

**SUBSCRIPTION AGREEMENT**

**for the issue and subscription of certain securities in the capital of Bombardier  
Transportation (Investment) UK Limited**

**Bombardier Inc.,**

**Bombardier Transportation (Investment) UK Limited**

**AND**

**Caisse de dépôt et placement du Québec**

**DATED**

**18 NOVEMBER 2015**

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## **SUBSCRIPTION AGREEMENT**

**THIS AGREEMENT** is dated 18 November 2015.

**BETWEEN:**

**Bombardier Inc.**, a corporation incorporated under the laws of Canada;

(“**BI**”)

**Bombardier Transportation (Investment) UK Limited**, a limited liability company incorporated in England and Wales, with registered number 09863932 and having its registered office at Two Pancras Square, King’s Cross, London, N1C 4AG, United Kingdom;

(“**BT**”)

**AND:**

**Caisse de dépôt et placement du Québec**, a legal person constituted under the laws of Québec;

(the “**Subscriber**”)

**WHEREAS** the Subscriber wishes to subscribe for Warrants in BI and Convertible Shares in BT, which will, in advance of Closing, be indirectly wholly-owned by BI, and will directly or indirectly own all of the entities and assets that comprise the Transportation Business (the “**Investment**”).

**NOW THEREFORE**, in consideration of the promises and the covenants and agreements herein contained, and subject to the terms and conditions hereof, the Parties agree as follows:

### **ARTICLE 1 INTERPRETATION**

#### **1.1 Definitions.**

Whenever used in this Agreement, unless there is something in the subject matter or context inconsistent therewith, the following words and phrases shall have the respective meanings ascribed to them as follows:

“**Accounts Relief**” means any Relief arising in respect of an Event occurring or a financial year ending on or before the Last Accounts Date which was taken into account in computing any deferred tax provision in the Financial Statements for the year ended 31 December 2014 or in eliminating such provision or is reflected in any deferred tax asset shown in the Financial Statements for the year ended 31 December 2014;

“**Accredited Investor**” shall have the meaning ascribed to such term in NI 45-106;

**“Additional Convertible Shares”** means the redeemable convertible shares in the capital of BT allotted and issued in lieu of the payment of a cash dividend on the Convertible Shares and/or any already issued Additional Convertible Shares, having the rights set out in Schedule A;

**“Additional Subscriber”** shall have the meaning ascribed to such term in Paragraph 11.1, to the extent it has been approved by BI in accordance with this Agreement, or is an Approved Additional Subscriber;

**“Additional Subscriber Joinder Agreement”** shall have the meaning ascribed to such term in Paragraph 11.1;

**“Affiliate”** of any person means, at the time such determination is being made, any other person controlling, controlled by or under common control with such first person, in each case, whether directly or indirectly, and “control” and any derivation thereof means the possession, directly or indirectly, of the power to direct or significantly influence the management and business or affairs of a person whether through the ownership of voting securities or otherwise provided that, from the Closing Date, the BT Group shall not be deemed to be an Affiliate of the BI Group or the Subscriber;

**“Agreed Form”** means, in relation to a document, the form of that document as initialled for the purpose of identification by or on behalf of BI and the Subscriber (in each case with such amendments as may be agreed by them or on their behalf);

**“Alternative Proposal”** shall have the meaning ascribed to such term in Paragraph 6.6;

**“Approvals”** shall have the meaning ascribed to such term in Paragraph 3.3(o);

**“Approved Additional Subscriber”** means a person named in the Agreed Form list of potential Additional Subscribers;

**“As-Converted Basis”** means on the basis of the number of Ordinary Shares that would (i) be in issue or (ii) be held by the relevant person (depending upon the context), in each case, should all the Convertible Shares and Additional Convertible Shares capable of conversion (directly or indirectly) into Ordinary Shares have been so converted in accordance with their terms;

**“BC and DR Plan”** means a written business continuity and disaster recovery plan outlining the procedures to be followed in the event of an emergency or other disruption of normal business activities;

**“BI Asset”** shall have the meaning ascribed to such term in Paragraph 12.3;

**“BI Attributed Cost”** shall have the meaning ascribed to such term in Paragraph 8.4;

**“BI Claim”** means any claim for Damages suffered or incurred by the Subscriber and brought by the Subscriber for breach of the BI Warranties set out in Paragraph 3.2;

**“BI Disclosure Letter”** means the letter from BI to the Subscriber delivered immediately prior to the date of this Agreement;

**“BI Group”** means BI and any company which is from time to time a subsidiary of BI, excluding, from the Closing Date, any company forming part of the BT Group;

**“BI’s Information Record”** means all information contained in any material change report (excluding any confidential material change report) including any press release incorporated thereto, financial statements, information circulars, annual information forms, prospectuses or other document of BI which has been publicly filed by, or on behalf of, BI pursuant to the requirements of Securities Laws by or on behalf of BI since 1 January 2015;

**“BI Material Adverse Change”** means any effect, change or occurrence that is or is reasonably likely to be materially adverse to the results of operations, financial condition, assets, properties, capital, liabilities (contingent or otherwise), obligations, cash flow, income, affairs or business operations of the BI Group on a consolidated basis, but shall exclude any effect, change or occurrence arising out of (a) changes in general economic conditions, (b) changes to conditions generally affecting the industry in which the BI Group operates, but only to the extent that such changes do not have a disproportionate effect on the BI Group, taken as a whole, as compared to other companies engaging in businesses similar to the applicable business of the BI Group, (c) natural disasters or acts of God, war, act of terrorism, civil unrest or similar events, (d) changes in applicable Laws or IFRS, or the interpretation thereof, (e) this Agreement, the Transaction Documents or an action required hereby or thereby, (f) the announcement, pendency or completion of this Agreement, the Transaction Documents or the transactions contemplated herein or therein; or (g) any effect, change or occurrence which is merely temporary;

**“BI Material Subsidiaries”** means, collectively, Bombardier Aerospace Corporation, Learjet Inc. and Short Brothers PLC and, prior to the Closing Date, Bombardier Corporation;

**“BI Moral Hazard Liability”** means any Damages that are incurred on or after the Closing Date in relation to the U.K. BI Group Pension Plans by any member of the BT Group under sections 38 to 43 of the Pensions Act 2004;

**“BI Obligation”** means any covenant, warranty or undertaking to indemnify or pay given by BI to the Subscriber under this Agreement;

**“BI Tax Warranty”** means the Warranty set out in Paragraph 3.2(n);

**“BI Warranties”** means the warranties set out in Paragraph 3.2, other than the BI Tax Warranty;

**“Bombardier License”** means the license agreement to be entered into between BI and BT as provided in Section 9.2 of the Shared Services Agreement;

**“BT Asset”** shall have the meaning ascribed to such term in Paragraph 12.1;

**“BT Attributed Cost”** shall have the meaning ascribed to such term in Paragraph 8.4;

**“BT Breach Tax Cost”** shall have the meaning ascribed to such term in Paragraph 8.4(a);

**“BT Group”** means BT and the BT Subsidiaries;

**“BT Material Adverse Change”** means any effect, change or occurrence that is or is reasonably likely to be materially adverse to the results of operations, financial condition, assets, properties, capital, liabilities (contingent or otherwise), obligations, cash flow, income, affairs or business operations of the BT Group on a consolidated basis, but shall exclude any effect, change or occurrence arising out of (a) changes in general economic conditions, (b) changes to conditions generally affecting the industry in which the BT Group operates, but only to the extent that such changes do not have a disproportionate effect on the BT Group, taken as a whole, as compared to other companies engaging in businesses similar to the Transportation Business, (c) natural disasters or acts of God, war, act of terrorism, civil unrest or similar events, (d) changes in applicable Laws or IFRS, or the interpretation thereof, (e) this Agreement, the Transaction Documents or an action required hereby or thereby, (f) the announcement, pendency or completion of this Agreement, the Transaction Documents or the transactions contemplated herein or therein; or (g) any effect, change or occurrence which is merely temporary;

**“BT Material Subsidiaries”** means, collectively, Bombardier Transportation Global Holding SE, Bombardier Transportation Canada Holding Inc., Bombardier European Investments, S.L.U., Bombardier Transportation Investments USA LLC, Bombardier Transit Corporation, Bombardier Transportation Canada Inc., Bombardier Transportation Financial Services S.à r.l., Bombardier Transport France S.A.S., Bombardier Transportation GmbH, Bombardier Transportation (Holdings) UK Ltd., Bombardier Transportation (Holdings) USA Inc., Bombardier Transportation Italy S.p.A., Bombardier Transportation Sweden AB and Bombardier Transportation (Switzerland) AG;

**“BT Obligation”** means any covenant, warranty or undertaking to indemnify or pay given by BT to the Subscriber under this Agreement (including the Tax Warranties);

**“BT Pension Plans”** shall have the meaning ascribed to such term in Paragraph 3.2(jj)(vi);

**“BT Subsidiaries”** means the direct or indirect subsidiaries of BT from time to time, which, for the avoidance of doubt, will, at Closing, include the members of the BI Group in relation to the Transportation Business that have been transferred to the BT Group as part of the Pre-Closing Reorganization and are Disclosed as Schedule 1.1A to the Disclosure Letter;

**“BT Tax Warranties”** means the Warranties set out in Paragraph 3.3(qq);

**“BT Third Party Assurances”** means all Guarantees, indemnities, counter-indemnities letters of comfort and any performance or other forms of guarantees (including, in respect of any performance bond, advance payment bond, standby

or documentary letter of credit) of any nature given to a third party by a member of the BT Group in respect of any obligation of a member of the BI Group (other than an obligation of a member of the BI Group in relation to the Transportation Business or an obligation of the BT Group);

**“BT Third Party Claim”** shall have the meaning ascribed to such term in Paragraph 8.8;

**“BT Warranties”** means the warranties set out in Paragraph 3.3, other than the BT Tax Warranties;

**“BT’s Bank Account”** means the bank account of BT as notified in writing by BT to the Subscriber and BI at least three Business Days prior to the Closing Date or such other bank account as notified in writing by BT to the Subscriber and BI from time to time;

**“Business Day”** means a day, other than a Saturday, Sunday or any other day on which the principal chartered banks located in Montréal, Québec, Berlin, Germany or London, United Kingdom are not open for business;

**“CDN\$”** means Canadian dollars;

**“CEDR”** means the Centre for Effective Dispute Resolution;

**“Claim(s)”** means any claims, demands, complaints, grievances, actions, applications, suits, causes of action, orders, charges, indictments, prosecutions, assessments, reassessments or judgments;

**“Class A Shares”** means the class A shares (multiple voting) in the capital of BI;

**“Class B Shares”** means the class B shares (subordinate voting) in the capital of BI;

**“Closing”** means completion of the Investment in accordance with the provisions of this Agreement;

**“Closing Conditions”** means the Subscriber Closing Conditions and the Joint Closing Conditions;

**“Closing Date”** shall have the meaning ascribed to such term in Paragraph 7.1;

**“Competition Closing Condition”** shall have the meaning ascribed to such term in Paragraph 7.7(a);

**“Confidential Information”** means any information supplied by any Party, or any of their Connected Persons to another party and any of its Connected Persons, whenever and in whatever form, in connection with this Agreement, including any information:

- (a) contained or reflected in any report or other material prepared by or for any party;

- (b) relating to the existence and provisions of, or the negotiations leading to, this Agreement; or
- (c) received or held by the receiving party (or any of its Connected Persons) relating to the disclosing party,

and includes written information and information transferred or obtained orally, visually, electronically or by any other means and any information that the receiving party has derived from information in (a) to (c) inclusive;

**“Connected Persons”** means, in relation to a party, any Affiliate of that party and any officer, director, employee, agent, advisor or representative of that party of any of its Affiliates, in each case, from time to time;

**“Contracts”** means all (i) agreements or (ii) legally binding arrangements, understandings, commitments and undertakings (whether written, electronic or oral), to which a person is a party or a beneficiary;

**“Convertible Shares”** means redeemable convertible shares in the capital of BT having the rights set out in Schedule A;

**“Corporations”** means BI and BT;

**“Damages”** means any losses, liabilities, damages or expenses (including Taxes suffered by the Party claiming the Damages and reasonable legal fees and expenses) whether resulting from an action, suit, proceeding, arbitration, Claim or demand that is instituted or asserted by a third party, including a Governmental Authority, or from a cause, matter, thing, act, omission or state of facts not involving a third party;

**“Disclosed”** means:

- (a) in the case of the BI Warranties, as fairly disclosed in or by virtue of the terms of the BI Disclosure Letter or in BI’s Information Record;
- (b) in the case of the BT Warranties, as fairly disclosed in or by virtue of the terms of the Disclosure Letter or in BI’s Information Record relating to the Transportation Business or the BT Group; and
- (c) in the case the Tax Warranties, as disclosed in relation to the BI Tax Warranty in Schedule 3.2(n) or in relation to the BT Tax Warranties in Schedule 3.3(qq) (as applicable) to the Disclosure Letter;

**“Disclosure Letter”** means the letter from BT to the Subscriber delivered immediately prior to the date of this Agreement;

**“Dispute Notice”** shall have the meaning ascribed to such term in Paragraph 14.12;

**“Dispute Representatives”** means, in the case of BI or BT, the Vice-President, Mergers and Acquisitions of BI from time to time, and in the case of the Subscriber, the Executive Vice-President, Québec of the Subscriber from time to time;



**“Disputes”** means a dispute arising between one or more of the Parties out of or in connection with this Agreement, including disputes arising out of or in connection with: (a) the creation, validity, effect, interpretation, termination, performance or non-performance of, or the legal relationships established by, this Agreement; (b) claims for set-off and counterclaims; and (c) any non-contractual obligations arising out of or in connection with this Agreement;

**“Distributions to BI”** means cash dividends distributions or returns of capital or income of any kind whatsoever including any reduction of capital or redemption or purchase of shares, by any member of the BT Group to or for the benefit of any member of the BI Group (other than any member of the BI Group in relation to the Transportation Business or any member of the BT Group), but excluding the Use of Proceeds;

**“€”** means Euros;

**“Encumbrance”** means with respect to any property or asset, a mortgage, charge, pledge, lien, option, right of first refusal, right of pre-emption, third party right or interest, other encumbrance or security interest of any kind in respect of such property or asset or another Contract having the same effect;

**“Enforceability Exceptions”** shall have the meaning ascribed to such term in Paragraph 3.2(c);

**“Environment”** means (a) all or any of the following media, namely air (including the air within buildings or other natural or man-made structures above or below ground), water (including surface or ground water, water in pipes, drainage or sewerage systems) and/or land and (b) any living organisms (including human beings) or systems supported by all or any of those media;

**“Environmental Consents”** means any permit, licence, authorisation, approval, registration or consent required under or in relation to Environmental Laws;

**“Environmental Laws”** means all or any applicable international, European Union, national, state, federal, regional or local Laws, together with all subordinate legislation, codes of practice, circulars, decisions, decrees, ordinances, regulations, orders, by-laws and judgments relating to Environmental Matters, together with any judicial interpretation of each of the foregoing;

**“Environmental Matters”** means all or any matters relating to the pollution or protection of the Environment, the use, storage, handling or disposal of Hazardous Substances, human health and safety (including health and safety of employees, occupiers and invitees and fire safety);

**“Event”** means any event, act, transaction or omission, and any reference to an Event occurring on or before a particular date shall include events which for Tax purposes are deemed to have, or are treated or regarded as having, occurred on or before that date;

**“Exchange Rate”** means, with respect to a particular currency for a particular day, the closing spot rate of exchange (the closing Spot Rates are the rates fixed at 4 p.m. U.K. time) for that currency into € on such date as published by WM Company (Reuters) or, where no such rate is published in respect of that

currency for such date, at the rate published by the Bank of Canada as at the close of business in Montréal on such date;

**“Expert”** shall have the meaning ascribed to such term in Paragraph 12.5;

**“Financial Debt”** means all borrowings and other indebtedness of a person in respect of overdrafts, acceptance credit or other credit facilities, loans, loan stocks, bonds, debentures, notes, debt or inventory financing, finance leases or sale and lease back arrangements or any other similar arrangements the purpose of which is to borrow money, or any other transaction having the commercial effect of borrowing money which are classified as short-term or long-term debt under IFRS, but shall exclude for the avoidance of doubt: (i) non-recourse factoring; (ii) amounts received from third party advance providers in exchange for the rights to customer payments pursuant to construction advance agreements; (iii) reimbursement obligations in respect of advance payments by or on behalf of third-party customers in respect of contracts pursuant to which such third-party customers acquire products manufactured, or services furnished, by such person or any of its subsidiaries; and (iv) obligations under derivative instruments;

**“Financial Statements”** means the Agreed Form combined audited financial statements of the Transportation Business in respect of the financial years ended 31 December 2012, 2013 and 2014 together with any notes, reports, statements or documents included in or annexed or attached to them;

**“First Resolution Period”** shall have the meaning ascribed to such term in Paragraph 14.12;

**“Fundamental BI Warranty”** means the warranties set out in Paragraphs 3.2(a) - 3.2(f) (inclusive) and 3.2(i)(ii);

**“Fundamental BI Warranty Claim”** means a claim for a breach of a Fundamental BI Warranty;

**“Fundamental Warranty”** means the warranties set out in Paragraphs 3.3(a) - 3.3(g) (inclusive);

**“Fundamental Warranty Claim”** means a claim for a breach of a Fundamental Warranty;

**“Government Official”** means any person qualifying as a public official or public employee under the Laws of any relevant jurisdiction and also includes:

- (a) a person who holds a legislative, administrative or judicial position in or with a Governmental Authority;
- (b) a person holding an official position, such as an employee, officer or director, in or with any Governmental Authority;
- (c) any individual “acting in an official capacity”, such as a delegation of authority, from a Governmental Authority to carry out official responsibilities;

- (d) an official of a public international organization such as the United Nations, the World Bank, the International Monetary Fund or the International Finance Corporation;
- (e) a political party, an official of a political party, or a candidate for political office;
- (f) an immediate family member, namely, a parent, spouse, sibling or child of a person in any of (a) through (e) above; and
- (g) an agent or intermediary of any person in any of (a) through (e) above;

**“Governmental Approval”** shall have the meaning ascribed to such term in Paragraph 3.2(d)(i);

**“Governmental Authority”** means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals, self-regulatory organizations, dispute settlement panels, Law, rule or regulation-making organizations or entities or state owned or controlled entities, in each case:

- (a) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them;
- (b) that is a public international organization or supranational body (including the European Union) and its institutions, departments, agencies and instrumentalities; or
- (c) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or Tax Authority or power;

and excludes, for the purposes of the definitions of “Damages” and “Laws” and Paragraphs 3.2(d), 3.2(m), 3.3(d), 3.3(q), 3.3(t), 3.3(u), 3.3(x), 3.3(cc), 3.3(jj), 5.1(c), 7.6(k) and Article 13 hereof and paragraph (i) of Schedule E, any Governmental Authority in its capacity as a customer of the BT Business;

**“Guarantee”** means, without duplication, any obligation, contingent or not, directly or indirectly guaranteeing or indemnifying any Financial Debt of any person or protecting a creditor of such person from a loss in respect of any such Financial Debt;

**“Hazardous Substances”** means any material or substance, including waste, which, alone or in combination with other substances, causes or may cause harm or damage to the environment or detriment to the health and safety of any person including, for the avoidance of doubt, asbestos or asbestos containing materials, radiation, radioactive substances;

**“holding company”** means any company which holds a majority of the voting rights in another company and has the right to appoint or remove a majority of its board of directors, or which is a member of another company and controls a majority of the voting rights in it under an agreement with other member(s), in each case whether directly or indirectly through one or more companies;

**“IFRS”** means International Financial Reporting Standards as adopted by the International Accounting Standards Board;

**“Intellectual Property Rights”** means:

- (a) patents, utility models and rights in inventions;
- (b) rights in each of know-how, confidential information and trade secrets;
- (c) trademarks, service marks, rights in logos, trade names, rights in each of get-up and trade dress, rights to sue for passing off (including trade mark-related goodwill), rights to sue for unfair competition, and domain names;
- (d) copyright, moral rights, database rights, rights in designs, and semiconductor topography rights;
- (e) any other intellectual property rights; and
- (f) all rights or forms of protection, subsisting now or in the future, having equivalent or similar effect to the rights referred to in paragraphs (a) to (e) above,

in each case: (i) anywhere in the world; (ii) whether unregistered or registered (including all applications, rights to apply and rights to claim priority); and (iii) including all divisionals, continuations, continuations-in-part, reissues, extensions, re-examinations and renewals;

**“Inter-Company Non-Trading Payables”** means, in relation to the BT Group, any amounts owed as at Closing by any member of the BT Group to any member of the BI Group (which are not Inter-Company Trading Debt) together with accrued interest, if any, up to the date of Closing on the terms of the applicable debt;

**“Inter-Company Trading Debt”** means all amounts owed, outstanding or accrued, including any VAT/GST arising on such amounts, as between any member of the BI Group and any member of the BT Group as at Closing in respect of inter-company trading activity and the provision of services, facilities and benefits between them; for the avoidance of doubt, Inter-Company Trading Debt:

- (a) includes, where applicable, amounts owed in respect of salaries or other employee benefits (including payroll Tax thereon but excluding any bonuses and related Tax), insurance (including health and motor insurance), pension and retirement benefit payments, management training and car rental payments paid or management services provided between them up to Closing; but
- (b) excludes amounts due in respect of matters which would have the characteristics of an intra-group loan;

**“Interim Accounts Date”** means 30 September 2015;

**"Interim Financial Statements"** means the Agreed Form combined financial statements of the Transportation Business in respect of the 9-month period ended on the Interim Accounts Date together with any notes, reports, statements or documents included in or annexed or attached to them;

**"Investment"** shall have the meaning ascribed to such term in the Preamble;

**"IT Contract"** means any contract between (i) a member of the BI Group in relation to the Transportation Business or the BT Group; and (ii) a third party, under which an IT System is licensed, leased, supplied, maintained or supported;

**"IT Systems"** means the information and communications technologies used by any member of the BT Group or any member of the BI Group in relation to the Transportation Business which are material, including hardware, software, networks and associated documentation;

**"Joint Claim"** shall have the meaning ascribed to such term in Paragraph 8.10;

**"Joint Closing Conditions"** shall have the meaning ascribed to such term in Paragraph 7.7;

**"Knowledge"** means the actual knowledge of, after reasonable internal enquiry, in the case of BI, [REDACTED]

or, in the case of BT, [REDACTED]

, as applicable;

provided that this shall not require any such individual to (i) independently verify the accuracy or veracity of the books and records of any person, (ii) obtain from any third party, including any Affiliate of BI or BT, any information not previously received from such third party or which would not otherwise be received from such third party in the Ordinary Course or (iii) conduct any inquiry of any other employees of such individual's employer or Affiliates of such employer;

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information  
with respect  
to specific  
individuals

**"Last Accounts Date"** means 31 December 2014;

**"Laws"** means applicable laws (including common law or civil law), statutes, by laws, rules, regulations, orders, ordinances, treaties, notices, directions, decrees, judgments, awards or requirements, in each case of any Governmental Authority, which have the force of law or are binding on the relevant person;

**"LCIA"** means the London Court of International Arbitration;

**"Leakage"** means in each case to, or on behalf of, or for the benefit of BI or, any member of the BI Group (other than the BT Group at Closing):

- (a) any return of capital or income of any kind whatsoever including any dividend or distribution (whether in cash or in kind) or any reduction of capital or redemption or purchase of shares by any member of the BI Group in relation to or to the detriment or diminution of the Transportation Business or by any member of the BT Group;
- (b) any management, service or other charges, or fees, costs, bonuses or other sums, paid or incurred by any member of the BI Group in relation to or to the detriment or diminution of the Transportation Business or by any

member of the BT Group, (including directors' fees or monitoring fees or other appropriations of profit);

- (c) any waiver, deferral or release by any member of the BI Group in relation to or to the detriment or diminution of the Transportation Business or by any member of the BT Group of any amount or obligation owed or due to any of them;
- (d) any payment or incurrence of interest or principal in respect of any indebtedness owed by any member of the BI Group in relation to or to the detriment or diminution of the Transportation Business or by any member of the BT Group;
- (e) any transaction other than on arm's length third party terms by any member of the BI Group in relation to or to the detriment or diminution of the Transportation Business or by any member of the BT Group;
- (f) any assumption or discharge of any liability (including in relation to any recharging of costs of any kind) by any member of the BI Group in relation to or to the detriment or diminution of the Transportation Business or by any member of the BT Group;
- (g) any guarantee, indemnity or security (other than as contemplated in the PCG Past Agreement or as Disclosed under the headings "Indemnity Agreements" or "Guarantee Fees Charge Agreements" in Schedule 3.3(i) *Inter-Company Relations* to the Disclosure Letter) provided by any member of the BT Group in respect of the obligations or liabilities of any member of the BI Group member or any of BI's Affiliates, provided that any such guarantee, indemnity or security shall not constitute Leakage until there is a payment pursuant to any such guarantee, indemnity or security and only up to the amount of such payment; and
- (h) any other payments made (whether in cash or kind) or transfers of value which is not for full value received by any member of the BI Group in relation to or to the detriment or diminution of the Transportation Business or by any member of the BT Group;

**"Leased Properties"** means all real and immovable property leased or licensed by the BI Group in relation to the Transportation Business and/or the BT Group, and includes all plates, building, structure, erections, improvements, appurtenances and real property fixtures situated thereon or forming part thereof which are material;

**"Longstop Date"** shall have the meaning ascribed to such term in Paragraph 7.10(b);

**"material"** means, in the context of the BT Warranties (other than the BT Warranty set out in Paragraph 3.3(jj)(iii)) and, in that context only, except where otherwise specifically defined, where a BT Warranty is given with this qualification there shall be no Subscriber Claim in respect of such BT Warranty unless the breach or inaccuracy of such BT Warranty without that qualification in respect of such Subscriber Claim, and any other Subscriber Claim arising out of the same or substantially the same facts, events or circumstances (for greater certainty,

any Subscriber Claim arising from the same or substantially the same facts, events or circumstances applicable to more than one third party will be deemed, for purposes of such determination, to have arisen from the same or substantially the same facts, events or circumstances), gives rise to the diminution in value of the BT Group on a consolidated basis as at the time of Closing in excess of [REDACTED] (i.e. a loss in value in the Offered Convertible Shares in excess of [REDACTED]) from that which it would have been if there was no breach or inaccuracy, and, in the context of the BT Warranties and, in that context only, “**in all material respects**” shall be construed accordingly; the foregoing definition will not be construed as establishing a standard of materiality for any other purpose (including the interpretation of “material” or “in all material respects” in the context of the BI Warranties or the interpretation of “BI Material Adverse Change” or “BT Material Adverse Change”);

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information  
with respect  
to specific  
amounts

“**Material Customers**” shall have the meaning ascribed to such term in Paragraph 3.3(bb)(i);

“**Material Vendors**” shall have the meaning ascribed to such term in Paragraph 3.3(bb)(i);

“**Mediation Notice**” shall have the meaning ascribed to such term in Paragraph 14.12;

