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|------|---------------------------------|--|-----------|
| 319. | Final Acceptance Unit Number 36 | by the Purchaser | |
| | | Issue of a Final Acceptance Certificate by the Purchaser | 08-Nov-18 |
| 320. | Final Acceptance Unit Number 37 | Issue of a Final Acceptance Certificate by the Purchaser | 13-Nov-18 |
| 321. | Final Acceptance Unit Number 38 | Issue of a Final Acceptance Certificate by the Purchaser | 19-Nov-18 |
| 322. | Final Acceptance Unit Number 39 | Issue of a Final Acceptance Certificate by the Purchaser | 26-Nov-18 |
| 323. | Final Acceptance Unit Number 40 | Issue of a Final Acceptance Certificate by the Purchaser | 03-Dec-18 |
| 324. | Final Acceptance Unit Number 41 | Issue of a Final Acceptance Certificate by the Purchaser | 10-Dec-18 |
| 325. | Final Acceptance Unit Number 42 | Issue of a Final Acceptance Certificate by the Purchaser | 24-Dec-18 |
| 326. | Final Acceptance Unit Number 43 | Issue of a Final Acceptance Certificate by the Purchaser | 31-Dec-18 |
| 327. | Final Acceptance Unit Number 44 | Issue of a Final Acceptance Certificate by the Purchaser | 08-Jan-19 |
| 328. | Final Acceptance Unit Number 45 | Issue of a Final Acceptance Certificate by the Purchaser | 14-Jan-19 |

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| 329. | Fleet Acceptance | Issue of Fleet Acceptance Certificate by the Manufacturer in relation to the Fleet | | 01-Jul-19 |
| | TOTAL PAYMENTS | | 269,472.279 | |

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Appendix 2 to Part B
Total Contract Price

| Column (1) | Column (2) |
|--|---------------------|
| Item | Contract Price |
| Bid Costs | ■ |
| 45 Units: @ 14 ■ per 4-Vehicle Dual Voltage Unit @ 31 ■ per 4-Vehicle AC Only Unit | ■ |
| Product Introduction, Acceptance and Reliability Growth Costs. | ■ |
| Simulator | ■ |
| Initial Spares | ■ |
| Special Tools | ■ |
| Manuals | £0* |
| Manufacturer Fit Out Assets | £0* |
| Total Contract Price (rounded to nearest £) | £269,472,279 |

* Included as part of the Product Introduction, Acceptance and Reliability Growth Costs

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Appendix 3 to Part B
Purchaser Milestone Payment Certificate

[To be issued on the Purchaser's headed notepaper]

To: [Manufacturer]
[Address]

Date: [●]

For the attention of: [●]

Manufacturer and Supply Agreement dated [●] and made between [●] (the Manufacturer) and Rail for London Limited (the MSA)

Words and expressions defined in the MSA shall have the same meanings when used in this certificate and the provisions of the MSA (including clause Error! Reference source not found. (*Governing Law and Jurisdiction*)) shall, as applicable, apply to this certificate.

This certificate constitutes a Purchaser Milestone Payment Certificate under the MSA and I, [the Purchaser Contract Manager] on behalf of the Purchaser hereby confirm to the Manufacturer that, as at the date of this certificate the Manufacturer has achieved Milestone [insert Milestone number], as set out in Appendix 1 (*Schedule of Milestones*) to Part B (*Milestones*) of Schedule 10 of the MSA.

[The Purchaser proposes to withhold or deduct the following sums due to it from the Manufacturer from the amount of the Milestone Payment as set out in Appendix 1 to Part B of Schedule 10 (*Milestones and Security*) of the MSA:]⁴

| <i>Ground for application of withholding or deduction</i> | <i>Amount of withholding or deduction</i> |
|--|---|
| <i>Liquidated damages agreed or determined to be payable pursuant to clause Error! Reference source not found.</i> | £[●] |
| <i>Premium paid by Purchaser for insurances pursuant to paragraph Error! Reference source not found. of Error! Reference source not found. of Error! Reference source not found. (Insurance)</i> | £[●] |
| <i>Other amounts to be withheld or deducted pursuant to clause Error! Reference source not found. (Set-off)</i> | £[●] |

⁴ This paragraph and following table only to be included if the Purchaser proposes to apply any withholding or deduction to the relevant Milestone Payment in accordance with the terms of this Agreement.

The Purchaser agrees to the Manufacturer issuing a Milestone Payment Invoice in relation of Milestone *[insert Milestone number]* in the amount of £*[Milestone Payment set out in column (3) of the Schedule of Milestones (less the total amount of withholdings or deductions (if any))]*.

The issue of this Purchaser Milestone Payment Certificate shall not be taken to mean that the relevant obligations of the Manufacturer have been completed in accordance with the terms of the MSA or otherwise to the satisfaction of the Purchaser.

Signed on behalf of **Rail for London Limited**

Name _____ Date _____

Position: Purchaser Contract Manager

Part C Options for supply of further Units and Equipment

1. Option Price for Option Orders

TABLE 1 -- OPTION PRICES

| Column 1 | | Column 2 | Column 3 |
|---------------------|--|---|---|
| Option | | Latest date Option can be exercised with no break in production: | Latest date Option can be exercised: |
| | | 26 Oct 2017 | 26 Oct 2019 |
| Remobilisation Cost | | N/A | £ [REDACTED] |
| Option Units | AC Only Units (4-Vehicle formation) | [REDACTED] per Unit | £ [REDACTED] per Unit |
| | AC Only Units (5-Vehicle formation) | [REDACTED] 0 per Unit | £ [REDACTED] per Unit |
| | Dual Voltage Units (4-Vehicle formation) | [REDACTED] per Unit | [REDACTED] per Unit |
| | Dual Voltage Units (5-Vehicle formation) | [REDACTED] per Unit | £ [REDACTED] per Unit |
| Option Vehicles | Additional Vehicles (for conversion of either 4-Vehicle AC Only Units or 4-Vehicle Dual Voltage Units into 5-Vehicle formation, as applicable) | [REDACTED] 0 per Vehicle | £ [REDACTED] 0 per Vehicle |
| Option Spares | AC Only Units (5-Vehicle formation) | [REDACTED] (see Note A) | £ [REDACTED] (see Note A) |
| | Dual Voltage Units (5-Vehicle formation) | [REDACTED] 0 (see Note A) | £ [REDACTED] (see Note A) |
| | Additional Vehicles (AC Only/Dual Voltage) | [REDACTED] 0 (see Note A) | £ [REDACTED] (see Note A) |

Note A:

In the event that a number of Optional 5 Vehicle Units (Dual Voltage or AC Only) are purchased or Additional Vehicles are purchased to create 5 Vehicle Units then the amounts shown for Option Spares are applicable only upon the first of such Options being exercised and will not apply otherwise.

The remobilisation costs shown in Column (3) of Table 1 shall only be payable in relation to the first Option Unit Change in respect of which the Option Notice is delivered after 26 October 2017.

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Where the Purchaser delivers an Option Notice under clause 6.6, the Option Price shall be the Foreign Exchange Adjusted Option Price calculated as set out in paragraph 1.1 and if the Option Notice is delivered after 26 October 2017, then the Option Price shall constitute the Foreign Exchange Adjusted Option Price multiplied by the Option Indexation Adjustment as at the date of the Option Notice

Foreign Exchange Adjustment

1.1 The Foreign Exchange Adjusted Option Price for each Option Unit, Option Vehicle or Option Spare shall be calculated by applying the Agreed Forward Rates to the relevant amounts in Table 2 below that are not denominated in £ sterling and adding the relevant amount in Table 2 that is denominated in £ sterling.

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TABLE 2 – FOREIGN CURRENCY BREAKDOWN

Options for supply of further Units and Equipment

| Column 1 | | Column 2 | Column 3 |
|---------------------|---|---|--|
| Option | | Breakdown of pricing in Table 1 into constituent currencies 26 Oct 2017 | Breakdown of pricing in Table into constituent currencies 26 Oct 2019 |
| Remobilisation Cost | | N/A | £ [REDACTED] – [REDACTED] % £ [REDACTED] (Euro element) – [REDACTED] % £ [REDACTED] (SEK element) – [REDACTED] % |
| Option Units | AC Only Units (4-Vehicle formation) | Per Unit £ [REDACTED] – [REDACTED] % £1 [REDACTED] (Euro element) – [REDACTED] % £ [REDACTED] (SEK element) – [REDACTED] % | Per Unit £ [REDACTED] – [REDACTED] % £ [REDACTED] (Euro element) – [REDACTED] % £ [REDACTED] (SEK element) – [REDACTED] % |
| | AC Only Units (5-Vehicle formation) | Per Unit [REDACTED] [REDACTED] [REDACTED] | Per Unit [REDACTED] [REDACTED] [REDACTED] |
| | Dual Voltage Units (4-Vehicle formation) | [REDACTED] [REDACTED] [REDACTED] [REDACTED] | [REDACTED] [REDACTED] [REDACTED] [REDACTED] |
| | Dual Voltage Units (5-Vehicle formation) | [REDACTED] [REDACTED] [REDACTED] [REDACTED] | [REDACTED] [REDACTED] [REDACTED] [REDACTED] |
| | Additional Vehicles (for conversion of either 4-Vehicle AC Only Units or 4-Vehicle Dual | [REDACTED] [REDACTED] [REDACTED] | [REDACTED] [REDACTED] [REDACTED] |
| Option Vehicles | | | |

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| Column 1 | | Column 2 | Column 3 |
|---------------|--|----------|----------|
| | Voltage Units into 5-Vehicle formation, as applicable) | | |
| Option Spares | AC Only Units (5 Vehicle formation) | | |
| | Dual Voltage Units (5-Vehicle formation) | | |
| | Additional Vehicles (AC Only/Dual Voltage) | | |

Indexation

- 1.1 The Option Indexation Adjustment shall be calculated in accordance with the following formula.

$$OIA = \left(\frac{RPIX_y}{RPIX_x} \times a \right) + \left(\frac{AWE_y}{AWE_x} \times b \right) + \left(\frac{PPI_y}{PPI_x} \times c \right) + d$$

OIA means the Option Indexation Adjustment expressed as a decimal fraction;

$RPIX_y$ means the value of RPIX published in the month preceding the month in which the Option Notice is delivered;

$RPIX_x$ means the value of RPIX published in March 2014;

AWE_y means the value of AWE published in the month preceding the month in which the Option Notice is delivered;

AWE_x means the value of AWE published in March 2014;

PPI_y means the value of PPI published in the month preceding the month in which the Option Notice is delivered;

PPI_x means the value of PPI published in March 2014;

a means the applicable proportion for RPIX expressed as a decimal fraction in relation to the Option Unit, Option Vehicle or Option Spare as set out in Table 3;

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- b means the applicable proportion for AWE expressed as a decimal fraction in relation to the Option Unit, Option Vehicle or Option Spare as set out in Table 3;
- c means the applicable proportion for PPI expressed as a decimal fraction in relation to the Option Unit, Option Vehicle or Option Spare as set out in Table 3; and
- d means the applicable proportion for Unindexed costs expressed as a decimal fraction in relation to the Option Unit, Option Vehicle or Option Spare as set out in Table 3.

Changes to the Indices

- (a) If any of the indices referred to in this paragraph **Error! Reference source not found.** ceases to be published, then such other appropriate index that may be published in place thereof shall apply or, in the absence of an appropriate replacement index, such index shall apply as the Parties may agree.

Base Date of Indices

- (b) If any of the indices specified in this paragraph **Error! Reference source not found.** is superseded by an index with a base date which is later than the base date of the indices specified above, the superseding index shall be used or an index with a later base date, as the case may require.

Provisional Indices

- (c) Where an index is published as "provisional" and is subsequently amended:
 - (i) the calculation of any applicable adjustment may be undertaken using the published provision index and invoices may be rendered accordingly;
 - (ii) any published amendment to the provisional index shall result in recalculation of any application adjustment; and
 - (iii) such recalculation shall be retrospective for the relevant period, and the Party disadvantaged by the amendment to the provisional index shall be entitled to recover the difference in the value of any invoice calculated on the basis of an amended provisional index.

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TABLE 3 – INDEXATION

Options for supply of further Units and Equipment

| Column 1 | Column 2 |
|-----------------|---|
| Option | Proportion of price to be multiplied by relevant index |
| Option Units | RPIX: 1.00 AWE: 0.00 PPI: 0.00 Unindexed: 0.00 |
| Option Vehicles | RPIX: 1.00 AWE: 0.00 PPI: 0.00 Unindexed: 0.00 |
| Option Spares | RPIX: 1.00 AWE: 0.00 PPI: 0.00 Unindexed: 0.00 |

Part D Technical Options

1. Option to exclude technical features

- 1.1 The Manufacturer hereby grants to the Purchaser, in respect of each technical feature described in the table shown in paragraph 2, the option to require the Manufacturer to modify the Units comprising either the Initial Order or any Option Order to exclude such technical feature (each a *Technical Option*).
- 1.2 The Purchaser may exercise a Technical Option at any time prior to:
- (a) in the case of the Units comprising the Initial Order, 11 December 2015, except for the Technical Option to exclude the technical feature "Icomera X6 multi-radio mobile access and application router (802.11b/g/n)", which the Purchaser shall be entitled to exercise at any time prior to 31 May 2016; or
 - (b) in the case of Units comprising an Option Order, 11 December 2015, except for the Technical Option to exclude the technical feature "Icomera X6 multi-radio mobile access and application router (802.11b/g/n)", which the Purchaser shall be entitled to exercise at any time prior to 31 May 2016.
- 1.3 Following receipt by the Manufacturer of a written notice from the Purchaser exercising a Technical Option that is received prior to the relevant date referred to in paragraph 1.2 of this Part D, the Manufacturer shall be liable to modify the relevant Units to exclude the technical feature(s) described in the Technical Option, and all references to the Train Technical Requirements and the component parts thereof in respect of the relevant Units shall be deemed to exclude such technical features.
- 1.4 If the Purchaser exercises a Technical Option prior to the relevant date referred to in paragraph 1.2 of this Part D, the Contract Price or, as applicable, the Option Price shall be reduced by the amount set out in column two or, as applicable, column 3 of the table shown below against the relevant technical feature(s) described in the Technical Option.
- 1.5 The Parties each agree that the exercise of a Technical Option prior to the relevant date referred to in paragraph 1.2 of this Part D shall not constitute a Purchaser Change, and the provisions of the Change Procedure shall not apply in respect of such exercise.

2. Technical Options

| Technical Feature | Reduction in Contract Price (per Initial Order Unit) | Reduction in Option Price (per Option Unit) |
|-------------------------------------|--|---|
| Retractable sleet brushes | ██████ | ██████ |
| Passenger counting equipment | ██████ | ██████ |
| Infrastructure monitoring equipment | ██ | ██ |
| De-icing equipment | ██████ | ██████ |

| | | |
|---|------------|------------|
| Removal of trip-cocks from a DV Unit | [REDACTED] | [REDACTED] |
| 'Icomera' X6 multi-radio mobile access and application router (802.11b/g/n) | [REDACTED] | [REDACTED] |

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Schedule 11
Subcontracts

Approved Subcontractors

| Major Component / Component | Approved Subcontractor(s) | Country of Manufacturer | Country of Design | Country of Test |
|--|-------------------------------------|----------------------------|----------------------------|----------------------------|
| Traction equipment (including all items in the power circuit traction motors and associated transmission systems) | Bombardier Transportation Sweden AB | Sweden/ Germany | Sweden | Sweden/ United Kingdom |
| Train Management System (Unit and Vehicle equipment, including intercommunication data-bus for train control and subsystem condition monitoring) | Bombardier Transportation Sweden AB | Sweden/ Germany | Sweden | Sweden/ United Kingdom |
| Pantograph | Brecknell Willis | United Kingdom | United Kingdom | United Kingdom |
| Machined Extrusions | Midas | China | China | China |
| Inter-vehicle and Unit end Couplers (mechanical components) | Dellner | Sweden | Sweden | Sweden |
| Mechanical and electrical brake systems | Knorr Bremse | Germany/ United Kingdom | Germany/ United Kingdom | Germany/ United Kingdom |
| HVAC (Cab and Saloon) | Melco | Japan/ Italy | Japan | Japan/ Italy |
| Bogie Frames | Bombardier GmbH Siegen | Germany | Germany/ United Kingdom | Germany |
| Wheelsets | Bombardier GmbH Siegen | Germany | Germany/ United Kingdom | Germany |
| Passenger Information System | Axion | Canada | Canada | Canada |
| | GDS | Italy | Italy | Italy |
| Door system complete | Knorr Bremse | Czech Republic | Austria | Czech Republic |

Schedule 12
Change Procedure

| | |
|---------------|---|
| Part A | General |
| Part B | Purchaser Changes |
| Part C | Manufacturer Changes |
| Part D | Compensation Changes |
| Part E | Option Unit Changes |
| | Appendix 1: Schedule of Costs |
| | Appendix 2: Calculation of Change in Costs |
| | Appendix 3: Manufacturer's Margin |

Part A General

1. Scope

Any amendment to the terms of this Agreement, including to the rights and/or obligations of the Manufacturer, the Purchaser or the Operator under this Agreement shall, save expressly provided to the contrary in this Agreement, be made in accordance with the procedure set out in this Schedule 12.

