

## SETTLEMENT AGREEMENT – SHARED PROCEEDS

This Settlement Agreement – Shared Proceeds (“Settlement Agreement”), effective as of July 14, 2015, is entered into between TALGO, INC., a Washington Corporation, (“Talgo”), as the plaintiff, and the State of Wisconsin, including its Department of Transportation, its Secretary of the Wisconsin Department of Transportation in his official capacity (Mark Gottlieb), and its Governor in his official capacity (Scott Walker) (hereinafter collectively referred to as the “State”), as defendants.

### RECITALS

A. Talgo and the State entered into that certain Contract for Purchase of Intercity Passenger Rail Equipment dated July 15, 2009, as may have been amended (the “Purchase Contract”), that certain Maintenance Agreement dated December 30, 2009, as may have been amended (the “Maintenance Agreement”), along with agreements for the purchase of a wheel change device and a sublease agreement (which all are collectively referred to herein as the “Contracts”). Pursuant to the terms of the Contracts, Talgo was contracted to (1) build trainsets (as defined below) for the State (2) provide spare parts for the service and operation of the Trainsets, (3) provide three (3) spare units to support maintenance activities, (4) provide warranty for such Trainsets, (5) provide 20 years of maintenance services on the Trainsets, (6) provide a temporary facility for the maintenance of the Trainsets, and (7) provide certain support equipment, such as the wheel change device, related to the Trainsets.

B. Talgo has alleged that the State breached the Contracts. The State disputes this allegation. During the dispute, Talgo maintained possession of the manufactured Trainsets and other Talgo Assets described in Recital A above and further performed maintenance services upon said Trainsets.

C. Talgo filed a civil action in the Dane County Circuit Court, Case No.: 12-CV-4340, and further intended to amend its Complaint in that action to assert claims to recover damages based on the State’s alleged breach of its Contracts with Talgo (collectively, the “Lawsuit”).

D. Talgo and the State (collectively, “the Parties” or singularly a “Party”) desire to end their disputes and resolve all claims between them.

E. The Parties have entered into a “Settlement Agreement – Lawsuit” of even date herewith whereby the State has paid Talgo for unpaid

Milestones 23 and 24, as set forth in the Updated Payment Schedule of the Purchase Contract, which is incorporated into the Purchase Contract pursuant to the terms thereof (the "Milestones") regarding the manufacture of the Trainsets and each Party has relinquished all obligations, claims, demands, actions or causes of action of every kind, contingent or fixed, legal or equitable arising out of any events related to the Lawsuit which occurred prior to the execution of this Settlement Agreement and the Settlement Agreement – Lawsuit.

F. The State and Talgo agree that Talgo, according to the terms of this Settlement Agreement, may share its proceeds from its sale, lease and maintenance of the Trainsets with the State to the extent Talgo receives monies arising from a sale or lease of the Trainsets to a third party.

G. As used herein, the term "Trainsets" includes the two complete Trainsets, any and all spare cars, any and all cab cars; and the term "Talgo Assets" refers to the Trainsets and any and all spare parts, all tools, all equipment, the wheel change device, and any and all other assets the State was to purchase under the Contracts.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, in the interest of the public, judicial economy, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree to be legally bound by the following terms and conditions, which, together with the Settlement Agreement – Lawsuit, also signed on the date hereof and the terms of which are incorporated herein, constitute full settlement of any and all disputes between them as set forth below:

1. Sharing of Proceeds. Subject to the cap set forth in Section 1(d) of this Agreement, the Parties shall share proceeds as follows:

- a. Sale Share. In the event Talgo sells one (1) or both of the Trainsets to any party other than the State, Talgo shall remit 30% of the Net Purchase Price of such sale. "Net Purchase Price" as used herein shall mean cash or funds actually received by Talgo for the sale of the Trainsets, less 1) transportation and delivery expenses associated with the sale, which expenses shall include, without limitation, costs associated with the movement of the Trainsets for delivery upon sale, insurance expense in transporting the Trainsets, costs of required rail equipment, track usage fees, labor costs and personnel costs for individuals assisting in the sale, move or transportation upon sale, and 2) all costs associated

with physical and/or software modifications and customizations required as a condition of such sale. The 30% due the State of the Net Purchase Price hereunder shall be paid by Talgo to the State within 30 days after Talgo has both incurred all the expenses required above and Talgo has received payment for such sale. Talgo shall provide all available documentation of such expenses upon reasonable request by the State.