“**NI 45-106**” means, collectively, National Instrument 45-106 – *Prospectus Exemptions* adopted under Securities Laws and *Regulation 45-106 respecting prospectus exemptions* adopted under the *Securities Act* (Québec);

“**Nominated Subscriber**” shall have the meaning ascribed to such term in Paragraph 14.19;

“**Offered Convertible Shares**” shall have the meaning ascribed to such term in Paragraph 2.1(a)(i);

“**Offered Securities**” means the Offered Convertible Shares and the Warrants;

“**Operational Payments to BI**” means the payments or cash flows of the same nature as those set out in the schedule of permitted leakage for the year 2015 in the Agreed Form (excluding the capital reductions and capital contributions) made in the Ordinary Course, from any member of the BI Group in relation to the Transportation Business or any member of the BT Group to, or on behalf or for the benefit of, any member of the BI Group (other than in relation to the Transportation Business and other than the BT Group);

“**Ordinary Course**” means, with respect to an action taken by a person, that such action is consistent with the past practices of such person or its business, as the case may be, and is taken in the ordinary course of such person or its business without regard to the impact of the transactions contemplated by this Agreement, including as a result of any announcement thereof;

“**Ordinary Shares**” means the ordinary shares in the capital of BT;

“**Organizational Documents**” shall have the meaning ascribed to such term in Paragraph 3.2(a)(iii);

**“Outstanding Securities”** shall have the meaning ascribed to such term in Paragraph 3.3(f)(i);

**“Owned IP”** means the Intellectual Property Rights owned by members of the BI Group in relation to the Transportation Business and/or members of the BT Group;

**“Owned Properties”** means all real and immovable property owned by the BI Group in relation to the Transportation Business and/or the BT Group, and includes all plates, building, structure, erections, improvements, appurtenances and real property fixtures situated thereon or forming part thereof which are material;

**“Parties”** means the parties to this Agreement and **“Party”** shall be construed accordingly;

**“PBGC”** shall have the meaning ascribed to such term in Paragraph 6.7;

**“PCG Future Agreement”** means the agreement relating to guarantees to be provided by BI to be entered into between BI and Bombardier Transportation (Global Holding) UK Limited, as provided in Section 10.1 of the Shared Services Agreement;

**“PCG Past Agreement”** means the agreement relating to guarantees currently provided by BI to be entered into between BI, Bombardier Transportation (Global Holding) UK Limited and Bombardier Transportation Financial Services S.à.r.l., Munsbach, Zurich Branch, as provided in Section 10.2 of the Shared Services Agreement;

**“Pension Plans”** means pension, early retirement, retirement or supplementary retirement plans, programs or schemes, but shall, for the avoidance of doubt exclude the Canada Pension Plan pursuant to the *Canada Pension Plan* (Canada), the Québec Pension Plan pursuant to *An Act respecting the Québec Pension Plan* (Québec), the Ontario Retirement Pension Plan contemplated under the *Ontario Retirement Pension Plan Act, 2015* (Ontario) and comparable plans contributed to under social security and other applicable Laws;

**“Permitted Amount”** means the product of [REDACTED] multiplied by the number of days elapsed in the 2016 calendar year prior to the Closing Date;

Redacted  
information  
with respect  
to specific  
amount

**“Permitted Encumbrances”** means: (i) security granted over a supplemental account and an exposure control account pursuant to the pledge agreement governed by Luxembourg law between Bombardier Transportation Financial Services S.à r.l. and Commerzbank International S.A. as Security Agent dated on or about 24 May 2011 securing the obligations of certain parties under the EUR 3,400,000,000 letter of credit facility agreement between Bombardier Transportation Financial Services s.à r.l. and the financial institutions therein dated 24 May 2011 (as amended and as amended and restated from time to time); (ii) any lien arising by operation of law and in the Ordinary Course and not as a result of any default or omission; (iii) any security or quasi-security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied in the Ordinary Course and not arising as a result of any default or omission; (iv) inchoate liens



imposed by law that are incidental to construction, maintenance, development or operation of the Transportation Business in the Ordinary Course if payment of the obligation secured thereby is not yet due or delinquent; (v) liens for Taxes, assessments, obligations under workers' compensation or other similar mandatory legislation or other mandatory requirements, charges or levies of any Governmental Authority in the Ordinary Course and not arising as a result of any default or omission if payment of the obligation secured thereby is not yet due or delinquent; (vi) easements, servitudes, encroachments, minor imperfections of title, rights-of-way and other rights, exceptions, reservations, conditions, limitations, covenants and other restrictions not arising as a result of any default or omission, that do not, individually or in the aggregate, detract from the value of, or impair the marketability of, any real property or would materially and adversely affect the ability of the Transportation Business to carry on business in the Ordinary Course; (vii) pledges and deposits to secure the performance of bids, tenders, trade or government contracts leases, licenses or statutory obligations, surety bonds, performance bonds, completion bonds and other obligations of a similar nature incurred, in each case, other than for repayment of borrowed money, in the Ordinary Course and not arising as a result of any default or omission; (viii) any lien consisting of (a) statutory landlord's liens or legal hypothecs under any leases or other liens on the Leased Property reserved in leases thereof for rent which is not yet due, (b) rights reserved to or vested in any Governmental Authority to control or regulate any property, or to limit the use of such property in any manner which does not materially impair the use of such property for the purposes for which it is held arising in the Ordinary Course and not arising as a result of any default or omission, and (c) zoning or other land use restrictions and ordinances of any Governmental Authority; (ix) liens in respect of judgments or awards with respect to which an appeal or other proceeding for review is being prosecuted and with respect to which a stay of execution pending such appeal or such proceeding for review has been obtained; (x) mechanics' and materialmen's liens and similar charges not filed of record and not delinquent; (xi) liens that will be paid in full or released on or prior to the Closing Date; and (xii) any Permitted Security;

**"Permitted Leakage"** means:

- (a) since the Last Accounts Date to 31 December 2015, the payments or cash flows set out in the Agreed Form;
- (b) from 1 January 2016 to Closing, Distributions to BI in an aggregate amount not exceeding the Permitted Amount and Operational Payments to BI; and
- (c) following the Closing, the Use of Proceeds;

**"Permitted Security"** the Permitted Security as defined in, and pursuant to, the letter of credit facility agreement, originally dated 24 May 2011, as amended, between, among others, Bombardier Transportation Financial Services S. à r.l., Munsbach, Zurich Branch and Commerzbank International S.A., as facility agent;

**"person"** means any individual (whether acting as an executor, trustee administrator, legal representative or otherwise), corporation, firm, partnership, sole proprietorship, syndicate, joint venture, trustee, trust, unincorporated organization or association, and pronouns have a similar extended meaning;

**“Plan”** means any bonus, deferred compensation, incentive compensation, share purchase, share option, share appreciation, phantom share, savings, profit sharing, severance or termination pay, health, dental or other medical, life, disability or other insurance (whether insured or self-insured), mortgage insurance, employee loan, employee assistance, supplementary unemployment benefit, plan or program relating to the BI Group in relation to the Transportation Business and/or the BT Group and every other employee benefit plan, program or agreement relating to the BI Group in relation to the Transportation Business and/or the BT Group or with respect to which the BI Group in relation to the Transportation Business and/or the BT Group would reasonably be expected to incur any liability, excluding plans administered pursuant to applicable health Tax, workplace safety insurance and employment insurance Laws and comparable arrangements;

**“Pre-Closing Reorganization”** means (i) the consolidation under BT of all assets, liabilities, obligations and entities forming the Transportation Business (including those steps set out in the Pre-Closing Reorganization Steps Plan); (ii) the execution of all required inter-company agreements for the purposes of providing certain services by the BI Group to the BT Group to ensure that the Transportation Business can continue in the Ordinary Course from and after Closing; (iii) the transfer of the Primove Business in accordance with the Primove Transfer Agreement and (iv) the payment of all outstanding intercompany loans between the BT Group and the BI Group, and excluding, for greater certainty, the Use of Proceeds;

**“Pre-Closing Reorganization Steps Plan”** means the steps in respect of the Pre-Closing Reorganization substantially in accordance with the steps plan Disclosed as Schedule 1.1B to the Disclosure Letter;

**“Primove Business”** means the business of developing, manufacturing and selling systems and components of electro mobility solutions for the automotive or for the train industry, including inductive charging systems, batteries and electric motors, as such business is currently being carried at the production site in Mannheim, Germany;

**“Primove License”** means the license granted under the Primove Transfer Agreement permitting Bombardier Transportation GmbH, as part of the BT Group, to use the intellectual property transferring to Primove GmbH pursuant to the Primove Transfer Agreement in the Transportation Business from time to time;

**“Primove Transfer Agreement”** means the Agreed Form asset transfer agreement to be entered into between Bombardier Transportation GmbH, as seller, and Primove GmbH, as purchaser, with respect to the Primove Business;

**“Prohibited Uses of Proceeds”** means the use by the BI Group of the Use of Proceeds: (i) to purchase or redeem any of BI's issued and outstanding shares (other than in accordance with the obligations of BI pursuant to its employee share based plan); or (ii) for the purposes of any material acquisition; or (iii) for the purposes of BI declaring, authorizing, making or paying any dividend (other than in connection with issued and outstanding preferred shares of BI);

**“Properties”** means, collectively, the Owned Properties and the Leased Properties;

**“Regulatory Approvals”** means the regulatory approvals or notifications which are required to be obtained or made, as applicable, in connection with the completion of the transactions contemplated in this Agreement as set out in Schedule E;

**“Relief”** means, unless the context otherwise requires, any relief, allowance, credit, deduction, exemption or set off in respect of any Tax or relevant to the computation of any income, profits or gains for the purposes of any Tax, or any right to or actual repayment of or saving of Tax (including any repayment supplement, fee or interest in respect of Tax), and:

- (a) any reference to the **use** or **set off** of Relief shall be construed accordingly and shall include use or set off in part; and
- (b) any reference to the loss of a Relief shall include the non-availability, non-existence or cancellation, in whole or in part, of any such Relief;

**“Reorganization Documents”** means all documents required and necessary to consummate, realize and complete all transactions, steps and actions expressly contemplated by the Pre-Closing Reorganization Steps Plan;

**“Second Resolution Period”** shall have the meaning ascribed to such term in Paragraph 14.12;

**“Securities Laws”** means all applicable securities laws in all provinces of Canada and the respective rules, regulations, blanket orders and blanket rulings under such laws together with applicable published policies, policy statements and notices of the Securities Regulators;

**“Securities Regulators”** means the applicable securities commission or securities regulatory authority in all provinces of Canada and **“Securities Regulator”** means any one of them;

**“Shared Services Agreement”** means the Agreed Form shared services agreement to be entered into between BI and Bombardier Transportation (Global Holding) UK Limited;

**“Shared Services Agreements”** means the PCG Past Agreement, the PCG Future Agreement and the Shared Services Agreement;

**“Shareholders’ Agreement”** means the shareholders’ agreement to be entered into between BI, Bombardier UK Holding Limited, BT, the Subscriber and potentially one or more Additional Subscribers based on the term sheet set out in Schedule D;

**“Share Terms”** means the terms set out in Schedule A;

**“Subscriber Claim”** means any claim for Damages suffered or incurred by the Subscriber and brought by the Subscriber for breach of the BT Warranties and any Subscriber Tax Claim;

**“Subscriber Closing Conditions”** shall have the meaning ascribed to such term in Paragraph 7.6;

**“Subscriber Obligation”** means any covenant, warranty or undertaking to indemnify or pay given by the Subscriber to BI or BT under this Agreement;

**“Subscriber Tax Claim”** means any claim for Damages suffered or incurred by the Subscriber and brought by the Subscriber for breach of the Tax Warranties or the Tax Pre-Closing Undertakings;

**“Subscriber Third Party Claim”** shall have the meaning ascribed to such term in Paragraph 8.9;

**“Subscriber Transaction Expenses”** means the out-of-pocket third party costs, fees and expenses incurred by the Subscriber specifically in connection with the Investment (including: (i) all costs, fees and expenses to be incurred before, on or after Closing in respect of filings for the Regulatory Approvals; and (ii) any applicable VAT/GST thereon);

**“Subscriber’s Bank Account”** means the bank account of the Subscriber as notified in writing by the Subscriber to the Corporations at least three Business Days prior to the Closing Date or, with respect to payments other than payment of the Subscription Price, such other bank account as notified in writing by the Subscriber to the Corporations from time to time;

**“Subscription Price”** shall have the meaning ascribed to such term in Paragraph 2.1(a)(i);

**“subsidiary”** means any company in relation to which another company is its holding company;

**“Surrender”** means any process whereby a Relief attributable to one person is made available (whether by way of surrender, transfer, allocation or otherwise) to another person;

**“Surviving Provisions”** means Paragraphs 1.1 (Definitions), 8.3 (Limitations), Article 9 (Transaction Fee and Subscriber Transaction Expenses), Article 13 (Press Release and Other Public Documents), Paragraphs 14.2 (Notices), 14.5 (Amendment), 14.6 (Waivers), 14.7 (Conflict with other Agreements), 14.8 (Confidentiality), 14.10 (No Third Party Enforcement), 14.11 (Applicable Law), 14.16 (Entire Agreement), and 14.20 (Assignment);

**“Tax”** or **“Taxation”** means (a) taxes on gross or net income, profits and gains, and (b) all other taxes, levies, duties, imposts, charges and withholdings of any nature, including any excise, property, wealth, capital, value added, sales, transfer, franchise and payroll taxes and any national insurance or social security contributions, and any payment which the relevant person may be or become bound to make to any person as a result of the discharge by that person of any tax which the relevant person has failed to discharge, together with all penalties, charges, fees and interest relating to any of the foregoing or to any late or incorrect return in respect of any of them, and regardless of whether such taxes, levies, duties, imposts, charges, withholdings, penalties and interest are chargeable directly or primarily against or attributable directly or primarily to the

relevant person or any other person and of whether any amount in respect of them is recoverable from any other person;

**“Tax Authority”** means any taxing or other authority competent to impose any liability to Tax, or assess or collect any Tax;

**“Tax Consolidation”** means any fiscal unity, group relief or tax consolidation arrangement between two or more entities, the effect of which is to treat those entities as a single entity for any Tax purpose or to off-set in whole or in part the income or taxable income of one entity against the available losses or other tax attribute of another entity;

**“Tax Knowledge of BI and/or BT”** means the actual knowledge, after reasonably internal enquiry, of [REDACTED]; provided that this shall not require any such individual to (i) independently verify the accuracy or veracity of the books and records of any person, (ii) obtain from any third party, including any Affiliate of BI or BT, any information not previously received from such third party or which would not otherwise be received from such third party in the Ordinary Course or (iii) conduct any inquiry of any other employees of such individual’s employer or Affiliates of such employer;

Redacted information with respect to specific individuals

**“Tax Pre-Closing Undertakings”** means the undertakings set out in Paragraph 5.1(e);

**“Tax Warranties”** means the BI Tax Warranty and the BT Tax Warranties;

**“Third Parties”** means [REDACTED];

Redacted information with respect to specific individuals

**“Third Party Right”** means any interest or equity of any person (including any right to acquire, option or right of pre-emption or conversion) or any mortgage, charge, pledge, lien, assignment, hypothecation, security interest or any other security agreement or arrangement, or any agreement to create any of the above;

**“Transaction Documents”** means this Agreement, the Shareholders’ Agreement, the Shared Services Agreement, the articles of association of BT, the Warrants certificate, the Bombardier License, the Primove Transfer Agreement and any other document which the parties agree is to be a Transaction Document;

**“Transaction Fee”** means a fee in the Euro equivalent of [REDACTED] (converted into Euros at the Exchange Rate on the Business Day prior to the Closing Date), payable by BI to the Subscriber;

Redacted information with respect to specific amount

**“Transportation Business”** means the worldwide rail transportation business of the BI Group (to be carried on by the BT Group following the Pre-Closing Reorganization) currently known as Bombardier Transportation, principally consisting of the development, manufacture and offering of a portfolio of products and services in the rail industry, including rolling stock services, system integration and signalling;

**“Transportation Business IP”** means the Owned IP and all other Intellectual Property Rights used by members of the BI Group in relation to the Transportation Business and/or the BT Group;

**“TSX”** means the Toronto Stock Exchange;

**“U.K.”** means the United Kingdom;

**“U.K. BI Group Pension Plan”** shall have the meaning ascribed to such term in Paragraph 6.8;

**“U.K. BT Group Pension Plan”** shall have the meaning ascribed to such term in Paragraph 6.8;

**“Unconditional Date”** shall have the meaning ascribed to such term in Paragraph 7.9;

**“Underlying Shares”** means the Class B Shares issuable upon exercise of the Warrants;

**“U.S.”** means the United States of America;

**“US\$”** means US dollars;

**“U.S. BI Group Pension Plan”** shall have the meaning ascribed to such term in Paragraph 6.7;

**“U.S. BT Group Pension Plan”** shall have the meaning ascribed to such term in Paragraph 6.7;

**“US/UK BI Group Pension Plans”** shall have the meaning ascribed to such term in Paragraph 3.2(m)(i);

**“Use of Proceeds”** means the use of the proceeds of the Subscription Price following Closing in accordance with the steps plan Disclosed as Schedule 1.1B to the Disclosure Letter;

**“VAT/GST”** means value added tax, goods and sales tax and any similar sales or turnover tax;

**“Warrant Subscription”** shall have the meaning ascribed to such term in Paragraph 2.1(c);

**“Warranties”** means the warranties set out in Article 3 (including the Tax Warranties), and **“Warranty”** shall be construed accordingly;

**“Warrants”** means warrants to purchase Class B Shares in the capital of BI having the rights set out in Schedule B; and

**“Working Hours”** means 9.30am to 5.30pm (local time) in the relevant location on a Business Day.

## 1.2 Interpretation.

In this Agreement, unless the context otherwise requires:

- (a) references to a person include any individual, firm, body corporate (wherever incorporated), government, state or agency of a state or any joint venture, association, partnership, works council or employee representative body (whether or not having separate legal personality);
- (b) references to “**CDN\$**” or “**Canadian dollars**” are references to the lawful currency from time to time of Canada;
- (c) references to “**US\$**” or “**US dollars**” are references to the lawful currency from time to time of the U.S.;
- (d) references to “**€**” or “**Euros**” are references to the lawful currency from time to time of European Monetary Union or a substantial number of its members from time to time;
- (e) references to any English legal term or concept shall, in respect of any jurisdiction other than England, be construed as references to the term or concept which most nearly corresponds to it in that jurisdiction;
- (f) Tax is attributable to a person (the “**Attributed Entity**”) and not to another person if and to the extent it is Tax which is payable by reference to the income, profits or gains, transactions, activities, assets, capital or liabilities of the Attributed Entity and not of the other person;
- (g) a Relief is attributable to a person (the “**Attributed Entity**”) and not to another person if and to the extent that it is a Relief which is available by reference to the losses, expenses, transactions, activities, assets, capital or liabilities of the Attributable Entity and not of the other person;
- (h) for the purposes of applying a reference to a monetary sum expressed in €, an amount in a different currency shall be deemed to be an amount in € translated at the Exchange Rate at the relevant date (which, in relation to a BI Claim or Subscriber Claim, shall be the date the BI Claim or Subscriber Claim is notified); and
- (i) any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

## 1.3 Enactments.

Except as otherwise expressly provided in this Agreement, any express reference to an enactment (which includes any legislation in any jurisdiction) includes references to (i) that enactment as amended, consolidated or re-enacted by or under any other enactment before or after the date of this Agreement; (ii) any enactment which that enactment re-enacts (with or without modification); and (iii) any subordinate legislation (including regulations) made (before or after the date of this agreement) under that enactment, as amended, consolidated or re-enacted as described in (i) or (ii) above, except to the extent that the liability of any party is thereby increased or extended.

#### 1.4 **Schedules, Subdivisions and Headings.**

The Schedules comprise schedules to this Agreement and form part of this Agreement. The division of this Agreement into Articles, Paragraphs and other subdivisions, and the inclusion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer

### **ARTICLE 2 SUBSCRIPTION FOR THE OFFERED SECURITIES**

#### 2.1 **Offered Securities.**

Subject to the fulfillment or waiver (to the extent permitted) of the Closing Conditions and the terms and conditions herein, at the Closing Date:

- (a) the Subscriber shall subscribe for:
  - (i) such number of Convertible Shares representing as of Closing, taking into account the issuance and allocation of such shares to the Subscriber, 30% of the equity share capital of BT (on an As-Converted Basis) (the **"Offered Convertible Shares"**) for aggregate gross proceeds of an amount of Euros equivalent to US\$1.5 billion (converted into Euros at the Exchange Rate on the Business Day prior to the Closing Date) (the **"Subscription Price"**); and
  - (ii) 105,851,872 Warrants to purchase Class B Shares in the capital of BI (the **"Offered Warrants"**), which, if the Offered Warrants were exercised on the date of this Agreement and the relevant Underlying Shares issued to the Subscriber, would represent 4.5% of all issued and outstanding equity shares in the share capital of BI on the date of this Agreement (taking account of the issue of the Underlying Shares); and
- (b) BT shall allot and issue the Offered Convertible Shares to the Subscriber, credited as fully paid and free from any Encumbrances (the **"Share Subscription"**); and
- (c) BI shall issue the Offered Warrants to the Subscriber (the **"Warrant Subscription"**) and together with the Share Subscription, the **"Subscription"**).

The Subscription Price shall be payable in accordance with Article 7.

BT may use the proceeds of the subscription in accordance with the Use of Proceeds.



### **ARTICLE 3 WARRANTIES BY THE CORPORATIONS**

#### **3.1 The Warranties**

- (a) The BI Warranties are qualified by those matters fairly disclosed in or by virtue of the terms of the BI Disclosure Letter or in BI's Information Record, and the BT Warranties are qualified by those matters fairly disclosed in or by virtue of the terms of the Disclosure Letter or, with respect to the BI Group in relation to the Transportation Business or the BT Group, in BI's Information Record.
- (b) Except for the BI Warranties and the BI Tax Warranty made by BI and the BT Warranties and the BT Tax Warranties made by BT, no member of the BI Group, member of the BT Group or any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of BI, BT, any member of the BI Group or any member of the BT Group, including any representation or warranty as to the accuracy or completeness of any information regarding BI, BT, any member of the BI Group or any member of the BT Group, furnished or made available to the Subscriber and its representatives (including any information, documents or material made available to the Subscriber in any confidential information memorandum, data room, management presentation or in any other form in expectation of the transactions contemplated hereby) or as to the future revenue, profitability or success of the Transportation Business or the BT Group (including any information, documents or material made available to Subscriber in any business plan or in any other form), or any representation or warranty arising from statute or otherwise in Law.
- (c) Subject to Paragraph 8.4, each of the Warranties shall be construed separately and independently, and shall not be extinguished or affected by Closing.
- (d) The only Warranties given by BI and BT in respect of Taxation or any liability to Taxation shall be, in the case of BI, the BI Tax Warranty and, in the case of BT, the BT Tax Warranties.
- (e) The only Warranties given by BT in respect of:
  - (i) Environmental Matters are those set out in Paragraph 3.3(ll), save that this shall not apply to Paragraphs 3.3(j), 3.3(k), 3.3(l), 3.3(p), 3.3(cc) and 3.3(dd) which shall not be so limited; and
  - (ii) Intellectual property are those set out in Paragraph 3.3(gg) save that this shall not apply to Paragraphs 3.3(j), 3.3(k), 3.3(l), 3.3(p), 3.3(cc) and 3.3(dd) which shall not be so limited.

#### **3.2 BI Warranties.**

BI warrants as follows to the Subscriber as at the date of this Agreement (except for those warranties that relate to a particular date, which warranties shall be made as of such date):

(a) **Organization and Good Standing.**

- (i) Each of BI and each BI Material Subsidiary is duly organized, validly existing and in good standing (to the extent that such concept or a similar concept is recognized) under the Laws of its jurisdiction of organization, incorporation or domicile and has the requisite power and authority to carry on its business as it is now being conducted. Each of BI and each BI Material Subsidiary is duly qualified to do business and is in good standing (to the extent that such concept or a similar concept is recognized) in each jurisdiction in which the nature of its business or the ownership or leasing of its Properties makes such qualification necessary, other than in such jurisdictions where the failure to be so incorporated, or organized or qualified or be in good standing would not reasonably be expected to materially and adversely affect the business of the relevant member of the BI Group.
- (ii) No bankruptcy proceedings nor (x) any insolvency, liquidation, receivership, dissolution or winding up or other proceedings of a similar nature; and (y) any corporate reorganization (other than the Pre-Closing Reorganization) or plan of arrangement under Laws governing BI and each BI Material Subsidiary's incorporation or under any other Laws, in respect of BI and each BI Material Subsidiary have been taken, undertaken or authorized by BI and each BI Material Subsidiary.
- (iii) BI has made available to the Subscriber true, complete and correct copies of its certificates of incorporation, bylaws or comparable organizational documents, as amended (collectively, the "**Organizational Documents**") of BI and each BI Material Subsidiary and neither BI nor any BI Material Subsidiary is in material violation of any provision of its respective Organizational Documents. The Organizational Documents of BI and each BI Material Subsidiary are in full force and effect.

- (b) **Capital Structure.** The authorized share capital of BI consists of (i) an unlimited number of preferred shares without nominal or par value issuable in series, of which 12,000,000 have been designated as the series 2 preferred shares, 12,000,000 have been designated as the series 3 preferred shares and 9,400,000 have been designated as the series 4 preferred shares; (ii) 2,742,000,000 Class A shares; and (iii) 2,742,000,000 Class B Shares. As at the close of business on 17 November 2015, BI had 9,692,521 series 2 preferred shares, 2,307,479 series 3 preferred shares, 9,400,000 series 4 preferred shares, 313,900,550 Class A Shares and 1,932,511,397 Class B Shares issued and outstanding. Except as contemplated by this Agreement and the shares issuable pursuant to the terms of BI's existing equity compensation plans, there are no agreements, options, warrants, rights of conversion or other rights pursuant to which BI is, or may become, obliged to issue or transfer any securities (including debt securities) or securities convertible or exchangeable, directly or indirectly, into any of its securities.