2. Duties

- 2.1 In exercising any of their rights and performing any of their obligations under this Schedule 12, the Parties shall use reasonable endeavours to act in such a manner as to simplify and minimise the administrative time and costs incurred in dealing with any Change proposal.
- 2.2 Each Party agrees to act reasonably and not to require the other Party to undertake unnecessary and onerous work in relation to a Change proposal.

3. Changes to TSA

If one Party informs the other Party that it considers that a Change proposed in relation to this Agreement is either related to a Change proposed in relation to the TSA or that, if implemented, would require the making of a Change under the TSA, as applicable, then:

- (a) the proposals under this Agreement and under the TSA (as applicable) shall be considered concurrently; and
- (b) a Change Confirmation Notice or a Claim Confirmation Notice (as the case may be) shall not be issued in relation to one of the related Changes alone.

Part B Purchaser Changes

1. Purchaser Change Notice

- 1.1 The Purchaser shall be entitled at any time during the duration of this Agreement to propose a Change (*Purchaser Change*).
- 1.2 If the Purchaser wishes to propose a Purchaser Change, it shall serve a notice (*Purchaser Change Notice*) on the Manufacturer. The Purchaser Change Notice shall only be valid if it is signed by the Purchaser Contract Manager and counter-signed by an authorised person (such person to be notified by the Purchaser to the Manufacturer) and shall set out details of the proposed Purchaser Change in sufficient detail to enable the Manufacturer to provide the Initial Change Appraisal in accordance with paragraph 2.
- 1.3 If the Purchaser considers, in its absolute discretion, that a Change needs to be implemented immediately (an *Emergency Change*) then the Purchaser shall indicate in the Purchaser Change Notice or at any time during the process set out in this Part B that the Purchaser Change is an Emergency Change and the Manufacturer shall commence the implementation of such Purchaser Change forthwith notwithstanding that the full process in this Part B has not been followed. The provisions set out in the remainder of this Part B shall apply to such Emergency Change save that, where the context requires, such provisions shall be read having regard to the fact that the Manufacturer has already commenced the implementation of the Purchaser Change.
- 1.4 In relation to an Emergency Change, the Purchaser shall:
 - (a) not require the Manufacturer to provide or procure Capital Expenditure upfront;
 - (b) during the implementation of any Emergency Change and prior to the full Purchaser Change process having been duly completed (in accordance with this Part B), pay to the Manufacturer following the end of each Railway Period an amount to cover any reasonable interim incremental costs, fees and expenses reasonably and properly incurred during that Railway Period as a direct result of the implementation of the Emergency Change (*Emergency Change Interim Payments*). Any Emergency Change Interim Payments will be reconciled in the Schedule of Payments in accordance with paragraph 8.5 of this Part B; and
 - (c) if (where the Purchaser is not precluded under this Agreement from doing so) the Purchaser withdraws the relevant Purchaser Change Notice (or if it is deemed withdrawn), pay the reasonable costs properly incurred by the Manufacturer in respect of the Emergency Change prior to such withdrawal (to the extent not already covered by the Emergency Change Interim Payments).

2. Initial Change Appraisal

- 2.1 As soon as practicable and in any event within 10 Working Days after receipt of a Purchaser Change Notice (or such longer period as is agreed by the Purchaser acting

reasonably), the Manufacturer shall deliver to the Purchaser a written report (an *Initial Change Appraisal*) which shall set out:

- (a) whether, in the reasonable opinion of the Manufacturer, including an explanation of the Manufacturer's reasons for such an opinion, the proposed Purchaser Change would:
 - (i) be technically unfeasible or impossible;
 - (ii) be illegal or put it in breach of its Safety Obligations where such illegality or breach could not be remedied by the Manufacturer making other changes to the Units or Works in order to accommodate such Purchaser Change;
 - (iii) materially and adversely affect the ability of the Manufacturer to provide the Works;
 - (iv) change the termination provisions of this Agreement in a manner which would make termination of this Agreement materially easier; or
 - (v) change the scope of any indemnity under this Agreement which would have the effect of making it materially more likely that the Manufacturer would be required to indemnify the Purchaser,

in each case in a manner that cannot be compensated or relieved by this Schedule 12;

- (b) the Manufacturer's initial assessment of any impact of the proposed Purchaser Change on any of the dates or activities referred to in the Project Programme, the Contractual Provisional Acceptance Dates, the Contractual Final Acceptance Dates and the Contractual Fleet Acceptance Date;
- (c) the Manufacturer's initial assessment of the scope of any changes to the Works, the Units or the Equipment or any additional works required to implement the proposed Purchaser Change, including:
 - (i) any investigatory or detailed design work which would have to be carried out in advance of preparing or finalising a Change Appraisal in respect of the proposed Purchaser Change; and
 - (ii) any changes to the Works or additional works which, in order to achieve the proposed Purchaser Change or to avoid or minimise any abortive works, would have to be commenced in advance of preparing or finalising a Change Appraisal in respect of the proposed Purchaser Change;
- (d) the Manufacturer's estimate, acting in good faith, of all Change in Costs under this Agreement that are associated with the proposed Purchaser Change, identifying separately each Change in Cost with such estimate;

- (e) without prejudice to paragraph 3 (*Changes to TSA*) of Part A (*General*) of this Schedule 12, the Manufacturer's initial assessment of the impact of the proposed Purchaser Change on the TSA; and
- (f) the Manufacturer's reasonable estimate of the cost and time required to prepare a Change Appraisal in respect of the proposed Purchaser Change in accordance with paragraph 4 (*Change Appraisal*),

taking into account, in the case of an Initial Change Appraisal issued in response to an Option Notice, the matters set out in Part E (*Option Unit Changes*).

2.2 If the Manufacturer's estimate referred to in paragraph 2.1(d) is for an amount which is equal to or less than £2,000,000 (Indexed by RPI), then the Initial Change Appraisal shall also include:

- (a) in respect of any capital works and any other part of the proposed Purchaser Change for which a Fixed Price Quotation can be provided or the cost can be determined by reference to the Schedule of Costs, either:
 - (i) a Fixed Price Quotation; or
 - (ii) details of those parts of the proposed Purchaser Change which are not covered by the Fixed Price Quotation provided under (i) above and for which the cost can be determined by reference to the Schedule of Costs; and
- (b) the Manufacturer's proposed Schedule of Payments (which may, if appropriate, consist of a single lump sum payment) to cover the Fixed Price Quotation where one can be provided.

2.3 The reasonable and properly incurred costs of preparing any Initial Change Appraisal shall be borne:

- (a) prior to the date of the end of the Detailed Unit Design Phase, by the Manufacturer; and
- (b) from and including the date of the end of the Detailed United Design Phase, by the Manufacturer and the Purchaser in equal amounts subject to a capped contribution by the Purchaser of £10,000 (Indexed by RPI),

provided always that the Manufacturer shall provide such evidence in support of the cost of preparing the Initial Change Appraisal claimed as the Purchaser may reasonably require.

3. Procedure Following Submission of an Initial Change Appraisal

3.1 If the Initial Change Appraisal states that, in the Manufacturer's opinion, the proposed Purchaser Change falls within one or more of the restrictions set out in paragraphs 2.1(a)(i) to (v), then the Manufacturer shall be entitled to object to the implementation of the proposed Purchaser Change, save that the Manufacturer shall not be entitled to object to an Option Unit Change on any of the grounds in

paragraphs 2.1(a)(i) to (v) if the Manufacturer can be compensated by this Schedule 12.

If the Purchaser disagrees with the Manufacturer's opinion, then the Parties shall seek to resolve the matter(s) in dispute and, if agreement has not been reached within 10 Working Days of receipt of the Initial Change Appraisal, the Purchaser may refer the matter for resolution under the Dispute Resolution Procedure. If the Purchaser has not referred the matter to the Dispute Resolution Procedure within 20 Working Days of receipt of the Initial Change Appraisal, the Purchaser Change Notice shall be deemed to be withdrawn.

3.2 Provided that the Purchaser Change Notice has not been withdrawn by the Purchaser (or deemed to have been withdrawn in accordance with paragraph 3.1), then within 20 Working Days after receipt of the Initial Change Appraisal (or a determination in favour of the Purchaser following a reference to the Dispute Resolution Procedure under paragraph 3.1), the Purchaser may either:

- (a) if the Manufacturer's estimate referred to in paragraph 2.1(d) is:
 - (i) for an amount which is equal to or less than £2,000,000 (Indexed by RPI) and the Purchaser would like the Manufacturer to proceed with the proposed Purchaser Change without the Manufacturer preparing a Change Appraisal; or
 - (ii) for an amount which is more than £2,000,000 (Indexed by RPI) and the Parties agree that a Change Appraisal is not required in order for the Manufacturer to implement the proposed Purchaser Change,

issue a Change Confirmation Notice instructing the Manufacturer to proceed with the implementation of the Purchaser Change or a part of the Purchaser Change in accordance with paragraph 7; or
- (b) issue a Change Appraisal Instruction instructing the Manufacturer to prepare a Change Appraisal in respect of the proposed Purchaser Change.

If the Purchaser has not issued a Change Confirmation Notice or a Change Appraisal Instruction within such 20 Working Day period, the Purchaser Change Notice shall be deemed to have been withdrawn.

3.3 A Change Appraisal Instruction provided by the Purchaser under paragraph 3.2(b) shall:

- (a) state:
 - (i) whether the Purchaser requires the Manufacturer to submit to it a Fixed Price Quotation in respect of the proposed Purchaser Change or any part of the proposed Purchaser Change; and
 - (ii) state any other requirement which the Purchaser has with regard to the form of procurement;

- (b) include any additional information in respect of the proposed Purchaser Change which the Purchaser requires the Manufacturer to consider when preparing the Change Appraisal;
- (c) specify any reporting format, break down of quotations or any other matters specifically required to be included in the Change Appraisal; and
- (d) if the Purchaser will be responsible for a portion of the costs pursuant to paragraph 2.3, state whether or not the Purchaser accepts the estimate of the cost and time required to prepare the Change Appraisal provided by the Manufacturer in accordance with paragraph 2.1(f).

3.4 If the Change Appraisal Instruction:

- (a) states that the Purchaser does not agree with the estimate of the cost and/or time required to prepare the Change Appraisal; or
- (b) materially alters the basis on which the Manufacturer made such estimate,

then the Parties shall endeavour to reach agreement on any matter in dispute, failing which either Party may refer such matter for resolution under the Dispute Resolution Procedure provided that the process set out in this Schedule 12 shall continue and such Dispute shall only be in respect of costs.

- 3.5 At the same time as issuing a Change Appraisal Instruction under paragraph 3.2(b), the Purchaser may issue a Change Confirmation Notice instructing the Manufacturer to proceed with any preliminary works or advance works identified in the Initial Change Appraisal in accordance with paragraph 2.1(c)(i) and/or (ii). The cost of any such works shall be included in the quotation included in the Change Appraisal and agreed in accordance with paragraph 7. In the event of any Dispute in respect of the extent of such surveys or works, either Party may refer the matter for resolution under the Dispute Resolution Procedure.

4. Change Appraisal

- 4.1 Following the issue of a Change Appraisal Instruction, the Manufacturer shall deliver a written report (a *Change Appraisal*) to the Purchaser no later than, as applicable:

- (a) the date accepted in the Change Appraisal Instruction pursuant to paragraph 3.3(d); or
- (b) the date agreed or determined in accordance with paragraph 3.4.

4.2 The Change Appraisal shall set out:

- (a) the Manufacturer's detailed assessment of the matters referred to in paragraphs 2.1(b), 2.1(c) and 2.1(d) and any other impact of the proposed Purchaser Change on the provision of the Works;
- (b) whether relief from compliance with obligations is required, including the obligations of the Manufacturer to achieve the Provisional Acceptance of a Unit by no later than the Unit Longstop Date;

- (c) any amendments required to this Agreement (including any amendments to the Train Technical Requirements), or to the TSA as a result of the proposed Purchaser Change;
- (d) any Relevant Approvals which are required in order to implement the proposed Purchaser Change and any assistance which the Manufacturer anticipates it will require from the Purchaser in order to obtain such Relevant Approvals;
- (e) the proposed method of certification of any design, construction or operational aspects of the Works required by the proposed Purchaser Change if not covered by the procedures specified in the Agreement;
- (f) where the Change Appraisal Instruction specifies that a Fixed Price Quotation must be provided, the amount of such Fixed Price Quotation and a breakdown of such quotation identifying separately (without double counting):
 - (i) each Change in Costs; and
 - (ii) any impact on the Milestone Payments;
- (g) insofar as not covered by a Fixed Price Quotation provided under paragraph 4.2(f):
 - (i) an estimate of each of the items set out in paragraphs 4.2(f)(i) and 4.2(f)(ii); and
 - (ii) details of any of the expenditure referred to in (i) above which can be determined by reference to the Schedule of Costs;
- (h) the Manufacturer's proposed Schedule of Payments to take account of the aggregate cost (or saving) of implementing the proposed Purchaser Change and/or any adjustment to the Milestone Payments; and
- (i) the Manufacturer's proposed amendments to the Advance Payment Bond and/or Guarantee, or, where the Guarantee is not being amended, a confirmation that the Guarantee will be reaffirmed,

taking into account, in the case of a Change Appraisal issued in relation to an Option Notice, the matters set out in Part E (*Option Unit Changes*).

4.3 If while preparing the Change Appraisal the Manufacturer forms the opinion that:

- (a)
 - (i) other than in respect of an Option Unit Change, the proposed Purchaser Change would fall within one or more of the restrictions set out in paragraph 2.1(a)(i) to (v); and
 - (ii) in respect of an Option Unit Change, the proposed Option Unit Change would fall within one or both of the restrictions set out in paragraphs 2.1(a)(i) and (ii) and the Manufacturer cannot be compensated under this Schedule 12; and

- (b) the grounds for such objection were not identified in the Initial Change Appraisal and have not been the subject of a Dispute under paragraph 3.1,

then the Manufacturer may, at any time prior to the date on which it issues the Change Appraisal, notify the Purchaser of its objection to implementing the proposed Purchaser Change provided that any such notification shall be accompanied by an explanation of its reasons supporting its opinion. The Parties shall endeavour to reach agreement on any matter in dispute, failing which the Purchaser may within 10 Working Days of receipt of such notification refer such matter for resolution under the Dispute Resolution Procedure. If the Purchaser has not referred the matter to the Dispute Resolution Procedure within 20 Working Days of receipt of the Manufacturer's notification under this paragraph 4.3, the Purchaser Change Notice shall be deemed to be withdrawn.

- 4.4 The Manufacturer shall ensure in respect of any Change Appraisal that the Change in Costs are calculated in accordance with Appendix 2 (*Calculation of Change in Costs*) of this Schedule 12.

5. Procedure Following Submission of a Change Appraisal

- 5.1 As soon as practicable after the Purchaser receives the Change Appraisal, the Parties shall discuss and endeavour to agree, acting reasonably, the matters set out in the Change Appraisal. During such discussions, the Purchaser may request that the Manufacturer provide any further evidence or information in respect of the matters referred to at paragraphs 4.2 and 4.4 and notify the Manufacturer whether it wishes to amend the proposed Purchaser Change providing full details of any proposed amendment in which case the Manufacturer shall submit an amended Change Appraisal within 20 Working Days of such notification or such longer period as is agreed between the Parties.
- 5.2 All evidence and information provided by the Manufacturer or its Subcontractors and their subcontractors of any tier in response to a request under paragraph 5.1 shall be provided on an Open Book Basis and the Purchaser shall be entitled, subject to providing reasonable notice, to enter the offices of the Manufacturer or its Key Subcontractors for the purposes of auditing, inspecting and copying documentation (using facilities at the Manufacturer's or its Key Subcontractors' offices at no charge to the Purchaser) relating to any costings, claims of expenditure or losses incurred or likely to be incurred, estimates and quotations relevant to the proposed Purchaser Change.
- 5.3 Subject to paragraph 5.4, if the Parties cannot agree on the contents of the Change Appraisal (other than any element which forms part of the Manufacturer Cost Proposal for which the provisions of paragraph 7 (*Implementation of Purchaser Change*) shall apply), then either Party may refer the Dispute for resolution under the Dispute Resolution Procedure.
- 5.4 As soon as practicable, and in any event within 40 Working Days, after the contents of the Change Appraisal (other than any outstanding issues in relation to the Manufacturer Cost Proposal as referred to in paragraph 7) have been agreed in

accordance with paragraph 5.1 or determined in accordance with paragraph 5.3, the Purchaser shall either:

- (a) issue a Change Confirmation Notice (counter-signed by a person authorised by the Purchaser), instructing the Manufacturer to proceed with the implementation of the Purchaser Change or a part of the Purchaser Change in accordance with paragraph 7; or
- (h) withdraw the Purchaser Change Notice.