- b. Lease Share. In the event Talgo enters into a lease for one (1) or both of the Trainsets to any party other than the State, Talgo shall remit 10% of its annual Net Lease Proceeds. "Net Lease Proceeds" as used herein shall mean lease payments Talgo actually receives from the lessee under such lease, less expenses associated with such lease during the life of the lease. "Expenses associated with such lease" shall include, without limitation, costs associated with the movement of the Trainsets, insurance expense, costs of required rail equipment, track usage fees, support personnel expenses and all costs associated with physical and/or software modifications and customizations required as a condition of such lease. The amount due shall be paid by Talgo to the State within 30 days of the end of the calendar year. Notwithstanding the foregoing, Talgo's obligation to pay the 10% share set forth in this Subsection 1(b) shall apply only after all the expenses associated with such lease are fully exhausted as an offset to Talgo's payment obligation. By way of example, If Talgo leases the Trainsets for \$100,000 per year, and Talgo has \$50,000 in expenses associated with such lease during the first year and \$10,000 in expenses associated with such lease in subsequent years, Talgo will pay the State \$5,000 for the first year of the lease ( $\$100,000 - \$50,000 \text{ expenses} = \$50,000$ , and  $\$50,000 \times .1 = \$5,000$ ) and \$9,000 per year in subsequent years of the lease ( $\$100,000 - \$10,000 = \$90,000$ , and  $\$90,000 \times .1 = \$9,000$ ).
- c. Maintenance Share. In the event Talgo sells or leases one (1) or both of the Trainsets to any third party other than the State, where such sale or lease results in Talgo performing maintenance services to such purchaser (or lessee, as the case may be), Talgo shall remit to the State 30% of that amount of the resulting maintenance fees actually received by Talgo that exceeds \$4,500,000 annually (which \$4,500,000 threshold shall be adjusted each year on January 1 by the

change in the Consumer Price Index – All Urban Consumers as reported by the U.S. Bureau of Labor Statistics (<http://data.bls.gov/cgi-bin/surveymost>) for the previous year, hereinafter the “CPI”). By way of example (and for the sake of simplicity, not taking into account the CPI adjustment for later years), if Talgo receives maintenance fees totaling \$4,500,000 or less from a purchaser or lessee in a year, Talgo shall have no obligation to pay any part of the maintenance fees to the State; if Talgo receives maintenance fees of \$4,600,000 in a given year (again, not considering the CPI adjustment for the sake of simplicity in this example) from a purchaser or lessee of the Trainsets, then Talgo would remit \$30,000 to the State for that year  $((4,600,000 - 4,500,000) \times .30 = 30,000)$ .

- d. Cap on Share. Talgo’s total obligation to make payments to the State under this Settlement Agreement (whether through Subsections 1(a), 1(b) or 1(c)) shall be capped at the total collective amount of \$9,748,000. With regard to Talgo’s payment obligation under Subsection 1(a) of this Agreement (and the maintenance share set forth in Subsection 1(c) of this Agreement associated with such sale), Talgo’s obligation to make payments to the State (whether through Subsections 1(a) or 1(c)) shall terminate on July 14, 2018, provided that, if Talgo has, on or before July 14, 2018, sold or entered into a binding agreement for the sale of the Trainsets, then the payment obligation under Subsection 1(a) shall remain in effect for that specific sale. With regard to Talgo’s payment obligation under Subsection 1(b) of this Agreement (and the maintenance share set forth in Subsection 1(c) of this Agreement), Talgo’s obligation to make payments to the State (whether through Subsections 1(b) or 1(c)) shall terminate on July 14, 2018, provided that, if Talgo has, on or before July 14, 2018, leased or entered into a binding agreement for the lease of the Trainsets, then the payment obligation under Subsection 1(b) and 1(c) shall remain in effect for that specific lease term or any subsequent lease term for a lease entered into prior to July 14, 2018. By way of example, if Talgo enters into a binding agreement to sell the Trainsets prior to July 14, 2018, but the title is not transferred until after July 14, 2018, Talgo’s obligation to make payments to the State under this Settlement Agreement will continue with regard to that sale. If Talgo enters into a binding agreement to sell the Trainsets after

July 14, 2018, Talgo will not have any obligation to make payments to the State under Subsections 1(a) and 1(c) of this Settlement Agreement. If, prior to July 14, 2018, Talgo enters into a binding agreement to lease the Trainsets, its obligation to make payments to the State under Subsection 1(b) (and Subsection 1(c)) continues for the term of that lease or any subsequent lease for a lease entered into prior to July 14, 2018, even if the term of the lease extends beyond July 14, 2018 (for instance, a three-year lease commencing July 1, 2017). If Talgo enters into a binding agreement to lease the Trainsets after July 14, 2018, Talgo will have no obligation to make any payments to the State under this Settlement Agreement.

- e. Condition Precedent. Talgo's payment obligations in this Section 1 shall not apply, to any degree, unless and until the State has made the Settlement Payment set forth in the Settlement Agreement – Lawsuit.

2. Entities to be Bound. Talgo agrees that this Settlement Agreement binds itself, its current, former and future parents, divisions, subsidiaries, affiliates, predecessors, successors, and assigns. The State agrees this Settlement Agreement binds the State, including its agencies, instrumentalities, subdivisions, officials, officers, agents, employees and assigns to the extent allowable by law. The parties understand that in the event Talgo transfers ownership of the Trainsets to one of its current, former or future parents, divisions, subsidiaries, affiliates, predecessors, successors, or assigns, the State's right to Shared Proceeds under Section 1 of this Agreement is not extinguished by such transfer, and continues as against that subsequent entity.