- (c) **Authority; Enforceability.** BI has the requisite power and authority to execute and to deliver this Agreement, to consummate the Pre-Closing Reorganization and the Investment (including the issuance of the Underlying Shares upon the due exercise of the Warrants in accordance with their terms), and as of the date on which each Reorganization Document and Transaction Document is to be executed and delivered pursuant to the Pre-Closing Reorganization or the terms hereof, as applicable, each member of the BI Group will have the requisite power and authority to execute and deliver each of the Reorganization Documents and Transaction Documents to be so executed and delivered by it, as applicable, and to consummate the Pre-Closing Reorganization and the Investment (including, in respect of BI only, the issuance of the Underlying Shares upon the due exercise of the Warrants in accordance with their terms). Each member of the BI Group required to execute, deliver and perform this Agreement, each Reorganization Document, as applicable, each Transaction Document, as applicable, the Pre-Closing Reorganization and the Investment have or will have taken the necessary corporate or other action to authorize the execution and performance of this Agreement, each Reorganization Document, as applicable, each Transaction Document, as applicable, the Pre-Closing Reorganization and the Investment (including, in respect of BI only, the issuance of the Underlying Shares upon the due exercise of the Warrants in accordance with their terms) as of the date on which each relevant document is to be executed, delivered and performed. No vote or consent of the holders of any class or series of bonds or capital stock or other debt instruments or equity interest of any member of the BI Group is necessary to approve this Agreement, any of the Reorganization Documents or Transaction Documents, the Pre-Closing Reorganization or the Investment (including the issuance of the Underlying Shares upon the due exercise of the Warrants in accordance with their terms), other than any such votes or consents which will have been obtained prior to the execution of each relevant document and which are or will be, as the case may be, in full force and effect and irrevocable. This Agreement has been duly executed and delivered by BI and, assuming due authorization, execution and delivery of this Agreement by the Subscriber, is the valid and binding obligation of BI, enforceable against BI in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, fraudulent transfer, moratorium and other similar Laws of general application now or hereafter in effect relating to or affecting the rights and remedies of creditors of insurance companies or creditors' rights generally and general principles of equity, whether considered in a proceeding at Law or in equity (the "**Enforceability Exceptions**"). Each Reorganization Document and Transaction Document shall be, as of the date on which such Reorganization Document or Transaction Document is to be executed and delivered pursuant to the terms hereof, duly executed and delivered by each member of the BI Group required to execute and deliver the same, as applicable, and, assuming due authorization, execution and delivery of such Reorganization Document and Transaction Document by the other parties thereto, shall be the valid and binding obligation of each such member of the BI Group, as applicable, enforceable against each such member of the BI Group, as

applicable, in accordance with its terms, subject to the Enforceability Exceptions.

(d) **BI's Consents and Approvals.**

- (i) Other than the Regulatory Approvals and subject to the listing conditions referred to in Paragraph 3.2(f)(v), no consents or approvals of, waivers from or filings or registrations with, any Governmental Authority (each, a "**Governmental Approval**") are required to be made or obtained at or prior to the Closing Date by any member of the BI Group in connection with the execution, delivery and performance of this Agreement, the Reorganization Documents and the Transaction Documents or the consummation of the Pre-Closing Reorganization and the Investment (including the issuance of the Underlying Shares upon the due exercise of the Warrants in accordance with their terms), except for those Governmental Approvals of Governmental Authorities which the failure to obtain would not, individually or in the aggregate, reasonably be expected to (x) be material to the BI Group, the BT Group or the Transportation Business; or (y) materially impair or delay the ability of the BI Group and BT Group to consummate the Pre-Closing Reorganization or the Investment (including the issuance of the Underlying Shares upon the due exercise of the Warrants in accordance with their terms).
- (ii) As of the date hereof, none of the members of the BI Group has received written notification from any Governmental Authority that such Governmental Authority will oppose the transactions contemplated hereby or refuse to grant or issue its consent or approval, if required, with respect to the Pre-Closing Reorganization or the Investment (including the issuance of the Underlying Shares upon the due exercise of the Warrants in accordance with their terms).

- (e) **No Breach.** Subject to the making of the filings and registrations and receipt of the consents, approvals and waivers referred to in Paragraph 3.2(d)(i), the execution, delivery and performance of this Agreement, the Reorganization Documents and the Transaction Documents (for the purposes of Paragraph 3.2(e)(iii) and 3.2(e)(iv) only, save in relation to the performance of any provision of the Shareholders' Agreement resulting in a change of control of BT), by each member of the BI Group required to execute, deliver and perform the same, as applicable, and the consummation of the Pre-Closing Reorganization and Investment (including the issuance of the Underlying Shares upon the due exercise of the Warrants in accordance with their terms) in accordance with their respective terms and conditions hereof and thereof will not, with or without the giving of notice or passage of time or both, (i) conflict with or violate any provision of the Organizational Documents of any member of the BI Group in relation to the Transportation Business or any member of the BI Group which is a party to a Transaction Document or a Reorganization Document or otherwise involved in the Pre-Closing Reorganization; (ii) conflict with or violate any Law applicable to any member of the BI Group in relation to the Transportation Business or any member of the BI Group

which is a party to a Transaction Document or a Reorganization Document or otherwise involved in the Pre-Closing Reorganization except to the extent that such conflict or violation would not reasonably be expected to limit in any material manner the operations of the BI Group as presently conducted; (iii) result in a material breach of, constitute a material default under, result in the acceleration of, create in any party the right to accelerate, terminate or cancel any material Contract to which any member of the BI Group in relation to the Transportation Business or any member of the BI Group which is a party to a Transaction Document or a Reorganization Document or otherwise involved in the Pre-Closing Reorganization is bound; or (iv) give rise to any Encumbrance (other than a Permitted Encumbrance) on or with respect to the Properties or assets relating to the Transportation Business now owned or acquired by any member of the BI Group at or prior to the Closing Date.

(f) **Warrants and Underlying Shares.**

- (i) The Warrants have been duly authorized and allotted for issuance and, once issued, will be freely tradable after the expiry of applicable hold periods and compliance with resale restrictions and conditions under the Securities Laws and the applicable Laws of any other relevant jurisdiction.
- (ii) Upon issuance of the Warrants, the Underlying Shares will be available and reserved for issuance out of BI's authorized Class B Shares, solely for the purpose of issue upon the exercise of each of the Warrants.
- (iii) The Underlying Shares, when duly issued in accordance with the terms of the Warrants, will be (x) validly issued as fully paid and non-assessable Class B Shares in the capital of BI; and (y) freely tradable after the expiry of applicable hold periods and compliance with resale restrictions and conditions under the Securities Laws and the applicable Laws of any other relevant jurisdiction.
- (iv) The Warrants will have the attributes set out in Schedule B.
- (v) The TSX has accepted notice of the private placement of the Warrants and has conditionally approved the listing of the Underlying Shares subject to customary listing conditions. The exercise price of the Warrants of US\$1.66 per Warrant has been conditionally approved by the TSX.

(g) **Reporting Issuer Status.** BI is a reporting issuer or the equivalent in all provinces of Canada and is not on a list of defaulting issuers maintained by applicable securities commissions or securities regulatory authorities in any of the provinces of Canada pursuant to applicable securities laws; in particular, BI is in compliance, in all material respects, with all of its applicable continuous disclosure obligations under Securities Laws.

(h) **Securities Laws Compliance.** No Securities Regulator, securities commission, stock exchange or comparable authority has issued any order preventing or suspending: (i) trading in any securities of BI; or (ii)

distribution of the Warrants nor instituted proceedings for either purpose and, to the Knowledge of BI, no such proceedings are pending or contemplated, and each of the Pre-Closing Reorganization and the Investment contemplated herein complies in all respects with Securities Laws.

(i) **BI's Information Record.**

(i) BI had a reasonable basis for disclosing any forward-looking information contained in BI's Information Record, including in respect of the Transportation Business, as the same was updated, if applicable, and BI has updated material forward-looking information to the extent required by and in compliance with the Securities Laws.

(ii) The documents forming BI's Information Record, including in respect of the Transportation Business, complied in all material respects with Securities Laws at the time they were filed, and the statements set forth therein were true and correct in all material respects and contained no misrepresentations as of their respective dates.

(j) **Shareholders' Approval.** BI is not required by applicable Law or TSX requirements or its constitutional documents to obtain the approval of its shareholders in connection with the execution, delivery and performance of this Agreement, the Reorganization Documents or the Transaction Documents, the consummation of the Pre-Closing Reorganization or the Investment or the issuance of the Warrants.

(k) **Anti-Bribery and Corruption.** No member of the BI Group, and to the Knowledge of BI, none of the BI Group's directors, officers, employees, authorized agents or authorized representatives have, and no such individual is currently being investigated by any member of the BI Group for having, directly or indirectly, on behalf of a member of the BI Group (i) offered, promised, made or authorized, or agreed to offer, promise, make or authorize, any unlawful contribution, expense, payment or gift of funds, property or anything of value to or for the use or benefit of any Government Official for the purpose of securing action or inaction or a decision of a Governmental Authority or a Government Official, influence over such action, inaction or decision, or any improper advantage; or (ii) taken any action prohibited by the *Corruption of Foreign Public Officials Act* (Canada), the *Criminal Code* (Canada) where such action is related to corruption, the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) or the *Foreign Corrupt Practices Act of 1977*, as amended, *Title 18 United States Code Section 1956 and 1957* (U.S.) or the *Bribery Act 2010* (United Kingdom) or the rules and regulations promulgated thereunder or under any other legislation of any relevant jurisdiction covering the same subject matter legally binding upon any member of the BI Group or their respective operations, and the members of the BI Group have instituted and maintain policies and procedures designed to ensure continued compliance with such legislation. Over the past 5 years there has been no material suit, action or third party investigation for which any member of the BI Group received written

notice, litigation or proceeding by or before any Governmental Authority involving any member of the BI Group or, to the Knowledge of BI, any of their directors, officers, employees, agents or representatives with respect to such legislation, or to the Knowledge of BI, pending or threatened. The BI Group is not ineligible to tender for any contract or business with, or be awarded any contract or business by, such Governmental Authority, or to tender for or perform any sub-contracting work under a material contract with such Governmental Authority.

- (l) **Economic Sanctions and Export Controls.** The BI Group is, and for the past 5 years has been, in compliance with economic sanctions, anti-terrorism, customs and export and technology transfer control laws, including those contained in the *Special Economic Measures Act* (Canada), the *United Nations Act* (Canada), the *Freezing Assets of Corrupt Foreign Officials Act*, the *Criminal Code* (Canada), the *Export and Import Permits Act* (Canada), the *Defence Production Act* (Canada) and the *Customs Act* (Canada), including any regulations or orders issued under the foregoing, and similar applicable economic sanctions, anti-terrorism, customs and export and technology transfer control laws of other jurisdictions legally binding upon the BI Group. The BI Group has instituted and maintains policies and procedures designed to ensure continued compliance with such legislation. Over the past 5 years there has been no material suit, action, third party investigation for which any member of the BI Group received written notice, litigation or proceeding by or before any Governmental Authority involving the BI Group or, to the Knowledge of BI, any of their directors, officers, employees, agents or representatives with respect to such legislation.

(m) **BI Group Pension Plans.**

- (i) There are no Pension Plans subject to the laws of the U.K. or the U.S. which are maintained or otherwise contributed to, or are required to contribute to, by or on behalf of any member of the BI Group (excluding any member of the BI Group in relation to the Transportation Business or the BT Group) ("**UK/US BI Group Pension Plans**"), other than those UK/US BI Group Pension Plans Disclosed. Except as Disclosed, all UK/US BI Group Pension Plans provide benefits on a defined contribution basis only.
- (ii) All material details, governing documents and, where applicable, the most recent funding and asset valuations (including the most recent valuations filed with the applicable Governmental Authority) in relation to the UK/US BI Group Pension Plans have been furnished or made available to the Subscriber and its representatives. To the Knowledge of BI and/or BT, the UK/US BI Group Pension Plans have at all times complied in all material respects and been administered in all material respects in accordance with their governing documents and all applicable Laws and regulations.
- (iii) With respect to any UK/US BI Group Pension Plan subject to Title IV of the U.S. Employee Retirement Income Security Act to which

any member of the BI Group made, or was required to make, contributions during the past six (6) years: (a) there does not now exist, nor, to the Knowledge of BI and/or BT, do any circumstances exist that would reasonably be expected to result in any accumulated funding deficiency within the meaning of Section 412 of the U.S. Internal Revenue Code or Section 302 of the U.S. Employee Retirement Income Security Act, or any liability under Section 4971 of the U.S. Internal Revenue Code; (b) no reportable event within the meaning of Section 4043(c) of the U.S. Employee Retirement Income Security Act for which the 30-day notice requirement has not been waived has occurred with respect to a UK/US BI Group Pension Plan, and the consummation of the transactions contemplated by this Agreement will not result in the occurrence of any such reportable event with respect to any such plan; (c) all premiums to the Pension Benefit Guaranty Corporation have been timely paid in full when due; (d) no liability or contingent liability under Title IV of the U.S. Employee Retirement Income Security Act has been or is reasonably expected to be incurred by any member of the BI Group (other than liability to timely pay premiums to the Pension Benefit Guaranty Corporation); and (e) the Pension Benefit Guaranty Corporation has not instituted proceedings to terminate any UK/US BI Group Pension Plan and, to the Knowledge of BI and/or BT, no condition exists that would reasonably be expected to constitute grounds under Section 4042 of the U.S. Employee Retirement Income Security Act for the termination of, or the appointment of a trustee to administer, such plan.

- (n) **Tax Consequences of Pre-Closing Reorganization and Investment.** Except as Disclosed (and for these purposes, for the avoidance of doubt, a liability to Tax or the loss, use or set-off of an Accounts Relief the amount of which has been quantified for the purposes of any disclosure in Schedule 3.2(n) to the Disclosure Letter shall be treated as Disclosed only to the extent that it does not exceed the amount so quantified), neither the implementation of the transactions comprising the Pre-Closing Reorganization nor the Investment has given or will give rise to (i) any liability of a member of the BI Group in relation to the Transportation Business or member of the BT Group to make or suffer an actual payment of Tax or an amount in respect of Tax or (ii) the loss, use or set-off at any time of any Accounts Relief.

The Fundamental BI Warranties and the BI Tax Warranty shall be deemed to be repeated by BI immediately before Closing by reference to the facts and circumstances then existing as if references in such warranties to the date of this Agreement were references to the Closing Date (except for such warranties that relate to a particular date, which warranties shall be made as of such date).

### 3.3 **BT Warranties.**

BT warrants as follows to the Subscriber as at the date of this Agreement (except for those warranties that relate to a particular date, which warranties shall be made as of such date):



(a) **Organization and Good Standing.**

- (i) Each member of the BI Group in relation to the Transportation Business and the BT Group is duly organized, validly existing and in good standing (to the extent that such concept or a similar concept is recognized) under the Laws of its jurisdiction of organization, incorporation or domicile and has the requisite power and authority to carry on its activities as they are now being conducted. Each member of the BI Group in relation to the Transportation Business and the BT Group is duly qualified to do business and is in good standing (to the extent that such concept or a similar concept is recognized) in each jurisdiction in which the nature of its activities or the ownership or leasing of its Properties makes such qualification necessary, other than in such jurisdictions where the failure to be so incorporated, or organized or qualified or be in good standing would not reasonably be expected to materially and adversely affect the business of the BT Group.
- (ii) No bankruptcy proceedings nor (x) any insolvency, liquidation, receivership, dissolution or winding up or other proceedings of a similar nature; or (y) any corporate reorganization (other than the Pre-Closing Reorganization) or plan of arrangement under Laws governing any member of the BI Group in relation to the Transportation Business or the BT Group's incorporation or under any other Laws, in respect of any member of the BI Group in relation to the Transportation Business or the BT Group have been taken, undertaken or authorized by any member of the BI Group in relation to the Transportation Business or the BT Group.
- (iii) True, complete and correct copies of BT's and the BT Material Subsidiaries' Organizational Documents as amended have been Disclosed, and neither BT nor any BT Material Subsidiary is or will be on Closing in material violation of any provision of its respective Organizational Documents.

- (b) **Capital Structure.** All of the outstanding shares of each member of the BI Group in relation to the Transportation Business and the BT Group have been duly authorized and are validly issued, fully paid and non-assessable and all of the issued and outstanding securities of the BT Subsidiaries will, at Closing, be directly or indirectly held by BT. Except as contemplated by this Agreement and the BI shares issuable pursuant to the terms of BI's or BT's existing equity compensation plans, there are no pre-emptive or other outstanding rights, options, warrants, subscriptions, puts, calls, conversion rights or agreements or commitments relating to the authorized and issued, unissued or treasury shares, or other equity or voting interests or to any assets, of the BI Group in relation to the Transportation Business or the BT Group. The Offered Convertible Shares will not be issued in violation of any applicable Laws, or BT's Organizational Documents. No member of the BI Group in relation to the Transportation Business or the BT Group has any debt securities outstanding that have voting rights or are exercisable or convertible into, or exchangeable or redeemable for, or that give any person a right to

subscribe for or acquire, shares or any other security of any member of the BI Group in relation to the Transportation Business or of the BT Group. No member of the BI Group in relation to the Transportation Business or the BT Group has any obligation, contingent or otherwise, to repurchase, redeem (or establish a sinking fund with respect to redemption) or otherwise acquire any of its shares. There are no shares or other equity or voting interests of any member of the BI Group in relation to the Transportation Business or the BT Group reserved for issuance.

- (c) **Authority; Enforceability.** BT will have the requisite power and authority to enter into and to deliver this Agreement and to consummate the Investment. Each member of the BT Group will, as of the date on which each Reorganization Document and Transaction Document (other than this Agreement) is to be executed and delivered pursuant to the Pre-Closing Reorganization or the terms hereof, as applicable, have the requisite power and authority to execute and deliver each of the Reorganization Documents and Transaction Documents to be so executed and delivered by it, as applicable, and to consummate the Pre-Closing Reorganization. No vote or consent of the holders of any class or series of capital stock or bonds or other debt instruments of the BI Group in relation to the Transportation Business or the BT Group or equity interest of any member of the BI Group in relation to the Transportation Business or the BT Group is or will be necessary to approve this Agreement, any of the Reorganization Documents or Transaction Documents, the Pre-Closing Reorganization or the Investment, other than any such votes or consents which will have been obtained prior to the execution of each relevant document and which are or will be, as the case may be, in full force and effect and irrevocable. This Agreement will have been duly executed and delivered by BT and will be a valid and binding obligation of BT, enforceable against BT in accordance with its terms, except as such enforceability may be limited by the Enforceability Exceptions. Each Reorganization Document and Transaction Document shall be, as of the date on which such Reorganization Document or Transaction Document is to be executed and delivered pursuant to the terms hereof, duly executed and delivered by each of BT and the BT Subsidiaries required to execute and deliver same, as applicable, and, assuming due authorization, execution and delivery of such Reorganization Document and Transaction Document by the other parties thereto, shall be the valid and binding obligation of each of BT and such BT Subsidiaries, as applicable, enforceable against each of BT and such BT Subsidiaries, as applicable, in accordance with its terms, subject to the Enforceability Exceptions.
- (d) **Consents and Approvals.**
  - (i) Other than the Regulatory Approvals, no Governmental Approvals are or will be required to be made or obtained at or prior to the Closing Date by any of BT and the BT Subsidiaries in connection with the execution, delivery and performance of this Agreement, the Reorganization Documents, the Transaction Documents or the consummation of the Pre-Closing Reorganization or the Investment, except for those Governmental Approvals which the

failure to obtain would not be material or would not materially impair or delay the ability of the BI Group to consummate the Pre-Closing Reorganization or the Investment.

- (ii) No member of the BI Group in relation to the Transportation Business or the BT Group has received written notification from any Governmental Authority that such Governmental Authority will oppose the transactions contemplated hereby or refuse to grant or issue its consent or approval, if required, with respect to the Pre-Closing Reorganization or the Investment.
- (e) **No Breach.** Subject to the making of the filings and registrations and receipt of the consents, approvals and waivers referred to in Paragraph 3.3(d)(i), the execution, delivery and performance of this Agreement, the Reorganization Documents and the Transaction Documents (for the purposes of Paragraph 3.3(e)(iii) and 3.3(e)(iv) only, save in relation to the performance of any provision of the Shareholders' Agreement resulting in a change of control of BT), by each of BT and the BT Subsidiaries required to execute, deliver and perform the same, as applicable, and the consummation of the Pre-Closing Reorganization and Investment in accordance with their respective terms and conditions hereof and thereof will not, with or without the giving of notice or passage of time or both, (i) conflict with or violate any provision of the Organizational Documents of BT or any of the BT Material Subsidiaries; (ii) conflict with or violate any Law applicable to any member of the BI Group in relation to the Transportation Business or the BT Group except to the extent that such conflict or violation would not reasonably be expected to limit in any material manner the operations of the BI Group in relation to the Transportation Business or the BT Group as is presently conducted; or (iii) result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate or cancel any material Contract to which any member of the BI Group in relation to the Transportation Business or the BT Group is bound; (iv) give rise to any Encumbrance (other than a Permitted Encumbrance) on or with respect to the Properties or assets relating to the Transportation Business now owned or acquired at or prior to the Closing Date by BT or any of the BT Material Subsidiaries.
- (f) **Outstanding Securities.**
  - (i) At Closing, the share capital of BT will consist of Ordinary Shares and Convertible Shares. As at the close of business on 17 November 2015, one (1) Ordinary Share (the "**Outstanding Securities**") is in issue and constitutes the whole of the issued and allotted or, to the extent appropriate, registered, share capital of BT. All the Outstanding Securities are fully paid or properly credited as fully paid and there are no liabilities to pay any additional contributions on the Outstanding Securities. Immediately prior to Closing, all of the issued Ordinary Shares will be beneficially owned by and registered in the name of Bombardier UK Holding Limited.

- (ii) At Closing, all the securities in each member of the BT Group will be legally and beneficially owned directly or indirectly by BT free from all Encumbrances. All such securities are fully paid and there are no outstanding liabilities to pay any additional contributions on such securities.
- (g) **Offered Convertible Shares.** At Closing, the Offered Convertible Shares will have been allotted for issuance.
- (h) **Holding Corporation.** At Closing, BT will be solely a holding corporation and will not hold any asset, right or interest other than the securities of the BT Subsidiaries.
- (i) **Inter-Company Relations.** Except for the Shared Services Agreements, the Bombardier License, the Primove License and any commitment, obligation or other contractual right provided for in the Shared Services Agreements, at Closing, there will not be any Contract, commitment, obligation or any other contractual right which is binding between or which at any time in the future may become binding between any member of the BT Group and any member of the BI Group.
- (j) **Financial Statements.** The Financial Statements give a true and fair view of the financial position of the Transportation Business as at 31 December 2012, 31 December 2013 and the Last Accounts Date (as applicable) and the financial performance of the Transportation Business for the financial year ending 31 December 2012, 31 December 2013 and the Last Accounts Date (as applicable) and, in each case, except as otherwise noted therein:
  - (i) were prepared in accordance with the requirements of IFRS at the relevant time;
  - (ii) either make appropriate provision for, or appropriate disclosure of, all previous liabilities (whether actual, contingent or disputed and including finance lease commitments and pension liabilities), all outstanding capital commitments and all bad or doubtful debts of the Transportation Business and the BI Group in relation to the Transportation Business, in each case to the extent required in accordance with IFRS on the basis of the accounting policies and practices adopted in the preparation of the Financial Statements;
  - (iii) appropriately reflect all liabilities, obligations and costs incurred and paid in connection with any prior corporate reorganization or business restructuring (excluding the Pre-Closing Reorganization) of the BI Group in relation to the Transportation Business, in each case to the extent required in accordance with IFRS on the basis of the accounting policies and practices adopted in the preparation of the Financial Statements; and
  - (iv) no material change in accounting policies related to work-in-progress has been applied to any period to which the Financial Statements relate.

- (k) **Interim Financial Statements.** The Interim Financial Statements ended on the relevant Interim Accounts Date were properly prepared in all material respects using accounting policies consistent with those adopted in the preparation of the Financial Statements. On the basis of the accounting bases, practices and policies used in their preparation and having regard to the purpose for which they were prepared, the Interim Financial Statements:
- (i) are not misleading in any material respect;
  - (ii) do not materially overstate the value of the assets nor materially under state the liabilities of the BI Group in relation to the Transportation Business as at the relevant Interim Accounts Date; and
  - (iii) do not materially overstate the profits or materially under state the losses of the BI Group in relation to the Transportation Business in respect of the periods to which they relate.
- (l) **Position Since the Last Accounts Date.** Since the Last Accounts Date, except to the extent set forth in the Interim Financial Statements or Notes 2 or 31 of the Financial Statements for the financial year ending at the Last Accounts Date, as required in connection with the Pre-Closing Reorganization, and excluding Permitted Leakage:
- (i) each member of the BI Group in relation to the Transportation Business and the BT Group has carried on business in the Ordinary Course;
  - (ii) there has been no BT Material Adverse Change;
  - (iii) no member of the BI Group in relation to the Transportation Business or the BT Group has made or agreed to make any payment other than in the Ordinary Course;
  - (iv) no member of the BI Group in relation to the Transportation Business or the BT Group has declared, authorised, paid or made, any dividend or other distribution (whether in cash, stock or in kind) (except for any distributions provided for in the Financial Statements) nor has it reduced paid-up share capital, in each case except within the BT Group;
  - (v) no member of the BI Group in relation to the Transportation Business or the BT Group has issued or agreed to issue any share or loan capital or other similar interest, in each case except within the BT Group;
  - (vi) except in the Ordinary Course, no member of the BI Group in relation to the Transportation Business or the BT Group has entered, or agreed to enter, into any contract, liability or commitment (whether in respect of capital expenditure or otherwise) which involved or may involve any material expenditure or obligation;

- (vii) except in the Ordinary Course, no member of the BI Group in relation to the Transportation Business or the BT Group has acquired or disposed of, or agreed to acquire or dispose of, any one or more assets in a single transaction or series of connected transactions, which is or would be material;
  - (viii) except in the Ordinary Course, there has been no material increase or decrease in the levels of debtors or creditors (in each case which are not members of the BI Group) of any member of the BI Group in relation to the Transportation Business or the BT Group;
  - (ix) no debtor of a material debt of any member of the BI Group in relation to the Transportation Business or the BT Group has been released on terms that it pays less than the book value of its debt and no material debt owing to any member of the BI Group in relation to the Transportation Business or the BT Group has been, or has been agreed to be, deferred, subordinated or written off or has proved to any extent irrecoverable;
  - (x) with respect to the BI Group in relation to the Transportation Business or the BT Group there has been no material change in its accounting methods, principles or practices or elections, other than in a manner required by applicable Laws, IFRS or its auditors;
  - (xi) except in the Ordinary Course, no member of the BI Group in relation to the Transportation Business or the BT Group has received any written notice in relation to any delay or postponement in the payment of material accounts payable or any other material liabilities of the BI Group in relation to the Transportation Business or the BT Group;
  - (xii) there has been no material liability, obligation or cost incurred in connection with any corporate reorganization or business restructuring of the BI Group in relation to the Transportation Business or the BT Group; and
  - (xiii) there has been no damage, destruction or loss (whether or not covered by insurance) to the property of the BI Group in relation to the Transportation Business and the BT Group, which individually or in the aggregate is material.
- (m) **Debts owed to the BI Group in relation to the Transportation Business or the BT Group.** Since the Last Accounts Date, except as Disclosed and excluding Permitted Leakage, no member of the BI Group in relation to the Transportation Business and no member of the BT Group (i) has lent any money to any person (other than a member of the BT Group) in excess of [REDACTED] in a single transaction or [REDACTED] in aggregate which is due and payable and has not been repaid or (ii) is the creditor of any debt for borrowed money in excess of [REDACTED] in a single transaction or [REDACTED] in aggregate which is due and payable to a person other than a member of the BT Group.

Redacted  
information  
with respect  
to specific  
amounts

- (n) **Debts.** For the purposes of this Warranty, “**material Financial Debt**” or “**material Guarantee**” means Financial Debt or Guarantee of more than €[REDACTED] in respect of a single agreement.