If the Purchaser has not issued a Change Confirmation Notice within such 40 Working Day period, then the Purchaser Change Notice shall be deemed to have been withdrawn.

6. Change Appraisal Costs

6.1 If and to the extent the Purchaser is liable for costs pursuant to paragraph 2.3, the Purchaser shall pay the costs, fees and expenses reasonably and properly incurred by the Manufacturer in preparing and amending the Change Appraisal up to a maximum of:

- (a) the amount agreed pursuant to paragraph 3.3(d) or agreed or determined pursuant to paragraph 3.4; and
- (b) where the Purchaser has notified the Manufacturer under paragraph 5.1 that it wishes to amend the Purchaser Change, any costs, fees and expenses above the amount referred to in paragraph 6.1(a) which have been reasonably and properly incurred by the Manufacturer as a consequence of such amendment.

6.2 In determining the costs, fees and expenses reasonably and properly incurred pursuant to paragraph 6.1, the costs of any referral to the Dispute Resolution Procedure shall be disregarded and the apportionment of such costs shall be determined in accordance with Schedule 18 (*Dispute Resolution Procedure*).

6.3 Whilst preparing and amending the Change Appraisal, the Manufacturer shall provide a report to the Purchaser on a monthly basis showing:

- (a) the costs, fees and expenses reasonably and properly incurred pursuant to paragraph 6.1 up to the date of the report; and
- (b) the Manufacturer's estimate of the costs, fees and expenses which it anticipates it will incur in total.

7. Implementation of Purchaser Change

7.1 A Change Confirmation Notice issued by the Purchaser pursuant to paragraph 3.2(a) or 5.4 shall state:

- (a) whether the Purchaser accepts:
 - (i) in the case of a Change Confirmation Notice issued under paragraph 3.2(a):

- (A) the Fixed Price Quotation; and
- (B) the Manufacturer's proposed Schedule of Payments (which may, if applicable consist of a single lump sum payment),

each as included in the Initial Change Appraisal (where applicable, as amended in accordance with paragraph 5); or

- (ii) in the case of a Change Confirmation Notice issued under paragraph 5.4:

- (A) the Fixed Price Quotation;
- (B) the Manufacturer's proposed Schedule of Payments and/or adjustments to the Milestone Payments proposed in accordance with paragraph 4.2(h); and
- (C) any other proposal relating to the costs of or savings arising from the implementation of the Purchaser Change including costs that can be calculated using the Schedule of Costs,

each as included in the Change Appraisal,

(in each case, the *Manufacturer Cost Proposal*); and

- (b) if the Purchaser states in accordance with paragraph 7.1(a) that it does not accept the Manufacturer Cost Proposal, whether the Purchaser requires the Manufacturer to proceed with the Purchaser Change or any part of the Purchaser Change either:

- (i) immediately following issue of the Change Confirmation Notice or such other date specified in the Change Confirmation Notice notwithstanding that the Parties have not reached final agreement in respect of the Manufacturer Cost Proposal; or
- (ii) immediately following agreement or determination in respect of the Manufacturer Cost Proposal in accordance with paragraph 7.4.

7.2 A Change Confirmation Notice issued by the Purchaser pursuant to paragraphs 3.2(a), 3.5 or 5.4 shall attach a copy of or otherwise reference the Initial Change Appraisal, the instructions issued in accordance with paragraph 3.5 or the Change Appraisal, as applicable, which shall be in agreed form other than in respect of any issues relating to the Manufacturer Cost Proposal or which remain to be agreed or determined under this paragraph 7.

7.3 Subject to paragraph 7.6, a Change Confirmation Notice shall have the effect of varying the relevant Train Technical Requirements or any other term of this Agreement to the extent provided in the agreed Initial Change Appraisal, the agreed instructions issued in accordance with paragraph 3.5 or the agreed Change Appraisal, as applicable, with effect from the date of receipt by the Manufacturer of the Change Confirmation Notice or such other date specified in the Change Confirmation Notice. As soon as practicable after such date the Manufacturer shall implement the Purchaser Change or part of the Purchaser Change and shall be bound by this

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Agreement in so doing as if the Purchaser Change or relevant part of the Purchaser Change formed part of the relevant Train Technical Requirements or other terms of this Agreement.

- 7.4 If the Purchaser states in the Change Confirmation Notice that it does not agree with the Manufacturer Cost Proposal, then:
- (a) the Parties shall endeavour to reach agreement in respect of the cost (or saving) of implementing the Purchaser Change; and
 - (b) the Purchaser may request any additional information of the type referred to in paragraph 4.4 and in providing such information the provisions of paragraph 5.2 shall apply *mutatis mutandis*.

If the Parties fail to reach agreement within 20 Working Days of the issue of the Change Confirmation Notice, then either Party may refer the matter for resolution under the Dispute Resolution Procedure. Notwithstanding any other provision of this Part B, the Manufacturer shall not be entitled to any compensation in connection with a Purchaser Change save to the extent that such compensation directly arises from such Purchaser Change.

- 7.5 The Manufacturer Cost Proposal accepted in accordance with paragraph 7.1(a) or agreed or determined in accordance with paragraph 7.4 shall be binding on both Parties in full and final settlement of all costs incurred by the Manufacturer and any impact (whether arising directly or indirectly as a result of the Purchaser Change) on the Milestone Payments and any other sum to be calculated pursuant to Schedule 10 (*Milestones and Security*) notwithstanding that the actual costs or impact may be greater or less than the Manufacturer Cost Proposal accepted, agreed or determined as the case may be.

- 7.6 If the Manufacturer, having used best endeavours, fails to obtain the Relevant Approvals required to implement the Purchaser Change as set out in the Change Appraisal within 180 Working Days of receipt of the Purchaser Confirmation Notice (or such longer period as set out in the agreed Change Appraisal), then the Manufacturer shall notify the Purchaser of such failure. Following such notification, the Purchaser shall either:

- (a) withdraw the Purchaser Change Notice; or
- (b) agree an extended period for the Manufacturer to obtain the necessary consents or regulatory approvals.

If the Manufacturer fails to obtain the Relevant Approvals within such extended period, the Purchaser shall be deemed to have withdrawn the Purchaser Change Notice.

- 7.7 In implementing any Purchaser Change, the Manufacturer shall comply with, as applicable:
- (a) the certification procedures for Units and Equipment set out in this Agreement; or

- (b) the method of certification specified in the agreed Change Appraisal in accordance with paragraph 4.2(e).
- 7.8 The Manufacturer shall maintain and make available any records relating to a Purchaser Change in accordance with this Agreement.
- 7.9 The Manufacturer shall:
 - (a) where required, within 10 Working Days of the Change Confirmation Notice provide an amended and/or restated Advance Payment Bond and/or Guarantee; and
 - (b) in relation to any Change where an amended Guarantee is not required provide a restated Guarantee.
- 8. Payments by the Purchaser**
- 8.1 Any Schedule of Payments proposed by the Manufacturer in accordance with paragraph 2.2(b) or 4.2(h) shall:
 - (a) set out any amendments to the Milestone Payments;
 - (b) set out the timing of the payments to be made by the Purchaser in respect of the net cost (if any) for implementing the proposed Purchaser Change (as quoted or estimated pursuant to paragraphs 2.1(e) and 2.2(a) or paragraphs 4.2(f) and 4.2(g), as applicable); and
 - (c) in respect of the payments referred to in paragraphs 8.1(a) and 8.1(b) identify those payments which relate to the carrying out of, or specific progress towards, an element within the Purchaser Change and, in respect of each such payment, specify the evidence which the Manufacturer will provide in order to confirm that the part of the Purchaser Change corresponding to each occasion when payment is due has been duly carried out.
- 8.2 Where the Manufacturer Cost Proposal (accepted in accordance with paragraph 7.1(a) or agreed or determined in accordance with paragraph 7.4) requires the Purchaser to make one or more payments to the Manufacturer by reference to a Schedule of Payments (other than amendments to the Milestone Payments), the Purchaser shall make any such payment within 30 Working Days of receipt by the Purchaser of an invoice (complete in all material respects) in accordance with the agreed Schedule of Payments accompanied by relevant evidence (where applicable) that the relevant part of the Purchaser Change has been carried out.
- 8.3 Where the Manufacturer Cost Proposal (accepted in accordance with paragraph 7.1(a) or agreed or determined in accordance with paragraph 7.4) includes amendments to the Milestone Payments, the payments will be made in accordance with the provisions of Schedule 10 (*Milestones and Security*).
- 8.4 If payment is not made in accordance with paragraph 8.2 or 8.3, the Purchaser shall pay to the Manufacturer interest at the Default Rate on the amount unpaid from the date 30 Working Days after receipt of the relevant invoice until settlement of such payment.

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- 8.5 Once a Change Confirmation Notice has been issued by the Purchaser in relation to an Emergency Change (if any), the Parties shall ensure that the Schedule of Payments provides for a reconciliation of any discrepancy between the Emergency Change Interim Payments made by the Purchaser pursuant to paragraph 1.4 and the actual incremental costs, fees and expenses reasonably and properly incurred by the Manufacturer (and accounted for) in relation to the implementation of the Emergency Change during the period from the relevant Purchaser Change Notice issued pursuant to paragraph 1.2 and prior to the Purchaser's Change Confirmation Notice.

Part C Manufacturer Changes

1. Manufacturer Change Notice

- 1.1 If the Manufacturer wishes to introduce a change to any of the relevant Train Technical Requirements (*Manufacturer Change*), it must serve a notice in writing on the Purchaser (*Manufacturer Change Notice*) which shall:
- (a) set out the proposed Manufacturer Change in sufficient detail to enable the Purchaser to evaluate it in full including providing information equivalent to that provided in respect of a Purchaser Change pursuant to paragraph 2 (*Initial Change Appraisal*) or paragraph 4 (*Change Appraisal*) of Part B (*Purchaser Changes*) of this Schedule 12;
 - (b) specify the Manufacturer's reasons for proposing the proposed Manufacturer Change;
 - (c) request the Purchaser to consult with the Manufacturer with a view to deciding whether to agree to the Manufacturer Change and, if so, what consequential changes the Purchaser requires as a result;
 - (d) indicate any implications of the proposed Manufacturer Change; and
 - (e) indicate if there are any dates by which a decision by the Purchaser is critical.

2. Evaluation of Manufacturer Change

- 2.1 The Purchaser shall evaluate the proposed Manufacturer Change in good faith, taking into account all relevant issues, including whether:
- (a) the Purchaser will be required to make a change in the Milestone Payments or to make any other payment;
 - (b) the change affects the quality of the Works or the likelihood of successful delivery of the Works;
 - (c) the change will alter the relationship of the Purchaser with third Parties;
 - (d) the financial strength of the Manufacturer is sufficient to perform the proposed Manufacturer Change, taking into account the Advance Payment Bond and Guarantee;
 - (e) the residual value of the Units is reduced; or
 - (f) the change materially affects the risks or costs to which the Purchaser is exposed.
- 2.2 The Purchaser cannot reject a Manufacturer Change which is required in order to conform to a Change in Law. The costs of introducing a Manufacturer Change and other effects resulting from a Qualifying Change in Law (including any resulting variation in the Milestone Payments) shall be dealt with in accordance with clause 28 (*Change in Law*) and, to the extent not so dealt with, shall be borne by the Manufacturer.

3. Procedure Following Submission of a Manufacturer Change Notice

- 3.1 As soon as practicable after receiving the Manufacturer Change Notice, if requested by either Party, the Parties shall meet and discuss the matters referred to in such notice. During their discussions the Purchaser may propose modifications or (acting in its absolute discretion) accept or reject the Manufacturer Change Notice.
- 3.2 If the Purchaser accepts the Manufacturer Change Notice (with or without modification), the Parties shall, as soon as practicable after the Purchaser's acceptance:
- (a) agree and enter into any documents to amend this Agreement, the TSA or any other relevant document which are necessary to give effect to the Manufacturer Change; and
 - (b) implement the Manufacturer Change.
- 3.3 If the Purchaser rejects the Manufacturer Change Notice, it shall not be obliged to give its reasons for such a rejection.

4. Payment Adjustment

- 4.1 Unless the Purchaser's acceptance specifically agrees to an increase in the Milestone Payments or other payments under this Agreement, there shall be no increase in such payments as a result of a Manufacturer Change.
- 4.2 If the Manufacturer Change causes or will cause the Manufacturer's costs or those of a Subcontractor to decrease, the Milestone Payments or other payments shall be reduced accordingly.
- 4.3 Following agreement to any adjustment to the Milestone Payments pursuant to this Part C, the Schedule of Milestones shall be updated.

Part D Compensation Changes

1. Compensation/Relief Claim

- 1.1 As soon as practicable and in any event within 15 Working Days after the Manufacturer is aware that a Compensation Event has caused or is likely to cause any of the consequences referred to in clause 17.2, the Manufacturer shall give to the Purchaser a notice of its claim (an *Initial Claim Appraisal*), which shall set out the opinion of the Manufacturer on:
- (a) the Manufacturer's initial assessment of any impact of the proposed Compensation Event on any of the dates or activities referred to in the Project Programme, the Contractual Provisional Acceptance Dates, the Contractual Final Acceptance Dates and the Contractual Fleet Acceptance Date;
 - (b) the Manufacturer's initial assessment of the scope of any changes to the Works, the Units or the Equipment;

- (c) without prejudice to paragraph 3 (*Changes to TSA*) of Part A (*General*) of this Schedule 12, the Manufacturer's initial assessment of the impact of the proposed Compensation Event on the TSA;
 - (d) the Manufacturer's initial assessment of the impact of the proposed Compensation Event on any matters which affect the Manufacturer's revenue; and
 - (e) the Manufacturer's estimate, acting in good faith, of all Change in Costs under this Agreement that are associated with the proposed Compensation Event, identifying separately each Change in Cost with such estimate.
- 1.2 If the Manufacturer's estimate referred to in paragraph 1.1(e) of this Part D is for an amount that is equal or less than £2,000,000 (Indexed by RPI) then the Initial Claim Appraisal shall also include:
- (a) in respect of any capital works arising from the Compensation Event or for any other effects of the Compensation Event for which a Fixed Price Quotation can be provided or the cost can be determined by reference to the Schedule of Costs either:
 - (i) a Fixed Price Quotation; or
 - (ii) details of those effects of the Compensation Event which are not covered by the Fixed Price Quotation provided under sub-paragraph (i) and for which the cost can be determined by reference to the Schedule of Costs; and
 - (b) the Manufacturer's proposed Schedule of Payments (which may, if appropriate, consist of a single lump sum payment) to take account of the Change in Costs of the Compensation Event.
- 1.3
- (a) In the event that the information is provided after the timescales referred to in paragraph 1.1 then the Manufacturer shall not be entitled to compensation and/or relief from its obligations under this Agreement to the extent that the amount of such compensation and/or required relief has been increased as a result of such delay in providing such information.
 - (b) Except as provided in paragraph 1.3(a) it is acknowledged that the Manufacturer may make more than one demand in respect of each Compensation Event.
- 1.4 The Manufacturer shall, without prejudice to its obligations in this Agreement and in accordance with the standard expected of a competent contractor involved in designing and manufacturing rolling stock acting in accordance with Good Industry Practice, use its reasonable endeavours to mitigate any adverse effects of a Compensation Event.
- 2. Procedure for Submission of an Initial Claim Appraisal**
- 2.1 Within 15 Working Days after receipt of the Initial Claim Appraisal, the Purchaser may issue a Claim Confirmation Notice in accordance with paragraph 5 (*Agreement*)

of Claim) of this Part D or issue an instruction for the Manufacturer to provide a Claim Appraisal in respect of the Compensation Event (a *Claim Appraisal Instruction*).

