

# **Domination and Profit & Loss Transfer Agreement**

between           **METRO AG**,  
Metro-Straße 1, D-40235 Düsseldorf  
  
- as “Controlling Company” (“*Organträger*”) -

and               **METRO Erste Gesellschaft für Vermögensverwaltung mbH**,  
Metro-Straße 1, D-40235 Düsseldorf  
  
- as “Controlled Company” (“*Organgesellschaft*”) -

## **§ 1 Domination**

The Controlled Company shall submit the governance of its company to the Controlling Company. Accordingly, the Controlling Company is entitled to issue instructions to the Board of Directors (*Geschäftsführung*) of the Controlled Company with respect to the management of the company.

## **§ 2**

### **Transfer of Profit**

1. Subject to the allocation or dissolution of reserves pursuant to paragraph 2, any annual net profit which arises without the obligation to transfer the profit reduced by any loss carried forward from the preceeding year is to be transferred.
  
2. Subject to the Controlling Company's approval, the Controlled Company may allocate amounts to other profit reserves to the extent permitted by commercial law and economically justified pursuant to reasonable commercial judgement. Any uncommitted reserves allocated during the term of this Agreement (other profit reserves pursuant to §272 para. 3 HGB (German Commercial Code) as well as capital reserves from additional capital payments by the Controlling Company pursuant to § 272 para. 2 no. 4 HGB) shall be dissolved upon the demand of the Controlling Company and shall be used to compensate any annual net loss or shall be transferred to the extent permitted by law as profit. The transfer of profit resulting from the dissolution of reserves allocated prior to the Agreement shall be precluded.

## **§ 3**

### **Compensation for Loss**

Pursuant to the provisions of § 302 para. 1 and 3 AktG (*German Stock Corporation Act*), the Controlling Company is obligated to compensate for any annual net loss which would otherwise arise during the term of the Agreement unless such loss is compensated for by withdrawals from reserves (other profit reserves under § 272 para. 3 HGB and capital

reserves from additional capital payments by the Controlling Company pursuant to §272 para. 2 no. 4 HGB) allocated during the term of the Agreement.

#### **§ 4**

##### **Effectiveness and Term of the Agreement**

1. The Agreement is entered into subject to the approval of the Shareholders' Meeting (*Gesellschafterversammlung*) of the Controlled Company and the Annual Stockholders' Meeting (*Hauptversammlung*) of the Controlling Company. It shall become valid upon registration in the commercial register located at the site of the registered office of the Controlled Company and shall, except for the right to issue instructions under § 1, apply for the time period beginning on October 30, 2002.
2. The Agreement may be terminated by giving three months' notice. The Agreement may be terminated for the first time with effect to the end of December 31, 2007, but not earlier than five calendar years from the beginning of the fiscal year in which the fiscal unit under German corporate income tax law and German business tax law is acknowledged for the first time by virtue of this Agreement. If the Agreement is not terminated within such notice period, it shall, each time, be renewed for the period of one calendar year.
3. The right to terminate the Agreement for cause without having to comply with a notice period shall remain unaffected. In particular, the Controlling Company shall be entitled to terminate the Agreement for cause if the Controlling Company no longer holds the majority of the voting rights from its shares in the Controlled Company.

## § 5

### Final Provisions

If any provision of this Agreement should be or become invalid or unenforceable or if this Agreement contains any gaps, the validity of the remaining provisions of this Agreement shall not be affected. In such case the parties shall be obliged to replace the ineffective or unenforceable provision by an effective and enforceable provision that achieves as closely as possible the commercial effect intended by the ineffective or unenforceable provision and/or fills the gap with a provision that the parties would have agreed upon in view of their commercial intentions if they had considered this issue.

Düsseldorf, November 15, 2002

(2 signatures)

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METRO AG

(2 signatures)

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METRO Erste Gesellschaft für  
Vermögensverwaltung mbH