Redacted  
information  
with respect  
to specific  
amounts

- (i) Except as Disclosed, neither the BI Group in relation to the Transportation Business nor the BT Group has entered into any Contract as debtor of material Financial Debt or material Guarantees other than Inter-Company Non-Trading Payables, in each case which has not been repaid or discharged.
- (ii) No member of the BI Group in relation to the Transportation Business or the BT Group has received since the Last Accounts Date any written notice to repay any material Financial Debt which is repayable on demand or to make a payment (including by way of provision of cash collateral) in respect of any material Guarantee.
- (iii) No material Financial Debt of any member of the BI Group in relation to the Transportation Business or of any member of the BT Group has become due and payable, or capable of being declared due and payable, in each case due to a default in respect thereof or mandatory prepayment or similar event, before its stated maturity and no payment (including by way of provision of cash collateral) in respect of any material Guarantee has become due and payable or capable of being declared due and payable in each case due to a default in respect of the underlying obligation and neither the BI Group in relation to the Transportation Business nor the BT Group have received (x) a notice of default in respect of material Financial Debt or material Guarantee (or any facility pursuant to which any Guarantee is issued); or (y) a demand or other notice requiring any material Financial Debt to be paid or repaid before its stated maturity or any payment (including by way of provision of cash collateral) to be made in respect of any material Guarantee, in each case due to a default in respect of such material Financial Debt.
- (iv) No event of default or any other event or, to the Knowledge of BI and/or BT, circumstance, which would entitle any person to terminate, accelerate or call for early repayment of any material Financial Debt or terminate, accelerate or call for any payment (including by way of provision of cash collateral) in respect of any material Guarantee of any member of the BI Group relating to the Transportation Business or the BT Group or to enforce any security given by the BI Group or the BT Group (or, in either case, any event or circumstance which with the giving of notice or the expiry of a grace period, would constitute such an event or circumstance) has occurred.

(v) No Encumbrances (other than Permitted Encumbrances) have been granted over any member of the BI Group in relation to the Transportation Business or of the BT Group or any of their respective assets, in each case which is still in force.

(vi) As at October 31, 2015, BI Group in relation to the Transportation Business and the BT Group has no adverse marked-to-market position under any derivatives instruments in excess of [REDACTED] in respect of a single agreement and [REDACTED] in the aggregate on a net basis.

Redacted information with respect to specific amounts

(o) **Licenses.** The BI Group in relation to the Transportation Business and the BT Group, have obtained all material licenses, permissions, authorizations (public or private) and consents, which, if not obtained, would have materially and adversely affected the BI Group in relation to the Transportation Business and the BT Group's ability to carry on its business in the Ordinary Course required for carrying on the Transportation Business effectively in the places and in the manner in which it is carried on and in accordance with all applicable laws and regulations (collectively, the "**Approvals**"). These Approvals are in full force and effect, and have been complied with in all material respects. To the Knowledge of BI and/or BT, there are no circumstances which indicate that any Approval will or is likely to be revoked or not renewed, in whole or in part, in the Ordinary Course or as a result of the Investment or any of the Transaction Documents.

(p) **Compliance with Laws.** Each member of the BI Group in relation to the Transportation Business and each BT Material Subsidiary has in all material respects conducted its business and corporate affairs in accordance with its memorandum and articles of association, by-laws or other equivalent constitutional documents and each member of the BI Group in relation to the Transportation Business and the BT Group has in all material respects conducted its business and corporate affairs in accordance with all applicable laws and regulations. To the Knowledge of BI and/or BT, the BI Group in relation to the Transportation Business and the BT Group is not in material default of any statute, regulation, order, decree or judgment of any court or any governmental or regulatory authority in any jurisdiction.

(q) **Competition and Fair Trading Laws.**

In each case in any material respects:

(i) no member of the BI Group in relation to the Transportation Business and no member of the BT Group is a party to any agreement, arrangement, concerted practice or course of conduct which: (a) falls within Article 101 and/or Article 102 of the Treaty on the Functioning of the European Union; (b) falls within Article 53 and/or Article 54 of the Agreement on the European Economic Area; (c) falls within Part VI or Part VIII of the *Canadian Competition Act*; or (d) otherwise infringes the competition legislation or practice of any jurisdiction.



- (ii) no member of the BI Group in relation to the Transportation Business and no member of the BT Group has received, in the past five (5) years, any process or other written notice or communication threatening any action or proceedings, by or on behalf of any Governmental Authority having jurisdiction in competition matters, or any third party, in relation to: (a) any agreement, arrangement, concerted practice or course of conduct to which any member of the BI Group or the BT Group is, or is alleged to be, a party; (b) any action, conduct, practice or behavior of any member of the BI Group or the BT Group; or (c) any other discharge of that Governmental Authority's regulatory functions.
- (iii) no member of the BI Group in relation to the Transportation Business and no member of the BT Group are subject to any order, judgment, decision or direction given by any Governmental Authority, or is party to any written undertaking or assurance given to any such Governmental Authority in relation to competition matters, which is still in force.
- (iv) to the Knowledge of BI and/or BT, no director, key manager or employee of any member of the BI Group in relation to the Transportation Business or of any member of the BT Group: (x) has received, in the past five (5) years, any process or other written notice or communication threatening any threat of action or proceedings, by or on behalf of any Governmental Authority having jurisdiction in competition matters in relation to the enforcement of any personal breach of any competition legislation; or (y) is subject to any order, judgment, decision or direction given by any Governmental Authority, or is party to any written undertaking or assurance given to such Governmental Authority, in relation to competition matters which is still in force.
- (r) **State aid.** No member of the BI Group in relation to the Transportation Business or the BT Group has received any aid within the meaning of Articles 107 to 109 of the Treaty on the Functioning of the European Union in a material amount and which has not been repaid other than in accordance with applicable laws, nor, to the Knowledge of BT and/or BI, is any member of the BI Group in relation to the Transportation Business or the BT Group proposing to receive such aid.
- (s) **Canada Transportation Act.** No member of the BI Group in relation to the Transportation Business or the BT Group constitutes a transportation undertaking within the meaning of section 53.1 of the *Canada Transportation Act*, as amended.
- (t) **Possession and third party facilities.** All of the material assets of the Transportation Business are in the possession or under the control of the BI Group in relation to the Transportation Business and the BT Group (or will be in the possession or under the control of the BT Group following completion of the Pre-Closing Reorganization) other than assets in the possession of: (i) the BI Group in relation to the Transportation Business; (ii) the BT Group's customers or suppliers in the Ordinary Course; or (iii) joint ventures or consortiums involving any member of the BT Group in

the Ordinary Course. To BI's and/or BT's Knowledge, no Governmental Authority has sought to expropriate any such assets.

(u) **Real Estate.**

- (i) The Properties comprise all the land and buildings owned, controlled, occupied or used by the BI Group in relation to the Transportation Business or the BT Group which are material to the operation of the Transportation Business.
- (ii) To the Knowledge of BI and/or BT, the Properties are not subject to any restriction or limitation that would reasonably be expected to materially adversely affect the ability of the BT Group to continue to carry on the Transportation Business from the relevant Property after Closing in the Ordinary Course.
- (iii) The BI Group has the right to possess each of the material Owned Properties which are required for the operation of the Transportation Business in the Ordinary Course, and following the Pre-Closing Reorganization the BT Group will be in possession of each of the Owned Properties sufficient to enable it to carry on the Transportation Business in all material respects in the Ordinary Course.
- (iv) Neither the BI Group nor the BT Group has received written notice of any expropriation or taking of any part of the Properties by any Governmental Authority, nor, to the Knowledge of BI and/or BT, is any such expropriation or taking threatened or planned against any of the Properties, which, in each case, would materially and adversely affect the ability of the Transportation Business to carry on business in the Ordinary Course.
- (v) The Owned Properties as at the date of this Agreement are legally and beneficially owned by the BI Group and following the Pre-Closing Reorganization will be legally and beneficially owned by the BT Group, in each case with good and valid title, free and clear of all Encumbrances, other than Permitted Encumbrances, in each case except as would not reasonably be expected to materially and adversely affect the ability of the Transportation Business to carry on business in the Ordinary Course.
- (vi) The material leases relating to the Leased Properties are in good standing in all material respects and, to the Knowledge of BI and/or BT, no material default has occurred or is alleged thereunder.
- (vii) To the Knowledge of BI and/or BT, there are no agreements affecting the right, title and interest of the BI Group or the BT Group in and to the Properties that would reasonably be expected to materially and adversely affect the ability of the Transportation Business to carry on in the Ordinary Course.

- (v) **Adequacy of assets.** Other than as contemplated in the Shared Services Agreements, the Bombardier License and the Primove License, the rights, properties and assets of each member of the BI Group in relation to the Transportation Business and the BT Group are (taken together with the facilities and services provided under, and assets to be transferred pursuant to, the Transaction Documents and the other actions that the Subscriber is otherwise obliged to undertake independently pursuant to the Transaction Documents) sufficient for the BT Group to carry on the Transportation Business in all material respects immediately following Closing in the places and substantially in the manner in which it has been carried on by the BI Group for the previous 12 months. Except as contemplated in the Shared Services Agreements, the Bombardier License and Primove License, no member of the BI Group in relation to the Transportation Business or the BT Group depends (or will depend) in any material respect on the use of assets owned, or facilities and services provided, by any other member of the BI Group which will not be transferred to a member of the BT Group pursuant to the Pre-Closing Reorganization or provided to them pursuant to the Transaction Documents. Other than as contemplated in the Primove Transfer Agreement, no material rights, properties or assets of the Transportation Business were transferred out of the BT Group to the BI Group as part of the Pre-Closing Reorganization.
- (w) **Co-mingling and Cash Pooling.** Since the Last Accounts Date no monies of the BI Group in relation to the Transportation Business or the BT Group are co-mingled or cash pooled with any monies of the members of the BI Group who do not comprise the Transportation Business.
- (x) **Insurance.** The BI Group maintains in relation to the Transportation Business insurance of the types and in the amounts that it deemed adequate or required by Governmental Authority for the Transportation Business as such business is currently being conducted. The insurance is in full force and effect and is not void or voidable, all premiums payable to date have been paid and, to BI's and/or BT's Knowledge, there are no circumstances which would lead to the insurers avoiding any material liability under them. Closing will not have the effect of terminating, or entitling any insurer to terminate, cover under any such insurance, in all material respects. No member of the BI Group in relation to the Transportation Business and the BT Group has any material outstanding claim under any such insurance.
- (y) **Material contracts.** Except as Disclosed, no member of the BI Group in relation to the Transportation Business or the BT Group is a party to any material Contract (other than the Shared Services Agreements, the Bombardier License or the Primove License):
  - (i) under which, by virtue of the Investment, (a) any other party shall be relieved of any material obligation or become entitled to exercise any material right (including any termination right or any pre-emption right or other option); (b) any member of the BI Group in relation to the Transportation Business or the BT Group shall be in material default or lose any material benefit, right or license which it currently enjoys; or (c) a material liability or material

obligation of the BI Group in relation to the Transportation Business or the BT Group shall be created or increased, in each case, which is material;

- (ii) which is not in the Ordinary Course or not on arm's length terms;
  - (iii) which establishes any material joint venture, consortium, a partnership at law or profit (or loss) sharing agreement or arrangement with a third party;
  - (iv) under which any member of the BI Group in relation to the Transportation Business or any member of the BT Group has sold or disposed of any company or business where it remains subject to any material liability (whether contingent or otherwise); or
  - (v) which is a bid, tender, proposal or offer which, if accepted, would result in any member of the BI Group in relation to the Transportation Business or the BT Group being committed to any agreement or arrangement of a kind described in Paragraphs 3.3(y)(i) to 3.3(y)(iv) above other than in the Ordinary Course.
- (z) **Defaults.** No member of the BI Group in relation to the Transportation Business or the BT Group is in material default under any material Contract to which it is a party which would be reasonably likely to lead to the termination of such Contract and, to the Knowledge of BI and/or BT, no party with whom any member of the BI Group in relation to the Transportation Business or any member of the BT Group has entered into any material Contract is in material default under it which would be reasonably likely to lead to the termination of such Contract.
- (aa) **Trading relationships.** During the 12 months preceding the date of this Agreement no Material Customer or Material Vendor (and as defined in Paragraph 3.3(gg) below) has terminated their relationship with any member of the BI Group in relation to the Transportation Business or any member of the BT Group or has indicated in writing an intention to do so, either in whole or in a substantial manner. To the Knowledge of BI and/or BT, no such Material Customer or Material Vendor has indicated in writing its intention to cease to deal with, or to substantially reduce its dealings with, the BI Group in relation to the Transportation Business or the BT Group where such cessation or reduction would be material to the Transportation Business.
- (bb) **Principal suppliers and customers.**
- (i) Schedule 3.3(bb) to the Disclosure Letter contains a true and complete list of the top 20 external suppliers (the "**Material Vendors**") of products or services (based on dollar volume of purchases) to BI Group in relation to the Transportation Business in 2014, taking into account the full-year volume for the year ended on the Last Accounts Date. All Material Vendors are arm's length to each member of the BI Group in relation to the Transportation Business and each member of the BT Group.

- (ii) Schedule 3.3(bb) to the Disclosure Letter sets forth a true and complete list of the top 20 external customers (the “**Material Customers**”) of BI Group in relation to the Transportation Business in 2014, taking into account the full-year revenue for the year ended on the Last Accounts Date. All Material Customers are arm’s length to the BI Group in relation to the Transportation Business and BT Group.
- (cc) **Litigation.** Except as Disclosed or as claimant in the collection of non-material debts arising in the Ordinary Course, no member of the BI Group in relation to the Transportation Business or the BT Group is a claimant or defendant in or otherwise a party to any material litigation, arbitration or administrative proceedings before any Governmental Authority (including any proceedings before any tribunal or in relation to publicly awarded contracts), which are in progress or pending and which concern it or any of its material assets (“**Material Proceedings**”). Except as Disclosed or with respect to claims relating to the performance in the Ordinary Course of Contracts or projects in progress, no written notices have been received by any member of the BI Group or any member of the BT Group which are likely to give rise to any Material Proceeding.
- (dd) **Investigations.** To the Knowledge of BI and/or BT, no material governmental, administrative, regulatory or other official investigation or inquiry concerning the BI Group in relation to the Transportation Business or the BT Group is in progress or pending other than tax audits occurring in the Ordinary Course.
- (ee) **Withdrawal.** Neither the BI Group in relation to the Transportation Business nor the BT Group has carried out or conducted any mandatory withdrawal of a fleet from service in the last five years and, to the Knowledge of BI and/or BT, there are no circumstances which are reasonably likely to give rise to any such withdrawal.
- (ff) **Winding up, administration and receivership.** No order has been made, petition presented or meeting convened for the winding up of any of BI, BT or any BT Material Subsidiary, or for the appointment of any provisional liquidator or in relation to any other process whereby the business is terminated and the assets of the company concerned are distributed amongst the creditors and/or shareholders or other contributors, and there are no cases or proceedings under any applicable insolvency, reorganization or similar laws in any relevant jurisdiction, and no events have occurred which, under applicable laws, would be reasonably likely to justify any such cases or proceedings. To the Knowledge of BI and/or BT, no person has taken any step, legal proceeding or other procedure with a view to the appointment of an administrator, whether out of court or otherwise, in relation to any of BI, BT or any BT Material Subsidiary, and no receiver (including any administrative receiver) has been appointed in respect of the whole or any material part of any of the property, assets and/or undertaking of the BI Group in relation to the Transportation Business or the BT Group nor has any such order been made (including, in any relevant jurisdiction, any other order by which, during the period it is in force, the affairs, business and assets of the company concerned are managed by a person

appointed for the purpose by a court, governmental agency or similar body).

(gg) **Intellectual Property.**

- (i) Schedule 3.3(gg) to the Disclosure Letter contains a complete and accurate list of registrations and applications for the material Owned IP. All application or renewal fees (as applicable) have been paid in respect of applications and registrations for the material Owned IP and, to the Knowledge of BI and/or BT, the material Owned IP is valid.
- (ii) Subject to the terms of Paragraphs (viii) and (ix), the members of the BI Group transferring to the BT Group as part of the Pre-Closing Reorganization and the BT Group are the sole legal and beneficial owners of all of the rights and interests in, have validly licensed to them, or will have validly licensed to them under the Bombardier License or the Shared Services Agreement, all of the material Transportation Business IP.
- (iii) Subject to the terms of Paragraphs (viii) and (ix), the Owned IP, the Intellectual Property Rights that are licensed to each member of the BT Group and each member of the BI Group transferring to the BT Group as part of the Pre-Closing Reorganization by any other member of the BI Group or any third party, and the Intellectual Property Rights to be licensed to the BT Group under the Shared Services Agreement, the Bombardier License and the Primove License collectively comprise all of the Intellectual Property Rights that are required to carry on the Transportation Business in all material respects after Closing in the places and substantially in the manner in which it has been carried on by the BI Group for the 12 months prior to Closing.
- (iv) Subject to the terms of Paragraphs (viii) and (ix), any use:
  - (a) by any member of the BI Group in relation to the Transportation Business and the BT Group of material Intellectual Property Rights owned by any other member of the BI Group that is not transferring to the BT Group as part of the Pre-Closing Reorganization or any third party is pursuant to a written license agreement entered into with the relevant member of the BI Group or any third party, or will be specifically provided for, by way of a license or the provision of a service, in the Shared Services Agreement or in the Bombardier License; and
  - (b) by any member of the BI Group that is not transferring to the BT Group as part of the Pre-Closing Reorganization or any third party of material Owned IP is pursuant to a written license agreement entered into with the relevant member of the BI Group or any third party, or will be specifically provided for, by way of a license or the provision of a service, in the Shared Services Agreement.

- (v) All of the existing licenses described in Paragraph 3.3(gg)(iv)(a) and (b):
  - (a) have been Disclosed to the Subscriber; and
  - (b) are in force and, to the Knowledge of BI and/or BT, none of the parties to them is in default and no event has occurred or circumstance exists that may enable the relevant member of the BI Group or third party to terminate any of them, except as would not reasonably be expected to materially and adversely affect the Transportation Business' ability to carry on its business in the Ordinary Course.
- (vi) No disputes are in progress or pending or, to the Knowledge of BI and/or BT, threatened against any member of the BI Group in relation to the Transportation Business or the BT Group, in connection with any of the licenses described in Paragraph 3.3(gg)(iv)(a) and (b), which, if occurred, would reasonably be expected to adversely affect the Transportation Business' ability to carry on its business in the Ordinary Course.
- (vii) There are no claims in progress or pending or, to the Knowledge of BI and/or BT, threatened against any member of the BI Group in relation to the Transportation Business or the BT Group relating to any material Owned IP and, to the Knowledge of BI and/or BT, there is no valid basis for any such claim, except as would not reasonably be expected to materially and adversely affect the Transportation Business' ability to carry on its business in the Ordinary Course.
- (viii) No member of the BI Group in relation to the Transportation Business or the BT Group has received, in the last 2 years, written notice of actual or alleged infringement of the Intellectual Property Rights.
- (ix) To the Knowledge of BI and/or BT, none of the operations of any member of the BI Group in relation to the Transportation Business or the BT Group infringe, Intellectual Property Rights of any third party and no third party is infringing any material Owned IP, except, in each case, as would not reasonably be expected to materially and adversely affect the Transportation Business' ability to carry on its business in the Ordinary Course.
- (x) The material Owned IP is not subject to any Encumbrances (other than Permitted Encumbrances).
- (xi) The BI Group in relation to the Transportation Business and the BT Group have managed the confidentiality aspects of its material Owned IP in accordance with commercially reasonable business practices.

(hh) **Information technology.**

Except as Disclosed or contemplated in the Shared Services Agreement:

- (i) All of the material IT Systems are owned by, or validly licensed, leased or supplied under IT Contracts to, the BI Group in relation to the Transportation Business and the BT Group.
- (ii) All of the material IT Systems are maintained and supported by a member of the BT Group or BI Group or by a third party under an IT Contract.
- (iii) Copies of all material IT Contracts have been Disclosed.
- (iv) The ownership, benefit or right to use the material IT Systems will not be lost or rendered liable to termination by virtue of the Investment, the conversion of the Convertible Shares into Ordinary Shares in accordance with their terms or the performance of this Agreement.
- (v) In the last 12 months, the material IT Systems have not failed to any material extent and the data that they possess has not been corrupted or compromised to any material extent. The BT Group and the BI Group in relation to the Transportation Business have implemented commercially reasonable (a) measures designed to prevent the material IT Systems from being infected by viruses, spyware, malware and from unauthorized access and (b) back-up systems (which are in operation) designed to ensure that in the event of any failure of the material IT Systems no material data will be irrevocably lost.
- (vi) Each member of the BI Group in relation to the Transportation Business and the BT Group has adopted a BC and DR Plan, the details of which have been Disclosed to the Subscriber.
- (vii) The material IT Systems that are (a) owned by the members of the BI Group transferring to the BT Group as part of the Pre-Closing Reorganization and the BT Group; (b) licensed, leased or supplied to the members of the BI Group transferring to the BT Group as part of the Pre-Closing Reorganization and the BT Group under the IT Contracts, or (c) to be made available to the members of the BI Group transferring to the BT Group as part of the Pre-Closing Reorganization and the BT Group under the Shared Services Agreements, comprise all the material IT Systems that are required to carry on the Transportation Business in the Ordinary Course after Closing as it was carried on at the date of this Agreement.

(ii) **Shared contract and services.** Except as Disclosed or as contemplated in the Shared Services Agreements and the Bombardier License:

- (i) no member of the BI Group that is not transferring to the BT Group as part of the Pre-Closing Reorganization is party to an agreement



or arrangement with a third party under which goods and/or services are provided in respect of the Transportation Business;

- (ii) no member of the BI Group transferring to the BT Group as part of the Pre-Closing Reorganization or the BT Group is party to an agreement or arrangement with a third party under which material goods and/or services are provided in respect of any business of the BI Group which is not transferring to the BT Group as part of the Pre-Closing Reorganization; and
- (iii) no member of the BI Group that is not transferring to the BT Group as part of the Pre-Closing Reorganization is party to an agreement or arrangement under which any material goods and/or services are provided by that member to any member of the BI Group transferring to the BT Group as part of the Pre-Closing Reorganization or the BT Group.

(jj) **Labour, Employment, Pensions and Benefit Plans.**

- (i) Save as required under applicable Laws, no member of the BI Group or the BT Group is under any obligation to inform or consult with, or to obtain the consent of, any works council, trade union or other body representing employees (or any group of employees) or the employees themselves in relation to the implementation of the Transaction Documents, the Pre-Closing Reorganization or the Investment.
- (ii) Each member of the BI Group in relation to the Transportation Business and each member of the BT Group has in relation to its employees complied in all material respects with all applicable laws and regulations, agreements with employee representatives and terms and conditions of employment.
- (iii) No member of the BI Group in relation to the Transportation Business or the BT Group is bound by or a party to, in each case either individually or collectively, any binding agreement with any trade union, works council, or any other body representing its employees (or any group of them), which is material to the BI Group in relation to the Transportation Business or the BT Group. All members of the BI Group in relation to the Transportation Business and BT Group have complied in all material respects with the terms of each such agreement or other arrangement.
- (iv) No member of the BI Group in relation to the Transportation Business or of the BT Group is involved, or has been involved at any time in the past 3 years, in any material industrial action, strike, lock-out or dispute with any works council, trade union or other body representing employees (or any group of employees) or any material number of employees themselves, and to the Knowledge of BI and/or BT there is no such dispute pending or threatened.

- (v) No member of the BT Group or the BI Group in relation to the Transportation Business is currently participating, or has at any time in the past 6 years, participated, in any US/UK BI Group Pension Plan and there is no member of the BI Group (excluding any member of the BI Group in relation to the Transportation Business) which is currently participating, or has at any time participated in the past 6 years, in any BT Pension Plan.
- (vi) There are no Pension Plans which are maintained or otherwise contributed to, or are required to be contributed to, by or on behalf of any member of the BI Group in relation to the Transportation Business or the BT Group ("**BT Pension Plans**"), other than those BT Pension Plans Disclosed. Other than those BT Pension Plans Disclosed as defined benefit plans or as having a defined benefit provision, all BT Pension Plans provide benefits on a defined contribution basis only.
- (vii) The most recent funding and asset valuations (including the most recent valuations filed with the applicable Governmental Authority) in relation to the BT Pension Plans have been Disclosed. All material details and governing documents in relation to the BT Pension Plans representing in the aggregate more than 90% of the defined benefit obligations of the BI Group in relation to the Transportation Business or the BT Group have been Disclosed. To the Knowledge of BI and/or BT, the BT Pension Plans have at all times complied and been administered in all material respects in accordance with their governing documents and all applicable Laws and regulations.
- (viii) All material amounts due and payable by the BI Group or the BT Group in relation to the BT Pension Plans, including, for the avoidance of doubt, contributions or special payments required to satisfy minimum funding requirements, assessments and levies due to Governmental Authorities, and contributions to statutory insolvency protection systems, have been or will be duly paid in full on the due dates for such payments.
- (ix) Other than claims for benefits in the Ordinary Course, to the Knowledge of BI and/or BT, there are no material Claims outstanding or pending or threatened against, and no audits, investigations, examinations, determinations or notices of intended decision by a Governmental Authority in progress in relation to, any BT Pension Plan or the trustees, managers, administrators of any BT Pension Plan or against the assets of any BT Pension Plan in respect of any act, event, omission or other matter arising out of or in connection with any BT Pension Plan and, to the Knowledge of BI and/or BT, there are no circumstances which would reasonably be expected to give rise to any such Claims.
- (x) Schedule 3.3(jj) to the Disclosure Letter contains a true and complete copy of the report entitled "[REDACTED]" as for Fiscal Year Ending December 31, 2014

Redacted  
information  
with respect  
to report  
name and  
reference

and, to the Knowledge of BT and/or BI, such report contains the disclosure information required under International Accounting Standard 19, rev. 2011 (IAS 19) for the fiscal year ending on December 31, 2014.

- (xi) Save where required by Law, no promises or commitments have been made by the BI Group in relation to the Transportation Business and/or BT Group to participants under the BT Pension Plans concerning the continuation of benefits or exercise of any discretion or power to pay benefits under the BT Pension Plans or the payment of benefits other than those provided under the governing documents of the BT Pension Plans, and no agreement has been made to establish any other pension, retirement or supplementary retirement plan, program or scheme.
- (xii) The BT Pension Plans have all material approvals, certificates, notifications, registrations, recognitions or authorities (including for the purpose of the Tax regime under which they operate) from, and have made all filings and registrations with, any Governmental Authority which are necessary for the operation of those plans or for advantageous or favourable tax treatment applicable to pension plan regimes in the relevant jurisdictions (if applicable) and, to the Knowledge of BI and/or BT, there is no reason why any such approval, certification, notification, registration, recognition or authority may be withdrawn, cancelled, cease to apply or be placed in a revocable position.
- (xiii) None of the transactions set out in this Agreement would reasonably be expected to, in any material respects, result in any increase in benefits or accelerate the vesting, funding or payment of any amount to become payable under the Plans, any Plan being terminated and/or wound up, any material increase in the liabilities of any member of the BI Group in relation to the Transportation Business or the BT Group in respect of such Plans, or limitation on the ability to amend or terminate any Plans. Except as Disclosed, no amount that could be received (whether in cash or property or the vesting of property), as a result of the consummation of the transactions contemplated by this Agreement by any employee or other service provider of any member of the BI Group in relation to the Transportation Business or the BT Group would be characterized as an "excess parachute payment" within the meaning of Sections 280G and 4999 of the U.S. Internal Revenue Code.
- (xiv) There have been and are no intercompany agreements in place under which: (a) any member of the BI Group in relation to the Transportation Business or the BT Group is required to contribute to, pay, indemnify or otherwise meet any Claims or liabilities of any Pension Plan of any other BI subsidiary (excluding any member of the BI Group in relation to the Transportation Business or the BT Group); or (b) any member of the BI Group (other than the BT Group) is required to contribute to, pay, indemnify or otherwise meet any Claims or liabilities of any BT Pension Plan.