- 2.2 A Claim Appraisal Instruction provided by the Purchaser under paragraph 2.2 shall:
- (a) state whether the Purchaser requires the Manufacturer to submit to it a Fixed Price Quotation in respect of the effects of the Compensation Event or any part of the Compensation Event;
 - (b) include any additional information in respect of a Compensation Event which the Purchaser requires the Manufacturer to consider when making the Claim Appraisal; and
 - (c) specify any reporting format, breakdown of quotations or any other matters specifically required to be included in the Claim Appraisal.
3. **Claim Appraisal**
- 3.1 Following the issue of Claim Appraisal Instruction the Manufacturer shall deliver a written report (a *Claim Appraisal*) to the Purchaser within 15 Working Days.
- 3.2 The Claim Appraisal shall set out:
- (a) the Manufacturer's detailed assessment of the matters referred to in paragraphs 1.1(a) to (e) of this Part D and any other impact of the Compensation Event on the provision of the Units or the Equipment;
 - (b) whether relief from compliance with obligations is required including the obligations of the Manufacturer to achieve the relevant Provisional Acceptance of a Unit by no later than the Unit Longstop Date, and the proposed postponement of such date by such time as shall be reasonable in the circumstances;
 - (c) any amendments required to the Agreement (including any amendments to the Train Technical Requirements), the TSA or any other relevant document as a result of the Compensation Event;
 - (d) where the Claim Appraisal Instruction specifies that a Fixed Price Quotation must be provided, the amount of such Fixed Price Quotation and a breakdown of such quotation identifying separately (without double counting):
 - (i) each Change in Costs; and
 - (ii) any impact on the Milestone Payments; and
 - (iii) any amount included in such estimate to take account of contingencies and risks associated with paragraphs (i) and (ii);
 - (e) insofar as not covered by a Fixed Price Quotation provided under paragraph 3.2(d):

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- (i) an estimate of each of the items set out in paragraphs 3.2(d)(i) and (ii); and
 - (ii) details of any of the amounts referred to in paragraph (i) above which can be determined by reference to the Schedule of Costs; and
- (f) the Manufacturer's proposed Schedule of Payments to take account of the aggregate cost (or savings) of the Compensation Event and/or any adjustment to the Milestone Payments.

3.3 The Manufacturer shall ensure in respect of any Claim Appraisal that:

- (a) the Change in Costs are calculated in accordance with Appendix 2 (*Calculation of Change in Costs*) of this Schedule 12;
- (b) that any Fixed Price Quotation or change to the Milestone Payments reflects prevailing market rates applicable to the circumstance of the quotation; and
- (c) that it has used its best endeavours to oblige its Subcontractors and their subcontractors of any tier to minimise any increase in cost and maximise any reduction in costs.

4. Procedure Following Submission of Claim Appraisal

- 4.1 As soon as practicable after the Purchaser receives the Claim Appraisal, the Parties shall discuss and endeavour to agree, acting reasonably, the matters set out in the Claim Appraisal. During such discussions, the Purchaser may request that the Manufacturer provide any further evidence or information in respect of the matters referred to in paragraph 3.3.
- 4.2 All evidence and information provided by the Manufacturer or its Subcontractors and their subcontractors of any tier in response to requests under paragraph 4.1 shall be provided on an Open Book Basis and the Purchaser shall be entitled, subject to providing reasonable notice, to enter the offices of the Manufacturer for the purpose of auditing, inspecting and copying documentation (using facilities at the Manufacturer's office at no charge to the Purchaser) relating to any costs, claims of expenditure or losses incurred or likely to be incurred, estimates and quotations relevant to the Compensation Event.
- 4.3 If the Parties cannot agree on the contents of the Claim Appraisal (other than any element which forms part of the Manufacturer Compensation Proposal for which the provisions of paragraph 5 shall apply), then either Party may refer the Dispute for resolution under the Dispute Resolution Procedure and such compensation shall be determined on the basis of what would be reasonable for such a Compensation Event.
- 4.4 As soon as practicable, and in any event within 20 Working Days after the contents of the Claim Appraisal (other than any outstanding element relating to the Manufacturer Compensation Proposal as referred to in paragraph 5) have been agreed in accordance with paragraph 4.1 or determined in accordance with paragraph 4.3, the Purchaser shall issue a Claim Confirmation Notice setting out the matters which have been agreed or determined.

5. Agreement of Claim

5.1 A Claim Confirmation Notice issued by the Purchaser pursuant to paragraph 2.1 or 4.4 shall state:

- (a) whether the Purchaser accepts:
 - (i) in the case of a Claim Confirmation Notice issued under paragraph 2.1:
 - (A) the Fixed Price Quotation; and
 - (B) the Manufacturer's proposed Schedule of Payments (which may, if applicable consist of a single lump sum payment),each as included in the Initial Claim Appraisal (where applicable, as amended in accordance with paragraph 4); or
 - (ii) in the case of a Claim Confirmation Notice issued under paragraph 4.4:
 - (A) the Fixed Price Quotation;
 - (B) the Manufacturer's proposed Schedule of Payments and/or adjustments to the Milestone Payments proposed in accordance with paragraph 3.2(f); and
 - (C) any other proposal relating to the costs of or savings arising from the Compensation Event,each as included in the Claim Appraisal,(in each case, the *Manufacturer Compensation Proposal*); and
- (b) if the Purchaser states in accordance with paragraph 5.1(a) that it does not accept the Manufacturer Compensation Proposal, the reasons for not so doing.

5.2 A Claim Confirmation Notice issued by the Purchaser pursuant to paragraph 2.1 or 4.4 of this Part D shall attach a copy of or otherwise reference the relevant parts of the Initial Claim Appraisal or the Claim Appraisal, as applicable, and shall be in agreed form other than in respect of any issues relating to the Manufacturer Compensation Proposal which remain to be agreed or determined under this paragraph 5.

5.3 Subject to paragraph 5.6, a Claim Confirmation Notice shall have the effect of varying the relevant Train Technical Requirements or postponing the relevant longstop dates in the Project Programme or any other term of this Agreement to the extent provided in the agreed Initial Claim Appraisal or the agreed Claim Appraisal, as applicable, with effect from the date of receipt by the Manufacturer of the Claim Confirmation Notice or such other date specified in the Claim Confirmation Notice.

5.4 If the Purchaser states in the Claim Confirmation Notice that it does not agree with the Manufacturer Compensation Proposal, then:

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- (a) the Parties shall endeavour to reach agreement in respect of the cost (or saving) of the Compensation Event; and
- (b) the Purchaser may request any additional information of the type referred to in paragraph 4.1 and in providing such information the provisions of paragraph 4.2 shall apply mutatis mutandis.

If the Parties fail to reach agreement within 20 Working Days of the issue of the Claim Confirmation Notice, then either Party may refer the matter for resolution under the Dispute Resolution Procedure.

- 5.5 The Manufacturer Compensation Proposal accepted in accordance with paragraph 5.1(a) or agreed or determined in accordance with paragraph 5.4 shall be binding on both Parties in full and final settlement of all costs incurred by the Manufacturer and any impact (whether arising directly or indirectly as a result of the Compensation Event) on the Milestone Payments and any other sum to be calculated pursuant to Schedule 10 (*Milestones and Security*) notwithstanding that the actual costs or impact may be greater or less than the Manufacturer Compensation Proposal accepted, agreed or determined as the case may be.
- 5.6 The Manufacturer shall maintain and make available any records relating to a Compensation Event in accordance with this Agreement.
- 6. **Payments by the Purchaser**
 - 6.1 Any Schedule of Payments proposed by the Manufacturer in accordance with paragraphs 1.2(b) or 3.2(f) of this Part D shall:
 - (a) set out any amendments to the Schedule of Milestones;
 - (b) set out the timing of the payments to be made by the Purchaser in respect of the net cost (if any) for dealing with the Compensation Event (as quoted or estimated pursuant to paragraphs 1.1(d) and 1.2(a) or paragraphs 3.2(e) and 3.2(f), as applicable); and
 - (c) in respect of the payments referred to in paragraphs 6.1(a) and 6.1(b), identify those payments which relate to the carrying out of, or specific progress towards, dealing with any element of the Compensation Event and, in respect of each such payment, specify the evidence which the Manufacturer will provide in order to confirm that the relevant part of the Compensation Event corresponding to each occasion when payment is due has been duly dealt with.
 - 6.2 Where the Manufacturer Compensation Proposal (accepted in accordance with paragraph 5.1(a) or agreed or determined in accordance with paragraph 5.4) requires the Purchaser to make one or more payments to the Manufacturer by reference to a Schedule of Payments (other than amendments to the Schedule of Milestones), the Purchaser shall make any such payment within 30 Working Days of receipt by the Purchaser of an invoice (complete in all material respects) in accordance with the agreed Schedule of Payments accompanied by the relevant evidence (where applicable) that the relevant part of the Compensation Event has been dealt with.

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- 6.3 Where the Manufacturer Compensation Proposal (accepted in accordance with paragraph 5.1(a) or agreed or determined in accordance with paragraph 5.4) includes amendments to the Schedule of Milestones, the payments will be made in accordance with the provisions of Schedule 10 (*Milestones and Security*).
- 6.4 If payment is not made in accordance with paragraph 6.2 or 6.3, the Purchaser shall pay to the Manufacturer interest at the Default Rate on the amount unpaid from the date 30 Working Days after receipt of the relevant invoice until payment.

Part E Option Unit Changes

1. Required Terms

If the Purchaser delivers an Option Notice, the Manufacturer shall, without prejudice to the generality of its obligations under this Agreement, unless the Purchaser agrees otherwise, prepare its Initial Change Appraisal and Change Appraisal in response to that Option Notice on the basis of the following principles:

- (a) the Change in Costs in relation to the proposed Option Unit Change shall be consistent with the Option Prices set out in Part C (*Options for supply of further Units and Equipment*) of Schedule 10 (*Milestones and Security*);
- (b) the Manufacturer will comply with its obligations under paragraph 1.7 of Part A (*Advance Payment Bond*) of Schedule 10;
- (c) the Schedule of Payments in relation to the proposed Option Unit Change shall be consistent with the Milestone Payments for the Units comprising the Initial Order, such that the Manufacturer shall be entitled (upon issuance of the Change Confirmation Notice) to submit an invoice for an amount which is the proportion of the applicable Option Price that is the same proportion of the aggregate amount of Milestone Payments in respect of the Initial Order (as set out in Appendix 1 to Part B (*Milestones*) of Schedule 10), less any Milestone Payments relating to (i) Product Introduction, Acceptance and Reliability Growth Costs, (ii) Provisional, Final or Fleet Acceptance and/or (iii) Bodysells delivered to erection stage that has been paid at such time pursuant to Part B (*Milestones*) of Schedule 10, with the balance of the Option Price being payable as Milestone Payments relating to the relevant Option Units and/or Option Vehicles (treating them as Units comprising the Initial Order) in accordance with Part B of Schedule 10, taking into account the increase of the Total Contract Price by the applicable Option Price;
- (d) deliveries shall be added to the end of the programmed dates for delivery of Units comprising the Initial Order, unless there has been a break in production and in that case the first of the relevant Units and/or Vehicles are to be delivered to the Purchaser for Acceptance no later than 104 weeks after the end of the week in which the Change Confirmation Notice is issued by the Purchaser;
- (e) in the case of Option Units and/or Vehicles, the programmed dates for the delivery of such Units and/or Vehicles for Acceptance shall be such that, taking into account the cumulative effect of deliveries of Units comprising the Initial Order (if applicable) and the Option Units and/or Vehicles, the delivery rate of Units and/or Vehicles:
 - (i) where there has been no break in production, will not at any time be less than 2 Vehicles and shall not exceed 8 Vehicles per week; or
 - (ii) where there has been a break in production, will not at any time exceed 8 Vehicles per week;

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- (f) in the case of Option Vehicles, the Manufacturer shall be wholly responsible for:
 - (i) delivering the Option Vehicles and the relevant number of Units to a conversion site in the United Kingdom nominated by the Purchaser;
 - (ii) converting the relevant Units from 4-car formation to 5-car formation by the fitting of the Option Vehicles;
 - (iii) commissioning the Option Vehicles as part of a Unit;
 - (iv) providing technical support to the test running of the Option Vehicles (as part of a Unit); and
 - (v) satisfying the other Provisional Acceptance criteria in relation to the Option Vehicles,and shall bear all of the costs of any such activities; and
- (g) in the case of Option Vehicles, the programmed dates for the delivery of such vehicles for Acceptance shall be such that no more than two Units are required to be removed from Unrestricted Passenger Revenue-Earning Service at any time for the purposes of conversion from 4-car formation to 5-car formation.

REDACTED

Appendix 1 Schedule of Costs

To the extent that an Initial Change Appraisal or a Change Appraisal agreed in accordance with Part B (*Purchaser Changes*) or Part D (*Compensation Changes*) of this Schedule 12 states that any costs are to be agreed by reference to the Schedule of Costs, then such costs shall be determined as follows:

1. Staff Costs

Professional and other monthly paid staff

- 1.1 The cost of professional and other monthly paid staff of the Manufacturer or its Subcontractors working directly on the design or manufacture of any Works required by a Purchaser Change shall be recoverable on a time basis as follows:

$(\text{Basic Annual Salary}/1600) \times \text{Actual Hours Worked} \times \text{On-Cost Multiplier A}$

Where:

Basic Annual Salary means the annual salary excluding overtime and bonuses during the period covered by the account. Where the annual salary is changed during the period covered by the account, the total worked should be apportioned and applied to the relevant salary level;

Actual Hours Worked means actual hours worked including overtime hours; and

On-Cost Multiplier A is the factor required to recover the appropriate part of the annual salary and on-costs. The multiplier to be used for this paragraph 1.1 is [REDACTED] in respect of train works or tendered works affecting the Units.⁴ The on-costs deemed to be covered by On-Cost Multiplier A include (i) the costs of general management and accountancy, support staff, secretarial and administration staff and the like, (ii) the costs of normal office overheads and profit, and (iii) all contributions and payments made by the employer for staff pension and life assurance schemes and for National Insurance, and any tax, charge, levy, impost or payment of any kind which the employer is obliged by law to make on behalf of or in respect of the relevant employee.

Agency or sub-consultant staff (based in the offices of the Manufacturer or its Subcontractors)

- 1.2 The cost of agency or sub-consultant staff working directly on the design or manufacture of any Works required by a Purchaser Change who are not direct employees of any of the Manufacturer or its Subcontractors but are based in the offices of the Manufacturer or its Subcontractors shall be recoverable on a time basis as follows:

⁴ Where the Manufacturers consider that the Purchaser Change would not have an effect on the achievement of any of the dates in the Project Programme and where the Manufacturer's estimate of the value of the change is less than £1,000,000, this multiplier will apply in respect of the Train Works only and will not apply otherwise.

Hourly Cost x Actual Hours Worked x On-Cost Multiplier B

Where:

Hourly Cost means the hourly cost paid to an agency or sub-consultant in respect of named individual professionals;

Actual Hours Worked means actual hours worked; and

On-Cost Multiplier B is the factor required to recover the appropriate part of the Manufacturer's and Key Subcontractor's on-costs. The multiplier to be used for this paragraph 1.2 is [REDACTED] in respect of train works or tendered works affecting the Units.⁵ The on-costs deemed to be covered by On-Cost Multiplier B include (i) the costs of general management and accountancy, support staff, secretarial and administration staff and the like; and (ii) the costs of normal office overheads and profit.

Agency or sub-consultant staff (based in their own offices)

- 1.3 The cost of agency or sub-consultant staff working directly on the design or manufacture of any Works required by a Purchaser Change who are not direct employees of any of the Manufacturer or its Key Subcontractors and are based in their own offices shall be recoverable on a time basis as follows:

Hourly Cost x Actual Hours Worked x On-Cost Multiplier C

Where:

Hourly Cost means the hourly cost paid to an agency or sub-consultant in respect of named individual professionals;

Actual Hours Worked means actual hours worked including overtime hours; and

On-Cost Multiplier C is the factor required to recover the appropriate part of the Manufacturer's and the Key Subcontractor's on-costs. The multiplier to be used for this paragraph 1.3 is [REDACTED] in respect of train works or tendered works affecting the Units.⁶ The on-costs deemed to be covered by On-Cost Multiplier C include (i) the costs of general management and accountancy, support staff, secretarial and administration staff and the like; and (ii) profit.

Miscellaneous

- 1.4 (a) Time spent in travelling for the purposes of the Purchaser Change to be performed under this Schedule of Costs shall be chargeable, excluding travel between home and normal work place.

⁵ Where the Manufacturers consider that the Purchaser Change would not have an effect on the achievement of any of the dates in the Project Programme and where the Manufacturer's estimate of the value of the change is less than £1,000,000, this multiplier will apply in respect of the Train Works only and will not apply otherwise.

⁶ Where the Manufacturers consider that the Purchaser Change would not have an effect on the achievement of any of the dates in the Project Programme and where the Manufacturer's estimate of the value of the change is less than £1,000,000, this multiplier will apply in respect of the Train Works only and will not apply otherwise.

