which they are issued, rank in full for all dividends and distributions declared, made or paid on the Shares after such date and otherwise will rank equally in all respects with, and be identical to, the existing issued Shares.

## **5. Records and registration matters**

- 5.1 In all material respects, each Group Company has properly kept and maintained its statutory books and registers and board and shareholder minutes that it is required by Law to keep and they are accurate, in each case, in all material respects.
- 5.2 Each material filing, return, resolution and other document required by Law or under applicable regulation to be filed by each Group Company and, so far as the Company is aware, any filing or return required to be filed by Law or applicable regulation and, in each case, which is material to the business of the Group taken as a whole has been properly filed.

## **6. Information and Disclosure**

- 6.1 All information in relation to the Group Companies, the Business and Assets or which would be material to an understanding of the Business and the condition (financial or otherwise) and results of operations of the Group Companies, or which may be relevant in making an investment decision in relation to the New Shares, has been made available and provided to Etihad, and as far as the Company is aware, such information is true, correct and accurate in all material respects, and no such information omits to state any fact necessary to make such statements accurate.
- 6.2 None of the Company Warranties contained in this Agreement, and none of the information contained in any certificate or other document delivered by the Company or the GoS pursuant hereto or thereto or in connection with the transactions contemplated hereby or thereby, contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements herein or therein not misleading.

## **7. Compliance / Anti-bribery and corruption**

- 7.1 Each Group Company and its current and former directors, officers and employees have complied with all Anti-Corruption Laws. So far as the Company is aware, each Business Intermediary has conducted its business relating to the Group Companies in compliance with all Anti-Corruption Laws.
- 7.2 Each Group Company has instituted and maintained appropriate policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, compliance by such Group Company and its directors, officers, employees and Business Intermediaries for the time being with all Anti-Corruption Laws in relation to the businesses of the Group Companies. Full details of such policies and procedures have been provided to Etihad.

## **Part 2: GoS Warranties**

### **1. Enforceability of Transaction Documents**

- 1.1 The GoS has full power and authority to enter into the Transaction Documents at the date of this Agreement.
- 1.2 Each Transaction Document to be entered into by the GoS constitutes valid and binding obligations of the GoS in accordance with their terms.
- 1.3 The procedure leading to the entering into of the Transaction Documents was conducted fully in accordance with applicable Law.
- 1.4 There are no regulatory consents or third party approvals, authorisations or orders required in order for the GoS to enter into and perform its/his/her obligations pursuant to each of the Transaction Documents that have not been or will not be obtained prior to Closing. Other than as contemplated by this Agreement, no approval, waiver, registration, consultation or notification is required to be obtained or made by the GoS in connection with the execution, performance or enforceability in any material respect by or against the GoS of a Transaction Document entered into or to be entered into by them.
- 1.5 Neither the execution (and in the case of a deed, delivery) by the GoS of a Transaction Document nor the performance by the GoS of any of its obligations under a Transaction Document will violate or conflict with:
  - 1.5.1 any provision of applicable Law;
  - 1.5.2 a provision in an agreement or instrument which is binding on it/him/her; or
  - 1.5.3 an order or judgment of a court, tribunal or governmental or regulatory body which is binding on it,

which, in each case, would be material for completion of the issuance of the New Shares to Etihad in accordance with its terms or the Group Company taken as a whole.

### **2. Share capital**

- 2.1 The Shares presently registered in the name of the GoS are fully paid up and legally and beneficially owned by them, and free of all Encumbrances and the GoS has not received notice of any claim by any Person to be entitled to any of the foregoing in respect of the Shares.
- 2.2 The Shares held by the GoS have not been transferred and there are no existing or future arrangements in relation to the transfer, reorganisation and restructuring of such shareholding in any manner whatsoever.

### **3. Information and Disclosure**

- 3.1 To the best of the GoS's knowledge, information and belief (not having made any enquiry), all information in relation to the Group Companies, the Business and Assets or which would be

material to an understanding of the Business and the condition (financial or otherwise) and results of operations of the Group Companies, or which may be relevant in making an investment decision in relation to the New Shares, has been made available and provided to Etihad, and to the best of the GoS's knowledge, such information is true, correct and accurate in all respects, and no such information omits to state any fact necessary to make such statements accurate.