- (xv) In respect of any member of the BI Group in relation to the Transportation Business or any member of the BT Group, there are no open applications to any pension standards regulator for approval to transfer assets and liabilities to or from any BT Pension Plan registered under the pension standards Laws of Canada or a province thereof.
- (xvi) With respect to any BT Pension Plan subject to Title IV of the U.S. Employee Retirement Income Security Act to which any member of the BI Group in relation to the Transportation Business or the BT Group made, or was required to make, contributions during the past six (6) years: (a) there does not now exist, nor, to the Knowledge of BI and/or BT, do any circumstances exist that would reasonably be expected to result in any accumulated funding deficiency within the meaning of Section 412 of the U.S. Internal Revenue Code or Section 302 of the U.S. Employee Retirement Income Security Act, or any liability under Section 4971 of the U.S. Internal Revenue Code; (b) no reportable event within the meaning of Section 4043(c) of the U.S. Employee Retirement Income Security Act for which the 30-day notice requirement has not been waived has occurred with respect to a UK/US BI Group Pension Plan, and the consummation of the transactions contemplated by this Agreement will not result in the occurrence of any such reportable event with respect to any such plan; (c) all premiums to the Pension Benefit Guaranty Corporation have been timely paid in full when due; (d) no liability or contingent liability under Title IV of the U.S. Employee Retirement Income Security Act has been or is reasonably expected to be incurred by any member of the BI Group (other than liability to timely pay premiums to the Pension Benefit Guaranty Corporation); and (e) the Pension Benefit Guaranty Corporation has not instituted proceedings to terminate any UK/US BI Group Pension Plan and, to the Knowledge of BI and/or BT, no condition exists that would reasonably be expected to constitute grounds under Section 4042 of the U.S. Employee Retirement Income Security Act for the termination of, or the appointment of a trustee to administer, such plan.
- (kk) **Data protection.** Each member of the BI Group in relation to the Transportation Business or the BT Group has at all times in the last 12 months complied, in all material respects with all applicable data protection laws, and no member of the BI Group in relation to the Transportation Business or the BT Group has received any written notice that they have not complied with any of them in any material respects.
- (ll) **Environment.**
  - (i) Each member of the BI Group in relation to the Transportation Business and the BT Group are in all material respects in compliance with Environmental Laws.
  - (ii) No claims, proceedings, actions, demands or notices have been received by or filed against the BI Group in relation to the

Transportation Business or the BT Group alleging or specifying any material non-compliance with or material liability under any Environmental Laws and, to BI's and/or BT's Knowledge, no such claims, proceedings, actions, demands or notices have been threatened nor are there circumstances likely to give rise to the reception or filing of same.

- (iii) All material Environmental Consents for any use of the Properties or any operations or activities of or permitted by any member of the BI Group in relation to the Transportation Business or the BT Group have been obtained, are being complied with in all material respects, are valid and are in full force and effect and, to BI's and/or BT's Knowledge, there are no facts or circumstances which may result in any such Environmental Consent being terminated, revoked or suspended.
- (iv) To BI's and/or BT's Knowledge, no member of the BI Group in relation to the Transportation Business nor of the BT Group is or has been a party to or otherwise accepted the burden of or has any material obligations or liabilities under or arising from any indemnity, warranty or other contractual provision or arrangement concerning liabilities, losses, damages, fines, penalties, charges, costs or expenses relating to the Environment which are material.
- (mm) **Brokers or Finders.** Except as Disclosed, no broker or finder has acted directly or indirectly on behalf of any member of the BI Group in relation to the Transportation Business or the BT Group, nor has any member of the BI Group in relation to the Transportation Business nor has the BT Group incurred or will incur any obligation to pay any brokerage or finder's fee or other commission in connection with the Investment.
- (nn) **Anti-Bribery and Corruption.** Neither the BI Group in relation to the Transportation Business nor the BT Group, nor to the Knowledge of BI and/or BT, any of the BI Group in relation to the Transportation Business or the BT Group's directors, officers, employees, authorized agents or authorized representatives have, and no such individual is currently being investigated by any member of the BI Group for having, on behalf of the BT Group or the BI Group in connection with the Transportation Business, directly or indirectly, (i) offered, promised, made or authorized, or agreed to offer, promise, make or authorize, any unlawful contribution, expense, payment or gift of funds, property or anything of value to or for the use or benefit of any Government Official for the purpose of securing action or inaction or a decision of a Governmental Authority or a Government Official, influence over such action, inaction or decision, or any improper advantage; or (ii) taken any action prohibited by the *Corruption of Foreign Public Officials Act* (Canada), the *Criminal Code* (Canada) where such action is related to corruption, the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) or the *Foreign Corrupt Practices Act of 1977*, as amended, *Title 18 United States Code Section 1956 and 1957* (U.S.) or the *Bribery Act 2010* (U.K.) or the rules and regulations promulgated thereunder or under any other legislation of any relevant jurisdiction covering the same subject matter legally binding upon the BI Group in relation to the Transportation Business or the BT Group, or their

respective operations, and the BI Group in relation to the Transportation Business and the BT Group have instituted and maintain policies and procedures designed to ensure continued compliance with such legislation. Over the past 5 years there has been no material suit, action or third party investigation for which any member of the BT Group received written notice, litigation or proceeding by or before any Governmental Authority involving the BI Group in relation to the Transportation Business or the BT Group or any of their directors, officers, employees, agents or representatives with respect to such legislation, or to the Knowledge of BT, pending or threatened. Neither the BI Group in relation to the Transportation Business nor the BT Group is ineligible to tender for any material contract or business with, or be awarded any contract or business by, such Governmental Authority, or to tender for or perform any sub-contracting work under a material contract with such Governmental Authority.

(oo) **Economic Sanctions and Export Controls.** The BI Group in relation to the Transportation Business and the BT Group are, and for the past 5 years have been, in compliance with economic sanctions, anti-terrorism, customs and export and technology transfer control laws, including those contained in the *Special Economic Measures Act* (Canada), the *United Nations Act* (Canada), the *Freezing Assets of Corrupt Foreign Officials Act*, the *Criminal Code* (Canada), *Export and Import Permits Act* (Canada), the *Defence Production Act* (Canada) and the *Customs Act* (Canada), including any regulations or orders issued under the foregoing, and similar applicable economic sanctions, anti-terrorism, customs and export and technology transfer control laws of other jurisdictions legally binding upon the BI Group in relation to the Transportation Business or the BT Group. The BI Group in relation to the Transportation Business and the BT Group have instituted and maintain policies and procedures designed to ensure continued compliance with such legislation. Over the past 5 years there has been no material suit, action, third party investigation for which any member of the BT Group received written notice, litigation or proceeding by or before any Governmental Authority involving the BI Group in relation to the Transportation Business or the BT Group or, to the Knowledge of BT, any of their directors, officers, employees, agents or representatives with respect to such legislation.

(pp) **BT Obligations.** All agreements that control or purport to control in any material respects the BI Group in relation to the Transportation Business or the BT Group or impose or purport to impose material obligations on the BI Group in relation to the Transportation Business or the BT Group with which the BI Group in relation to the Transportation Business or the BT Group, in each case, which is required to comply under the Shared Services Agreements or another agreement with the BI Group have been Disclosed.

(qq) **Tax Warranties.**

Except as Disclosed (it being acknowledged, for the avoidance of doubt, that no matter shall be treated as Disclosed against the BT Tax Warranty in Paragraph 3.3(qq)(i)):

- (i) All material liabilities, whether actual, deferred, contingent or disputed, of members of the BI Group in relation to the Transportation Business and members of the BT Group, as determined on the combined basis used for the purposes of preparing the Financial Statements of the Transportation Business for the year ended 31 December 2014, for Tax in respect of any period ending on or before the Last Accounts Date or arising in respect of an Event occurring or deemed to occur on or before the Last Accounts Date are fully provided for or (as appropriate) disclosed in the Financial Statements for the year ended 31 December 2014, and the amount of any Tax asset shown in the Financial Statements for the year ended 31 December 2014 does not exceed the amount actually available. All other Tax Warranties set out in this Paragraph 3.3(qq) are made without prejudice to the generality of this clause (i).
- (ii) Since the Last Accounts Date, except as contemplated by the Pre-Closing Reorganization Steps Plan, no member of the BI Group in relation to the Transportation Business and no member of the BT Group has been involved in any transaction which has given or may give rise to a material liability to Tax on any member of the BI Group in relation to the Transportation Business or any member of the BT Group (or would have given or might reasonably give rise to such a liability but for the availability of any Relief) other than Tax in respect of normal trading income or receipts of the relevant member of the BI Group in relation to the Transportation Business or member of the BT Group arising from transactions entered into by it in the Ordinary Course.
- (iii) Each member of the BI Group in relation to the Transportation Business and each member of the BT Group has duly, and within any appropriate time limits, made all material returns, given all material notices and supplied all material other information required to be supplied to all relevant Tax Authorities and has maintained all material records required to be maintained for Tax purposes. All such information was and remains complete and accurate in all material respects and all such returns and notices were and remain complete and accurate in all material respects and were made on the proper basis, and do not, and to the Tax Knowledge of BI and/or BT are not likely to, reveal any transactions which may be the subject of any material dispute with, or any material enquiry raised by, any Tax Authority.
- (iv) Without prejudice to any other Tax Warranty set out in this Paragraph 3.3(qq), all material amounts of Tax which have fallen due for payment by any member of the BI Group in relation to the Transportation Business or by any member of the BT Group prior to the date of this Agreement have been paid in full.
- (v) No member of the BI Group in relation to the Transportation Business and no member of the BT Group is involved in any current material dispute with any Tax Authority or is or has in the last four years been the subject of any investigation, enquiry audit

or visit by any Tax Authority that, to the Tax Knowledge of BI and/or BT, might result in a material adverse effect on any financial statements of the BT Group or the BI Group in relation to the Transportation Business prepared in accordance with the same principles as the Financial Statements. To the Tax Knowledge of BI and/or BT, in respect of each member of the BI Group in relation to the Transportation Business and of each member of the BT Group there is no planned investigation, enquiry audit or visit by any Tax Authority that might result in a material adverse effect on any financial statements of the BT Group or the BI Group in relation to the Transportation Business prepared in accordance with the same principles as the Financial Statements.

- (vi) Within the past four years, no member of the BI Group in relation to the Transportation Business and no member of the BT Group has paid or become liable to pay to any Tax Authority any material penalty, fine, surcharge or interest in respect of Tax. No member of the BI Group in relation to the Transportation Business and no member of the BT Group has within the past four years been required to provide any security in respect of any amount of Tax and no asset of a member of the BI Group in relation to the Transportation Business or a member of the BT Group is subject to any charge or power of sale in favour of any Tax Authority.
- (vii) Within the past four years, no transaction in respect of which any consent, ruling, confirmation or clearance (each a **"Ruling"**) was required or sought from any Tax Authority has been entered into or carried out by any member of the BI Group in relation to the Transportation Business or any member of the BT Group without such Ruling having first been properly and validly obtained for the transaction carried out. Any transaction for which such Ruling was obtained has been carried out only in accordance with the terms of such Ruling.
- (viii) No member of the BI Group in relation to the Transportation Business and no member of the BT Group has undertaken any transaction or series of transactions requiring notification or disclosure to any Tax Authority under anti-avoidance legislation or infringing any code of practice in relation to taxation.
- (ix) No Tax Authority has operated or agreed to operate any special arrangement (being an arrangement which is not based on relevant legislation or any published practice) or other concessionary treatment which is material in relation to the affairs of any member of the BI Group in relation to the Transportation Business or the affairs of any member of the BT Group.
- (x) Each member of the BI Group in relation to the Transportation Business and each member of the BT Group has made all material deductions and retentions of or on account of Tax as it was or is obliged to make and all such payments of or on account of Tax as should have been made to any Tax Authority in respect of such deductions or retentions.



- (xi) All material amounts payable to any Tax Authority in respect of any employee (including any Tax deductible from any amounts paid to an employee, and any social security, social fund or similar contributions required to be made in respect of any employee) due and payable by any member of the BI Group in relation to the Transportation Business or member of the BT Group up to the date of this Agreement have been duly paid and each member of the BI Group in relation to the Transportation Business and each member of the BT Group has made all such deductions and retentions as should have been made under applicable laws or regulations.
- (xii) Each member of the BI Group in relation to the Transportation Business and each member of the BT Group is and has at all times been resident in its country of incorporation for Tax purposes and is not and has not at any time been treated as resident in any other jurisdiction for any Tax purpose (including any double taxation arrangement). No member of the BI Group in relation to the Transportation Business and no member of the BT Group is or has in the last four years been subject to Tax in any jurisdiction other than its place of incorporation by virtue of having a permanent establishment or other place of business in that jurisdiction.
- (xiii) No member of the BI Group in relation to the Transportation Business and no member of the BT Group is liable for any Tax as the agent of any other person or business or constitutes a permanent establishment of any other person, business or enterprise (including in each case for the avoidance of doubt any member of the BI Group other than in relation to the Transportation Business) for any Tax purpose.
- (xiv) All material transactions:
  - (a) between members of the BI Group in relation to the Transportation Business or members of the BT Group; or
  - (b) between any member of the BI Group in relation to the Transportation Business or any member of the BT Group and any current or former member of the BI Group other than in relation to the Transportation Business,have been and are on fully arm's length terms. To the Tax Knowledge of BI and/or BT, there are no circumstances which could cause any Tax Authority to make any material adjustment for Tax purposes, or require any such material adjustment to be made, to the terms on which any such transaction is treated as taking place, and no material adjustment for Tax purposes has been made, threatened or attempted in fact.
- (xv) Each member of the BI Group in relation to the Transportation Business and each member of the BT Group has complied fully

with and observed in all material respects the terms of any applicable VAT/GST legislation.

- (xvi) All documents which establish or are necessary to establish the title of any member of the BI Group in relation to the Transportation Business or of any member of the BT Group to any asset have been duly stamped and any applicable stamp duties, registration charges or similar duties or charges in respect of such documents have been duly accounted for and paid.
- (xvii) All duties, fees and penalties payable in respect of the capital of each member of the BI Group in relation to the Transportation Business and each member of the BT Group (including any premium over nominal value at which any share was issued) have been duly accounted for and paid, and, to the Tax Knowledge of BI and/or BT, there are no circumstances under which any Relief obtained against payment of any such amount might reasonably be withdrawn.
- (xviii) No Relief attributable to a member of the BI Group in relation to the Transportation Business or a member of the BT Group has been the subject of a Surrender from:
  - (a) a member of the BI Group in relation to the Transportation Business or a member of the BT Group; to
  - (b) a member of the BI Group other than in relation to the Transportation Business,

for consideration representing less than the full value of the Tax saved by virtue of the use of that Relief by the relevant member of the BI Group other than in relation to the Transportation Business.

The BT Fundamental Warranties shall be deemed to be repeated by BT immediately before Closing by reference to the facts and circumstances then existing as if references in such warranties to the date of this Agreement were references to the Closing Date (except for such warranties that relate to a particular date, which warranties shall be made as of such date).

## **ARTICLE 4 WARRANTIES OF THE SUBSCRIBER**

### **4.1 Warranties of the Subscriber.**

The Subscriber warrants as follows to the Corporations as at the date of this Agreement:

- (a) The Subscriber is duly constituted and validly subsisting under the Laws of the Province of Québec.
- (b) The Subscriber has all necessary corporate power, authority and capacity to enter into this Agreement and to carry out its obligations under this Agreement.

- (c) The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Subscriber.
- (d) This Agreement constitutes a valid and binding obligation of the Subscriber enforceable against it in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization and other Laws of general application limiting the enforcement of creditors' rights generally and to the fact that specific performance is an equitable remedy available only in the discretion of the court.
- (e) The execution, delivery and performance by the Subscriber of this Agreement and the completion of the transactions contemplated hereby do not and will not result in a violation of any Law, regulation, order or ruling, including Securities Laws, applicable to the Subscriber, and do not and will not constitute a breach of or default under any of the Subscriber's constitutional documents, by-laws or resolutions or any agreement to which the Subscriber is a party or by which it is bound.
- (f) The Subscriber is subscribing for the Offered Securities as principal or is deemed under NI 45-106 to be subscribing for the Offered Securities as principal and was not created or used solely to purchase or hold securities as an accredited investor as defined in paragraph (m) of the definition of "accredited investor" in NI 45-106.
- (g) The Subscriber is an Accredited Investor.
- (h) Other than as set out in this Agreement, there is no requirement for the Subscriber to make any filing with, give any notice to, or obtain any consent of, any person who is a party to a contract binding on or affecting Subscriber as a result of, or in connection with, or as a condition to the lawful completion of, the transactions contemplated by this Agreement.
- (i) Other than [REDACTED], no broker, finder or financial advisor has acted directly or indirectly on behalf of any member of the Subscriber, nor has the Subscriber incurred or will incur any obligation to pay any brokerage or finder's fee or other commission in connection with the Investment.

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The warranties set out in this Article 4 shall be deemed to be repeated immediately before Closing reference to the facts and circumstances then existing as if references in such representations and warranties to the date of this Agreement were references to the Closing Date.

Each of the warranties set out in this Article 4 shall be construed separately and independently, and shall not be extinguished or affected by Closing.

## ARTICLE 5 PRE-CLOSING UNDERTAKINGS

### 5.1 Conduct Prior to the Closing Date.

- (a) During the period from the date of this Agreement to the Closing Date the Corporations shall procure that each member of the BT Group and of the BI Group, to the extent that relates to or impacts the Transportation Business (other than in respect to Paragraphs 5.1(a)(iii), 5.1(a)(v) and 5.1(a)(vi) only in relation to payments, transfers or transactions in the Ordinary Course within the BI Group in relation to the Transportation Business or the BT Group, as set out in the Pre-Closing Reorganization Steps Plan, required pursuant to Paragraph 5.1(c) or expressly permitted by this Agreement (including Permitted Leakage)), shall:
- (i) not carry on its business with respect to the BI Group in relation to the Transportation Business or the BT Group, as applicable, otherwise than in the Ordinary Course;
  - (ii) not drawdown under the existing revolving credit facilities or any other operating facility of the BI Group in relation to the Transportation Business or the BT Group, except for any interim period cash requirements of the BT Group after 31 December 2015 or at any time for the issuance of letters of credit in the Ordinary Course pursuant to existing credit facilities, that have been Disclosed, to secure the performance of obligations under Contracts with suppliers and customers of the BI Group in relation to the Transportation Business or BT Group;
  - (iii) not acquire or dispose of any asset of a value above [REDACTED] or any BT Material Subsidiary, excluding joint ventures, project vehicles, concessions, other such investments made in each case in the Ordinary Course in connection with bids or projects, disposals of stock-in-trade, disposals of obsolete or redundant assets, and disposals of securitization program assets, accounts receivable or similar rights and related assets made in each case in the Ordinary Course;
  - (iv) except for any borrowings prior to 31 December 2015 from the BI Group for working capital needs of the Transportation Business or the BT Group, not incur any additional indebtedness for borrowed money in relation to the Transportation Business or the BT Group (including all forms of upstream guarantees to the BI Group) in excess of [REDACTED] in aggregate (other than drawdowns on the existing BT facilities for working capital purposes);
  - (v) not declare, authorize, make or pay any dividend or other restricted payment or distribution (whether in cash, stock or in kind) to any shareholder or member of the BI Group or reduce, purchase or redeem any part of its paid-up share capital other than as expressly permitted in this Agreement;

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- (vi) not grant any Guarantee or any Encumbrance (other than a Permitted Encumbrance in the Ordinary Course), or increase the level of any of the fees being charged in respect the parent company guarantees, including in respect of the arrangements set out in "Guarantee Fees Charge Agreements" in Schedule 3.3(i) *Inter-Company Relations* to the Disclosure Letter, or create, allot or issue or agree to issue any share or loan capital or other security, or grant any option over or right to subscribe for any share or loan capital or other security;
- (vii) not enter into or amend any arrangement or agreement which imposes or purports to impose material obligations on the BI Group with which any member of the BT Group is required to comply under the Shared Services Agreement or any other agreement with any member of the BI Group;
- (viii) not make any change in any method of accounting practice for the Transportation Business other than as required by IFRS or as a result of a change in any method of accounting practice adopted by the BI Group on a consolidated basis;
- (ix) not amend the constitutional documents of any member of the BI Group in relation to the Transportation Business or the BT Group;
- (x) ensure that all transactions between members of the BT Group and members of the BI Group take place on arm's length terms;
- (xi) ensure that no action is taken by the BI Group in relation to the Transportation Business or the BT Group which is inconsistent with the provisions of this Agreement or implementation of the transactions contemplated herein;
- (xii) not adopt or amend any equity incentive plans in respect of the BI Group relating specifically to the Transportation Business or the BT Group (for greater certainty, the adoption or amendment of equity incentive plans adopted by BI or the BI Group pursuant to which securities are granted to officers, directors and employees of the BI Group that are not transferring to the BT Group as part of the Pre-Closing Reorganization shall be permitted).
- (xiii) with respect to the Plans and BT Pension Plans:
  - (a) not cause any benefits to become payable under the Plans or BT Pension Plans, or any Plan or BT Pension Plan to (except in the Ordinary Course) be amended, terminated and/or wound up, in each case in a manner which would cause any material increase (in aggregate or otherwise) in the liabilities of any member of the BT Group in respect of such Plans or BT Pension Plans;
  - (b) not, without the Subscriber's prior written consent, agree to, establish or contribute to any new Plan or BT Pension Plans which would increase the pension and other benefits payable

to or in respect of any person or persons employed by the BT Group, in a manner that would increase the total staff costs in respect of the BT Group by more than 2 per cent per annum.

- (xiv) except as otherwise agreed between the Parties, not permit to subsist or enter, or allow any of the BI Group to enter, into any contracts or other agreements that restrict or prohibit the exercise by the Subscriber of any of its rights under its Investment, or that could prohibit, restrict or cause a default, termination right, mandatory prepayment event or similar event upon or as a result of any exercise of the Subscriber's option to convert the Convertible Shares or Additional Convertible Shares in accordance with the Convertible Share Terms or based upon or as a result of any other rights of the Subscriber under its Investment (other than customary change of control provisions relating to the BT Group), nor make any amendments to any existing contracts or arrangements that would have any of the foregoing effects;
- (xv) not to co-mingle or cash pool any monies of the BI Group (in relation to the Transportation Business) or the BT Group with any monies of the members of the BI Group who do not comprise the Transportation Business; and
- (xvi) not enter into any agreement to do any of the foregoing,

save in each case without the Subscriber's written consent (not to be unreasonably withheld, delayed or conditioned).

(b) Pending Closing, the Corporations shall:

- (i) ensure that, subject to Paragraph 14.8 (Confidentiality) and the requirements of any anti-trust Laws, the Subscriber's representatives shall be allowed such access as is reasonably requested, upon reasonable prior notice in writing and during Working Hours, to (a) the books and records of the BI Group in relation to the Transportation Business and the BT Group (including all statutory books, minute books, leases, contracts, supplier lists and customer lists) and (b) the premises used by, and management of, the BI Group in relation to the Transportation Business and the BT Group, without materially affecting the operations of the BI Group or the Transportation Business in the Ordinary Course; and
- (ii) promptly advise the Subscriber in writing of the occurrence of any of the following that comes to the Knowledge of BI and BT: (a) any BT Material Adverse Change; (b) any fact which would constitute or give rise to a breach of any of the warranties herein contained which would give rise to a Subscriber Claim, if such warranties were to be repeated at or any time before the Closing Date, by reference to the facts and circumstances then existing as if references in the representations and warranties contained herein to the date of this Agreement were references to the relevant date.

- (c) Pending Closing, BI Group shall maintain, in relation to the Transportation Business, insurance of the types and in the amounts that it reasonably considers appropriate and in any event as is required by a Governmental Authority in each case for the Transportation Business as such business is currently being conducted.
- (d) Each of BI and the Subscriber (in respect of the Regulatory Approvals only), as soon as practicable after the date of this Agreement shall (x) make, or cause to be made, all such filings, notifications and submissions required or desirable to obtain the Regulatory Approvals and the approvals, consents and amendments that have been Disclosed; and (y) use commercially reasonable efforts to obtain, or cause to be obtained, all Regulatory Approvals and such Disclosed approvals, consents and amendments as soon as reasonably practicable and prior to 31 March 2016 (or if not obtained by then in any event by the Longstop Date). Subject to compliance at all times with applicable Laws and the other provisions of this Agreement:
  - (i) the Parties shall coordinate and co-operate with each other in exchanging information and supplying such assistance as is reasonably requested in connection with obtaining the Regulatory Approvals including: (a) giving each Party and its respective legal counsel a reasonable opportunity to comment on drafts of any filings, notifications, submissions or correspondence (other than that of an administrative nature), which it intends to make to any Governmental Authority; (b) providing each Party with all notices and information supplied to or filed with or received from any Governmental Authority; and (c) allowing persons nominated by each Party to attend all meetings whether in person, or by telephone or by other means with the relevant Governmental Authority and, where appropriate, to make oral submissions at each such meetings, save as required by applicable Law or regulation; provided in each case, that the Parties shall not be obliged to disclose to each other information of a commercially sensitive nature relating to their own businesses otherwise than through their legal counsels on an "outside counsel to counsel" basis;
  - (ii) in connection with the obtaining of all approvals and consents deemed required or desirable (in the Subscriber's and BI's reasonable opinion), including any Regulatory Approval, it being understood that the Subscriber shall exercise reasonable commercial efforts in order to satisfy any Regulatory Approval, but the Subscriber shall not be required to take any steps that, in the Subscriber's reasonable opinion, would materially lessen the value of the Investment or any other investment of the Subscriber; and
  - (iii) BI shall provide the Subscriber with an update on a regular periodic basis (and in any event on a fortnightly basis) on that status of obtaining the Disclosed approvals, consents and amendments.