REDACTED

- (b) Time spent by staff engaged in general accountancy, secretarial or administration duties (unless otherwise agreed) shall not be chargeable.
- (c) In addition to the fee described in paragraphs 1.1, 1.2 and 1.3 above, the Manufacturer shall be reimbursed by the Purchaser for all approved costs and expenses properly incurred by it in connection with the Purchaser Change to be performed under this Schedule of Costs and certified by the Manufacturer in respect of:
 - (i) an appropriate portion of travel and subsistence expenses paid to employees, agency staff or sub-consultant staff as the case may be;
 - (ii) the cost of printing and reproduction of all documents, drawings, maps and records and the like authorised by the Purchaser;
 - (iii) the cost of providing, where required by the Purchaser, auditors' certificates of costs; and
 - (iv) the cost of any other expenses authorised by the Purchaser , excluding normal office overheads such as rent, rates, heating, lighting, telephone and postal charges.
- (d) For the purposes of this Schedule of Costs, *approved* means approved in writing by the Purchaser before the cost, remuneration or expenditure in question is incurred or committed.

Appendix 2
Calculation of Change in Costs

1. Principles

- 1.1 The Manufacturer shall ensure that the Change in Costs is calculated on the following principles:
- (a) the costs shall reflect prevailing market rates applicable to the circumstances of the quotation and on an open book basis;
 - (b) the Manufacturer shall use its best endeavours to oblige its Subcontractors and their subcontractors of any tier to minimise any increase in costs and maximise any reduction in costs;
 - (c) the Manufacturer shall demonstrate how any expenditure to be incurred or avoided is being measured in a cost effective manner including showing that when such expenditure is incurred foreseeable Changes in Law at that time have been taken into account;
 - (d) the Manufacturer shall ensure that the Changes in Costs take account of any reduction in expenditure incurred to replace or maintain assets which was originally anticipated but would be avoided as a result of implementing the Change or Relevant Event;
 - (e) the Manufacturer shall demonstrate that where Key Subcontractors have sourced parts or materials from within their respective group undertaking (as such term is defined in section 1161 of the Companies Act 2006) that no mark up has been added to such parts or material.

2. Margin

The only margin which may be added to the costs calculated above is as set out in Appendix 3 (*Manufacturer's Margin*) to this Schedule 12.

3. Compensation Events

Where the Relevant Event is a Compensation Event, only Direct Losses shall be taken into account in the calculation of Changes in Costs.

Appendix 3
Manufacturer's Margin

1. The following percentage uplifts shall be applied to quotations and estimates (or parts of the same) of the direct costs and savings resulting from implementation of proposals for any Purchaser Change as calculated in accordance with Appendix 2 (*Calculation of Change of Costs*) to this Schedule 12.
2. Each percentage shall be deemed to include all of the Manufacturer's additional or reduced overheads including the costs of management, administration, legal accountancy, head office overheads and charges, supervision, insurance, accommodation, provision of small tools, standard items of plant, protective clothing, general contingency, general manufacturing and/or risk and profit resulting from the Purchaser Change.
3. For the avoidance of doubt, the percentages obtained from this Appendix 3 are not applicable to any quotation, estimate or price obtained by reference to the Schedule of Costs included in Appendix 1 (*Schedule of Costs*) to this Schedule 12.

| Element of Purchaser Change quotation or estimate | Net increase or decrease in direct costs - % |
|--|--|
| Increase or decrease in Capital Expenditure excluding the Works | ■% in relation to the train works where the Manufacturer and the Purchaser agree that the Purchaser Change will not affect the achievement of any of the dates in the Schedule, otherwise ■% |
| Increase or decrease in the cost of implementing the Works | ■% in relation to an increase in net direct costs. ■% in relation to a decrease in net direct costs |

REDACTED

Schedule 13
Insurance

- Part A :** **Manufacturer Obligations**
- Part B :** **Insurance required from the Commencement Date in respect of the Works**
- Part C :** **Broker's Letter of Undertaking**
- Part D :** **Endorsements**
- Part E :** **Bombardier's Insurance Confirmations**

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Part A Manufacturer Obligations

1. Required Manufacturer Insurances

1.1 The Manufacturer shall take out and maintain in full force and effect and at its own cost, the following policies and contracts of insurance (the *Required Insurances*):

- (a) all risks property insurance for an amount not less than the full replacement cost any one occurrence subject to the annual aggregate limit against any loss or damage (however and wherever it arises including testing and commissioning) (with respect to in transit marine cargo insurance for an amount not less than [REDACTED] per shipment) to each item of the Insured Property described in paragraph 2.1 of Part B (*Insurance required from the Commencement Date in respect of the Works*) and the Manufacturer warrants that it will reinstate the sum insured so as to maintain the aggregate limit;
- (b) public and product liability insurance in respect of the Manufacturer's liability for death or injury to any person (other than employees of the Manufacturer and its Subcontractors) and loss or damage to any property (excluding the Units and Equipment) in an amount of not less than [REDACTED] in respect of each and every occurrence or series of occurrences consequent upon one event or original cause, and subject to at least one reinstatement of any aggregate limit.

1.2 From the date of this Agreement and for its duration, the Manufacturer shall procure any other insurance as is required by any Applicable Laws and Standards including insurance to be effected against legal liability for injury to its employees and to other persons under a contract of service or apprenticeship to them (and shall procure that each Subcontractor shall maintain such insurance in respect of its own employees).

2. Requirements for All Risks Property Insurances

The all risks property damage Required Insurances described in paragraph 1.1(a) shall:

- (a) be in the name of the Manufacturer and will name each of the Purchaser, the Owner (if it is not the Purchaser and is notified to the Manufacturer pursuant to clause 44.1) and any financiers providing finance to the Owner for the purposes of the Project (the *Financiers*) and their respective assigns as loss payees for their respective rights and interests;
- (b) include a waiver of subrogation in favour of the Owner (whether the Purchaser or another person notified to the Manufacturer pursuant to clause 44.1), the Purchaser (if not the Owner) and any Financiers; and
- (c) comply with the provisions of 2 of Part B (*Insurance required from the Commencement Date in respect of the Works*) of this Schedule 13.

3. Requirements for Third Party Liability Insurances

The liability insurances specified in paragraph 1.1(b) shall:

- (a) be in the name of the Manufacturer and include the Purchaser, the Owner (where not the Purchaser and notified to the Manufacturer pursuant to clause 44.1) and any Financier and their respective successors and assigns as additional insureds for their respective rights, liabilities and interests (for the purposes of this paragraph 3, the *Required Additional Insureds*);
- (b) include a provision whereby the insurers agree to indemnify in terms of such insurances the Purchaser, the Owner (where not the Purchaser and notified to the Manufacturer pursuant to clause 44.1) and any Financier against legal liability in respect of which the Manufacturer is liable to indemnify such person under the terms of this Agreement;
- (c) include a waiver of subrogation in favour of the Owner (whether the Purchase or another person notified to the Manufacturer pursuant to clause 44.1, the Purchaser (if not the Owner) and any financiers;
- (d) comply with the provisions of paragraph 3 (*Third Party Public and Products Liability Insurance*) of Part B (*Insurance required from the Commencement Date in respect of the Works*).

4. Insurance to be for additional insured and/or loss payee (as applicable) and for several interest

The Manufacturer shall ensure that each policy or contract of the Required Insurances shall:

- (a) severally insure each of the Insureds named in paragraph 1 (*Common to each policy in this Part B*) of Part B (*Insurance required from the Commencement Date in respect of the Works*) and, subject to the prior consent of the Purchaser, others nominated by the Manufacturer;
- (b) entitle the Purchaser to maintain the policies in force after termination of this Agreement to the extent that this is achievable with the insurers;
- (c) contain a multiple-insured clause providing that the insured under the policy are insured on a composite basis applying to each insured as if, save only for limits of liability and/or amount, they were separately and individually insured; and
- (d) contain a non-vitiation clause whereby the vitiating act of one insured Party shall not prejudice the right to indemnity of any other insured which has an insurable interest and has not committed any vitiating act,

in the case of paragraphs (b) to (d), in the form of Endorsement 2 in Part D (*Endorsements*) of this Schedule 13, or such other terms as may be expressly approved by the Purchaser in accordance with paragraph 6.2.

5. Rights of subrogation

The Parties shall procure that all Required Insurances under which the Purchaser, the Owner (where it is not the Purchaser and has been notified to the Manufacturer pursuant to clause 44.1) or such Owner's financiers in connection with the Project, or

the Operator are not named as an insured contain a term to the effect that the insurers have agreed to waive all rights of subrogation against such persons, in the form of Endorsement 2 in Part D (*Endorsements*) of this Schedule 13, or such other terms as may be expressly approved by the Purchaser in accordance with paragraph 6.2.

6. Terms of policies and insurers

6.1 Each policy of Required Insurance shall:

- (a) provide cover denominated in Sterling and US dollars;
- (b) be in accordance with normal industry practice of persons engaged in the design, manufacture, testing, certification and commissioning of similar rolling stock, associated equipment and special tools in similar circumstances;
- (c) be placed and maintained with insurers with a Standard & Poor's Corporation long-term credit rating of at least ■ (or an equivalent rating from another rating agency of equal repute), unless otherwise approved by the Purchaser in its absolute discretion; and
- (d) be in such form and substance, consistent with the obligations of the Manufacturer under this Agreement as may be approved in writing from time to time by the Purchaser (such approval not to be unreasonably withheld or delayed).

6.2 No later than 15 Working Days prior to effecting any such policy or contract of insurance, the Manufacturer shall submit to the Purchaser for its approval:

- (a) the identity of the proposed insurer(s); and
- (b) the principal terms, conditions and warranties of the proposed insurance (including extensions, exclusions and levels of deductibles) or any revision to such insurance.

7. Cancellation or limitation of cover

All Required Insurances shall contain an endorsement whereby the Purchaser (and the Owner, where it is not the Purchaser and has been notified to the Manufacturer pursuant to clause 44.1) receives from the insurer in writing:

- (a) not less than 30 days' notice of cancellation or non-renewal for any reason;
- (b) not less than 30 days' notice of any reduction in limit or restriction in coverage or any increase in deductibles, whether at the instance of the insurer or the insured (which, in the case of any such reduction, restriction or increase required by the insured shall not be implemented without the agreement of the Purchaser (not to be unreasonably withheld));
- (c) advice of any default in payment of any premium payable under the policy; and

- (d) advice of any act or omission, including but not limited to known breaches of warranty, or of any event of which the insurer has knowledge and which might invalidate or render a policy void or voidable at the insurer's discretion,

in the form of Endorsement 1 in Part D (*Endorsements*) of this Schedule 13, or such other terms as may be expressly approved by the Purchaser in accordance with paragraph 6.2.

8. Loss Payee Provisions

8.1 All Required Insurances shall provide that claim proceeds, whether interim or final:

- (a) in respect of loss or damage to the Units or the Equipment shall be applied in reinstatement of the insured asset in question save only where the insured asset is a Lost Unit in respect of which the Purchaser has elected to cancel this Agreement in accordance with clause 22.1(b)(ii), in which case the insurance proceeds shall be paid to the Purchaser up to the amount of all sums due to be repaid to the Purchaser by the Manufacturer pursuant to clause 22.5(b); and
- (b) in respect of insurances against liabilities to third Parties, shall be paid to the aggrieved Party or, where that liability has been met by an insured Party pursuant to an indemnity or express contractual obligation under this Agreement, shall be paid to the indemnifier or the person liable for such obligations.

8.2 All policies for the Required Insurances shall be endorsed so as to be paid without deduction or set-off, whether in respect of unpaid premiums or otherwise.

9. Law and jurisdiction

All policies maintained or procured pursuant to this Schedule 13 shall be subject to English law and the exclusive jurisdiction of the English courts.

10. Payment of Premiums

The Manufacturer shall procure the due and punctual payment of all premiums payable in respect of each policy or contract of insurance taken out in accordance with paragraph 1.

11. Manufacturer to supply insurance policies

Promptly following any request from the Purchaser, the Manufacturer shall provide to the Purchaser for inspection a copy of the certificates and policies of insurance maintained in compliance with paragraph 1 together with evidence satisfactory to the Purchaser that all premiums payable in respect of such insurances have been paid in full and that such insurances are in full force and effect.

REDACTED

12. Compliance with Requirements

The Parties shall (and the Manufacturer shall procure that its Subcontractors shall) comply with all reasonable requirements of the insurers and shall not do or cause to be done anything which might render void or voidable any policy of insurance effected in accordance with paragraph 1 or as a result of which payment of insurance proceeds may be withheld in whole or in part.

13. Purchaser's Right to Insure

13.1 If and to the extent that any of the Required Insurances are not taken out and maintained as contemplated by this Schedule 13, the Purchaser may, without prejudice to any other rights under this Agreement, itself arrange the relevant policies or contracts of insurance. The Manufacturer shall indemnify the Purchaser against all premiums and other Losses payable by the Purchaser in exercising its rights under this paragraph 13.1, together with Default Interest from the date on which premiums are paid or other costs incurred until the date of payment by the Manufacturer to the Purchaser.

13.2 If the Purchaser procures an insurance policy or policies pursuant to this paragraph 13, the Purchaser shall be entitled to deduct the amount due from the Manufacturer to the Purchaser under paragraph 13.1 from the next Milestone Payment payable to the Manufacturer, in accordance with Part B (*Milestones*) of Schedule 10 (*Milestones and Security*).

14. Notification of claims

14.1 The Manufacturer shall give to the Purchaser prompt notification of any incident which may reasonably be expected to result in claims arising from that incident exceeding in aggregate £500,000 in any 12-month period under any of the insurances referred to in paragraph 1 accompanied by full details of the said incident.

14.2 The Manufacturer shall procure that the insurance broker appointed by the Manufacturer to place the Required Insurances delivers a report addressed to the Purchaser on at least a bi-annual basis (calculated as from the date of this Agreement) which will include accurate up-to-date details of (i) any claim notified against the Project and (ii) a summary (including the date, location, type of loss and amount) of any losses paid or reserved against the annual aggregate policy limits.

14.3 The Manufacturer shall procure that each of (a) the insurer(s) providing the Required Insurances and (b) the insurance broker appointed by the Manufacturer to place the Required Insurances, notifies the Purchaser as soon as reasonably practicable of any act or omission, breach or default of which it has been notified or of which it is aware and which in its reasonable opinion would either, invalidate or render unenforceable in whole or in part any of the Required Insurances or, would otherwise materially impact on the extent of cover provided under the Required Insurances.

15. Loss Mitigation

The Manufacturer is responsible for ensuring that, in the event of an incident, all reasonable steps are taken to mitigate further loss. This will include any necessary

emergency repairs to property damaged in order to mitigate further damage or for reasons of safety. These repairs must be reasonable in relation to the loss or damage that has been suffered.

16. Unavailability of Insurance

If and to the extent that the Manufacturer is unable to obtain (or procure the obtaining of) any of the insurances specified in paragraph 1 on normal commercial terms, the Manufacturer shall promptly notify the Purchaser and the Parties shall consult with each other in order to agree alternative insurance arrangements and/or alternative security to be provided or procured by the Manufacturer.

17. Broker's Letter of Undertaking

The Manufacturer shall procure that the insurance broker appointed by the Manufacturer to place the Required Insurances delivers to the Purchaser (and the Owner, where it is not the Purchaser and has been notified to the Manufacturer pursuant to clause 44.1) a letter substantially in the form set out in Part C (*Broker's Letter of Undertaking*) of this Schedule 13 in respect of each insurance policy or contract effected as part of the Required Insurances, as soon as possible but in any event before the Commencement Date and (where applicable) the subsequent renewal of each such policy.

18. Saving Provision

None of:

- (a) the Manufacturer's compliance or failure to comply with its obligations under this Schedule 13;
- (b) the existence of the Required Insurances or any other insurance procured by the Manufacturer or the absence (in whole or in part) of them; or
- (c) the terms of any policy or contract of insurance, including, without limitation, the limits of indemnity amounts referred to in Part B (*Insurance required from the Commencement Date in respect of the Works*) of this Schedule 13,

shall relieve or limit the Manufacturer of its liabilities and obligations under this Agreement.

Part B Insurance required from the Commencement Date in respect of the Works

1. Common to each policy in this Part B

Insureds

- (1) the Manufacturer;

Additional Insured and/or Loss Payee

- (2) the Purchaser;
- (3) the Owner (where it is not the Purchaser and has been notified to the Manufacturer pursuant to clause 44.1);
- (4) any financiers providing finance to the Owner for the purposes of the Project;

each for their respective rights and interests in the Project.

For the purposes of this Part B, a Subcontractor may either be (a) named as an additional insured, or (b) the subject of Difference in Conditions/Difference in Limits cover to more specific insurance of the Subcontractor.