- 3.2 None of the GoS Warranties contained in this Agreement, and none of the information contained in any document delivered by the GoS in connection with the Transaction contemplated, contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements herein not misleading.

### **Part 3: Etihad Warranties**

1. Etihad is validly incorporated, in existence and duly registered under the laws of its jurisdiction and has full power to conduct its business as conducted at the date of this Agreement.
2. Each Transaction Document to be entered into by Etihad constitutes valid and binding obligations of Etihad in accordance with their terms.
3. As at the date of this Agreement, Etihad does not hold, directly or indirectly, any beneficial interest in the Company.
4. Etihad has the power under its constitutional documents and has obtained all necessary authorities (including without limitation, all relevant shareholders' resolutions) to subscribe and pay for the New Shares in the manner set out in this Agreement and to enter into and perform its obligations under each Transaction Document.
5. There are no governmental or regulatory consents or third party approvals, authorisations or orders required in order for Etihad to subscribe and pay for the New Shares in the manner set out in this Agreement and to enter into and perform its obligations pursuant to each of the Transaction Documents that have not been or will not be obtained prior to Closing.
6. Etihad has funds available to pay the Subscription Amount.
7. No proceedings have been threatened or served on Etihad in relation to any winding up, bankruptcy or insolvency proceedings in relation to Etihad.

## **SCHEDULE 5: Pre-completion Undertakings**

### **1. Continuation of business in the normal course**

The business of the Group shall be operated in all material respects in the usual and ordinary course as carried on prior to the date of this Agreement.

### **2. Matters requiring permission of Etihad**

The Board shall consult with Etihad and, to the extent within its powers, obtain Etihad's prior written permission before any of the Board itself or any member of the Senior Management Team resolves to, or (in the case of the Board only) proposes to shareholders that the Company should, or exercises any discretionary powers delegated to it/such person to:

- 2.1 modify any rights attached to any shares in a Group Company;
- 2.2 create, or issue, or grant a right to acquire (either by transfer or subscription), shares in the capital of a Group Company, or issue securities giving a right over any shares in the capital of a Group Company save for any issue of shares by any Group Company (other than the Company) to another member of the Group;
- 2.3 resolve to capitalise or repay an amount standing to the credit of a reserve of a Group Company or redeem or purchase shares in the capital of a Group Company or otherwise reorganise the share capital of a Group Company;
- 2.4 effect any mergers/demergers;
- 2.5 effect any material acquisitions or disposals of businesses and/or companies and/or assets;
- 2.6 initiate any steps towards the voluntary winding up of the Company;
- 2.7 change the Company's dividend policy;
- 2.8 appoint new auditors;
- 2.9 change the status of the Company by re-registration;
- 2.10 appoint or dismiss senior management;
- 2.11 enter into any form of commercial agreement with any airline other than Etihad.

### **3. Matters requiring consultation with Etihad**

The Board shall consult with Etihad regarding the following measures before any of the following is effected:

#### **Ownership and control of Group Companies**

- 3.1 other than the establishment of a company or the subscription for shares in a special purpose or joint venture company to effect aircraft financing, the admission of any person (other than another Group Company) as a member of a Group Company (other than the Company) or



transfer, or approve the transfer of, shares in a Group Company (other than to another Group Company);

- 3.2 other than the creation of an Encumbrance in connection with the granting of security for the purpose only of aircraft or engine financing, the creation of any Encumbrance over any issued shares of a Group Company;

#### **Corporate actions of Group Companies**

- 3.3 other than in the ordinary course of business (including aircraft financing), the members of a Group Company passing a shareholders' resolution, except for a resolution representing ordinary business of an annual general meeting;