(e) Pending Closing, the Corporations shall procure that:

- (i) Non-Ordinary Course - except as contemplated by the Pre-Closing Reorganization Steps Plan, no member of the BI Group in relation to the Transportation Business or member of the BT Group will be involved in any voluntary transaction which has given or may give rise to a material liability to Tax (or would or might give rise to such a liability but for the availability of an Accounts Relief) of any BT Entity other than Tax in respect of normal trading transactions entered into in the Ordinary Course;
- (ii) Residence/permanent establishment - no member of the BI Group in relation to the Transportation Business or member of the BT Group will begin to be resident for Tax purposes or, other than in the Ordinary Course become subject to Tax by virtue of having a permanent establishment or other place of business, in any jurisdiction other than its place of incorporation;
- (iii) Tax policies - save as required by any change in Law or IFRS, no member of the BI Group in relation to the Transportation Business or member of the BT Group will change its Tax or transfer pricing policies in any material respect; and
- (iv) Surrender of Reliefs - No Relief attributable to a member of the BI Group in relation to the Transportation Business or member of the BT Group shall be the subject of a Surrender to any member of the BI Group other than in relation to the Transportation Business for consideration representing less than the full value of the Tax saved by virtue of the use of that Relief,

save in each case with the Subscriber's prior written consent, which shall not be unreasonably withheld, delayed or conditioned.

## 5.2 Transaction Documents

The Parties undertake to negotiate in good faith and to agree on the Agreed Form of the following documents as soon as reasonably practicable:

- (i) the Share Terms (and the articles of association of BT) based on the term sheet set out in Schedule A;
- (ii) the Shareholders' Agreement based on the term sheet set out in Schedule D;
- (iii) the PCG Past Agreement, the PCG Future Agreement and the Bombardier Licence based on the principles set out in the Shared Services Agreement; and
- (iv) the Additional Subscriber Joinder Agreement.

The Parties undertake to review and update the services schedules to the Shared Services Agreements, including making any amendments to the services that are required as a result of the Pre-Closing Reorganization.



## **ARTICLE 6 UNDERTAKINGS AND SPECIFIC INDEMNITIES**

### **6.1 Pre-Closing Reorganization.**

The Corporations undertake to take all actions and to fulfill all requirements required to implement the Pre-Closing Reorganization upon terms satisfactory to the Subscriber (acting reasonably) as soon as reasonably practicable but in any event prior to the fulfillment of the Joint Closing Condition.

BI shall indemnify and hold harmless the Subscriber from and against, and shall promptly pay on demand to the Subscriber, an amount equal to all Damages suffered or incurred by the Subscriber (which, for the avoidance of doubt, shall include the Subscriber's pro rata share (based on its percentage shareholding in BT on an As-Converted Basis) of any liability that arises or has arisen in the BT Group as a result of the Pre-Closing Reorganization):

- (a) as a result of or in connection with the Pre-Closing Reorganization;
- (b) which would not have arisen or been suffered, incurred or sustained but for the Pre-Closing Reorganization; and
- (c) as a result of any event(s) or circumstance(s) that would have a BT Material Adverse Change or BI Material Adverse Change arising as a result of the implementation of the Pre-Closing Reorganization.

save and except that this shall not apply to any such Damages to the extent resulting from any liability that arises or has arisen in the BT Group in respect of Tax (it being acknowledged, for the avoidance of doubt, that the same shall instead be the subject of a Subscriber Tax Claim to the extent provided in Paragraph 3.2(n) and Paragraph 8.4).

### **6.2 Rectifications.**

The Corporations undertake to the Subscriber to take all reasonable actions to fulfill all requirements after Closing to rectify the matters set out in Schedule G.

### **6.3 Leakage.**

BI undertakes to the Subscriber that:

- (a) since the Last Accounts Date there has not been any Leakage and there will not be any Leakage in the period since the Last Accounts Date up to and including Closing (the "**Pre-Closing Period**");
- (b) no arrangement or agreement has been made or will be made in the Pre-Closing Period that will result in any Leakage; and
- (c) no member of the BI Group in relation to the Transportation Business nor any BT Group member has paid nor has become obliged to pay any third party costs relating to the Investment, the Distributions to BI, or the Pre-Closing Reorganization;

in each case other than any Permitted Leakage.

BI shall indemnify and hold harmless the Subscriber from and against, and shall promptly pay to the Subscriber, an amount equal to all Damages suffered or incurred by the Subscriber as a result of any breach of the undertakings in this Paragraph 6.3, save and except that this shall not apply unless the amount of such Damages exceeds [REDACTED] in which case BI shall indemnify and hold harmless the Subscriber from and against, and shall promptly pay to the Subscriber, the amount of such Damages exceeding [REDACTED] (other than such Damages that are a result of such breach in relation to the Distributions to BI exceeding the Permitted Amount in which case BI shall indemnify and hold harmless the Subscriber from and against, and shall pay to the Subscriber, the whole amount of such Damages and not merely the excess). In addition, BI shall indemnify and hold harmless the Subscriber from and against, and shall promptly pay to the Subscriber, an amount equal to all Damages suffered or incurred by the Subscriber as a result of the operations effecting the Distributions to BI (excluding, for greater certainty, the fact that the Distributions to BI are for the benefit of any member of the BI Group (other than any member of the BI Group in relation to the Transportation Business or any member of the BT Group), to the exclusion of any other person, including the Subscriber) (and which, for the avoidance of doubt, shall be deemed to include the Subscriber's pro rata share (based on its percentage shareholding in BT on an As-Converted Basis) of any liability that arises or has arisen in the BT Group as a result of the Distributions to BI).

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For greater certainty, notwithstanding anything contained herein, nothing in this Agreement shall prevent the Corporations from effecting Permitted Leakage up to and including Closing. In addition, notwithstanding anything contained herein or in any other Transaction Document, in the event the aggregate Distributions to BI from 1 January 2016 up to and including Closing are less than the Permitted Amount, the Corporations shall have the right to effect Distributions to BI (to the exclusion of any other person that is not a member of the BI Group, including the Subscriber) after Closing in an aggregate amount not exceeding the difference, and the Subscriber undertakes to take all reasonable actions required of it to effect such Distributions to BI (including any vote or written consent or waiver in relation thereto).

#### 6.4 **Tax relating to prior Tax Consolidation.**

BI shall procure that there is paid to each member of the BT Group, or shall otherwise indemnify and hold harmless each member of the BT Group from and against, an amount equal to any Tax which that member of the BT Group is required to discharge and which is attributable to any current or former member of the BI Group (other than a member of the BT Group) as a result of such member of the BT Group's membership at any time of the BI Group or a Tax Consolidation with any member of the BI Group (other than a member of the BT Group) (such Tax being a "**BI Tax Liability**").

To the extent that any payment made pursuant to this Paragraph 6.4 would otherwise be subject to Tax in the hands of the relevant member of the BT Group, BI, BT and the Subscriber shall consult in good faith as to ways in which this result might be avoided without disturbing any economic or commercial arrangements between the parties. If such result cannot be avoided, then the amount payable to the relevant member of the BT Group pursuant to this Paragraph 6.4 shall be increased by such amount as will leave that member of the BT Group, after taking account of the Tax payable on the increased amount, with sufficient funds to discharge the BI Tax Liability.

#### 6.5 **BI Procurement.**

Prior to the Closing Date, BI undertakes to take all reasonable actions to fulfill all requirements required of the Corporations and all members of the BT Group pursuant to this Agreement and to procure the due and punctual performance and observance of all of the

covenants, undertakings, indemnities, agreements and obligations provided by BT and other members of the BT Group under this Agreement, provided always that BI shall not be responsible for procuring the due and punctual performance and observance of the BT Warranties and any indemnities given by BT and not BI, which shall, for the avoidance of doubt, be the responsibility of BT).

#### 6.6 **No Solicitation.**

In consideration of the time and resources that the Subscriber and its representatives have devoted and will devote to evaluating and pursuing the Investment, BI hereby agrees that, until the earliest of (i) receipt of a termination notice by either Party as provided for in Paragraph 7.10 or (ii) completion of the Investment herein contemplated, the Corporations will not and cause their Affiliates and their respective directors, officers, employees, advisors, agents and representatives not to, directly or indirectly:

- (a) initiate, solicit or take any other action to encourage, facilitate or induce the making, submission or announcement of any inquiries, expression of interests, offers or proposals constituting or reasonably expected to lead to;
- (b) participate in any discussions or negotiations regarding;
- (c) provide any non-public information concerning the Transportation Business, the BT Group or relating to it or their respective businesses to any person for the purpose of making, evaluating or determining whether to make or pursue, any inquiries, proposals or offers constituting or reasonably expected to lead to;
- (d) agree to, accept, recommend or endorse (or publicly propose or announce any intention or desire to agree to, accept, recommend or endorse); or
- (e) authorize, propose or enter into any letter of intent, term sheet, contract or other agreement with respect to, an agreement, offer or proposal for, or any indication of interest in,

in each case, whether or not in writing, a purchase, merger, take-over bid, tender offer, amalgamation, arrangement, business combination, consolidation, recapitalization, reorganization, issuer bid, initial public offering, share exchange, compromise, liquidation, dissolution or winding-up or similar transaction, or sale of assets, whether in a single transaction or a series of transactions providing for an acquisition of the Transportation Business or BT or of all or a substantial part of the assets of the Transportation Business or BT by any Party other than the Subscriber (or any Additional Subscriber) or any of its or their Affiliates, or any other similar acquisition or any equity investment transaction involving or otherwise relating to, or the formation of a partnership or joint venture with or for, BT and/or any of their subsidiaries which would reasonably be expected to impede, interfere with, prevent, materially delay or limit the consummation of the Investment (any such agreement, offer, proposal or indication of interest, an “**Alternative Proposal**”).

For the avoidance of doubt, this Paragraph 6.6 shall not prevent BT and/or BI from negotiating or discussing a strategic merger or joint venture or sale of BT to any competitor of the Transportation Business (or any direct or indirect Affiliate thereof), provided that:

- (i) the Subscriber is kept informed of any such negotiations or discussions in respect of such strategic merger or joint venture or sale of BT; and
- (ii) such strategic merger or joint venture or sale of BT, or any agreement or arrangement in relation thereto, shall, given its material impact on the BT business, not be entered into without the prior written consent of the Subscriber.

#### 6.7 US Pension Plan Matters.

With respect to each BI Group Pension Plan subject to the Laws of the U.S. (the “**U.S. BI Group Pension Plan**”) and each Pension Plan subject to the Laws of the U.S. (the “**U.S. BT Group Pension Plan**”):

- (a) BI and BT shall timely make, or shall cause to be timely made, any reportable event filings required to be made with the Pension Benefit Guaranty Corporation (the “**PBGC**”) for each U.S. BI Group Pension Plan and each U.S. BT Group Pension Plan under Section 4043 of the U.S. Employee Retirement Income Security Act in connection with the consummation of the transactions contemplated by this Agreement.
- (b) If the PBGC notifies BI or BT prior to the Closing Date that it has commenced a review of any U.S. BI Group Pension Plan or any U.S. BT Group Pension Plan in connection with, or otherwise relating to, the consummation of the transactions contemplated by this Agreement, BI (with respect to the PBGC review of each U.S. BI Group Pension Plan) and BT (with respect to the PBGC review of each U.S. BT Group Pension Plan) undertake to take all reasonable actions to obtain, prior to the Closing Date, a written statement from the PBGC that (i) it has concluded each such review, and any actions required by the PBGC to be taken by any party in connection with the review (including, but not limited to, any funding contributions with respect to any U.S. BI Group Pension Plan or any U.S. BT Group Pension Plan) have been completed, or (ii) the PBGC does not currently contemplate taking further action with respect to any such U.S. BI Group Pension Plan or any such U.S. BT Group Pension Plan in connection with the consummation of the transactions contemplated by this Agreement.
- (c) If any funding contributions (other than funding contributions required in the Ordinary Course) are required to be made to any U.S. BI Group Pension Plan or any U.S. BT Group Pension Plan in connection with the consummation of the transactions contemplated by this Agreement, BI undertakes to satisfy all such funding contribution obligations using solely the assets of BI or its Affiliates other than the BT Group or the Transportation Business. In the event the assets of any member of the BT Group or the Transportation Business are used to satisfy any such funding obligation, the Subscription Price shall be reduced by an amount equal to the aggregate sum of all such funding contributions made out of the assets of the BT Group or the Transportation Business.
- (d) In the event that any funding obligation with respect to any U.S. BT Group Pension Plan is actually incurred by the Subscriber and/or any Additional Subscriber, BI shall indemnify and hold harmless the

Subscriber and any Additional Subscriber from and against any such funding obligation, and shall pay, upon receipt of proof of payment, to the Subscriber and/or the Additional Subscriber an amount up to and including the full funding obligation actually incurred by the Subscriber and/or the Additional Subscriber, to the extent required to ensure that such funding obligation is borne by BI on the one hand and the Subscriber and/or any Additional Subscribers on the other hand in proportion to their then current respective direct and indirect equity interests in BT (on an As-Converted Basis).

## 6.8 U.K. Pension Plan Matters

With respect to each BI Group Pension Plan subject to the Laws of the U.K. (the “**U.K. BI Group Pension Plan**”) and each BT Pension Plan subject to the Laws of the U.K. (the “**U.K. BT Group Pension Plan**”):

- (a) Prior to the Closing Date, BI undertakes to take all reasonable actions to ensure that:
  - (i) no member of the BT Group shares one or more common directors with any company in the BI Group that is a participating employer in the U.K. BI Group Pension Plans;
  - (ii) none of the companies within the BI Group shares one or more common directors (excluding trustee directors) with any company in the BI Group in relation to the Transportation Business or the BT Group that is a participating employer in the U.K. BT Group Pension Plans;
  - (iii) any companies in the BI Group that participate in any U.K. BT Group Pension Plan shall cease to participate in such U.K. BT Group Pension Plan no later than the Closing Date with any costs associated with such cessation of participation to be the responsibility of BI; and
  - (iv) any companies in the BT Group that participate in any U.K. BI Group Pension Plan shall cease to participate in such U.K. BI Group Pension Plan no later than the Closing Date with any costs associated with such cessation of participation to be the responsibility of BI.
- (b) BI shall indemnify and hold harmless each member of the BT Group from and against, and shall promptly pay to the BT Group an amount equal to any BI Moral Hazard Liability.

## ARTICLE 7 CLOSING

### 7.1 Closing.

Closing shall take place at the offices of BT's U.K. counsel, Norton Rose Fulbright LLP, in London, U.K. (unless otherwise agreed by the Parties), on the fifth Business Day after the Unconditional Date (the “**Closing Date**”) (unless otherwise agreed by the Parties) at such time to be agreed between BI and the Subscriber (and if BI and the Subscriber fail to agree on a time at noon).

## **7.2 Closing Obligations.**

If the Subscriber (on the one hand) or BI (on the other) fails to comply with any obligation in Paragraphs 7.3 and 7.4 (respectively), then the other Party shall be entitled (in addition to and without prejudice to other rights and remedies available) by written notice to the Party in default on the date Closing would otherwise have taken place, to:

- (a) require Closing to take place so far as practicable having regard to the defaults which have occurred;
- (b) notify the Party in default of a new date for Closing (being not more than 10 Business Days after the original date for Closing) in which case the provisions of Paragraph 7.1 shall apply to Closing as so deferred; or
- (c) terminate this Agreement (other than the Surviving Provisions).

If this Agreement is so terminated, no Party nor any of its Affiliates shall have any claim under this Agreement of any nature against any other Party or its Affiliates (except in respect of any rights and liabilities which have accrued before termination or under any of the Surviving Provisions).

If the Subscriber (on the one hand) or BI (on the other) fails to comply with any of its obligations under Paragraphs 7.3 and 7.4 (as applicable), and the other Party requires Closing to proceed so far as practicable, then to the extent that any such obligation is not complied with at Closing, the defaulting Party shall (without affecting any other rights and remedies available to the other Party) ensure that such obligation is fulfilled as soon as practicable following Closing.

If Closing is deferred and at such deferred Closing a Party fails to comply with its obligations under this Paragraph 7.2, the non-defaulting Party shall have the right to terminate this Agreement and no Party nor any of its Affiliates shall have any claim under this Agreement of any nature against any other Party or its Affiliates (except in respect of any rights and liabilities which have accrued before termination or under any of the Surviving Provisions).

## **7.3 Subscriber Closing Obligations.**

At or before Closing, the Subscriber shall deliver (or ensure that there is delivered) the following documents, items and actions to BI (or made available to BI's satisfaction):

- (a) a copy of a resolution delivered to BI (certified by a duly appointed officer as true and correct) of the board and/or supervisory board (as necessary to provide valid authorisation) of directors of the Subscriber (or, if required by the Law of its jurisdiction or its articles of association, by-laws or equivalent constitutional documents, of its shareholders) authorising the execution of and the performance by the relevant company of its obligations under this Agreement and each of the Transaction Documents to be executed by it;
- (b) pay the Subscription Price to BT in cash in accordance with Article 10; and

- (c) the Shareholders' Agreement duly executed by the Subscriber.

#### 7.4 **Corporations Closing Obligations.**

At or before Closing, BI shall deliver or perform (or ensure that there is delivered or performed) the following documents, items and actions to the Subscriber (or made available to the Subscriber's satisfaction):

- (a) all necessary documents, duly executed or endorsed where so required, to enable all the Offered Convertible Shares to be allotted and issued in the name of the Subscriber and all of the Offered Warrants to be issued in the name of the Subscriber, including any documents, such as necessary waivers of pre-emption rights or other consents, as may be required to enable the Subscriber to be registered as the holder of the Offered Securities;
- (b) the share certificates in respect of all of the Offered Convertible Shares;
- (c) a warrant certificate representing all of the Warrants duly executed by BI;
- (d) the Shareholders' Agreement duly executed by the Corporations;
- (e) the Shared Services Agreement duly executed by the relevant members of the BI Group and/or the BT Group, as applicable;
- (f) the PCG Past Agreement duly executed by the relevant members of the BI Group and/or the BT Group, as applicable;
- (g) the PCG Future Agreement duly executed by the relevant members of the BI Group and/or the BT Group, as applicable;
- (h) the Bombardier License duly executed by the relevant members of the BI Group and/or the BT Group, as applicable;
- (i) the Primove Transfer Agreement duly executed by the relevant members of the BI Group and/or the BT Group, as applicable;
- (j) a copy (certified by a duly appointed officer as true and correct) of a resolution of the board and/or supervisory board (as necessary to provide valid authorisation) of directors of BI and BT as appropriate (or, if required by the Law of its jurisdiction or its articles of association, by-laws or equivalent constitutional documents, of its shareholders) authorising the execution of and the performance by the relevant company of its obligations under this Agreement and each of the Transaction Documents to be executed by it; and
- (k) a resolution of the shareholder of BT, duly executed by BI, approving the adoption of the articles of association of BT that reflect the Convertible Share Terms and the terms of the Shareholders' Agreement.

## **7.5 Joint Closing Obligations.**

The Parties shall negotiate in good faith with a view to agreeing before the Closing Date the final form of any Transaction Document which is not in Agreed Form at the date of this Agreement. Each Party shall act reasonably in seeking to agree to the outstanding Transaction Documents.

All documents and items delivered at Closing shall be held by the recipient to the order of the person delivering the same until such time as Closing shall take place.

## **7.6 Subscriber Closing Conditions.**

Subject to Paragraph 7.8, the obligations of the Subscriber to effect Closing shall be conditional upon the fulfilment (or, to the extent permitted, waiver by the Subscriber) at or before the Closing Date of the following conditions in accordance with the terms of this Agreement:

- (a) the BI Warranties and BT Warranties when given did not, and at the Closing Date (except for those warranties that relate to a particular date, which warranties shall be made as of such date) will not (with the same force and effect as if made at and as of such time), contain any untrue, incorrect, inaccurate or misleading statement causing or likely to cause a BI Material Adverse Change or a BT Material Adverse Change;
- (b) BI and BT each delivering to the Subscriber a certificate signed by a duly authorised officer certifying that the matters in paragraph (a) are true and correct;
- (c) no BT Material Adverse Change or no BI Material Adverse Change having occurred or be continuing;
- (d) the Pre-Closing Reorganization not having caused or being likely to cause a BT Material Adverse Change;
- (e) no default, actual or potential termination event, mandatory prepayment event, offer to purchase or similar event, outstanding or subsisting, or likely to be triggered, or requirement to assume the payment of the bonds or performance of covenants under the BI indentures, under the credit facilities or the bonds of any member of either the BI Group or the BT Group (including as a result of the Investment or the Pre-Closing Reorganization);
- (f) no material breach of Article 5 having occurred or be continuing which caused or is likely to cause a BT Material Adverse Change;
- (g) except as Disclosed or contemplated by this Agreement (including Permitted Leakage), there being no: cross-guarantee or other forms of financial assistance provided by any member of the BT Group benefiting any member of the BI Group (other than a member of the BT Group) other than as approved in writing by the Subscriber (acting reasonably);
- (h) no Governmental Authority has prohibited, restrained or enjoined the Closing by way of order, judgement, direction, formal injunction (which



is continuing) or other proceedings, or has commenced proceedings to prohibit, restrain or enjoin the Closing of the Investment contemplated by this Agreement;

- (i) the amendments and/or waivers to the credit facilities of the BI Group and the BT Group set out in Schedule F shall have been executed by all of the parties thereto in a form acceptable to the Subscriber;
- (j) the Pre-Closing Reorganization having been completed, and where there are any variations to the Pre-Closing Reorganization Steps Plan, to the extent such variations are to the satisfaction of the Subscriber (acting reasonably); and
- (k) there will have been obtained from all appropriate Governmental Authorities and third-parties such approvals or consents (other than the Regulatory Approvals) as are required, in the Subscriber's reasonable opinion, to permit the Pre-Closing Reorganization and the Investment contemplated by this Agreement,

(together, the "**Subscriber Closing Conditions**").

#### 7.7 **Joint Closing Conditions.**

Subject to Paragraph 7.8, the obligations of the Subscriber and BI to effect Closing shall be conditional upon:

- (a) all necessary Regulatory Approvals having been obtained (the "**Competition Closing Condition**") at or before the Closing Date; and
- (b) the Transaction Documents (other than this Agreement) which are not in Agreed Form at the date of this Agreement, being agreed by BI and the Subscriber.

(together, the "**Joint Closing Conditions**").

#### 7.8 **Waiver of Condition.**

The Subscriber will have the exclusive right to waive the performance or compliance of any Subscriber Closing Condition in whole or in part and on such terms as may be agreed upon without prejudice to any of its rights in the event of non-performance of or non-compliance with any other condition in whole or in part. Any such waiver will not constitute a waiver of any other conditions. For the avoidance of doubt, BI shall have no right to waive the performance or compliance of any Subscriber Closing Condition.

The Joint Closing Conditions may not be waived by either BI or the Subscriber without the consent of the other. In the event that a Regulatory Approval has not been fulfilled, or waived, at or before the Closing Date, BI and the Subscriber shall jointly explore, in good faith, whether certain steps could be undertaken to facilitate Closing by the Closing Date, provided that neither BI or the Subscriber shall be required to take any steps that would, in the Subscriber's and BI's reasonable opinion, have a material impact on the economic benefits that that Party will derive from the Investment.

#### 7.9 **Unconditional Date.**

The Subscriber and BI shall each notify the other promptly upon becoming aware that the Joint Closing Conditions (other than those set out in paragraph (i) of Schedule E) have been fulfilled. The Subscriber shall notify BI promptly upon becoming aware that any of the conditions in Paragraphs 7.6(i) to 7.6(k) have been fulfilled or waived. The first Business Day on or by which the Competition Closing Condition has been fulfilled and all of the conditions in Paragraphs 7.6(i) to 7.6(k) have been fulfilled or waived is the “**Unconditional Date**”).

For the avoidance of doubt, the conditions set out in Paragraphs 7.6(a) – 7.6(h) shall be fulfilled or waived by the Subscriber and the conditions set out in paragraph (i) of Schedule E at Closing shall be fulfilled or waived by the Subscriber and BI and shall not be taken into account in determining the Unconditional Date or the Closing Date.

#### 7.10 **Termination.**

This Agreement may be terminated:

- (a) by mutual written consent of the Parties;
- (b) except where Paragraph 7.11 applies, by any one of the Parties if the Closing Date has not occurred on or before 30 April 2016 (the “**Longstop Date**”) or such other date as the Parties may agree to in writing; and
- (c) in accordance with Paragraph 7.2.

#### 7.11 **Extension of the Longstop Date.**

Where one or more of the Regulatory Approvals have not been received or a Governmental Authority has prohibited, restrained or enjoined the Closing by way of formal injunction (which is continuing), or has commenced proceedings to prohibit, restrain or enjoin the Closing of the Investment contemplated by this Agreement on or prior to the third Business Day prior to the Longstop Date notwithstanding that the Parties have used all reasonable efforts to achieve such approvals by 30 April 2016, BI or the Subscriber may notify the other that it wishes to extend the Longstop Date to 31 October 2016 (to allow additional time to secure such Regulatory Approvals or to contest such injunction or proceeding) and upon receipt of such notice this Agreement shall be amended so that the Longstop Date for the purposes of this Agreement shall be 31 October 2016.

#### 7.12 **Effect of Termination.**

If any Party terminates this Agreement under Paragraph 7.10, no Party (nor any of its Affiliates) shall have any Claim of any nature against any other Party (or any of its Affiliates) under this Agreement (except in respect of any rights and liabilities which have accrued before termination or under any of the Surviving Provisions).

#### 7.13 **Closing Proceeds.**

On Closing, BT shall use the net proceeds from the Investment in accordance with the Use of Proceeds and the BI Group shall use such proceeds for general corporate purposes and shall not use such proceeds for the Prohibited Uses of Proceeds.

## ARTICLE 8 CLAIMS

### 8.1 Claims against BT.

BT shall indemnify and hold harmless the Subscriber from and against any Subscriber Claim and any other claim for Damages suffered or incurred by the Subscriber and brought by the Subscriber for any failure of BI or BT to perform or fulfill its covenants or obligations in this Agreement and shall undertake to promptly pay, or procure payment, in cash to the Subscriber a sum equal to the aggregate of all Damages suffered or incurred by the Subscriber (whether or not arising due to third party Claims, which may be made or brought against the Subscriber, or which it may suffer or incur, directly or indirectly, as a result of or in connection with any Subscriber Claim or any other claim for Damages suffered or incurred by the Subscriber and brought by the Subscriber for any failure of BI or BT to perform or fulfill its covenants or obligations in this Agreement).

### 8.2 Indemnification by BI.

BI shall indemnify and hold harmless the Subscriber from and against any BI Claim brought by the Subscriber under or for breach of this Agreement by BI and shall promptly pay or procure payment in cash to the Subscriber a sum equal to the aggregate of all Damages suffered or incurred by the Subscriber (whether or not arising due to third party Claims, which may be made or brought against the Subscriber, or which it may suffer or incur, directly or indirectly, as a result of or in connection with any BI Claim or breach of this Agreement by BI).