2. All Risks Property Insurance

Insured Property

- 2.1 The Units and Equipment, and any other property, including property of the Purchaser, the Manufacturer, and the directors, employees, officers, servants or agents of any of them, for incorporation in or use in connection with the construction, integration, commissioning, testing and completion of the Units and Equipment, such cover shall include testing on mainline metals (including testing in tunnel and in depot) in respect of each Unit before operational handover which shall be on the date of Provisional Acceptance in respect of each Unit.

- 2.2 Storage of Units until Provisional Acceptance.

Coverage

- 2.3 "All risks" of physical loss or damage to the Insured Property unless otherwise excluded.

Sum Insured

- 2.4 At all times an amount not less than the full reinstatement or replacement value of the Insured Property, plus provision to include extensions as appropriate.

Maximum Deductible

- 2.5 [REDACTED] each and every claim.

Territorial Limits

- 2.6 Worldwide, including offsite storage and whilst in transit.

Period of Insurance

- 2.7 From the date of the Agreement until the date of Qualified Provisional Acceptance or Provisional Acceptance of the last Unit.

Cover Features and Extensions

- 2.8 (a) Terrorism
- (b) Munitions of war clause
- (c) Additional costs of completion
- (d) Professional fees clause (including the Purchaser's advisers' fees incurred during any period of reinstatement)
- (e) Debris removal clause
- (f) 72 hour clause
- (g) European Union local authorities clause
- (h) Free issue materials clause
- (i) Loss minimisation
- (j) Testing/commissioning

Principal Exclusions

- 2.9 (a) LEG 3
- (b) War and related perils (UK market agreed wording)
- (c) Nuclear/radioactive risks (UK market agreed wording)
- (d) Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds
- (e) Wear, tear and gradual deterioration
- (f) Consequential financial losses
- (g) Cyber risks
- (h) Inventory losses, fraud and employee dishonesty

3. Third Party Public and Products Liability Insurance

Interest

- 3.1 To indemnify the Insureds in respect of all sums that they may become legally liable to pay (including claimant's costs and expenses) as damages in respect of accidental:
- (a) bodily injury, illness, death, disease contracted by any person;
- (b) loss or damage to property; or

- (c) interference to property or any easement right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance, loss of amenities, or any like cause,

happening during the Period of Insurance and arising out of or in connection with the Works.

Limit of Indemnity

- 3.2 Not less than [REDACTED] respect of any one occurrence, and in the aggregate in respect of pollution and products liability and the Manufacturer warrants that it will reinstate limit of liability so as to maintain at all times an amount no less than [REDACTED]

Maximum Deductible

- 3.3 [REDACTED] for each and every occurrence of property damage, escalated periodically as appropriate. (Personal injury claims will be paid in full.)

Territorial Limits

- 3.4 Worldwide.

Jurisdiction

- 3.5 Worldwide.

Period of Insurance

- 3.6 Up to (and including) the later to occur of:
 - (a) the expiry of the design life warranty under clause 20.1 in respect of the last Unit; and
 - (b) the expiry of the Warranted Design Life of all Major Components.

Cover Features and Extensions

- 3.7
 - (a) Munitions of war
 - (b) Cross liability clause
 - (c) Contingent motor liability
 - (d) Defence Costs
 - (e) Corporate Manslaughter defence costs
 - (f) Full indemnity for the Purchaser and the Owner (when Insureds) to the extent that the Manufacturer is legally liable

Principal Exclusions

- 3.8 (a) Liability for death, illness, disease or bodily injury sustained by employees of the Insured.

REDACTED

- (b) Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by Legislation in respect of such vehicles.
- (c) Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- (d) Liability in respect of loss or damage to property in the care, custody and control of the insured but this exclusion is not to apply to all property belonging to Purchaser that is in the care, custody and control of another Insured.
- (e) Liability arising out of technical or professional advice (given for a fee) other than in respect of death or bodily injury to persons or damage to third party property.
- (f) Losses under the insurances referred to in paragraph 2 (*Contractors' "All Risks" Insurance*) of this Part B of Schedule 13.
- (g) Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- (h) Liability arising from seepage and pollution unless caused by a sudden, identifiable, unintended and unexpected occurrence.

Part C Broker's Letter of Undertaking

To: Rail for London Ltd

Dear Sirs

Manufacturer and Supply Agreement dated [●] entered into between [Manufacturer] (the *Manufacturer*) and Rail for London Limited (the *Purchaser*) (the *Agreement*)

1. We refer to the Agreement. Unless the context otherwise requires, terms defined in the Agreement shall have the same meaning in this letter
2. We act as insurance broker to the Manufacturer in respect of the Required Insurances and in that capacity we confirm that the Required Insurances which are required to be procured pursuant to clause 19 (*Insurance*) and Schedule 13 (*Insurance*) of the Agreement:
 - (a) where appropriate name you and such other persons as are required to be named pursuant to the Agreement for their respective interests;
 - (b) are, in our reasonable opinion as insurance brokers, as at today's date, in full force and effect;
 - (c) all premiums due to date in respect of the Required Insurances are paid and the Required Insurances are, to the best of our knowledge and belief, placed with insurers which, as at the time of placement, are reputable and financially sound. We do not however make any representations regarding such insurers' current or future solvency, or ability to pay claims; and that
 - (d) the endorsements set out in Part D (*Endorsements*) of Schedule 13 of the Agreement which is attached hereto are in our reasonable opinion as at today's date in full force and effect in respect of the Required Insurances.
3. We further confirm that the attached cover notes confirm this position.
4. Pursuant to instructions received from the Manufacturer and in consideration of your approving our appointment or continuing appointment as brokers in connection with the Required Insurances, we hereby undertake in relation to the Required Insurances:
 - (a) Notification Obligations
 - (i) to notify you at least thirty (30) days prior to the expiry of any of the Required Insurances if we have not received instructions from the Manufacturer to negotiate renewal and in the event of our receiving instructions to renew, to advise you promptly of the details thereof;
 - (ii) to notify you at least thirty (30) days prior to ceasing to act as brokers in relation to the Required Insurances unless, due to circumstances beyond our control, we are unable to do so in which case we shall notify you as soon as practicable;

- (iii) to supply to the Purchaser on at least a bi-annual basis, a report providing accurate up-to-date details of any claims and losses specified in paragraph 14.2 of Part A (*Manufacturer Obligations*) of Schedule 13 (*Insurance*) of the Agreement; and
 - (iv) to pay without set off or deduction of any kind for any reason all payments in respect of claims received by us from insurers in relation to the Required Insurances specified in Part A (*Manufacturer Obligations*) of Schedule 13 (*Insurance*) of the Agreement in accordance with the loss payable clause endorsed on the policy as set out in Part D (*Endorsements*) of Schedule 13 of the Agreement.
- (b) Advisory Obligations
- (i) to notify you as soon as reasonably practicable of any default in the payment of any premium for any of the Required Insurances;
 - (ii) to notify you if any insurer cancels or gives notification of cancellation of any of the Required Insurances to us, at least thirty (30) days before such cancellation is to take effect or as soon as reasonably practicable in the event that notification of cancellation takes place less than thirty (30) days before it is to take effect;
 - (iii) to notify you as soon as reasonably practicable of any act or omission, breach or default of which we have been notified or of which we are aware and which in our reasonable opinion would either, invalidate or render unenforceable in whole or in part any of the Required Insurances or, would otherwise materially impact on the extent of cover provided under the Required Insurances; and
 - (iv) in accordance with our duty to the Manufacturer to notify the Manufacturer of its pre-contractual duties of disclosure to insurers, including the duty to disclose all information that would be considered material in the context of such duty.
- (c) Disclosure Obligations
- (i) subject to the prior written consent of the Manufacturer (and we undertake to notify you as soon as reasonably practicable if such consent is withheld) to disclose to insurers all information provided to those of our employees directly involved with the placement of the Required Insurances in our capacity as insurance broker to the Manufacturer, including any fact, change of circumstance or occurrence notified to such employees, which in our reasonable opinion is material to the risks insured against under the Required Insurances and which properly should be disclosed to insurers, or in accordance with the policy terms and conditions of the relevant Required Insurance, as soon as reasonably practicable after we are in receipt of such information, fact, change of circumstance or occurrence whether prior to inception or renewal or otherwise.

- (ii) to treat as confidential all information so marked or otherwise stated to be confidential and supplied to us by or on behalf of the Manufacturer or the Purchaser and not to disclose such information, without the prior written consent of the supplier, to any third party other than those persons who, in our reasonable opinion have a need to have access to such information from time to time, and for the purpose of disclosure to the insurers or their agents in respect of the Required Insurances. Our obligations of confidentiality shall not conflict with our duties owed to the Manufacturer and shall not apply to disclosure required by an order of a court of competent jurisdiction, or pursuant to any applicable law, governmental or regulatory authority having the force of law or to information which is in the public domain.
- (d) Administrative Obligations
 - (i) to hold copies of all documents relating to or evidencing the Required Insurances, including but without prejudice to the generality of the foregoing, insurance slips, contracts, policies, endorsements and copies of all documents evidencing renewal of the Required Insurances, payment of premiums and presentation and receipt of claims;
 - (ii) to supply to the Purchaser and/or its insurance advisers (or the Purchaser's or its insurance advisers' authorised representatives) promptly on written request copies of the documents set out in clause 4(d)(i) of this letter, and to the extent available, to make available to such persons promptly upon the Purchaser's request the originals of such documents;
 - (iii) to administer the payment of premiums due pursuant to the Required Insurances such that, in so far as we hold appropriate funds, all such premiums shall be paid to insurers in accordance with the terms of the Required Insurances;
 - (iv) to administer the payment of claims from insurers in respect of the Insurances (the *Insurance Claims*) including:
 - (A) negotiating settlement of Insurance Claims presented in respect of the Required Insurances;
 - (B) collating and presenting all information required by insurers in relation to Insurance Claims presented in respect of the Required Insurances; and
 - (v) in so far as it is relevant and practicable, liaising and reporting to the Purchaser throughout the settlement, payment and administration of such Insurance Claims;
 - (vi) to advise the Purchaser as soon as reasonably practicable upon receipt of notice of any material changes which we are instructed by

the Manufacturer to make in the terms of the Required Insurances and which, if effected, in our reasonable opinion as Insurance Brokers would result in any material reduction in limits or coverage or increase in deductibles, exclusions or exceptions; and

- (vii) to use our reasonable endeavours to have endorsed on each and every policy evidencing the Required Insurances (when the same is issued) endorsements substantially in the form set out in Part D (*Endorsements*) of Schedule 13 (*Insurance*) of the Agreement.

5. Notification Details

Our obligations at clause 4 of this letter to notify or inform you shall be discharged by providing the requisite information in hard copy to:

Overground House,
125 Finchley Road,
Swiss Cottage,
London NW3 6HY.

- 6. Save insofar as we have given agreements or representations in this letter, it is to be understood by the Purchaser that they may not rely on any advice which we have given to the Manufacturer, and we do not represent that the Required Insurances are suitable or sufficient to meet the needs of the Purchaser which must take steps and advice of its own as it considers necessary in order to protect its own position.
- 7. The representations and obligations set out in this letter are subject to our continuing appointment as insurance brokers to the Manufacturer in relation to the Required Insurances concerned, and following termination of such appointment our immediate release from all our obligations set out in this letter to the extent those obligations arise on or after the termination, and subject to any right of lien we may have over the policy and policy documents regarding the Required Insurances, arising through common law or otherwise.
- 8. Our aggregate liability to any persons, companies or organisation who acts in reliance on this letter, or on any other broker's letter of undertaking issued by us in respect of the Required Insurances under this Agreement, for any and all matters arising from them and the contents thereof shall in any and all events be limited to the sum of £5,000,000, even if we are negligent. We do not limit liability for our fraud.
- 9. This letter is given by us on the instructions of the Manufacturer and with their full knowledge and consent as to its terms.

Yours faithfully

For and on behalf of [*Manufacturer's broker*]

We consent to the giving of this Letter of Undertaking by our insurance brokers

For and on behalf of
[*Manufacturer*]

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Part D Endorsements

Endorsement 1

Cancellation

This policy shall not be cancelled or terminated before the original expiry date is to take effect except in respect of non-payment of premium.

The insurer shall by written notice advise the Purchaser:

- (a) at least 30 days before any such cancellation or termination is to take effect;
- (b) at least 30 days before any reduction in limits or coverage or any increase in deductibles is to take effect; and
- (c) of any act or omission or any event of which the insurer has knowledge and which might invalidate or render unenforceable in whole or in part this policy.

Endorsement 2

Multiple Insured/Subrogation/Non-Vitiation Clause

Each of the Parties comprising the insured shall for the purpose of this policy be considered a separate co-insured entity, insured on a composite basis, with the words "the insured" applying to each as if they were separately and individually insured provided that the total liability of the insurers under each section of this policy to the insured collectively shall not (unless the policy specifically permits otherwise) exceed the limit of indemnity or amount stated to be insured under that section or policy. Accordingly, the liability of the insurers under this policy to any one insured shall not be conditional upon the due observance and fulfilment by any other insured Party of the terms and conditions of this policy or of any duties imposed upon that insured Party relating thereto, and shall not be affected by any failure in such observance or fulfilment by any such other insured Party.

It is understood and agreed that any payment or payments by insurers to any one or more of the insureds shall reduce, to the extent of that payment, insurers' liability to all such Parties arising from any one event giving rise to a claim under this policy and (if applicable) in the aggregate.

Insurers shall be entitled to avoid liability to or (as may be appropriate) claim damages from any insured Party in circumstances of fraud misrepresentation non-disclosure or material breach of warranty or condition of this policy (each referred to in this clause as a *Vitiating Act*) committed by that insured Party save where such misrepresentation non-disclosure or breach of warranty or condition was committed innocently and in good faith.

For the avoidance of doubt it is however agreed that a Vitiating Act committed by one insured Party shall not prejudice the right to indemnity of any other insured who has an insurable interest and who has not committed the Vitiating Act.

Insurers hereby agree to waive all rights of subrogation and/or recourse which they may have or acquire against any insured Party (together with their employees and agents) except where the rights of subrogation or recourse are acquired in consequence of a Vitiating Act in which

circumstances insurers may enforce such rights against the insured responsible for the Vitiating Act notwithstanding the continuing or former status of the vitiating Party as an insured.

Notwithstanding any other provision of this policy or any other document or any act and/or omission by any insured Party insurers agree that:

- (a) no Party other than the Purchaser has any authority to make any warranty, disclosure or representation in connection with this policy on behalf of Purchaser;
- (b) where any warranty, disclosure or representation is required from the Purchaser in connection with this policy insurers will contact the Purchaser in writing (in accordance with Endorsement 3 to Part D (*Endorsements*) of Schedule 13 of the Agreement) and set out expressly the warranty, disclosure and/or representation required within a reasonable period of time from the Purchaser (regarding itself); and
- (c) save as set out in a request from insurers to the Purchaser in accordance with (2) above, the Purchaser shall have no duty to disclose any fact or matter to insurers in connection with this policy save to the extent that for the Purchaser not to disclose a fact or matter would constitute fraudulent misrepresentation and/or fraudulent non-disclosure.

Endorsement 3

Communications

All notices or other communications under or in connection with this policy shall be given to each insured (and the Purchaser) in writing or by email. Any such notice will be deemed to be given as follows:

- (a) if in writing, when delivered
- (b) if sent by email, upon receipt by the sender of a "delivered" confirmation (provided that the sender shall not be required to produce a "read" confirmation).

The address and email of the Purchaser for all notices under or in connection with this policy are those notified from time to time by the Purchaser for this purpose to the Contractor's insurance broker at the relevant time. The initial address and email of the Purchaser is as follows:

Rail for London Limited:

Address: Overground House
125 Finchley Road
Swiss Cottage
London NW3 6HY

Email: [REDACTED]

Attention: [REDACTED]

It is further agreed that a notice of claim given by the Purchaser or any other insured shall in the absence of any manifest error be accepted by the insurer as a valid notification of a claim on behalf of all insureds.

Endorsement 4

Loss Payee (applicable only to the Contractors' "All Risks" Policies)

Unless and until the insurers receive written notice from the Manufacturer and the Purchaser directing otherwise, all proceeds of this policy shall be payable without deduction or set-off from the agreed claim figure to the Manufacturer to be applied in reinstatement of the insured asset in question save where the insured asset is a Unit which is the subject of an Event of Loss and in respect of which the Purchaser has elected to cancel its manufacture pursuant to the manufacture and supply agreement dated on or around 1 July 2015 between the Purchaser and the Manufacturer (the *Manufacture and Supply Agreement*), in which case the insurance proceeds shall be paid to the Purchaser up to the amount of all sums due to be repaid to the Purchaser by the Manufacturer pursuant to clause 22.5(b) of the Manufacture and Supply Agreement. Defined terms used in this Endorsement 4 shall have the same meaning as defined in the Manufacture and Supply Agreement.

Endorsement 5

Primary Insurance

It is expressly understood and agreed that this policy provides primary cover for the insured Parties and that in the event of loss destruction damage or liability covered by this policy which is covered either in whole or in part under any other policy or policies of insurance effected by or on behalf of any of the insured Parties the insurers will indemnify the insured Parties as if such other policy or policies of insurance were not in force and the insurers waive their rights of recourse if any against the insurers of such other policy or policies of insurance.

Endorsement 6

Claims Negotiation Rights

Notwithstanding any claim conditions contained herein insurers agree that the Purchaser has the right to settle and negotiate any claims received from third Parties subject to prior consent of insurers. If the Purchaser takes or fails to take any action as a direct result of which insurers' liability is increased then the liability of insurers to provide an indemnity is reduced to such an extent.

Part E Bombardier's Insurance Confirmations

[To be issued on Bombardier Inc.'s headed notepaper]

[Include Date]

[REDACTED]
Rail for London Ltd. (*RfL*)
c/o Transport for London
55 Broadway North Wing
2nd Floor Room 250
London SW1 H0BD, U.K.

SUBJECT: Lotrain Project

Dear [REDACTED],

We refer to the Manufacture and Supply Agreement for new Electric Multiple Unit Trains dated on or around 1 July 2015 between RfL and Bombardier Transportation UK Limited (*Bombardier Transportation*) (the *MSA*).

In respect to the insurances that Bombardier Transportation is providing in response to the relevant contractual obligations under the MSA, we hereby confirm that:

- Third Party Liability Insurance — in the event of the Aggregate Limit of Liability being exhausted, Bombardier Transportation warrants that it will reinstate the Aggregate Limit so as to maintain, at all times as required under the MSA, a level of Third Party Liability insurance equal to £155,000,000.
- All Risks Property Insurance — notwithstanding any aggregate provisions that may be in effect under Bombardier Transportation's Property Insurance Program, Corporate Governance, various Lenders Agreements, a variety of other contracts and prudent risk management dictate that Bombardier Transportation will maintain, at all times, adequate insurance covering their contract obligations and assets, in particular those under the MSA.

For and on behalf of Bombardier Inc.

Name:

Title:

Schedule 14
Responsible Procurement

Schedule 14 **Responsible Procurement**

Appendix 1: Responsible Procurement Performance Review and Action Plan Template

Appendix 2: Strategic Labour Needs and Training Monitoring Report Template

Appendix 3: London Overground Skills Pledge

Appendix 4: SLNT Output Breakdown

Appendix 5: Procurement Schedule Requirements

Appendix 6: SLNT Plan

1. Introduction

1.1 Generally

- (a) The Maintainer is required to implement Responsible Procurement and the London Living Wage through this Agreement and its requirements for this are set out in this Schedule 14.
- (b) The Manufacturer shall comply and shall ensure that its subcontractors and suppliers (of any tier) comply with this Schedule 14.

1.2 Definitions

Apprentice means an individual employed for a minimum of 16 hours a week who is undertaking a sector skills council/standard setting body recognised structure programme of training leading to the completion of a full apprenticeship;

Apprentice (existing) means an individual already undertaking an accredited apprenticeship scheme within the company who is employed for a minimum of 16 hours a week who is undertaking a sector skills council / standard setting body recognised structured programme of training leading to the completion of a full apprenticeship. Where an existing apprenticeship spans across several years it will be considered as 0.5 SLNT outputs i.e. three year existing apprenticeship = 1.5 SLNT training outputs. An apprentice must be employed on the Works for a minimum of four months in each year to qualify as 0.5 SLNT training output;

Black, Asian and Minority Ethnic (BAME) means a business in which 51 per cent. or more of the share capital is owned by members of one or more Minority Ethnic Groups;

Child means any person less than 15 years of age unless local minimum age law stipulates a higher age for work or mandatory schooling, in which case the higher age shall apply. If however, local minimum age law is set at 14 years of age in accordance with developing country exceptions under ILO Convention No.138, the lower age will apply;

Child Labour means a Child or Young Person, which does not comply with the provisions of the relevant ILO standards, and any work that is likely to be hazardous or to interfere with the Child's or Young Person's education, or to be harmful to the Child's or Young Person's health or physical, mental, spiritual, moral or social development;

Graduate means an individual employed for 16 hours or more who has completed their undergraduate degree within the last 12 months and who is beginning an employment position on a formal graduate trainee scheme with a minimum duration of 6 months;

ILO means the International Labour Organisation;

Job Start means an individual employed for 16 hours a week or more beginning a position of employment with a minimum duration of six months;

Local Community means within the vicinity of the boundaries of the Greater London Authority and the London Boroughs and the other local authority areas where the London Overground services are to be operated;

London Borough means the administrative area of Greater London (plus the City of London), containing 33 boroughs;

London Living Wage means the basic hourly wage of £8.80 (before tax, other deductions and any increase for overtime) determined by the Greater London Authority for employees working full time on the Works within one of the London Boroughs, as may be updated from time to time;

Minority Ethnic Groups means those who have classified themselves as members of ethnic groups other than 'white British';

Placement Position means a position intended to enable an individual to learn, develop or enhance their knowledge and skills in relation to the employment market that lasts between 11 days and 100 days and which includes elements of job coaching and support;

Relevant Employment Vacancy means an employment vacancy within the Manufacturer's organisation for a member of the Manufacturer's personnel;

Responsible Procurement means compliance with the GLA Responsible Procurement Policy dated March 2006 (as amended in January 2008 and as may be further amended from time to time);

Responsible Procurement Plan means the plan developed by the Manufacturer which describes the management processes and procedures for achieving compliance with the requirements set out in this Schedule 14;

Responsible Procurement Representative means the person appointed by the Manufacturer pursuant to paragraph 2.1 of this Schedule 14;

Skills and Employment Strategy means the TfL Group's 10 year skills and employment strategy dated December 2011 as amended from time to time;

Strategic Labour Needs and Training Plan or **SLNT Plan** means the plan in appendix 6 consistent with the requirements of paragraph 3.2(a) of this Schedule 14;

Small and Medium Enterprises (SMEs) means a business which meets at least two of the following criteria:

- (a) turnover per annum of up to £22.8 million;
- (b) balance sheet net asset value of no more than £11.4 million;
- (c) 250 employees or fewer.

The criteria in (b) and (c) will also be applied to group accounts where the turnover for the group does not exceed the figure stated in (a).

Suppliers demonstrating a diverse workforce means a workforce where 51 per cent. or more is representative of minority ethnic, under represented or protected groups;

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Suppliers from protected groups means groups in which 51 per cent. or more of the share capital is owned by members of a group for which protection is provided by anti-discriminatory legislation;

Suppliers from under-represented groups means groups in which 51 per cent. or more of the share capital is owned by members of one or more of the following groups:

- (a) Gender – Women;
- (b) Disability – people with physical and sensory impairments, learning difficulties and mental health requirements;
- (c) Sexual orientation – lesbians, gay men, bisexual and transgender people;
- (d) Age – older people (aged 60 or over), young adults (aged 24 or under);

Trainee means an individual on a placement position;

Work Experience means a person undertaking a placement as part of the national curriculum or as a specific qualification such as Diploma programmes or Young Apprenticeship, Programme led Apprenticeships;

Work Force Skills means workforce training or development activity for full time employed individuals that forms part of an accredited course of learning and development;

Young Person means any worker over the age of a **Child** and under the age of 25.

2. Management Requirements

Responsible Procurement Representative

2.1 The Manufacturer shall appoint a representative (the **Responsible Procurement Representative**) who shall:

- (a) be the primary contact for all Responsible Procurement related matters under the Agreement;
- (b) be responsible for production, implementation, management and updating of the Responsible Procurement Plan and any further deliverables required by the plan;
- (c) have responsibility for ensuring that the Manufacturer's Responsible Procurement obligations are met in accordance with this Agreement; and
- (d) co-operate with the Purchaser in providing evidence and records in support of Responsible Procurement including without limitation evidence and records from subcontractors and suppliers of any tier employed in relation to the Works.

Responsible Procurement Plan

2.2 (a) Within four weeks of the Commencement Date, the Manufacturer shall produce a Responsible Procurement Plan and submit it to the Purchaser for

Assurance Acceptance. All subsequent revisions of such plan shall be submitted to the Purchaser for Assurance Acceptance.

- (b) The Responsible Procurement Plan shall:
 - (i) describe the management processes and procedures for achieving compliance with all the Responsible Procurement requirements detailed within this Schedule 14 and include the Strategic Labour Needs and Training Plan;
 - (ii) demonstrate how the processes and procedures for achieving compliance with the Responsible Procurement requirements will be imposed on subcontractors and suppliers of any tier to ensure compliance throughout the supply chain; and
 - (iii) include a programme of activities to support the Responsible Procurement Plan with proposed dates for commencement and completion, including but not limited to:
 - (A) proposed training programme and dates;
 - (B) progress report submittal dates;
 - (C) progress meeting scheduled dates; and
 - (D) dates for site inspections and internal audits required to evidence progress achieved.
- (c) The Manufacturer shall manage the Works in compliance with the accepted Responsible Procurement Plan.
- (d) The Manufacturer shall review and update the Responsible Procurement Plan as necessary and in a timely way as the Works progress to ensure it reflects the current status of the Works. Revised plans shall be submitted to the Purchaser for Assurance Acceptance.
- (e) The Manufacturer shall inform all employees including subcontractors and suppliers of any tier, with direct or indirect responsibilities under the Responsible Procurement Plan of the contents of the plan that apply to their services.

Monitoring, Reporting and Management

2.3 (a) Responsible Procurement Progress Report

- (i) The Manufacturer shall submit a quarterly Responsible Procurement progress report to the Purchaser.
- (ii) The Responsible Procurement progress report shall include the following:
 - (A) a performance review and action plan (in the format detailed in Appendix 1 (*Responsible Procurement Performance Review and Action Plan*));

- (B) areas of concern / areas where guidance from the Purchaser is required;
- (C) the strategic labour needs and training monitoring report (in the format detailed in Appendix 2 (*Strategic Labour Needs and Training Monitoring Report*)); and
- (D) reporting against Responsible Procurement requirements detailed below.

(b) Supplier Diversity Reporting

The Manufacturer shall report the following:

- (i) The number of the Manufacturer's subcontractors that are:

| | Subcontractors (No.) |
|--|-------------------------|
| SME | |
| BAME | |
| Suppliers from other under-represented or protected groups | |
| Suppliers demonstrating a diverse workforce composition | |

- (ii) Progress in achieving the targets for use of SMEs set out in paragraph 3.1(b) supported by an update of the procurement schedule referred to in paragraph 3.1(c).

- (iii) The level of spend, to date, with the Manufacturer's subcontractors and suppliers that are:

| | Subcontractors | |
|--|--------------------|---|
| | Level of spend (£) | Proportion of total subcontract spend (%) |
| SME | | |
| BAME | | |
| Suppliers from other under-represented or protected groups | | |
| Suppliers demonstrating a diverse workforce composition | | |

(c) Equality and Diversity Reporting

The Manufacturer shall report the number of the Manufacturer's employees and, to the extent reasonably possible, of the employees of its subcontractors engaged in the performance of the Agreement who are:

| | Manufacturer (No.) | Subcontractors (No.) |
|--|-----------------------|-------------------------|
| Female | | |
| People from Minority Ethnic Group communities | | |
| Aged under 25 | | |
| Disabled | | |
| Total Workforce | | |

(d) CompeteFor Reporting

The Manufacturer shall include in the Responsible Procurement progress report:

- (i) number and value of opportunities advertised and by whom (e.g. Manufacturer, Manufacturer subcontractors and suppliers of any tier working on the Works);
- (ii) number and value of contracts awarded as a direct result of advertising the opportunity on CompeteFor of any tier working on the Works;
- (iii) number and type of opportunities identified to be advertised through CompeteFor during the next reporting period; and
- (iv) opportunities deemed not to be appropriate for sourcing through CompeteFor and reasons for this (e.g. existing contractual/supply chain relationships).

(e) Strategic Labour Needs and Training Reporting

The Manufacturer shall provide to the Purchaser reports in relation to strategic labour needs and training in the form of each of the templates in Appendix 1 (*Responsible Procurement Performance Review and Action Plan*) and Appendix 2 (*Strategic Labour Needs and Training Monitoring Report*).

(f) Ethical Sourcing Practices Reporting

The Manufacturer shall report on ethical sourcing practices in accordance with the Responsible Procurement Performance Review and Action Plan template in Appendix 1 (*Responsible Procurement Performance Review and Action Plan*) unless specific risks are identified following the risk analysis which then require further management and monitoring which shall be agreed by the Manufacturer and the Purchaser if required.

(g) Responsible Procurement Progress Meeting

The Manufacturer, its subcontractors (where deemed required by the Purchaser) engaged on the Works and the Purchaser shall meet one week following receipt of the Responsible Procurement progress report to review Responsible Procurement activity under the Agreement. The objective of the meeting shall be to verify that work is proceeding in accordance with the Responsible Procurement Plan.

(h) External Audits

Without prejudice to clause 9 (*Manufacturing Facilities and Rights of Audit*):

- (i) the Purchaser (or its nominated representative) shall undertake audits of the Manufacturer and subcontractors and suppliers of any tier working on the Works with regard to Responsible Procurement;
- (ii) The Manufacturer shall be given notice of the proposed external audit date and shall cooperate in relation to any audit including full access to premises used in the Manufacturer's or subcontractor's performance of the Works;
- (iii) The Manufacturer and/or its subcontractors and suppliers shall assist with these audits and make personnel and records available as required; and
- (iv) The Manufacturer, its subcontractors and suppliers of any tier shall maintain and retain records relating to the Responsible Procurement provisions of this part of the Agreement for a minimum of seven years.

3. Responsible Procurement Requirements

3.1 Encouraging a Diverse Base of Suppliers

- (a) For the purpose of this Schedule 14, the term *Diverse Suppliers* comprises the following four sub-sets:
 - (i) Small and Medium Enterprises;
 - (ii) Black, Asian and Minority Ethnic businesses;
 - (iii) Suppliers from other under-represented or protected groups; and
 - (iv) Suppliers demonstrating a diverse workforce composition.
- (b) The Manufacturer shall maximise the use of SMEs in connection with the Agreement and shall use its best endeavours to achieve 25 per cent. of the Total Contract Price.
- (c) The Manufacturer shall demonstrate actual and planned compliance with these targets through its supplier diversity reporting and by providing and maintaining a detailed procurement schedule which meets the requirements set out in Appendix 5 (*Procurement Schedule Requirements*).

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- (d) To the extent that the Manufacturer intends to use subcontractors in jurisdictions other than the United Kingdom, the Manufacturer must interpret this Schedule 14 using equivalent definitions applicable in those jurisdiction(s) or, where there are no equivalent definitions, provide an explanation and propose an alternative approach that reasonably approximates with the approach described in this Schedule 14.
- (e) To the extent that the Manufacturer intends to use subcontractors in jurisdictions other than the United Kingdom, the Manufacturer must comply with the equality and diversity requirements to the greatest extent permitted by the laws of their applicable jurisdiction and, where the legislation of that jurisdiction does not permit a reasonable approximation of the approach described in this Schedule 14, provide an explanation and propose an alternative approach that reasonably approximates with the approach described in this Schedule 14.
- (f) The monitoring of ethnic classification groups used for monitoring purposes are:
 - (i) White British;
 - (ii) Irish;
 - (iii) Any other White background;
 - (iv) Mixed White & Black Caribbean;
 - (v) White & Black African;
 - (vi) White & Asian;
 - (vii) Any other Mixed background;
 - (viii) Asian or Asian British Indian;
 - (ix) Pakistani;
 - (x) Bangladeshi;
 - (xi) Any other Asian background;
 - (xii) Black or Black British Caribbean;
 - (xiii) African;
 - (xiv) Any other Black background;
 - (xv) Chinese or other Ethnic Group Chinese; and
 - (xvi) Any other Ethnic Group.
- (g) CompeteFor

The Manufacturer shall use the CompeteFor web-sourcing portal or any successor system to advertise subcontractor and supplier opportunities which

arise from this Agreement (i.e. new contract specifically for this Agreement where no existing contractual arrangements are in place). The Manufacturer shall use reasonable endeavours to ensure that subcontractors and suppliers of any tier use the CompeteFor web-sourcing portal or any successor system to advertise further opportunities within the supply chain. The Manufacturer shall monitor the number, type and value of contract opportunities advertised and placed in its own supply chain.

(h) Meet the Buyer Event

The Manufacturer shall participate in Meet the Buyer Events as and when organised by TfL and/or any of its subsidiaries or nominees.

Meeting Strategic Labour Needs and Enabling Training Opportunities

3.2 (a) Strategic Labour Needs and Training Plan

(i) The Manufacturer has created and shall implement a Strategic Labour Needs and Training Plan (the *SLNT Plan*) for this Agreement. The SLNT Plan forms part of the Responsible Procurement Plan. The SLNT Plan states the Manufacturer's strategic labour needs and training objectives and the means by which the objectives shall be achieved. The Manufacturer shall further develop, update and implement the SLNT Plan as necessary, and at least on an annual basis, and shall submit all revisions of such plan to the Purchaser for Assurance Acceptance.

(ii) The SLNT Plan shall include:

(A) the Manufacturer's proposals to deliver the strategic labour needs and training (*SLNT*) for the performance of the Works in accordance with this Agreement including the following:

delivery against the following priority areas including:

- (I) the qualifications and training programmes identified;
- (II) named staff resource to be deployed to support the activity;
- (III) external funding streams identified to support the activity;
- (IV) assumptions made in proposing the activities; and
- (V) any input required from the Purchaser to undertake these activities;

(B) the Manufacturer's processes for ensuring the SLNT requirements will be met through the Manufacturer's subcontractors and suppliers, where they are responsible for delivering part of the Works, including:

- (I) how SLNT considerations will be included in the selection, contracting and management of subcontractors and suppliers;
 - (II) how the Manufacturer plans to make subcontractors and suppliers aware of any services and government support and funding streams for any SLNT activity to be undertaken towards the Manufacturer's proposed SLNT outputs; and
 - (III) how the Manufacturer will facilitate engagement between the Purchaser and the Manufacturer's supply chain to ensure that available funding streams and training programmes can be maximised;
- (C) the Manufacturer shall outline its processes for monitoring and co-ordinating the delivery of the SLNT outputs which shall include:
- (I) details of the personnel responsible for implementing, managing and reporting SLNT activity within the Manufacturer's organisation; and
 - (II) the administrative and management arrangements that will be operated in relation to the Manufacturer's SLNT activity;
- (D) the Manufacturer shall outline its arrangements to put the SLNT Plan into action following Assurance Acceptance which shall include the following:
- (I) engagement with the Purchaser to develop the SLNT Plan within the Responsible Procurement Plan;
 - (II) the required administration, management and reporting structures; and
 - (III) how the Manufacturer will attract, develop and retain personnel with the skills (including numeracy and literacy) necessary to deliver the Works;
- (E) the process for developing training plans for Apprentices and Trainees which shall include the following:
- (I) a requirement to submit to the Purchaser a training plan within one week of commencement of employment of a Trainee or Apprentice in relation to this Agreement;
 - (II) details of the skills and competencies to be developed and acquired by the Apprentice or Trainee together with the qualifications to be undertaken;

- (III) the timescales by which the Trainee and/or Apprentice should acquire the defined skills and competencies and achieve defined qualifications;
- (IV) review and update training plans for all Trainees and/or Apprentices each month;
- (V) making copies of completed and up to date training plans available to the Purchaser for inspection; and
- (VI) the Strategic Labour Needs and Training Output Breakdown.

(b) Strategic Labour Needs and Training Output Breakdown

- (i) The Manufacturer has created the SLNT for this Agreement and shall further develop, update and implement the SLNT in accordance with this Schedule 14 and the form in Appendix 4 (*Strategic Labour Needs and Training Output Breakdown*).
- (ii) The Manufacturer shall deliver the following minimum requirements for SLNT:
 - (A) where an apprenticeship training is for longer than one year, the Purchaser will allow each subsequent training year to count against the Manufacturer's overall SLNT requirement i.e. if the Manufacturer has an SLNT target of 12, this could either equate to 12 Apprentices each undertaking a year Apprenticeship or alternatively four Apprentices undertaking a three-year Apprenticeship;
 - (B) during delivery of the Works, the Manufacturer shall employ at least three Graduates and five Apprentices per annum in connection with the design or management of the Works. For the avoidance of doubt, this requirement shall be calculated as follows:

(3 graduates) x (length of this Agreement);
(5 Apprentices) x (length of this Agreement).

The profile for delivery of this requirement is set out in the Strategic Labour Needs and Training Plan in Appendix 6 (*SLNT Plan*).

(c) Community Relations

- (i) The Manufacturer acknowledges and accepts that members of the Tfl Group work closely with third party organisations to implement the Skills and Employment Strategy.
- (ii) Accordingly, the Manufacturer shall, and shall use all reasonable endeavours to ensure that its subcontractors and suppliers of any tier shall:
 - (A) at the time of placing an advertisement for a Relevant Employment Vacancy, notify the relevant member of Tfl Personnel (and/or any Third Parties nominated by the Tfl Group) of such advertisement, providing details of the:
 - (I) Relevant Employment Vacancy;
 - (II) date of the advertisement; and
 - (III) publication in which the advertisement is scheduled to appear or appeared (if applicable).

(d) London Overground Skills Pledge

The Manufacturer shall sign and comply with the London Overground Skills Pledge (set out in Appendix 3 (*London Overground Skills Pledge*)) and return the same to the Purchaser, demonstrating the Manufacturer's commitment to the development of the skills and qualifications of its workforce, supply chain and the Local Community. The Manufacturer shall procure that its subcontractors and suppliers of any tier sign and comply with the London Overground Skills Pledge under this Agreement prior to commencing the Works.

Ethical Sourcing Practices

3.3 (a) The Manufacturer shall ensure that in carrying out its obligations under this Agreement, it complies with the following minimum requirements (derived from the Ethical Trading Initiative (ETI) Base Code) (the *Ethical Sourcing Practices*) and shall use reasonable endeavours to ensure that subcontractors and suppliers of any tier comply with these minimum requirements:

- (i) Employment is freely chosen:
 - (A) there is no forced, bonded or involuntary prison labour;
 - (B) workers are not required to lodge *deposits* or their identity papers with their employer and are free to leave their employer after reasonable notice;
- (ii) Freedom of association and the right to collective bargaining are respected:

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- (A) workers, without distinction, have the right to join or form trade unions of their own choosing and to bargain collectively;
 - (B) the employer adopts an open attitude towards the activities of trade unions and their organisational activities;
 - (C) workers representatives are not discriminated against and have access to carry out their representative functions in the workplace; and
 - (D) where the right to freedom of association and collective bargaining is restricted under law, the employer facilitates, and does not hinder the development of parallel means for independent and free association and bargaining;
- (iii) Working conditions are safe and hygienic:
- (A) a safe and hygienic working environment shall be provided, bearing in mind the prevailing knowledge of the industry and of any specific hazards. Adequate steps shall be taken to prevent accidents and injury to health arising out of, associated with, or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment;
 - (B) workers shall receive regular and recorded health and safety training, and such training shall be repeated for new or reassigned workers;
 - (C) access to clean toilet facilities and to potable water, and, if appropriate, sanitary facilities for food storage shall be provided;
 - (D) accommodation, where provided, shall be clean, safe, and meet the basic needs of the workers; and
 - (E) the company observing the code shall assign responsibility for health and safety to a senior management representative;
- (iv) Child Labour shall not be used:
- (A) there shall be no recruitment of Child Labour;
 - (B) companies shall develop or participate in and contribute to policies and programmes which provide for the transition of any Child found to be performing Child Labour to enable her or him to attend and remain in quality education until no longer a Child;
 - (C) Children and Young Persons shall not be employed at night or in hazardous conditions; and

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(D) these policies and programmes shall conform to the provisions of the relevant ILO standards;

(v) Living wages are paid:

(A) wages and benefits paid for a standard working week meet, at a minimum, national legal standards or industry benchmark standards, whichever is higher. In any event wages should always be enough to meet basic needs and to provide some discretionary income;

(B) all workers shall be provided with written and understandable information about their employment conditions in respect to wages before they enter employment and about the particulars of their wages for the pay period concerned each time that they are paid; and

(C) deductions from wages as a disciplinary measure shall not be permitted nor shall any deductions from wages not provided for by national law be permitted without the expressed permission of the worker concerned. All disciplinary measures should be recorded;

(vi) Working hours are not excessive:

Working hours comply with national laws and benchmark industry standards, whichever affords greater protection;

(vii) No discrimination is practised:

There is no discrimination in hiring, compensation, access to training, promotion, termination or retirement based on race, caste, national origin, religion, age, disability, gender, marital status, sexual orientation, union membership or political affiliation;

(viii) Regular employment is provided:

(A) to every extent possible work performed must be on the basis of recognised employment relationship established through national law and practice. For the avoidance of any doubt, this requires the Manufacturer to engage its workforce by using contracts of employment (i.e. a contract of service and not any other kind of contract for the provision of services) wherever possible. The creation of some relationship other than that of a contract of employment will not be justified by the worker in question expressing a preference for that other kind of relationship, unless no other appropriately skilled workers could be engaged; and

(B) obligations to employees under labour or social security laws and regulations arising from the regular employment relationship shall not be avoided through the use of labour-

only contracting, subcontracting, or home-working arrangements, or through apprenticeship schemes where there is no real intent to impart skills or provide regular employment, nor shall any such obligations be avoided through the excessive use of fixed-term contracts of employment; and

- (ix) No harsh or inhumane treatment is allowed:
 - (A) physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation shall be prohibited.
- (b) The Manufacturer shall manage and monitor adherence to these minimum requirements throughout its supply chain and report any non-compliance and remedial actions to the Purchaser.
- (c) The Manufacturer is required to comply with national and other applicable law and, where the provisions of law and these provisions address the same subject, the provision which affords the greater protection should be applied. These principles shall not dilute any other related provisions under the Agreement.
- (d) The Manufacturer shall undertake a risk analysis of its supply chain to identify any areas where unethical labour practices may occur. In the event that areas of risk are identified by the Manufacturer, the Manufacturer shall detail in the Responsible Procurement Plan the action that will be undertaken by the Manufacturer to map the at-risk supply chains and provide information on the labour conditions at relevant production sites. The Manufacturer shall then, in conjunction with the Purchaser detail what remedial action will be undertaken to achieve compliance in accordance with Ethical Sourcing Practices. Where risks are identified the Manufacturer shall undertake social audits of production sites.
- (e) As soon as practicable following the Commencement Date, the Manufacturer shall be registered with an ethical supplier database, such as SEDEX (Supplier Ethical Data Exchange). The Manufacturer agrees that for the duration of this Agreement, it shall permit and enable the Purchaser to have access to the information in relation to the Manufacturer that subsists in such ethical supplier database.
- (f) During the course of this Agreement, the Purchaser has the right to request the Manufacturer to carry out one or more audits using a reputable auditor to verify whether the Manufacturer is complying with the Ethical Sourcing Practices. The identity of the auditor is to be approved by the Purchaser, such approval not to be unreasonably withheld or delayed. The costs of the audit shall be borne by the Purchaser.
- (g) If the Purchaser has reasonable cause to believe that the Manufacturer is not complying with any of the Ethical Sourcing Practices, then the Purchaser shall notify the Manufacturer and the Parties shall agree an action plan with

appropriate timeframes for compliance by the Manufacturer (the *Action Plan*), such Action Plan to be agreed by the Parties by no later than one calendar month from the date of the Purchaser notifying the Manufacturer that remedial action is required or such other period as the Parties may otherwise agree in writing. The costs of the creation and implementation of the Action Plan shall be borne by the Manufacturer.

London Living Wage

- 3.4 (a) Without prejudice to any other provision of this Agreement, the Manufacturer shall, and shall use reasonable endeavours to ensure that subcontractors and suppliers of any tier shall, pay their employees an hourly wage (or equivalent of an hourly wage) of not less than the London Living Wage where those employees are spending all of their working time on the Works within one of the London Boroughs.
- (b) The Manufacturer shall audit the records of its subcontractors and suppliers of any tier to ensure compliance with payment of the London Living Wage and notify the Purchaser of any non-compliance.
- (c) The Manufacturer shall, and shall use reasonable endeavours to procure that its subcontractors and suppliers of any tier shall, allow the Purchaser access to their records for the purposes of auditing compliance with the requirement to pay employees the London Living Wage.
- (d) In the event that the Manufacturer or the Purchaser discovers any non-compliance with the requirements of this paragraph 3.4, the Manufacturer shall co-operate fully with the Purchaser to resolve the non-compliance.
- (e) The Manufacturer shall disseminate on behalf of the Purchaser to its employees and subcontractors engaged in provision of the Works such perception questionnaires as the Purchaser may reasonably require from time to time and promptly (and, in the case of any Subcontractor, use reasonable endeavours to ensure that such Subcontractor will) collate and return to the Purchaser responses to such questionnaires.
- (f) Apprentices will be excluded from payment of the London Living Wage and will be paid as a minimum the normal rate for an apprentice as defined in the appropriate national agreement or other similar document.

4. Freight Operator Recognition Scheme

General

- 4.1 This paragraph 4 shall apply to any Delivery and Servicing Vehicle operated by the Manufacturer pursuant to the performance of the Works, where the destination of such Delivery and Servicing Vehicle is an MSA Facility.

Definitions

- 4.2 For the purposes of this paragraph 4, the following definitions shall apply:

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Bronze Accreditation means the minimum level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk;

Car-derived Vans means a vehicle based on a car, but with an interior that has been altered for the purpose of carrying larger amounts of goods and/or equipment;

Collision Report means a report detailing all collisions during the previous 12 months involving injuries to persons or fatalities;

Delivery and Servicing Vehicle means a Lorry, a Van or a Car-derived Van;

Driver means any employee of the Manufacturer (including an agency driver), who operates Delivery and Servicing Vehicles on behalf of the Manufacturer;

FORS means the Fleet Operator Recognition Scheme, which is an accreditation scheme for businesses operating van and lorry fleets. It is free to join and offers impartial, independent advice and guidance to motivate companies to improve their compliance with relevant laws and their environmental, social and economic performance;

FORS Standard means the standard setting out the accreditation requirements for the Fleet Operator Recognition Scheme, a copy of which can be found at: www.fors-online.org.uk;

Gold Accreditation means the highest level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk;

Lorry means a vehicle with an MAM exceeding 3,500 kilograms;

MAM means the maximum authorised mass of a vehicle or trailer including the maximum load that can be carried safely while used on the road;

MSA Facility means:

- (a) Willesden Depot, the Ilford A Maintenance Depot, a Stabling Site or an Operator's Control Room; or
- (b) any other place in connection with the performance of the Works, located within the jurisdiction of the Greater London Authority, where the Manufacturer makes deliveries or shall use, occupy or otherwise be responsible for;

Safer Lorry Scheme Order means The Borough Roads (London Safer Lorry Scheme) (Restriction of Goods Vehicles) Traffic Order 2015;

Side Guards means guards that are fitted between the front and rear axles of a Lorry and that comply with EC Directive 89/297/EEC and the Road Vehicles (Construction and Use) Regulations 1986;

REDACTED

Silver Accreditation means the intermediate level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk; and

Van means a vehicle with a MAM not exceeding 3,500 kilograms.

Fleet Operator Recognition Scheme Accreditation

4.3 Where the Manufacturer operates Delivery and Servicing Vehicles, it shall within 90 days of the Commencement Date:

- (a) (unless already registered) register for FORS or a scheme, which in the reasonable opinion of the Purchaser, is an acceptable substitute to FORS (the *Alternative Scheme*); and
- (b) (unless already accredited) have attained the standard of Bronze Accreditation (or higher) or the equivalent within the Alternative Scheme and shall maintain the standard of Bronze Accreditation (or equivalent standard within the Alternative Scheme) by way of an annual independent assessment in accordance with the FORS Standard or take such steps as may be required to maintain the equivalent standard within the Alternative Scheme. Alternatively, where the Manufacturer has attained Silver or Gold Accreditation, the maintenance requirements shall be undertaken in accordance with the periods set out in the FORS Standard.

Safety Equipment on Vehicles

4.4 The Manufacturer shall ensure that every Lorry, shall:

- (a) have Side Guards, unless the Manufacturer can demonstrate to the reasonable satisfaction of the Purchaser that the Lorry will not perform the function for which it was built if Side Guards are fitted;
- (b) have front, side and rear blind spots completely eliminated or minimised as far as practical and possible, through the use of fully operational direct and indirect vision aids and driver audible alerts;
- (c) have equipment fitted with an audible means of warning other road users of the Lorry's left manoeuvre;
- (d) have prominent signage on the Lorry to warn cyclists and other road users of the dangers of passing the Lorry on the inside and of getting too close to the Lorry; and
- (e) comply with any additional requirements of the Safer Lorry Scheme Order.

Driver Licence Checks

4.5 Where the Manufacturer operates Delivery and Servicing Vehicles, the Manufacturer shall ensure that:

- (a) it has a system in place to ensure all its Drivers hold a valid driving licence for the category of vehicle that they are tasked to drive, along with recording any endorsements, or restrictions on the Drivers licence; and