3. Non-Interference. The State covenants that it shall not knowingly or intentionally – and agrees that it has no right to – directly, or indirectly, interfere with, communicate with any third party about, participate in, negotiate, or in any way involve itself in any Talgo effort to sell, lease or maintain the Trainsets. The State shall promptly inform its WisDOT employees in writing that the dispute with Talgo has been settled, and that all employees are encouraged to assist Talgo in any way possible in its efforts to sell or lease the Trainsets to the extent reasonably requested by Talgo. WisDOT may determine the management protocol of these efforts. This written notice to WisDOT employees and any efforts by WisDOT (or its employees or management) to assist in the sale of the Trainsets shall not be considered “interference” as prohibited by this Settlement Agreement. The State also covenants to work in good faith with Talgo to assist in the lease or

sale of the Trainsets should Talgo make such a request for assistance. Talgo shall provide the State with written notice of any interference by the State. The Parties acknowledge that they will work in good faith to resolve any dispute arising based on allegations of interference. In the event the Parties are unable to resolve the dispute, the Parties agree that Talgo may file an action with the circuit court in Dane County seeking relief, without need to resort to the provisions of Wis. Stat. §§ 16.007 and 775.01. The State acknowledges that if Talgo prevails in its interference claim, the circuit court may award damages to Talgo up to the limit of Talgo's Shared Proceeds obligation under Section 1 of this Agreement. Talgo acknowledges that even if it prevails in its interference claim, the Court may decide not to award any damages or may award damages in a smaller amount than Talgo may demand.

4. Modification of Agreement. This Settlement Agreement may not be amended, revoked, changed, or modified in any way except in a writing executed by the Parties. No waiver of any provision of this Settlement Agreement shall be valid unless it is in writing and signed by the Party against whom such waiver is charged.

4. Interpretation. The language of all parts of this Settlement Agreement shall be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties. It has been negotiated by and between attorneys for the Parties and shall not be construed against either side as drafter.

5. No Precedential Value. The Parties acknowledge and agree that this Settlement Agreement has no precedential value upon third parties. Although the terms of this Settlement Agreement and the Settlement Agreement – Lawsuit shall bind the State with regard to future decisions or determinations regarding its dealings with Talgo, the terms of this Settlement Agreement in no way limit the State's authority to make future decisions or determinations with regard to third parties.

6. Selective Enforcement. The failure of a Party to enforce or exercise any right, condition, term, or provision of this Settlement Agreement shall not be construed as or deemed a relinquishment or waiver thereof, and the same shall continue in full force and effect.

7. Counterparts. This Settlement Agreement may be executed in any number of counterparts with the same effect as if all Parties hereto had all signed the same document. All counterparts shall be construed together and shall constitute one Settlement Agreement.

8. Voluntary Execution. The Parties have been and are each represented by counsel and have been fully advised regarding the meaning and nature of this Settlement Agreement and of the provisions, obligations and releases contained herein. The Parties acknowledge that they have executed this Settlement Agreement voluntarily and knowingly. The Parties acknowledge and agree that this Settlement Agreement is a result of a compromise and settlement does not represent an admission by any Party to any fact, claim or defense for any issue in the Lawsuit or otherwise.

9. Authorization. The undersigned representative of each Party certifies that he is fully authorized to enter into this Settlement Agreement and to legally bind each respective Party to all the terms and conditions set forth in this Settlement Agreement.

10. Governing Law/Exclusive Venue. The Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin. Any dispute or legal action concerning this Settlement Agreement shall be conducted exclusively and solely by a court in Dane County, Wisconsin. The Parties agree to consent to the exclusive jurisdiction and exclusive venue of any state court located in Dane County, Wisconsin.

11. Non-Reliance. The Parties agree and acknowledge that in executing this Settlement Agreement, they have not relied in any way upon representations or statements by the other Party not set forth in this Settlement Agreement, and further that they have independently chosen to enter into this Settlement Agreement without regard to representations or statements by the other Party that are not contained herein. The Parties have relied on the advice and representation of counsel of their own selection and have read and fully understand this Settlement Agreement, and have been fully advised as to its legal effect.

12. Entire Agreement. This Settlement Agreement and the Settlement Agreement – Lawsuit constitute the entire agreement between the Parties with respect to resolution of the dispute. Any representations, promises or statements not set forth in the Settlement Agreement are of no force and effect and have not been relied upon.

// signatures on following page //

TALGO, INC.:

Antonio Perez, its President and CEO

APPROVED AS TO FORM:

Lester Pines, attorney for Talgo, Inc.

The State of Wisconsin, The Wisconsin Department of Transportation, and Mark Gottlieb and Scott Walker in their official capacities, collectively:

Mark Gottlieb, Secretary, Department of Transportation for the State of Wisconsin

APPROVED AS TO FORM:

Mark Bromley, Assistant Attorney General, State of Wisconsin