### 8.3 Limitations.

BT's obligations for a Subscriber Claim, other than in respect of a Fundamental Warranty Claim (except where expressly stated otherwise), and BI's obligations for a BI Claim, other than in respect of a Fundamental BI Warranty Claim (except where expressly stated otherwise), shall be subject to the following limitations:

- (a) BT shall not be liable for any single Subscriber Claim and BI shall not be liable for any single BI Claim unless BT or BI (as applicable) receives from the Subscriber written notice containing such details as are then available of the matter giving rise to the Subscriber Claim or BI Claim (as applicable):
  - (i) in the case of a Subscriber Tax Claim, prior to the earlier of (i) [REDACTED] anniversary of the Closing Date and (ii) the [REDACTED] after the end of the statutory period during which the competent Tax Authority in the relevant jurisdiction may under applicable law validly make a claim for Taxes against the relevant member of the BT Group in relation to the relevant matter;
  - (ii) in the case of any other Subscriber Claim or BI Claim, prior to the date that is [REDACTED] from the Closing Date;
- (b) no single Subscriber Claim or BI Claim (and, for these purposes, a number of Subscriber Claims or BI Claims (as applicable) arising out of the same or substantially the same facts, events or circumstances (for greater certainty, any such claim arising from the same or substantially the same facts, events or circumstances applicable to more than one

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third party will be deemed, for purposes of such determination, to have arisen from the same or substantially the same facts, events or circumstances) may be aggregated and form a single Subscriber Claim or BI Claim (as applicable)) may be brought by the Subscriber unless the amount of Damages suffered or incurred by the Subscriber pursuant to that Subscriber Claim or BI Claim (as applicable) exceeds [REDACTED] (a "**Threshold Claim**"), (in which case, subject to Paragraph 8.3(b), the Subscriber shall be able to claim the whole amount of such Threshold Claim and not merely the excess);

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- (c) BT shall not be liable for any single Subscriber Claim and BI shall not be liable for any single BI Claim unless the aggregate amount of the Damages for all Threshold Claims exceeds [REDACTED] (in which case the Subscriber shall be entitled to claim the whole amount of such Threshold Claims and not merely the excess);
- (d) subject to Paragraph 8.3(i), the aggregate amount of the liability of BT and BI: (i) for all Subscriber Claims and BI Claims shall not, in aggregate, exceed [REDACTED]; and (ii) for all Fundamental Warranty Claims shall not, in aggregate, exceed the Subscription Price;
- (e) without prejudice to the meaning of Disclosed in relation to Subscriber Tax Claims, BT shall not be liable for any Subscriber Claim and BI shall not be liable for any BI Claim to the extent that the fact, matter, event or circumstance giving rise to such Subscriber Claim or BI Claim (as applicable) was Disclosed or was provided for or included in a provision of the Financial Statements or Interim Financial Statements (in each case, which has not been released);
- (f) any Subscriber Claim or BI Claim (as applicable) shall (if it has not been previously satisfied, settled or withdrawn) be deemed to have been withdrawn unless legal proceedings in respect of it have commenced by both being issued and served within 12 months of notification to BT or BI (as applicable) except:
  - (i) where the Subscriber Claim or BI Claim (as applicable) relates to a contingent liability, in which case it shall be deemed to have been withdrawn unless arbitration proceedings in respect of it have been commenced by being both issued and served within 12 months of it having become an actual liability; or
  - (ii) where the Subscriber Claim or BI Claim (as applicable) is a Subscriber Claim or BI Claim (as applicable) of which notice is given for the purpose of Paragraph 8.3(a) at a time when the amount set out in Paragraph 8.3(c) has not been exceeded, in which case it shall be deemed to have been withdrawn unless arbitration proceedings in respect of it have been commenced by being both issued and served within 12 months of the date of any subsequent notification to BT or BI (as applicable) pursuant to Paragraph 8.3(a) of one or more Subscriber Claims or BI Claims (as applicable) which results in the total amount claimed for in all Subscriber Claims and BI Claims being notified to BT or BI (as applicable) pursuant

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to Paragraph 8.3(a) exceeding the amount set out in Paragraph 8.3(c) for the first time;

For the purposes of this Paragraph 8.3(f), arbitration proceedings shall mean any proceedings before LCIA and arbitration proceedings shall not be deemed to have been commenced unless a written request for arbitration (“**Request**”) has been submitted and received by the Registrar of the Request in accordance with LCIA Rules;

- (g) if any Subscriber Claim or BI Claim (as applicable) is based upon a liability which is contingent only, BT or BI (as applicable) shall not be liable to make payment unless and until the contingent liability gives rise to an obligation to make a payment. This is without prejudice to the right of the Subscriber to give notice of the Subscriber Claim or the BI Claim in accordance with Paragraph 8.3(a) and to issue and serve proceedings in respect of it before such time. For the avoidance of doubt, the fact that the liability may not have become an actual liability by the relevant date provided in Paragraph 8.3(a) shall not exonerate BT or BI (as applicable) in respect of any Subscriber Claim or BI Claim (as applicable) or a Claim under any other provision of this Agreement (including under Paragraph 6.1 or Article 12) properly notified before that date;
- (h) the Subscriber shall not be entitled to recover damages or obtain payment, reimbursement, restitution or indemnity more than once in respect of any one liability, loss, cost, shortfall, damage or deficiency, regardless of whether more than one Subscriber Claim or one BI Claim (as applicable) arises in respect of it;
- (i) none of the limitations contained in this Paragraph 8.3 shall apply to any Subscriber Claim or BI Claim (as applicable) to the extent that the Subscriber Claim or BI Claim (as applicable) is the consequence of fraud, fraudulent misstatement or concealment of fraud by any member of the BI Group or the BT Group; and
- (j) BT shall not be liable for any Subscriber Claim and BI shall not be liable for any BI Claim to the extent that BT and/or BI (as applicable) has satisfied a claim under any of the indemnities pursuant to Paragraphs 6.1, 6.3, 6.7(b) or Article 12 for the same loss giving rise to such Subscriber Claim or BI Claim.

#### 8.4 **Subscriber Tax Claims.**

BI, BT and the Subscriber agree that, notwithstanding any other provision of this Agreement, the following shall apply for the purposes of determining whether the Subscriber may bring a Subscriber Tax Claim:

- (a) any liability of a member of the BT Group to make or suffer an actual payment of Tax or an amount in respect of Tax and any loss, use or set-off of any Accounts Relief, in each case to the extent that it would not have arisen but for one or more breaches of the Tax Warranties or the Tax Pre-Closing Undertakings (disregarding any reference therein to “material”) (a “**BT Breach Tax Cost**”), shall be deemed to arise from the

same single set of facts, events and circumstances (for the avoidance of doubt, irrespective of whether this is true in fact and irrespective of whether such BT Breach Tax Cost arises in respect of a matter existing prior to the Last Accounts Date or a matter only arising thereafter, including without limitation as a result of the Pre-Closing Reorganization or Investment);

- (b) the definition of “material” applicable in the context of the BT Warranties shall apply *mutatis mutandis* in the context of the Tax Warranties and the Tax Pre-Closing Undertakings (construing references therein to a “Subscriber Claim” as references to a “Subscriber Tax Claim”) provided that, in determining whether any breach arises out of the same or substantially the same facts, events or circumstances, the principle in Paragraph 8.4(a) shall apply;
- (c) no Subscriber Tax Claim may be brought by the Subscriber unless and until both of the following conditions are fulfilled:
  - (i) BT Breach Tax Costs have reached in aggregate [REDACTED] (and for these purposes a BT Breach Tax Cost consisting of a liability to make or suffer an actual payment of Tax or an amount in respect of Tax shall be the amount so payable, and a BT Breach Tax Cost consisting of any loss, use or set-off of any Accounts Relief shall be the aggregate amount by which any deferred tax provision recognized in the Financial Statements for the year ended 31 December 2014 would have been higher and any deferred tax asset recognized in the Financial Statements for the year ended 31 December 2014 would have been lower had the relevant breach or breaches (including any breach or breaches which were then prospective) been taken into account in computing the same; and
  - (ii) the Damages suffered or incurred by the Subscriber as a result of such BT Breach Tax Costs exceeds [REDACTED];
- (d) where the conditions in Paragraph 8.4(c) are met, a Subscriber Tax Claim shall be established and shall accordingly constitute a Subscriber Claim and a Threshold Claim for the purposes of this Agreement, and any subsequent or increased Subscriber Tax Claim shall, in accordance with the principle in Paragraph 8.4(a) but without double-counting, constitute a Subscriber Claim and a Threshold Claim, provided, in each case, that the aggregate amount of the liability of BI and BT for any such claim shall not exceed the Damages suffered or incurred by the Subscriber as a result of such BT Breach Tax Costs;
- (e) BT shall be considered to have breached a BT Tax Warranty set out in Paragraphs 3.3(qq)(ii) to 3.3(qq)(xviii) (a “**Tax Disclosure Breach**”) only if and to the extent that: (i) if the matter giving rise to such Tax Disclosure Breach is relevant to determining whether BT has breached the BT Tax Warranty set out in Paragraph 3.3(qq)(i), such matter has also resulted in a breach of the BT Tax Warranty set out in Paragraph 3.3(qq)(i); or (ii) such matter is not relevant to determining whether BT has breached the BT Tax Warranty set out in Paragraph 3.3(qq)(i).

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Any claim for Damages in respect of a Subscriber Tax Claim shall, where the underlying BT Breach Tax Costs comprise BT Breach Tax Costs resulting from a breach of the BI Tax Warranty (a “**BI Attributed Cost**”) on the one hand, and a breach of the BT Tax Warranties and/or the Tax Pre-Closing Undertakings (a “**BT Attributed Cost**”), on the other hand, be apportioned as between, and borne by, BI and BT respectively in the same ratio as the BI Attributed Costs bear to the BT Attributed Costs.

#### 8.5 **Gross-Up.**

In order to avoid that the Subscriber indemnifies itself because of the participation of the Subscriber in the capital of BT, BT hereby agrees that if it is required to pay an amount to the Subscriber pursuant to this Agreement from and after Closing, that amount shall be grossed up by reference to the following calculation:

- (a) the amount BT is required to pay; multiplied by
- (b) an amount equal to:
  - (i) the total number of Ordinary Shares held, in aggregate, by any person other than the Subscriber and any Additional Subscribers (and any person to whom the Subscriber and any Additional Subscribers have transferred the Offered Convertible Shares to in accordance with the Shareholders' Agreement) on an As-Converted Basis at the relevant time of payment plus the number of Ordinary Shares held by the Subscriber and any Additional Subscribers (and any person to whom the Subscriber and any Additional Subscribers have transferred the Offered Convertible Shares to in accordance with the Shareholders' Agreement) at the relevant time of payment on an As-Converted Basis; divided by
  - (ii) the number of Ordinary Shares held in aggregate, by any person other than the Subscriber and any Additional Subscribers (and any person to whom the Subscriber and any Additional Subscribers have transferred the Offered Convertible Shares to in accordance with the Shareholders' Agreement) on an As-Converted Basis at the relevant time of payment;

(such percentage being the “**Gross Up Percentage**”).

#### 8.6 **Tax on payments**

All sums payable under or for breach of this Agreement shall be paid free and clear of all deductions or withholdings whatsoever, save only as provided in this Agreement or as required by Law.

If any deduction or withholding is required by Law from any payment in respect of a BT Obligation, BI Obligation or a Subscriber Obligation then the payer shall pay the payee such additional amount as will, after such deduction or withholding has been made, leave the payee with the same amount as it would have been entitled to receive in the absence of any such requirement to make a deduction or withholding. If, at any time after any additional amount is paid as a consequence of the application of this clause, the payee receives or is granted a credit against or remission from any Taxation payable by it which it would not otherwise have received or been granted, the payee shall, to the extent that it can do so without prejudicing the retention of the amount of such credit or remission, reimburse the payer of the payment with

such amount as shall leave the Subscriber (after such reimbursement) in no worse a position than it would have been in had the circumstances giving rise to the payment of the additional amount not in fact arisen. Such reimbursement shall be made not later than ten Business Days after the payee receives or is granted such credit.

#### 8.7 **Waiver of Claims.**

BI agrees and undertakes with BT and the Subscriber that neither it nor any member of the BI Group has any rights against, and will waive and shall not make any Claim against:

- (a) any member of the BT Group other than when the Claim is the result of a Claim having been made against a member of the BI Group under any guarantee, indemnities, counter-indemnities or letters of comfort of any nature that has been given to a third party by a member of the BI Group in respect of an obligation of a member of the BT Group or of the BI Group in respect of the Transportation Business prior to Closing or in connection with any services provided by member of the BI Group in respect of the Transportation Business prior to Closing in the Ordinary Course; or
- (b) any employee, director, officer, adviser or agent of any member of the BT Group.

#### 8.8 **BT Third Party Claims.**

If BT or BI becomes aware of any Claim or potential Claim by a third party (including any Taxation Authority) against a member of the BI Group in relation to the Transportation Business or the BT Group that would reasonably be expected to result in a Claim being made by the Subscriber in accordance with this Agreement (a "**BT Third Party Claim**"):

- (a) BT or BI (as applicable) shall as soon as reasonably practicable, and in any event within twenty Business Days of becoming aware of any BT Third Party Claim, give notice of the BT Third Party Claim to the Subscriber, and shall use best efforts to ensure that the Subscriber is given all reasonable information and facilities to investigate it; and
- (b) BT or BI (as applicable) shall consult with the Subscriber in relation to the conduct and settlement of the BT Third Party Claim but shall not be required to get the consent of the Subscriber prior to admitting liability or making any agreement or compromise in relation to the BT Third Party Claim.

Failure to notify the Subscriber in accordance with Paragraph 8.8(a) shall not of itself prevent BI and/or BT from exercising its rights under this Paragraph 8.8 in respect of such BT Third Party Claim. If BI or BT fails to fulfill its obligation to consult with the Subscriber under Paragraph 8.8(b) in relation to any BT Third Party Claim, it shall be prevented from exercising its rights under this Paragraph 8.8 in respect of such BT Third Party Claim.

#### 8.9 **Subscriber Third Party Claims.**

If the Subscriber becomes aware of any Claim or potential Claim by a third party (including any Taxation Authority) against it or any of its Affiliates (other than a member of the



BT Group) that would reasonably be expected to result in a Claim being made by the Subscriber in accordance with this Agreement (a “**Subscriber Third Party Claim**”), the Subscriber shall:

- (a) as soon as reasonably practicable and in any event within twenty Business Days of becoming aware of any Subscriber Third Party Claim, give notice of the Subscriber Third Party Claim to BT and shall use best efforts to ensure that it is given all reasonable information and facilities to investigate it;
- (b) not (and ensure that none of its Affiliates (other than a member of the BT Group) shall) admit liability or make any agreement, settlement or compromise in relation to the Subscriber Third Party Claim without the prior written consent of the BT (such consent not to be unreasonably withheld or delayed); and
- (c) ensure that it and its relevant Affiliates (other than a member of the BT Group) shall take such action as BT may reasonably request to avoid, resist, dispute, appeal, compromise or defend the Subscriber Third Party Claim, save to the extent that to do so would:
  - (i) breach any duty of confidentiality owed by the Subscriber or any of its Affiliates to a third party;
  - (ii) result in a waiver of privilege; or
  - (iii) prejudice the ability of the Subscriber to bring a claim against BI or BT.

Neither the Subscriber, nor any of its Affiliates shall be required to take any action or refrain from taking any action pursuant to this Paragraph 8.9 if the action or omission requested would, in the reasonable opinion of the Subscriber, be prejudicial to the business, including the commercial interests, reputation, goodwill or relationships, of the Subscriber or any of its Affiliates.

#### 8.10 **Joint Claims.**

If a Subscriber Third Party Claim and a Claim or potential Claim against a member of either the BI Group or the BT Group is brought by the same third party in respect of the same matter or related matters which might reasonably be expected to result in a Claim being made by the Subscriber (a “**Joint Claim**”), the Subscriber and BI and/or BT (as the case may be) shall:

- (a) reasonably cooperate with each other in defending such Joint Claim; and
- (b) make available to each other, at the expense of the requesting party, all witnesses, pertinent records, materials and information in their and their subsidiaries possession or control relating to the Joint Claim, save to the extent that to do so would breach any duty of confidentiality owed by a party or any of its Affiliates (other than in the case of the Subscriber, the BT Group) to a third party, or would result in a waiver of privilege.

The Subscriber shall not admit liability or make any agreement, settlement or

compromise in relation to a Joint Claim without the prior written consent of the Corporations (such consent not to be unreasonably withheld or delayed), and the Corporations shall not admit liability or make any agreement, settlement or compromise in relation to a Joint Claim without the prior written consent of the Subscriber (such consent not to be unreasonably withheld or delayed).

The Subscriber shall not be precluded from bringing any Claim by reason of any breach of the terms of Paragraphs 8.8, 8.9 and 8.10, provided that the Subscriber's recovery shall be limited to the extent that such breach is prejudicial to the rights and obligations of the Corporations in connection with such Claim.

#### **8.11 Remediable breaches.**

Where the matter or default giving rise to a Subscriber Claim or BI Claim is capable of remedy, neither the BT nor BI will be liable for such Subscriber Claim or BI Claim unless the matter or default is not remedied to the reasonable satisfaction of the Subscriber within twenty Business Days after the date on which notice of such Subscriber Claim or BI Claim is given to BT or BI (as the case may be).

#### **8.12 General limitations.**

Neither BT nor BI shall be liable in respect of a Subscriber Claim or BI Claim to the extent that the matter giving rise to, or the loss arising from, or any increase in that claim:

- (a) in the case of the BI Warranties (other than a BI Fundamental Warranty) or the BT Warranties (other than a BT Fundamental Warranty), occurs as a result of or is otherwise attributable to any introduction, enactment, change, amendment or withdrawal of any enactment, regulation, rules of any regulator or administrative practice or guidance occurring after the date of this Agreement (whether or not that introduction, enactment, change, amendment or withdrawal purports to have retrospective effect in whole or in part), or any change in the interpretation of any of the foregoing by any court of law or tribunal after the date of this Agreement;
- (b) in the case of the BI Fundamental Warranties or the BT Fundamental Warranties, occurs as a result of or is otherwise attributable to any introduction, enactment, change, amendment or withdrawal of any enactment, regulation, rules of any regulator or administrative practice or guidance occurring after the Closing Date (whether or not that introduction, enactment, change, amendment or withdrawal purports to have retrospective effect in whole or in part), or any change in the interpretation of any of the foregoing by any court of law or tribunal after the Closing Date;
- (c) occurs as a result of a transfer of a BT Asset or BI Asset required and carried out in accordance with Article 12 to the extent the relevant Damage is satisfied in accordance with that Article or to the extent the relevant Damage has been compensated for by payment under an indemnity in Paragraphs 6.1, 6.3, 6.7 or 6.8(b).

#### **8.13 Insurance.**

If in respect of any matter which would otherwise give rise to a Subscriber Claim or BI Claim, that Subscriber Claim or BI Claim shall be reduced by: (a) the amount which the Subscriber actually recovers under such policy of insurance; or (b) the amount which that

member of the BT Group actually recovers under such policy of insurance multiplied by the percentage of Ordinary Shares held by the Subscriber (on an As-Converted Basis), in each case, after deducting any costs incurred in making such recovery including the amount of any excess or deductible and any Tax incurred as a result of the receipt of such recovery.

**8.14 Calculating liability.**

If, after BT and/or BI has made any payment in respect of a Subscriber Claim or BI Claim (as applicable), the recipient of that payment or BT recovers from a third party (including any Taxation Authority) (whether by payment, discount, credit, relief or otherwise) a sum which is referable to that payment (the “**Recovery Amount**”), then the Subscriber shall as soon as reasonably practicable repay (or procure the repayment) to BI or BT, as applicable, an amount equal to the lesser of the Recovery Amount (net of Tax and less any costs of recovery) and the sum paid by BI or BT multiplied by the percentage of Ordinary Shares held by the Subscriber (on an As-Converted Basis).

**8.15 Consequential loss.**

Notwithstanding anything to the contrary in this Agreement, no Party shall in any circumstances be liable to another Party, whether in contract, tort, misrepresentation, indemnity or breach of statutory duty or otherwise for indirect loss or consequential loss (including loss of customers or clients, damage to reputation, loss of profits or special, punitive or aggravated damages), and provided further that, subject to Paragraph 14.20, this shall not prevent the Subscriber or an Additional Subscriber from bringing a claim on behalf of the Subscriber or an Additional Subscriber (as applicable).

**8.16 Mitigation.**

Each Party shall use reasonable endeavours to mitigate any loss or damage it suffers, including by pursuing any relevant third party or claiming under any relevant insurance policy.

**ARTICLE 9  
TRANSACTION FEE AND SUBSCRIBER TRANSACTION EXPENSES**

In consideration of the Subscriber’s agreement and commitments under this Agreement, BI agrees to pay, or shall procure that a member of the BI Group pays, the Subscriber the Transaction Fee (plus any applicable VAT/GST thereon) and the Subscriber Transaction Expenses, which shall be payable as follows:

- (a) the Transaction Fee (plus any applicable VAT/GST thereon) shall be paid on the Closing Date; and
- (b) the outstanding Subscriber Transaction Expenses as at the Closing Date shall be paid on or prior to the date that is 15 days after the Closing Date (and if such date is not a Business Day, the last Business Day prior to the date that is 15 days after the Closing Date) or, if this Agreement is terminated in accordance with its terms, within 15 days of receipt by BI of an invoice from the Subscriber.

BI undertakes to pay the outstanding Subscriber Transaction Expenses as at 16 October 2015 within 10 Business Days of the date of receipt of invoices therefor.

BI agrees to pay, or shall procure that a member of the BI Group pays, any stamp or

other documentary transaction duties and any other transfer Taxes that result from this Agreement or its implementation, including the Pre-Closing Reorganization, provided that the obligation of BI shall not extend to any transfer or agreement to transfer any of the Offered Convertible Shares or the Offered Warrants issued to the Subscriber or any stamp duty or stamp duty reserve tax arising under sections 67, 70, 93 or 97 Finance Act 1986.

## **ARTICLE 10 PAYMENTS**

Any payment to be made pursuant to this Agreement by the Subscriber to BT shall be made to BT's Bank Account. Any payment to be made pursuant to this Agreement by either of the Corporations to the Subscriber shall be made to the Subscriber's Bank Account.

Payment under this Article 10 shall be in immediately available funds by electronic transfer on or prior to the due date for payment. Receipt of the amount due shall be an effective discharge of the relevant payment obligation.

If any sum due for payment under this Agreement is not paid by the due date for payment, the person in default shall pay interest at 5 per cent on that sum from, but excluding the due date, to, but excluding the date of actual payment, calculated on a daily basis.

## **ARTICLE 11 CO-INVESTORS**

### **11.1 Additional Subscribers.**

The Subscriber may, at its option but without obligation to do so, upon such terms as the Subscriber may determine (but subject to the terms of this Article 11), identify one or more additional subscriber(s) (each an "**Additional Subscriber**") to whom the Subscriber may transfer its right to subscribe for a number of Offered Convertible Shares and/or Warrants under this Agreement or transfers Offered Convertible Securities, provided that:

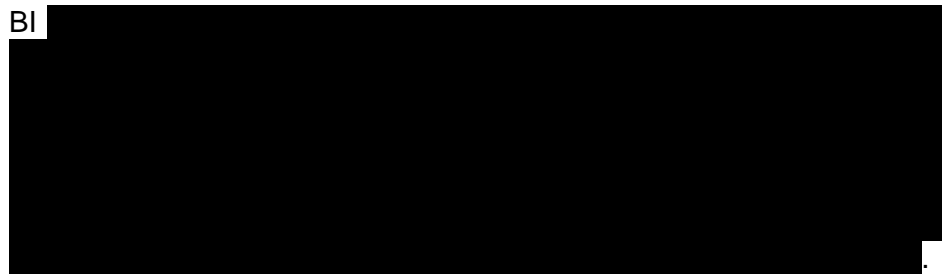
- (a) the Subscriber holds not less than 50 per cent. of the Offered Convertible Shares and Warrants following completion of any and all such syndications;
- (b) any such transfer is completed prior to the Closing Date or within 6 months of the Closing Date (or such later date to the extent any mandatory consents are required);
- (c) such Additional Subscriber is an Approved Additional Subscriber or its identity is approved in advance in writing by BI (acting reasonably);
- (d) each Additional Subscriber subscribes for or is transferred Offered Convertible Shares that represent at least 6 per cent. of the Ordinary Shares in BT on an As-Converted Basis;
- (e) if such syndication is proposed to be effected prior to Closing, it shall not impede or interfere with or delay Closing and the Subscriber shall remain responsible for payment of the full Subscription Price on Closing;
- (f) each Additional Subscriber enters into a joinder agreement (the

**“Additional Subscriber Joinder Agreement”**) as an Additional Subscriber pursuant to which such Additional Subscriber shall, on the terms and conditions of the Additional Subscriber Joinder Agreement, become a party to this Agreement and be bound by the terms of this Agreement, it being accepted that for the purpose of any claims against BI and/or BT hereunder the Additional Subscriber’s and the Subscriber’s claims, subject to Paragraph 14.20, may be exercised independently by the Subscriber or Additional Subscriber but when exercised shall be exercised on behalf of the Subscriber and all Additional Subscribers and shall be aggregated and subject to all the limitations contained or referred to herein and the Additional Subscriber will not be entitled to make a claim to BI or BT to the extent that the Subscriber if it had not made such syndication could not;

- (g) following such transfer, after the Closing, the Subscriber and any Additional Subscriber shall be severally and proportionately liable for all obligations arising out of or in connection with its holding of Offered Convertible Shares or this Agreement or any other Transaction Document; and

(h)

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## 11.2 **BI and BT Obligations in respect of an Additional Subscriber.**

BI and BT agree to take such actions as shall reasonably be requested by the Subscriber to assist the Subscriber in discussing, negotiating and agreeing any transfer of its rights to subscribe for, or any transfer of any Offered Securities to an Additional Subscriber pursuant to Paragraph 11.1, including:

- (a) assisting in the production and negotiation of such documentation as is reasonably required to effect any such transfer;
- (b) assisting in providing information and engaging with relevant regulators as required to secure any regulatory approvals required in connection with the Additional Subscriber’s acquisition of the Offered Securities;
- (c) providing reasonable assistance to those third party advisers advising the Subscriber or Additional Subscriber on any such transfer;
- (d) providing reasonable financial and other information regarding the BI Group and the BT Group to an Additional Subscriber and its advisers; and
- (e) assisting in the production of any marketing documents and cooperating with the marketing efforts in connection with any such transfer as reasonably requested by the Subscriber.

## **ARTICLE 12 WRONG POCKETS**

### **12.1 BT Assets.**

If after Closing any member of the BI Group owns any interest in any asset which is not part of or owned by a member of the BT Group and which was (within the 12 month period prior to the date of this Agreement and/or the period prior to the Closing Date) used predominantly by the Transportation Business and is not agreed to be provided by BI after Closing pursuant to the Shared Services Agreement or Primove Licence or Bombardier Licence (a "**BT Asset**"):

- (a) if any member of the BI Group is or becomes aware of the same, BI shall immediately give written notice to both BT and the Subscriber of the same; or
- (b) if any member of the BT Group is or becomes aware of the same, BT shall immediately give written notice to the Subscriber and (if so directed by the Subscriber) give written notice to BI of the same.

If notice is given in accordance with Paragraph 12.1(a) or Paragraph 12.1(b) above, the Dispute Representatives shall, acting reasonably and in good faith, determine whether such BT Asset shall in order to give full effect to this Agreement and its intent either (i) remain with the relevant member of the BI Group or (ii) be transferred to a member of the BT Group in accordance with Paragraph 12.2.

### **12.2 BT Asset Transfers.**

If the Dispute Representatives determine pursuant to Paragraph 12.1, or if it is otherwise determined pursuant to Paragraph 12.5, that a BT Asset shall in order to give full effect to this Agreement and its intent be transferred to a member of the BT Group, BI shall (at its own cost), as soon as practicable, ensure that such BT Asset (together with any benefit or sum, net of Tax and reasonable out of pocket expenses, accruing to any member of the BI Group as a result of holding that BT Asset since Closing) is transferred to such member of the BT Group as BT (acting at the direction of the Subscriber) shall specify in writing on terms that no consideration is payable by any person for such transfer. BT shall provide such assistance to BI as BI reasonably requires for this purpose and BI shall indemnify the Subscriber against any and all Damages suffered or incurred by it in relation to the transfer or as a result of holding the relevant interest for the period from Closing until it is so transferred. The relevant BT Asset shall be held on trust for BT until its transfer is complete.

### **12.3 BI Assets.**

If after Closing any member of the BT Group owns any interest in any asset which (within the 12 month period prior to the date of this Agreement) was used predominantly by BI Group other than the Transportation Business and is not agreed to be provided by the BT Group after Closing pursuant to the Shared Services Agreements (a "**BI Asset**"):

- (a) if any member of the BT Group is or becomes aware of the same, BT shall give written notice to both BT and the Subscriber of the same; or
- (b) if any member of the BI Group is or becomes aware of the same, BI may give written notice to BT of the same at any time.

If notice is given in accordance with Paragraph 12.3(a) or Paragraph 12.3(b), the Dispute Representatives shall, acting reasonably and in good faith, determine whether such BI Asset shall in order to give full effect to this Agreement and its intent either (i) remain with the BT Group or (ii) be transferred to a member of the BI Group in accordance with Paragraph 12.4.

#### **12.4 BI Asset Transfers.**

If the Dispute Representatives determine pursuant to Paragraph 12.1, or if it is otherwise determined pursuant to Paragraph 12.5, that a BI Asset shall in order to give full effect to this Agreement and its intent be transferred to a member of the BI Group, BT shall (at BI's cost), as soon as practicable, ensure that such BI Asset (together with any benefit or sum, net of Tax and reasonable out of pocket expenses, accruing to any member of the BT Group as a result of holding that BI Asset since Closing) is transferred to such member of the BI Group as BI shall specify on terms that no consideration is payable by any person for such transfer. BI shall provide such assistance to BT as BT reasonably requires for this purpose and shall indemnify BT and the Subscriber and each of its or their Affiliates against any and all Damages suffered or incurred by the BT Group or any BT Subsidiary in relation to the transfer or as a result of holding the relevant BI Asset for the period from Closing until it is so transferred. The relevant BI Asset shall be held on trust for BI until its transfer is complete.

#### **12.5 Wrong Pockets Determination.**

The Dispute Representatives shall meet to try and resolve the matter within ten Business Days of the matter having first been considered by them pursuant to Paragraph 12.1 or 12.3. If any such meeting fails to result in a settlement within ten Business Days of such referral to it (or it is not possible to convene such a meeting within this period) then the matter may be referred by either Party to an appropriate professional with expertise in the industry or area to which the asset relates with at least ten years relevant experience (the "**Expert**"). The Expert referred to in this Paragraph 12.5 shall be such person as is agreed between BI and the Subscriber (each acting reasonably) or, failing agreement within five Business Days of request for agreement being received from the one Party to the other, shall be nominated by the President for the time being of the Institute of Chartered Accountants in England and Wales. The decision of the Expert will be binding on BI, BT and the Subscriber.

#### **12.6 Third Party Assurances.**

BI shall ensure that at the Closing Date each member of the BT Group is released in full from all BT Third Party Assurances other than those Disclosed under the heading "Indemnity Agreements" in Schedule 3.3(i) *Inter-Company Relations* to the Disclosure Letter. In addition, from and after the Closing Date BI shall use its reasonable efforts to ensure that, as soon as reasonably practicable after becoming aware of any BT Third Party Assurance in respect of any obligations of the BI Group, each member of the BT Group is released in full from such BT Third Party Assurance from and after the Closing Date. Pending release of any BT Third Party Assurance referred to in this paragraph (excluding those Disclosed under the heading "Indemnity Agreements" in Schedule 3.3(i) *Inter-Company Relations* to the Disclosure Letter), BI shall indemnify the BT Group against any and all Damages arising under or by reason of that BT Third Party Assurance from and after the Closing Date.

### **ARTICLE 13 PRESS RELEASE AND OTHER PUBLIC DOCUMENTS**

BI and the Subscriber acknowledge and agree that any communication in respect of BT and the Investment shall be within the parameters of a joint communication strategy.

The Corporations shall ensure that any press release concerning the Investment complies with applicable Laws, including Securities Laws and that the press release issued in respect of the execution of this Agreement shall be the press release set out in set out in Schedule C.

If in compliance with applicable Laws, including Securities Laws, BI is required to file any material contracts in relation to the Investment or involving the Subscriber in any public registry, filing system or depository, including SEDAR, BI shall notify the Subscriber of such requirement within two Business Days of the date of such material contract, and the Parties shall consult with each other, and reasonable consideration shall be given to any comments made by the Subscriber and its legal counsel. with respect to any proposed redactions to the material contract in compliance with applicable Laws, including Securities Laws, before it is filed in any such registry, filing system or depository, provided, however, that the final determination of such redactions, if any, shall be made in BI's sole discretion.

The Subscriber and its legal counsel shall be given a reasonable opportunity to review and comment on matters relating to the Subscriber and its Investment in drafts of any other press releases of BI to be issued in connection with the transactions contemplated hereunder, provided, however, that the final determination of any changes to such press releases shall be made by BI acting reasonably.

BI and its legal counsel shall be given a reasonable opportunity to review and comment on matters relating to BI and the Investment in drafts of any other press releases of the Subscriber to be issued in connection with the transactions contemplated hereunder, provided, however, that the final determination of any changes to such press releases shall be made by the Subscriber acting reasonably.

BI agrees to provide the Subscriber with a draft copy of any correspondence or other documentation that is to be sent to any Governmental Authority (including the TSX) in connection with the application for or the obtaining of the Regulatory Approvals, and to allow the Subscriber and its legal counsel to have a reasonable opportunity to review and provide comments thereon. The Subscriber's legal counsel shall also be authorized to attend any meetings with the TSX for matters relating to its Investment, the Warrants and related matters.

## **ARTICLE 14 MISCELLANEOUS**

### **14.1 Further Assurances.**

Each of the Parties hereto upon the request of each of the other Parties hereto, whether before or after the Closing Date, shall do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, deeds, documents, assignments, transfers, conveyances, powers of attorney and assurances as may reasonably be necessary or desirable to complete and give effect to this Agreement and the transactions contemplated herein.

Each of the Parties shall procure that each of its Affiliates complies with all obligations under this Agreement that are expressed to apply to any of its Affiliates.

### **14.2 Notices.**

- (a) Any notice, direction or other instrument required or permitted to be given to any Party hereto by any other Party in connection with this



Agreement shall be in writing in English, signed by or on behalf of the Party giving it and shall be sufficiently given if delivered by hand, registered post or courier (using an internationally recognised courier company), or transmitted by facsimile, as follows:

- (i) in the case of the BI and/or BT, to each of:

**Bombardier Inc.**

800 René-Lévesque Boulevard West  
Suite 2900  
Montréal, Québec  
H3B 1Y8

Attention: Senior Vice President, General Counsel and  
Corporate Secretary  
Facsimile: +1 514-861-2746  
Email: [daniel.d@bombardier.com](mailto:daniel.d@bombardier.com)

- and -

**Bombardier Transportation (Investment) UK Limited**

Two Pancras Square  
King's Cross  
London N1C 4AG

Attention: Company Secretary & Legal Affairs  
Facsimile: +44 1332 266271  
Email: [sharmila.sylvester@uk.transport.bombardier.com](mailto:sharmila.sylvester@uk.transport.bombardier.com)

with a copy (which shall not constitute notice) to:

**Norton Rose Fulbright Canada LLP**

1, Place Ville Marie  
Suite 2500  
Montréal, Québec  
H3B 1R1

Attention: Paul Raymond  
Facsimile: +1 514-286-5474  
Email: [paul.raymond@nortonrosefulbright.com](mailto:paul.raymond@nortonrosefulbright.com)

Attention: Eric Stevens  
Facsimile: +1 514-286-5474  
Email: [eric.stevens@nortonrosefulbright.com](mailto:eric.stevens@nortonrosefulbright.com)

- (ii) in the case of the Subscriber:

**Caisse de dépôt et placement du Québec**

1000, Place Jean-Paul-Riopelle  
Montréal, Québec  
H2Z 2B3

Attention: Senior Director, Investment, Quebec  
Facsimile: +1 514 281-9368  
E-mail: [jmethot@cdpq.com](mailto:jmethot@cdpq.com)

and with a copy to

Attention: Senior Director, Legal Affairs, Investment  
Facsimile: +1 514 847-9480  
E-mail: [slussier@cdpq.com](mailto:slussier@cdpq.com)

with a copy (which shall not constitute notice) to:

**Freshfields Bruckhaus Deringer LLP**  
65 Fleet Street  
London EC4Y 1HS

Attention: Laurie McFadden  
Facsimile: +44 20 7108 7088  
Email: [laurie.mcfadden@freshfields.com](mailto:laurie.mcfadden@freshfields.com)

Attention: Richard Thexton  
Facsimile: +44 20 7108 4395  
Email: [richard.thexton@freshfields.com](mailto:richard.thexton@freshfields.com)

- and -

**McCarthy Tétrault LLP**  
1000, De La Gauchetière West  
Suite 2500  
Montréal, Québec  
H3B 0A2

Attention: Patrick Boucher  
Facsimile: +1 514-875-6246  
Email: [pboucher@mccarthy.ca](mailto:pboucher@mccarthy.ca)

or to such other address as any of the Parties may designate by notice in writing given to the others.

- (b) Any such notice, direction or other instrument, if delivered by hand, shall be deemed to have been given and received on the day on which it was delivered, provided that if such day is not a Business Day then the notice, direction or other instrument shall be deemed to have been given and received on the first Business Day next following such day and if transmitted by fax, shall be deemed to have been given and received on the day of its transmission, provided that if such day is not a Business Day or if it is transmitted or received after the end of normal business hours then the notice, direction or other instrument shall be deemed to have been given and received on the first Business Day next following the day of such transmission.
- (c) Any Party hereto may change its address for service from time to time by written notice given to each of the other Parties hereto in accordance

with the foregoing provisions.

**14.3 No Partnership.**

Nothing herein shall constitute or be construed to constitute a partnership of any kind whatsoever between the Subscriber and the Corporations nor make either Party the agent of the other Party for any purpose.

**14.4 Severability.**

The provisions contained in each Article are enforceable independently of each other Article and the invalidity, illegality or unenforceability of any provision of this Agreement shall not affect the validity, legality or enforceability of any other provision hereof.

If and to the extent that any provision of this Agreement is held to be, or becomes, invalid or unenforceable under the Law of any jurisdiction but would be valid, binding and enforceable if some part of the provision were deleted or amended, then the provision will apply with the minimum modifications necessary to make it valid, binding and enforceable and neither the validity or enforceability of the remaining provisions of this Agreement, nor the validity or enforceability of that provision under the Law of any other jurisdiction shall in any way be affected or impaired as a result of this Paragraph 14.4.

The Parties shall negotiate in good faith to amend or replace any invalid, void or unenforceable provision with a valid, binding and enforceable substitute provision or provisions, so that, after the amendment or replacement, the commercial effect of the Agreement is as close as possible to the effect it would have had if the relevant provision had not been invalid, void or unenforceable.

**14.5 Amendment.**

Except as otherwise provided herein, this Agreement may only be amended by the Parties in writing.

If this Agreement is amended, the amendment shall not constitute a general waiver of any of the provisions of this Agreement, the amendment shall not affect any rights, obligations or liabilities under this Agreement that have already accrued up to the date of amendment, and the rights and obligations of the Parties under this Agreement shall remain in force, except as, and only to the extent that, they are amended.

**14.6 Waivers.**

No failure to exercise, or delay in exercising, any right under this Agreement or provided by Law shall affect that right or operate as a waiver of the right. The single or partial exercise of any right under this Agreement or provided by Law shall not preclude any further exercise of it.

**14.7 Conflict with Other Agreements.**

If there is any conflict between the terms of this Agreement and any other agreement, this Agreement shall prevail (as between the Parties) unless: (i) such other agreement expressly states that it overrides this Agreement in the relevant respect and (ii) the Parties are either also parties to that other agreement or otherwise expressly agree in writing that such other agreement shall override this Agreement in that respect.

#### 14.8 **Confidentiality.**

Each Party shall (and shall procure that each of its Connected Persons shall) hold Confidential Information in confidence, not copy or reproduce it, not disclose it to any person other than a Connected Person, and use the Confidential Information only for the purpose of exercising or performing that Party's rights and obligations under this Agreement.

This Paragraph 14.8 shall not apply to Confidential Information to the extent that:

- (a) the Confidential Information is required to be disclosed by Law or by any stock exchange or Governmental Authority, or is reasonably requested by any Tax Authority. If the receiving Party believes that Paragraph 14.8(a) applies, it shall, as far as it is practicable and lawful to do so:
  - (i) first consult the disclosing party to give the disclosing party an opportunity to contest the disclosure; and
  - (ii) take into account the disclosing party's reasonable requirements about the proposed form, timing, nature and extent of the disclosure;
- (b) the Confidential Information is required to be disclosed so that the receiving party can fulfil its obligations under this Agreement;
- (c) the Confidential Information was already in the public domain when it was first received by the receiving party;
- (d) the Confidential Information subsequently enters the public domain, other than through breach of Paragraph 14.8;
- (e) written records show that, when the Confidential Information was first made available to the receiving party, it was already in the lawful possession of the receiving party or any of its Connected Persons;
- (f) the Confidential Information is required to be disclosed for the purpose of any arbitral or judicial proceedings arising out of this Agreement;
- (g) the Confidential Information is required to be disclosed to lending banks, financial institutions or any other funding or prospective funding (whether debt or equity) parties (including any potential Additional Subscribers pursuant to Article 11) of the receiving party or any of its Affiliates or arrangers of that funding or rating agencies engaged by or on behalf of the receiving party for the purpose of getting funding or meeting its obligations to such party; or
- (h) the Confidential Information is required to be disclosed by the receiving party to:
  - (i) its direct or indirect investors, including any person who the receiving party reasonably believes is likely to become a direct or indirect investor;

- (ii) persons who the receiving party reasonably believes are likely to become investors in its shares, whether directly or indirectly, through syndication by its investors; or
- (iii) directors, officers or advisers of persons falling under this Paragraph 14.8 (h)(i) or (h)(ii).

Each Party shall disclose Confidential Information as permitted by this Paragraph 14.8 only if it is reasonably required and, in the case of disclosures under 14.8(b), 14.8(g) or 14.8(h) of the paragraph above, only if the party to whom the disclosure is made is informed of the confidential nature of the Confidential Information and acknowledges that it is subject to a duty of confidentiality on substantially the same terms as this Paragraph 14.8 and enters in a confidentiality agreement in favour of BT and other Parties to this Agreement.

Subject to the paragraph below, if this Agreement terminates, the receiving party shall (and shall procure that its Connected Persons shall), within 20 days after receiving a written request by the disclosing party: (a) destroy, or return to the disclosing party, all copies of any document that contains any Confidential Information; (b) take reasonable steps to erase the Confidential Information from any computer or other digital device on which it is held; and (c) appoint one of its authorised officers to supervise the steps contemplated in this paragraph, and to certify in writing to the disclosing party that they have been carried out. For these purposes, 'document' includes any material prepared by or on behalf of either Party or its Connected Persons.

Each Party and its Connected Persons may retain any Confidential Information to the extent required, and for the time period specified, by any applicable Law, including the rules of a professional body.

The provisions of this Paragraph 14.8 shall survive termination of this Agreement.

#### **14.9 Obligations of the Corporations.**

Unless expressly specified in this Agreement, the obligations of the Corporations under this Agreement shall be several and not joint and several.

#### **14.10 No Third Party Enforcement.**

Subject to the following paragraphs of this Paragraph 14.10, a person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

The Third Parties will be entitled to enforce Paragraphs 8.7(b), 11.1(f) (to the extent it relates to the enforcement of Paragraph 8.7(b)), this Paragraph 14.10 and the penultimate paragraph of Paragraph 14.16 and members of the BT Group will be entitled to enforce Paragraph 6.4 and Paragraph 8.7(a), in each case, subject to and in accordance with the Contracts (Rights of Third Parties) Act 1999 and the terms of this Agreement.

The Parties may not vary or rescind Paragraph 8.7(b), this Paragraph 14.10 or the penultimate paragraph of Paragraph 14.16 without the written consent of the Third Parties. This right is subject to the rights of the Parties to amend or vary this Agreement without the consent of the Third Parties (provided that such amendment or variation does not relate to, or affect, any right of a Third Party).

#### 14.11 **Applicable Law.**

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

#### 14.12 **Dispute Resolution.**

Each Party may give written notice of any Dispute (a “**Dispute Notice**”) to the other Parties. The Dispute Notice shall include a detailed description of the Dispute and any steps taken by the Parties to resolve it. The Parties shall attempt in good faith to resolve the Dispute through a face-to-face meeting or telephone conference call within 10 Business Days after the Dispute Notice was received (the “**First Resolution Period**”).

If the Parties are unable to resolve the Dispute by amicable negotiation within the First Resolution Period, the Dispute shall be referred to the respective Dispute Representatives of the Parties within 15 Business Days after the end of the First Resolution Period. The Dispute Representatives shall attempt in good faith to resolve the Dispute through a face-to-face meeting or telephone conference call within 10 Business Days from and including the date on which it was referred to them (the “**Second Resolution Period**”).

If the Dispute Representatives fail to resolve the Dispute within the Second Resolution Period, the Parties shall attempt to resolve the Dispute by mediation, using the CEDR Mediation Model Procedure, which is incorporated into this Article. To initiate a mediation, a Party shall provide written notice requesting a mediation (a “**Mediation Notice**”) to the other Parties and to CEDR within five Business Days after the end of the Second Resolution Period. Unless otherwise agreed by the other Parties, CEDR shall nominate the mediator. The mediation shall start within 10 Business Days after the date of the Mediation Notice and shall be completed within 30 Business Days after the mediation’s start-date. If the Dispute cannot be resolved by the mediation process within the set time period the Parties may proceed to arbitration.

Except to obtain interim or injunctive relief, no Party may bring any proceedings under Paragraph 14.13 in relation to any Dispute until the procedure in this Paragraph 14.12 has been followed.

#### 14.13 **LCIA Arbitration**

Subject to Paragraph 14.14, any Dispute shall be referred to, and finally resolved by, arbitration under the LCIA rules as effective on 1 October 2014 (“**LCIA Rules**” or “**Rules**”), which Rules are deemed to be incorporated into this clause. The tribunal shall consist of three arbitrators. The Parties to the Dispute shall each nominate one arbitrator, provided that where there are multiple claimants or multiple respondents, the multiple claimants jointly and the multiple respondents jointly shall nominate an arbitrator. The third arbitrator shall be appointed by agreement of the Parties. If the Parties are unable to agree on the appointment of the third arbitrator, the third arbitrator shall be appointed by the President or a Vice President of the LCIA.

The place of arbitration shall be London. The language to be used in the arbitral proceedings shall be English.

#### 14.14 **Injunctions and specific performance.**

Each of the Parties acknowledges and agrees that damages may not be an adequate remedy for particular breaches of this Agreement and that each Party shall be entitled (without

prejudice to its other rights and remedies) to all equitable remedies, including permanent injunction, and/or specific performance.

The Parties are entitled to seek all interim measures available under the LCIA Rules. Nothing in the above shall prevent any party from applying to the Courts of England and Wales for interim relief of any kind.

**14.15 Agent for Service of Process.**

BI shall at all times maintain an agent for service of process and any other documents in proceedings in England and Wales or any other proceedings in connection with this Agreement. That agent shall be Bombardier UK Holding Limited, currently of Two Pancras Square, King's Cross, London N1C 4AG, United Kingdom. Any claim form, judgment or other notice of legal process shall be sufficiently served on BI if delivered to Bombardier UK Holding Limited at its address for the time being. BI waives any objection to such service.

BI irrevocably undertakes not to revoke the authority of its agent and if, for any reason the Subscriber requests BI to do so, BI shall promptly appoint another agent with an address in England and notify the Subscriber of the agent's details. If, following such a request, BI fails to appoint another agent, the Subscriber may, at BI's expense, appoint one on behalf of BI. Nothing in this Agreement shall affect the Subscriber's right to serve process in any other manner permitted by Law.

The Subscriber shall at all times maintain an agent for service of process and any other documents in proceedings in England and Wales or any other proceedings in connection with this Agreement. That agent shall be Kirsty Buchan of Law Debenture Corporate Services Limited, currently of Fifth Floor, 100 Wood Street, London EC2V 7EX (Fax: + 44 (0)20 7606 0643 and email: kirsty.buchan@lawdeb.com). Any claim form, judgment or other notice of legal process shall be sufficiently served on the Subscriber if delivered to Law Debenture Corporate Services Limited at its address for the time being. The Subscriber waives any objection to such service.

The Subscriber irrevocably undertakes not to revoke the authority of its agent and if, for any reason BI requests the Subscriber to do so, the Subscriber shall promptly appoint another agent with an address in England and notify BI of the agent's details. If, following such a request, the Subscriber fails to appoint another agent, BI may, at the Subscriber's expense, appoint one on behalf of the Subscriber. Nothing in this Agreement shall affect BI's right to serve process in any other manner permitted by Law.

**14.16 Entire Agreement.**

[REDACTED], this Agreement and the other Transaction Documents together set out the whole agreement between the Parties and supersede any previous draft, agreement, arrangement or understanding, [REDACTED], whether in writing or not, relating to the Investment. It is agreed that:

Redacted information with respect to prior arrangement

- (a) no Party has relied on or shall have any claim or remedy arising under or in connection with any statement, representation, warranty or

undertaking made by or on behalf of the other Party (or any of its Connected Persons) in relation to the Investment that is not expressly set out in this Agreement or any other Transaction Document;

- (b) the only right or remedy of a Party in relation to any provision of this Agreement or any other Transaction Document shall be for breach of this Agreement or the relevant Transaction Document; and
- (c) except for any liability in respect of a breach of this Agreement or any other Transaction Document, no Party (nor any of its Connected Persons) shall owe any duty of care or have any liability in tort or otherwise to the other Party in relation to the subject matter of this Agreement.

Without limiting the generality of the foregoing, each of the Parties irrevocably and unconditionally waives any right or remedy it may have to terminate and/or to rescind this Agreement by reason of any misrepresentation (other than a fraudulent misrepresentation) having been made to it by any person (whether party to this Agreement or not) and upon which it has relied in entering into this Agreement or for breach of contract or otherwise howsoever arising other than as specifically provided for under this Agreement. A Party may only terminate this Agreement prior to Closing in accordance with the express terms hereof.

No person shall have any claim against any employee, director, consultant or agent of BI or BT arising out of the BT Warranties or BI Warranties or the disclosures contained in the Disclosure Letters (and, in particular, the persons listed in the definition of Knowledge in Paragraph 1.1) or against BI or BT vicariously for such persons other than a claim against BI or BT as the case may be in accordance with the terms of this Agreement. Each Party agrees to the terms of this Paragraph 14.16 on its own behalf and as agent for each of its Connected Persons.

Nothing in this Paragraph 14.16 shall limit any liability for fraud or fraudulent misrepresentation.

**14.17 No double recovery.**

No Party shall be entitled to recover damages or obtain payment, reimbursement, restitution or indemnity more than once in respect of any one liability, loss, cost, shortfall, damage or deficiency under any other provision of this Agreement or in any other Transaction Document, regardless of whether more than one claim arises in respect of it.

**14.18 Counterparts.**

This Agreement may be executed in any number of counterparts and by each Party on separate counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same Agreement. Delivery of a counterpart of this Agreement by e-mail attachment shall be an effective mode of delivery.

**14.19 Nomination.**

The Subscriber may in its absolute discretion nominate one or more wholly-owned Affiliate (each a "**Nominated Subscriber**") to subscribe for Warrants in BI and/or Convertible Shares in BT at Closing by giving written notice of such nomination to BT and BI prior to Closing



and may in relation thereto assign any and all of its rights under this Agreement to the Nominated Subscriber in accordance with Paragraph 14.20.

**14.20 Assignment.**

The Subscriber may its absolute discretion assign, transfer, charge or otherwise deal with any of its rights or obligations under this Agreement in whole or in part to one or more wholly-owned Affiliates and/or Additional Subscribers.

If the Subscriber assigns, transfers, charges or otherwise deals with any of its rights or obligations under this Agreement or any Additional Subscriber(s) enters into an Additional Subscriber Joinder Agreement, then:

- (a) neither it nor BI or BT shall have any greater liability under this Agreement than they would otherwise have had;
- (b) BI and BT shall not have any greater liability to any wholly-owned Affiliate(s), Additional Subscriber(s) and the Subscriber taken as a whole than it would have had to the Subscriber alone and will not have any liability to any wholly-owned Affiliate(s) or Additional Subscriber(s) in circumstances where it would not have had a liability to the Subscriber; and
- (c) the Subscriber shall notify BI as soon as practicable after the assignment, transfer, charge or dealing, together with full particulars of the assignee, transferee or chargee.

The Subscriber may not sub contract the performance of any of its obligations under this Agreement other than as provided in the Additional Subscriber Joinder Agreement, provided always that the Subscriber shall remain liable for the Subscription Price.

Neither BT nor BI may assign, transfer, charge or otherwise deal with any of its rights or obligations under this Agreement.

**14.21 Enurement.**

This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective heirs, executors, successors (including any successor by reason of the amalgamation or merger of any Party), administrators and permitted assigns until terminated in accordance with Paragraph 7.10.

*(Signature follows)*

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date first indicated above.

**BOMBARDIER INC.**

Per: (signed) Daniel Desjardins  
Name: Daniel Desjardins  
Title: Senior Vice President, General  
Counsel and Corporate Secretary

Per: (signed) Louis G. Véronneau  
Name: Louis G. Véronneau  
Title: Vice President, Mergers and  
Acquisitions

**CAISSE DE DÉPÔT ET PLACEMENT DU  
QUÉBEC**

Per: (signed) Christian Dubé  
Name: Christian Dubé  
Title: Executive Vice-President, Quebec

Per: (signed) Justin Méthot  
Name: Justin Méthot  
Title: Senior Director

**BOMBARDIER TRANSPORTATION  
(INVESTMENT) UK LIMITED**

Per: (signed) Daniel Desjardins  
Name: Daniel Desjardins  
Title: Authorized Signatory

Per: (signed) Louis G. Véronneau  
Name: Louis G. Véronneau  
Title: Authorized Signatory