#### **Financial matters**

- 3.4 the exercise of any discretionary power delegated to it to propose or resolve to declare, pay or make a dividend or other distribution (other than to another wholly owned Group Company);
- 3.5 other than in the ordinary course of business (including aircraft and engine financing), any Group Company giving a guarantee or indemnity in respect of a third party's obligation or liability (other than a guarantee or indemnity in respect of another Group Company's obligation or liability);
- 3.6 any borrowing of money by the Group or acceptance of a financial facility (other than normal trade credit), or material amendment of the terms on which a loan or other financial facility (other than normal trade credit) is made available to it, to the extent that such borrowings, facilities or amendments would, in aggregate, increase the liability of the Group by more than US\$1,000,000 (one million US Dollars). The Company shall procure that Etihad is given prior written notice of any such borrowing, facility or amendment which would, in aggregate, increase the liability of the Group by more than US\$500,000 (five hundred thousand US Dollars);
- 3.7 the Board shall exercise any discretionary power delegated to it to create or issue debt securities, or grant a right to acquire debt securities;
- 3.8 save as in relation to aircraft related capital expenditure committed to as at the date of this Agreement and as provided in paragraph 3.6 above, the making by the Group of any capital expenditure or capital commitment which individually exceeds US\$200,000 (two hundred thousand US Dollars) or which when added with all other capital expenditure or capital commitments made by each Group Company since the date of this Agreement mean that total capital expenditure or capital commitments made by the Group between the date of this Agreement and Closing (save as in relation to aircraft related capital expenditure committed to as at the date of this Agreement) exceeds US\$700,000 (seven hundred thousand US Dollars);

#### **Assets**

- 3.9 other than as may be required directly in relation to aircraft and engine financing, the acquisition by any Group Company of shares or securities issued by another company which is not a Group Company;
- 3.10 other than as may be required directly in relation to aircraft and/or engine financing or in relation to the disposal of aircraft or aircraft engines (provided such disposals do not

materially prejudice the operations of the Group), the sale or disposal by any Group Company of, or the grant of a right to acquire or make subject to any third party interests of any kind, an asset of a Group Company with a book or fair value in excess of US\$200,000 (two hundred thousand US Dollars);

- 3.11 other than in the ordinary course of business (including aircraft financing or security arrangements in relation to the Borrowings), the creation by any Group Company of an Encumbrance over any material asset of a Group Company;

#### **Contracts**

- 3.12 any Group Company:

- 3.12.1 entering into a contract, transaction or arrangement that is outside the ordinary course of business, or not on arm's length terms, or provides for any profit share arrangement; or

- 3.12.2 terminating, or materially amending or varying, a contract, transaction or arrangement to which a Group Company is a party and which (before or after such an amendment or variation) is of a kind referred to in paragraph 3.12.1.

#### **4. Relationship between paragraph 1 and paragraph 2 of this schedule**

Paragraph 2 shall take precedence over paragraph 1 if there is a conflict between such provisions.

#### **5. Permitted exceptions**

Neither clause 5 nor this schedule 5 shall prevent or restrict the Company or any Group Company from:

- 5.1 completing or performing an obligation under a contract or arrangement entered into or contemplated by a Group Company before the date of this Agreement provided such obligations, contract or arrangement has been provided to Etihad prior to Execution Date and is in the normal course of business; or

- 5.2 taking or omitting to take any action:

- 5.2.1 to comply with the Articles or applicable Laws; or

- 5.2.2 as contemplated by this Agreement or any other Transaction Document.

## SCHEDULE 6: CONFIRMATION LETTER

*[On the letterhead of the Company]*

To: Etihad

*[Date]* 2013

Dear Sirs

We refer to the Investment Agreement between us dated *[Date]* 2013 (the "**Investment Agreement**").

Words and expressions defined in the Investment Agreement have the same meanings in this letter (the "**Confirmation Letter**").

We acknowledge that you are relying on this Confirmation Letter in deciding not to exercise any termination rights that you may have in relation to the Investment Agreement and in deeming the Conditions to have been satisfied and we confirm that:

1. the Company has complied with its obligations under the Investment Agreement to the extent that they fall to be performed on or before the date of this Confirmation Letter;
2. each of the Conditions has been waived, satisfied or fulfilled in accordance with its terms;
3. as of the date hereof, none of the Company Warranties is untrue, inaccurate or misleading; and
4. we are not aware of any circumstances giving rise to a right for Etihad to terminate its obligations under the Investment Agreement.

Yours faithfully

Director  
JAT AIRWAYS A.D.

**SIGNATURE**

This Agreement is signed by duly authorised representatives of the parties:

**SIGNED** ) SIGNATURE:  
for and on behalf of )  
**JAT AIRWAYS A.D.** ) NAME:

**SIGNED** ) SIGNATURE:  
for and on behalf of )  
**ETIHAD AIRWAYS PJSC** ) NAME:

**SIGNED** ) SIGNATURE:  
by )  
**THE GOVERNMENT OF THE REPUBLIC** )  
**OF SERBIA** ) NAME: