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Part D Compensation Changes

1. Compensation/Relief Claim

1.1 As soon as practicable and in any event within 15 Working Days after the Maintainer is aware that a Qualifying Change in Law has occurred or is likely to occur or that an Exonerating Event has caused or is likely to cause any of the consequences referred to in clause 22.1 (any such event being a *Qualifying Event* for the purposes of this Schedule 10), the Maintainer shall give to the Purchaser a notice of its claim (an *Initial Claim Appraisal*), which shall set out the opinion of the Maintainer on:

- (a) in the case of an Exonerating Event, whether the relevant event is a Minor Exonerating Event or a Major Exonerating Event;
- (b) the Maintainer's initial assessment of the scope of any Modifications to the Units or the Equipment required as a result of the Qualifying Event;
- (c) the Maintainer's initial assessment of the impact of the proposed Qualifying Event on the operation and maintenance regimes adopted or proposed to be adopted for the Units or the Equipment including any consequential changes to the Services;
- (d) the Maintainer's initial assessment of the impact of the proposed Qualifying Event on any matters which affect the Maintainer's revenue including whether such Qualifying Event will give rise to additional or reduced Adjustments; and
- (e) the Maintainer's estimate, acting in good faith, of all Change in Costs under this Agreement that are associated with the proposed Qualifying Event, identifying separately each Change in Cost with such estimate to identify separately the aggregate increased or decreased costs discounted back to the date of the Initial Claim Appraisal at the Discount Rate and the annual increase or decrease for each Contract Year.

1.2 If the proposed Qualifying Event is a Minor Exonerating Event or the Maintainer's estimate referred to in paragraph 1.1(d) is for an aggregate amount that is equal or less than £2,000,000 (indexed by the Indexation Adjustment Formula), then the Initial Claim Appraisal shall also include:

- (a) in respect of any capital works arising from the Qualifying Event or for any other effects of the Qualifying 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 Qualifying Event which are not covered by the Fixed Price Quotation provided under paragraph (i) and for which the cost can be determined by reference to the Schedule of Costs; and

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- (b) the Maintainer'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 Qualifying Event.

2. General

- 2.1 In the event that the Maintainer delivers an Initial Claim Appraisal, a Claim Appraisal or any other relevant information required by the Purchaser in relation to a Qualifying Event after the dates or timescales referred to in this Part D, then the Maintainer shall not be entitled to any 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.
- 2.2 Except as provided in paragraph 2.1, it is acknowledged that the Maintainer may make more than one demand in respect of each Qualifying Event which is not a Minor Exonerating Event.
- 2.3 If a Major Exonerating Event continues for more than ten (10) Working Days or at any time when the Maintainer is unable to determine the extent of the effect of the Major Exonerating Event on the performance of its obligations under this Agreement, the Maintainer shall continue to submit to the Purchaser, at intervals of not more than ten (10) Working Days, further updated written particulars of the Major Exonerating Event including updates as to the matters set out in the Initial Claim Appraisal.
- 2.4 The Maintainer shall, without prejudice to its obligations in this Agreement and in accordance with the standard expected of a reasonably competent contractor involved in maintaining rolling stock acting in accordance with Good Industry Practice, use its reasonable endeavours to mitigate any adverse effects of a Qualifying Event.

3. Procedure following submission of an Initial Claim Appraisal

- 3.1 Within 15 Working Days after receipt of the Initial Claim Appraisal, the Purchaser may either:
 - (a) if the Initial Claim Appraisal:
 - (i) states that it relates to a Minor Exonerating Event or includes an estimate referred to in paragraph 1.1(d) for an aggregate amount that is equal or less than £2,000,000 (indexed by the Indexation Adjustment Formula) and the Purchaser does not consider that a Change Appraisal is required in respect of the Qualifying Event; or
 - (ii) states that it relates to a Major Exonerating Event or includes an estimate referred to in paragraph 1.1(d) for an aggregate amount that is more than £2,000,000 (indexed by the Indexation Adjustment Formula) and the Parties agree that a Change Appraisal is not required in respect of the Qualifying Event,

issue a Claim Confirmation Notice in accordance with paragraph 6 (*Agreement of Claim*) of this Part D; or

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- (b) issue an instruction for the Maintainer to provide a Claim Appraisal in respect of the Qualifying Event (a *Claim Appraisal Instruction*).

3.2 A Claim Appraisal Instruction provided by the Purchaser under paragraph 3.1(b) shall:

- (a) state whether the Purchaser requires the Maintainer to submit to it a Fixed Price Quotation in respect of the effects of the Qualifying Event or any part of the Qualifying Event;
- (b) include any additional information in respect of a Qualifying Event which the Purchaser requires the Maintainer 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.

4. Claim Appraisal

4.1 Following the issue of Claim Appraisal Instruction the Maintainer shall deliver a written report (a *Claim Appraisal*) to the Purchaser within 15 Working Days.

4.2 The Claim Appraisal shall set out:

- (a) the Maintainer'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 Qualifying Event on the provision of the Services;
- (b) whether relief from compliance with obligations is required including obligations under the Performance Regime;
- (c) any amendments required to this Agreement (including any amendments to the Maintenance Technical Requirements) or the MSA or any other relevant document as a result of the Qualifying 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, such estimate to include the aggregate increased or decreased costs discounted to the date of the Claim Appraisal at the Discount Rate and the annual increase or decrease for each Contract Year;
 - (ii) any impact on the Service Payments, such estimate to include the aggregate increase or decrease discounted back to the date of the Claim Appraisal at the Discount Rate and the annual increase or decrease for each Contract Year;
 - (iii) any additional Adjustments arising from the Qualifying Event which have been taken into account in determining such Fixed Price Quotation; and

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- (iv) any amount included in such estimate to take account of contingencies and risks associated with paragraphs (i) to (iii);
- (e) insofar as not covered by a Fixed Price Quotation provided under paragraph 4.2(d):
 - (i) an estimate of each of the items set out in paragraphs 4.2(d)(i) to (iv); and
 - (ii) details of any of the amounts referred to in paragraph (i) which can be determined by reference to the Schedule of Costs; and
- (f) the Maintainer's proposed:
 - (i) Schedule of Payments to take account of the aggregate cost (or savings) of the Qualifying Event; and/or
 - (ii) any adjustment to the Service Payments, such adjustment to be determined pursuant to clause 24 (*Financial Adjustments*),

and in the case of a Qualifying Change in Law, such Schedule of Payments or adjustment shall be in accordance with the risk allocation principles set out in clause 23.4.

4.3 The Maintainer 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 10;
- (b) that any Fixed Price Quotation or change to the Service 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.

5. Procedure Following Submission of Claim Appraisal

5.1 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 Maintainer provide any further evidence or information in respect of the matters referred to in paragraph 4.3.

5.2 All evidence and information provided by the Maintainer or its Subcontractors and their subcontractors of any tier in response to requests 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 Maintainer for the purpose of auditing, inspecting and copying documentation (using facilities at the Maintainer'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 Qualifying Event.

5.3 If the Parties cannot agree on the contents of the Claim Appraisal (other than any element which forms part of the Maintainer Compensation Proposal for which the provisions of paragraph 6 (*Agreement of Claim*) 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 Qualifying Event.

5.4 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 Maintainer Compensation Proposal as referred to in paragraph 6 (*Agreement of Claim*)) have been agreed in accordance with paragraph 5.1 or determined in accordance with paragraph 5.3, the Purchaser shall issue a Claim Confirmation Notice setting out the matters which have been agreed or determined.

6. Agreement of Claim

6.1 A Claim Confirmation Notice issued by the Purchaser pursuant to paragraph 2.1 or 5.4 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 Maintainer'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 5 (*Procedure Following Submission of Claim Appraisal*)); or
 - (ii) in the case of a Claim Confirmation Notice issued under paragraph 5.4:
 - (A) the Fixed Price Quotation;
 - (B) the Maintainer's proposed Schedule of Payments and/or adjustments to the Service Payments proposed in accordance with paragraph 4.2(f); and
 - (C) any other proposal relating to the costs of or savings arising from the Qualifying Event,

each as included in the Claim Appraisal,

(in each case, the *Maintainer Compensation Proposal*); and
- (b) if the Purchaser states in accordance with paragraph 6.1(a) that it does not accept the Maintainer Compensation Proposal, the reasons for not so doing.

6.2 A Claim Confirmation Notice issued by the Purchaser pursuant to paragraph 2.1 or 5.4 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 Maintainer Compensation Proposal which remain to be agreed or determined under this paragraph 6.

- 6.3 Subject to paragraph 6.6, a Claim Confirmation Notice shall have the effect of varying the Maintenance Technical Requirements 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 Maintainer of the Claim Confirmation Notice or such other date specified in the Claim Confirmation Notice.
- 6.4 If the Purchaser states in the Claim Confirmation Notice that it does not agree with the Maintainer Compensation Proposal, then:
- (a) the Parties shall endeavour to reach agreement in respect of the cost (or saving) of the Qualifying Event; and
 - (b) the Purchaser may request any additional information of the type referred to in paragraph 5.1 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 Claim Confirmation Notice, then either Party may refer the matter for resolution under the Dispute Resolution Procedure.

- 6.5 The Maintainer Compensation Proposal accepted in accordance with paragraph 6.1(a) or agreed or determined in accordance with paragraph 6.4 shall be binding on both Parties in full and final settlement of all costs incurred by the Maintainer and any impact (whether arising directly or indirectly as a result of the Qualifying Event) on the Service Payments and any other sum to be calculated pursuant to Schedule 6 (*Payment Mechanism*) notwithstanding that the actual costs or impact may be greater or less than the Maintainer Compensation Proposal accepted, agreed or determined as the case may be.
- 6.6 The Maintainer shall maintain and make available any records relating to a Qualifying Event in accordance with this Agreement.

7. Payments by the Purchaser

- 7.1 Any Schedule of Payments proposed by the Maintainer in accordance with paragraphs 1.2(b) or 4.2(f) of this Part D shall:
- (a) 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 Qualifying Event (as quoted or estimated pursuant to paragraphs 1.1(d) and 1.2(a) or paragraphs 4.2(e) and 4.2(f), as applicable) other than any payments which will be made by means of an adjustment to the Service Payments in accordance with clause 24 (*Financial Adjustments*); and
 - (b) in respect of the payments referred to in paragraph 7.1(a), identify those payments which relate to the carrying out of, or specific progress towards, dealing with any element of the Qualifying Event and, in respect of each such

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payment, specify the evidence which the Maintainer will provide in order to confirm that the relevant part of the Qualifying Event corresponding to each occasion when payment is due has been duly dealt with.

- 7.2 Where the Maintainer Compensation Proposal (accepted in accordance with paragraph 6.1(a) or agreed or determined in accordance with paragraph 6.4) requires the Purchaser to make one or more payments to the Maintainer by reference to a Schedule of 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 the relevant evidence (where applicable) that the relevant part of the Qualifying Event has been dealt with.
- 7.3 If payment is not made in accordance with paragraph 7.2, the Purchaser shall pay to the Maintainer interest at the Default Rate on the amount unpaid from the date 30 Working Days after receipt of the relevant invoice until payment.

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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 10 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 Maintainer or its Subcontractors working directly on providing the Services required by a Purchaser Change shall be recoverable on a time basis as follows:

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

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]. 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 Maintainer or its Subcontractors)

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

$$\text{Hourly Cost} \quad \times \quad \text{Actual Hours Worked} \quad \times \quad \text{On-Cost Multiplier B}$$

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

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On-Cost Multiplier B is the factor required to recover the appropriate part of the Maintainer's on-costs. The multiplier to be used for this paragraph 1.2 is [REDACTED]. 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 providing the Services required by a Purchaser Change who are not direct employees of any of the Maintainer 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 Maintainer's on-costs. The multiplier to be used for this paragraph 1.3 is [REDACTED]. 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.
- (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, the Maintainer 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 Maintainer 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

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- (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.

2. Additional Services

Where any aspect of a Purchaser Change is similar to Additional Services then the fixed price for such Additional Services, as set out in the price list at Appendix 2 (*Additional Services Payments*) to Schedule 6 (*Payment Mechanism*) shall be used to determine the relevant cost.

Appendix 2 Calculation of Change in Costs

1. Principles

1.1 The Maintainer shall ensure that the Change in Costs is calculated on the following principles:

- (a) where the activities, items or costs are similar to equivalent activities, items or costs:
 - (i) contained in the Base Case Maintenance Model, the costs for such items shall be equivalent to and benchmarked against such costs; or
 - (ii) contained in the price for Additional Services contained in Appendix 2 (*Additional Services Payments*) to Schedule 6 (*Payment Mechanism*), then the costs set out in such appendix shall apply;
- (b) where paragraph 1.1(a) does not apply, the costs shall reflect prevailing market rates applicable to the circumstances of the quotation and on an Open Book Basis;
- (c) the Maintainer 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;
- (d) the Maintainer 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;
- (e) the Maintainer 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;
- (f) the Maintainer shall demonstrate that where it has sourced parts or materials from within its 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.

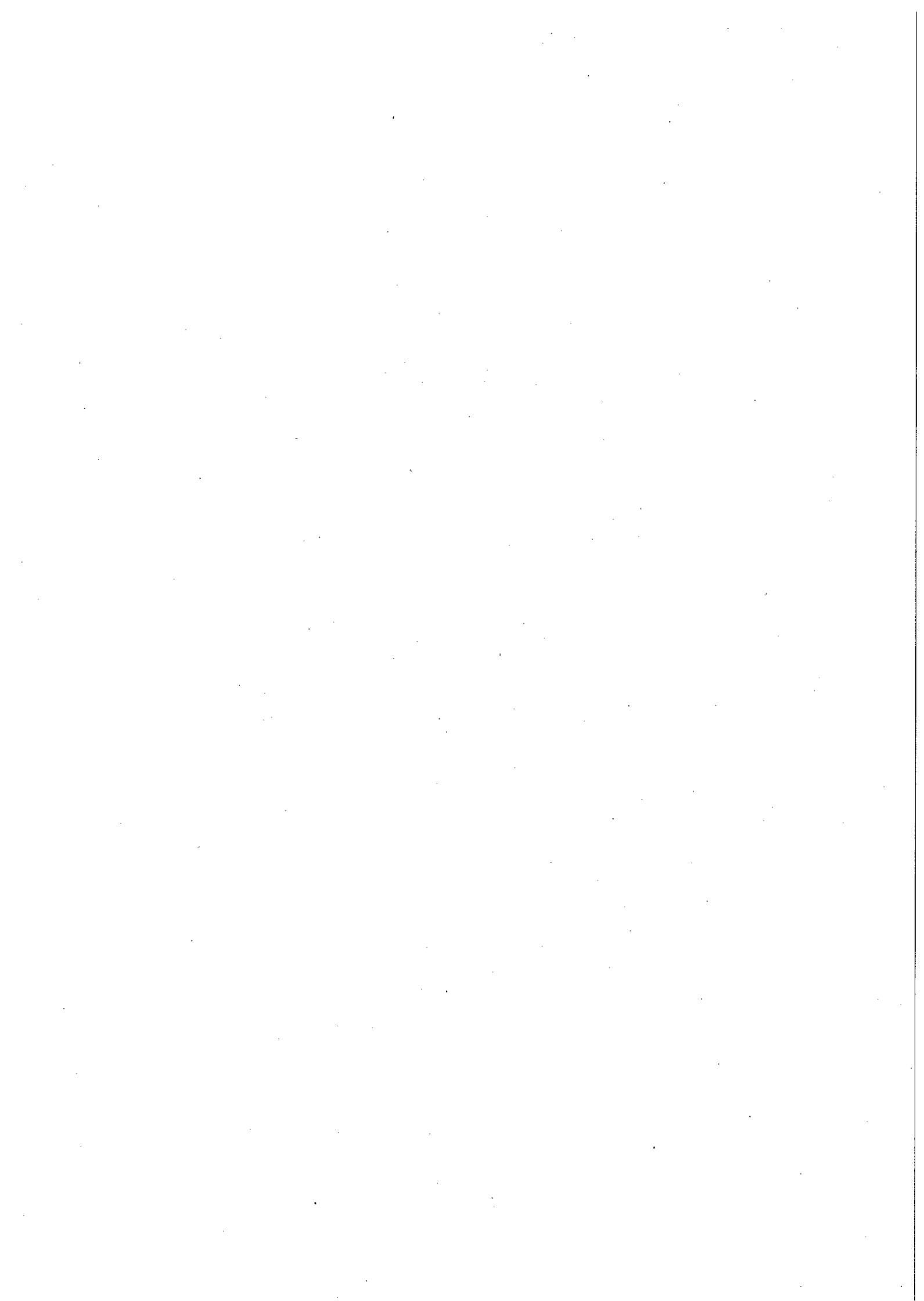
2. Margin

The only margin which may be added to the costs calculated above is as set out in Appendix 3 (*Maintainer's Margin*) to this Schedule 10.

**Appendix 3
 Maintainer'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 in Costs*) to this Schedule 10.
2. Each percentage shall be deemed to include all of the Maintainer'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 10.

Element of Purchaser Change quotation or estimate	Net increase or decrease in direct costs (%)
Increase or decrease in Capital Expenditure excluding the Tendered Price	■
Tendered Price (excluding the cost of administering the contract which shall be separately identified in the Maintainer Cost Proposal)	■
Increase or decrease in the costs of operating and maintaining the Units	■ provided that where there is a decrease of more than ■ in the costs of operating and maintaining the Units this percentage shall not apply.



**Schedule 11
Insurance**

Part A	Maintainer Obligations
Part B	Policies to be taken out by the Maintainer from the Operating Date and maintained for the Duration
Part C	Broker's Letter of Undertaking
Part D	Endorsements
Part E	Bombardier's Insurance Confirmations

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Part A Maintainer Obligations

1. Required Maintainer Insurances

- 1.1 The Maintainer 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 damage 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 to each item of the Insured Property described in paragraph 2.1 of Part B (*Policies to be taken out by the Maintainer from the Operating Date and maintained for the Duration*) and the Maintainer warrants that it will reinstate the sum insured so as to maintain the aggregate limit; and
 - (b) public and product liability insurance in respect of the Maintainer's liability for death or injury to any person (other than employees of the Maintainer and loss or damage to any property (excluding the Equipment) in an amount of not less than the Minimum Liability Coverage in respect of each and every occurrence or series of occurrences consequent upon one event or original cause, and subject to such annual aggregate as permitted by the ORR.
- 1.2 The Maintainer procures that it shall deliver to the Purchaser prior to the first date of Equipment Acceptance, a letter in the form set out in Part E (*Bombardier's Insurance Confirmations*) of this Schedule, duly signed by Bombardier Inc.
- 1.3 From the date of this Agreement and for its duration, the Maintainer 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 Maintainer and will name each of the Purchaser (if not the Owner), 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 Maintainer pursuant to clause 45.1), the Purchaser (if not the Owner) and any Financiers; and
- (c) comply with the provisions of paragraph 2 (*Property Damage Insurance*) of Part B (*Policies to be taken out by the Maintainer from the Operating Date and maintained for the Duration*).

3. Requirements for Third Party Liability Insurances

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

- (a) be in the name of the Maintainer and include the Purchaser, the Owner (where not the Purchaser and notified to the Maintainer pursuant to clause 45.1), the Operator 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 Maintainer pursuant to clause 45.1), the Operator and any Financier against legal liability in respect of which the Maintainer is liable to indemnify such person under the terms of this Agreement;
- (c) without prejudice to paragraph (d), be without exclusion of liability for loss of or damage to property or death or illness to persons arising out of defects in any or all parts of the Equipment;
- (d) indemnify each insured in respect of claims made by any insured against any other insured to the extent of the limits of liability; and
- (e) accept and insure the indemnity provisions of this Agreement to the extent of the risks covered by the policies;
- (f) includes a waiver of subrogation in favour of the Owner (whether the Purchaser or another person notified to the Maintainer pursuant to clause 45.1), the Purchaser (if not the Owner), the Operator and any Financiers; and
- (g) comply with the provisions of paragraph 3 (*Third Party Public and Products Liability Insurance*) of Part B (*policies to be taken out by the Maintainer from the Operating Date and maintained for the Duration*).

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

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

- (a) severally insure each of the Insureds named in paragraph 1.1 of Part B (*Policies to be taken out by the Maintainer from the Operating Date and maintained for the duration*) and, subject to the prior consent of the Purchaser, others nominated by the Maintainer;
- (b) contain an acknowledgement that the insurer is aware (and has seen a copy) of this Agreement and that all the Equipment (and the Units) is owned by the Owner (or, where appropriate, a financier) and, where appropriate, operated by the Operator;

- (c) entitle the Purchaser to maintain the policies in force after termination of this Agreement to the extent that this is achievable with the insurers;
- (d) 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;
- (e) 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 (c) to (e), in the form of Endorsement 2 in Part D (*Endorsements*) of this (b), or such other terms as may be expressly approved by the Purchaser in accordance with paragraph (ii).

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 is notified to the Maintainer pursuant to clause 45.1) 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.

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 maintaining similar rolling stock, simulators, spares or special tools, as the case may be, in similar circumstances;
- (c) be placed and maintained with insurers with a Standard & Poor's Corporation long-term credit rating of at least [REDACTED] (or an equivalent rating from another rating agency of equal repute), unless otherwise approved by the Purchaser in its absolute discretion;
- (d) be in such form and substance, consistent with the obligations of the Maintainer 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 Maintainer 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. Insured Amounts/Deductibles

The limit of indemnity amounts referred to in the limits of indemnity amounts referred to in Part B (*Policies to be taken out by the Maintainer from the Operating Date and maintained for the Duration*) are minima and do not constitute a limitation of the Maintainer's liability under this Agreement.

8. 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 Maintainer pursuant to clause 45.1) 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 (b), or such other terms as may be expressly approved by the Purchaser in accordance with paragraph (ii).

9. Loss Payee Provisions

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

- (a) in respect of the property damage insurances shall be applied in reinstatement of the insured asset in question; 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.

9.2 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.

10. Law and jurisdiction

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

11. Payment of Premiums

The Maintainer 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.

12. Maintainer to supply insurance policies

Promptly following any request from the Purchaser, the Maintainer 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.

13. Compliance with Requirements

The Parties shall (and the Maintainer 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.

14. Purchaser's Right to Insure

14.1 If and to the extent that any of the Required Insurances are not taken out and maintained as contemplated by paragraph 1, the Purchaser may, without prejudice to any other rights under this Agreement, itself arrange the relevant policies or contracts of insurance. The Maintainer shall indemnify the Purchaser against all premiums and other Losses payable by the Purchaser in exercising its rights under this paragraph 14.1, together with Default Interest from the date on which premiums are paid or other costs incurred until the date of payment by the Maintainer to the Purchaser.

14.2 If the Purchaser procures an insurance policy or policies pursuant to this paragraph 14.2, the Purchaser shall be entitled to deduct the amount due from the Maintainer to the Purchaser under paragraph 14.1 from the Service Payments payable to the Maintainer during the period to which the insurance policy relates, such deduction to be made from the applicable Service Payments in such proportions as the Purchaser may determine, in accordance with clause 19.2(c).

15. Notification of claims

15.1 The Maintainer 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.

15.2 The Maintainer shall procure that the insurance broker appointed by the Maintainer 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 up-to-date details of (i) any claim notified against the Project and (ii) a summary

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(including the date, location, type of loss and amount) of any losses paid or reserves made against the annual aggregate policy limits.

- 15.3 The Maintainer shall procure that each of (a) the insurer(s) providing the Required Insurances and (b) the insurance broker appointed by the Maintainer 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.

16. Loss Mitigation

The Maintainer 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.

17. Unavailability of Insurance

If and to the extent that the Maintainer is unable to obtain (or procure the obtaining of) any of the insurances specified in paragraph 1 (*Required Maintainer Insurances*) on normal commercial terms, the Maintainer 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 Maintainer.

18. Broker's Letter of Undertaking

The Maintainer shall procure that the insurance broker appointed by the Maintainer to place the Required Insurances delivers to the Purchaser (and the Owner, where it is not the Purchaser and has been notified to the Maintainer pursuant to clause 45.1) a letter substantially in the form set out in Part C (*Broker's Letter of Undertaking*) of this Schedule 11 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.

19. Saving Provision

None of:

- (a) the Maintainer's compliance or failure to comply with its obligations under this (b);
- (b) the existence of the Required Insurances or any other insurance procured by the Maintainer 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 (*Policies to be taken out by the Maintainer from the Operating Date and maintained for the Duration*),

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

Part B Policies to be taken out by the Maintainer from the Operating Date and maintained for the Duration

1. Common to each policy in this Part B

Insureds

- (1) the Maintainer;

Additional Insured and/or Loss Payee

- (2) the Purchaser;
- (3) the Owner (where it is not the Purchaser and has been notified to the Maintainer pursuant to clause 45.1);
- (4) any financiers providing finance to the Owner for the purposes of the Project; and
- (5) the Operator (in respect of the Third Party Public and Products Liability Insurance described in paragraph 3 (*Third Party Public and Products Liability Insurance*) only),

each for their respective rights and interests under the Agreement.

2. Property Damage Insurance

Insured Property

- 2.1 The Equipment from the date of Equipment Acceptance (as appropriate), and the Depot Moveable Assets from the date of installation or other acquisition by the Maintainer.

Coverage

- 2.2 "All risks" of physical loss or damage to the Insured Property from any cause not excluded.

Sum Insured

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

Maximum Deductible

- 2.4 For the insured property in paragraph 2.1 a minimum deductible of £100,000 and a maximum deductible of £250,000 each and every claim, or in each case such other amount as is agreed from time to time by the Parties.

Territorial Limits

- 2.5 United Kingdom.

Period of Insurance

- 2.6 From the date of Equipment Acceptance until:
- (a) in respect of each Spare, the termination or expiry of this Agreement;

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- (b) in respect of the Special Tools and the Simulator, the end of the Maintenance Period; and
- (c) in respect of the Depot Moveable Assets, title in such Depot Moveable Asset has transferred to the Purchaser or the Owner in accordance with the terms of this Agreement,

and in each case renewable on an annual basis unless agreed otherwise by the Parties.

Cover Features and Extensions

- 2.7
- (a) Terrorism.
 - (b) Capital additions clause.
 - (c) 72 hour clause.
 - (d) European Union local authorities clause.
 - (e) Professional fees.
 - (f) Debris removal.
 - (g) Pollution and contamination to the Insured Property arising from an event which itself is not otherwise excluded. To include pollution or contamination resulting from accidental damage.
 - (h) Repair/reinstatement basis of claims settlement with cash option for non-reinstatement.

Principal Exclusions

- 2.8
- (a) War and related perils (UK market agreed wording).
 - (b) Nuclear/radioactive risks (UK market agreed wording).
 - (c) Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.
 - (d) Wear, tear and gradual deterioration.
 - (e) Consequential financial losses.
 - (f) Cyber risks.

3. Third Party Public and Products Liability Insurance

Interest

- 3.1 To indemnify the Insured 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) death, or 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 provision of the Services.

Limit of Indemnity

- 3.2 Not less than £155,000,000 (or such other amount as constitutes the Minimum Liability Coverage from time to time) in respect of any one occurrence, and in the aggregate in respect of pollution and products liability and the Maintainer warrants that it will reinstate limit of liability so as to maintain at all times an amount no less than £155,000,000.

Maximum Deductible

- 3.3 £100,000 for each and every occurrence of property damage, or such other amount as is agreed from time to time by the Parties.

Territorial Limits

- 3.4 Worldwide.

Jurisdiction

- 3.5 Worldwide.

Period of Insurance

- 3.6 From the Operating Date or from the date of Completion of the Insured Property (if earlier) for the duration of this Agreement and renewable on an annual basis unless agreed otherwise by the Parties.

Cover Features and Extensions

- 3.7
 - (a) Contractual liability clause
 - (b) Munitions of war
 - (c) Cross liability clause
 - (d) No exclusion is to apply in relation to liability of the Insureds for loss of or damage to property or death or injury to persons arising out of defects to the relevant vehicle or Unit arising out of maintenance activities undertaken by the Maintainer or a Subcontractor
 - (e) Contingent motor liability
 - (f) Defence costs in respect of Health and Safety at Work Legislation
 - (g) Corporate Manslaughter defence costs

Principal Exclusions

- 3.8 (a) Liability for death, illness, disease or bodily injury sustained by employees of the Insured.
- (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 the Purchaser (including the Units and Equipment) that is in the care, custody and control of the Maintainer or a Subcontractor.
- (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) Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- (g) Liability arising from seepage and pollution unless caused by a sudden, identifiable, unintended and unexpected occurrence.

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Part C Broker's Letter of Undertaking

To: The Purchaser

Dear Sirs

Agreement dated __ July 2015 entered into between Bombardier Transportation UK Limited (the *Maintainer*) 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 Maintainer 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 25 (*Insurance and Risk*) and Schedule 11 (*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 11 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 Maintainer 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) 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 Maintainer 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 to the Maintainer unless, due to circumstances beyond our control, we are unable to do so in which case we shall notify you as soon as practicable;

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- (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 (*Maintainer Obligations*) of Schedule 11 (*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 (*Maintainer Obligations*) of Schedule 11 (*Insurance*) of the Agreement in accordance with the loss payable clause endorsed on the policy as set out in Part D (*Endorsements*) 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 Maintainer to notify the Maintainer 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 Maintainer (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 Maintainer, 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 Maintainer 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 Maintainer 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
 - (C) 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
- (v) to advise the Purchaser as soon as reasonably practicable upon receipt of notice of any material changes which we are instructed by

the Maintainer 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

- (vi) 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 of Schedule 11 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:

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

- 6. Savé 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 Maintainer, 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 Maintainer 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 for 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 Maintainer and with their full knowledge and consent as to its terms.

Yours faithfully

.....
For and on behalf of
[Maintainer's broker]

REDACTED

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

.....
For and on behalf of
Bombardier Transportation UK Limited

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:

1. no party other than the Purchaser has any authority to make any warranty, disclosure or representation in connection with this policy on behalf of the Purchaser;
2. 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 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
3. 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 Physical Damage Policies)

All proceeds of this policy shall be payable without deduction or set-off from the agreed claim figure to the Maintainer to be applied in reinstatement of the insured asset in question.

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 an Authority 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]

██████████
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 ██████████

We refer to the Train Services Agreement dated on or around 1 July 2015 between RfL and Bombardier Transportation UK Limited (*Bombardier Transportation*) (the *TSA*).

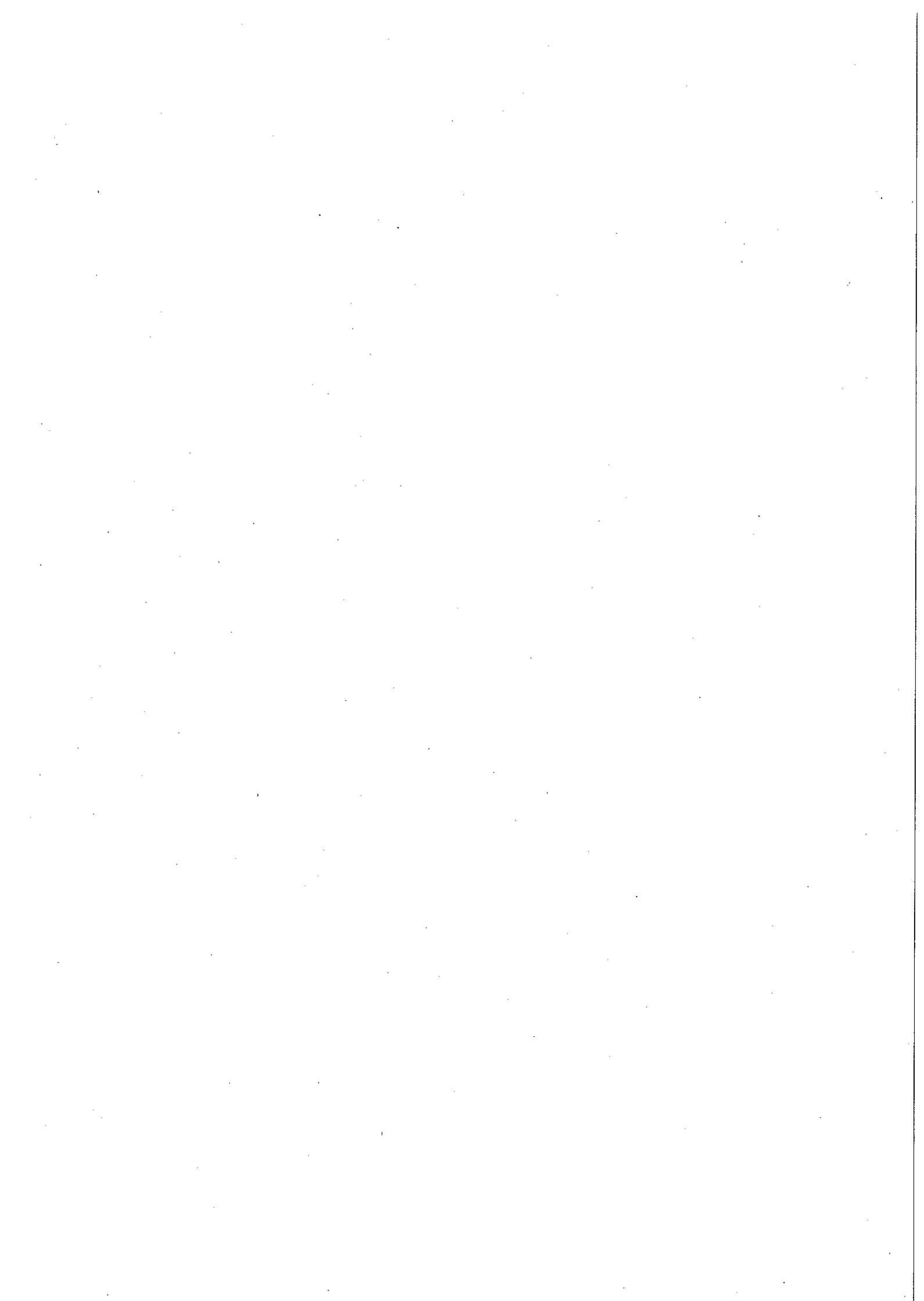
In respect to the insurances that Bombardier Transportation is providing in response to the relevant contractual obligations under the TSA, we hereby confirm that:

- 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 TSA, 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 TSA.

For and on behalf of Bombardier Inc.

Name:

Title:



Schedule 12
Responsible Procurement

Schedule 12 **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 Explanation and Response Requirements**
- 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 12.
- (b) The Maintainer shall comply and shall ensure that its subcontractors and suppliers (of any tier) comply with this Schedule 12.

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 Services 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 Services 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 Maintainer's organisation for a member of the Maintainer'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 Maintainer which describes the management processes and procedures for achieving compliance with the requirements set out in this Schedule 12;

Responsible Procurement Representative means the person appointed by the Maintainer pursuant to paragraph 2.1 of this Schedule 12;

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 (*SLNT Plan*) consistent with the requirements of paragraph 3.2(a) of this Schedule 12;

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; or
- (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;

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; or
- (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;

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 Maintainer 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 Maintainer'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 on the Services.

Responsible Procurement Plan

- 2.2 (a) No later than nine months prior to the Existing Fleet Commencement Date, the Maintainer 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 12 and include:
 - (A) the Equality and Diversity Strategic Plan;
 - (B) the Strategic Labour Needs and Training Plan; and
 - (C) the Labour and Skills Gap 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 Maintainer shall manage the Services in compliance with the accepted Responsible Procurement Plan.
- (d) The Maintainer shall review and update the Responsible Procurement Plan as necessary and in a timely way as the Services progresses to ensure it reflects the current status of the Services. Revised plans shall be submitted to the Purchaser for Assurance Acceptance.
- (e) The Maintainer 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 Maintainer 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 Template*));
 - (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 Template*)); and
 - (D) reporting against Responsible Procurement requirements detailed below.

(b) Supplier Diversity Reporting

The Maintainer shall report the following:

- (i) The number of the Maintainer'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 Maintainer'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 Strategic Plan Reporting

In addition to reporting progress achieved on the development and implementation of the Equality and Diversity Strategic Plan, the Maintainer shall report the number of the Maintainer's employees and, to the extent reasonably possible, of the employees of its subcontractors engaged in the performance of the Agreement who are:

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

(d) CompeteFor Reporting

The Maintainer shall include in the Responsible Procurement progress report:

- (i) number and value of opportunities advertised and by whom (e.g. Maintainer, Maintainer subcontractors and suppliers of any tier working on the Services);
- (ii) number and value of contracts awarded as a direct result of advertising the opportunity on CompeteFor of any tier working on the Services;
- (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

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The Maintainer 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 and Appendix 2.

(f) Ethical Sourcing Practices Reporting

The Maintainer 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 Template*) unless specific risks are identified following the risk analysis which then require further management and monitoring which shall be agreed by the Maintainer and the Purchaser if required.

(g) Responsible Procurement Progress Meeting

The Maintainer, its subcontractors (where deemed required by the Purchaser) engaged on the Services 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 17 (*Audit Rights*):

- (i) the Purchaser (or its nominated representative) shall undertake audits of the Maintainer and subcontractors and suppliers of any tier working on the Services with regard to Responsible Procurement.
- (ii) The Maintainer 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 Maintainer's or subcontractor's performance of the Services.
- (iii) The Maintainer and/or its subcontractors and suppliers shall assist with these audits and make personnel and records available as required.
- (iv) The Maintainer, 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 12, 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 Maintainer shall maximise the use of SMEs in connection with the Agreement and shall use its best endeavours to achieve 25 per cent. of the amount equal to the aggregate of all of the Base Period Charges in each Contract Year.
- (c) The Maintainer 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*).
- (d) To the extent that the Maintainer intends to use subcontractors in jurisdictions other than the United Kingdom, the Maintainer must interpret this Schedule 12 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 12.
- (e) To the extent that the Maintainer intends to use subcontractors in jurisdictions other than the United Kingdom, the Maintainer 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 12, provide an explanation and propose an alternative approach that reasonably approximates with the approach described in this Schedule 12.
- (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) Equality and Diversity Strategic Plan
- (i) It should be noted that *Equality and Diversity* refers to the promotion of equal opportunities and diversity within the Maintainer's own workforce and individuals working for employers within the supply chain. It does not refer to the diversification of the Maintainer's supply chain by expanding access to the widest selection of Diverse Suppliers.
 - (ii) For the purpose of this Schedule 12, the term *priority equality groups* comprises the following:
 - Age** – Older people (aged 60 or over), children and young people (under the age of 25);
 - Disability** – People with mobility and sensory impairments, people with mental health issues, people with learning difficulties and people with other hidden impairments;
 - Faith** – People with a distinct religious or philosophical belief;
 - Gender** – Women and transgendered people;
 - Race** – People from Black, Asian and Minority Ethnic communities;
 - Sexual orientation** – Lesbians, gay men and bisexual people; and
 - Socio-economic** – Those in or from deprived areas or socially excluded groups.
- (h) The Maintainer shall develop and implement an Equality and Diversity Strategic Plan (the *Equality and Diversity Strategic Plan*) for the Duration. The plan shall form part of the Responsible Procurement Plan. The plan shall state the Maintainer's equality and diversity objectives and the means by which the objectives shall be achieved for the Duration.
- (i) The Equality and Diversity Strategic Plan shall demonstrate as a minimum:
- (i) adoption of a comprehensive equality policy that is in line with current legislation and codes of practice of the Equality and Human Rights Commission;

- (ii) implementation of recruitment policies and procedures that exclude practices that are discriminatory, create unfair conditions of employment or create unequal rates of pay (which shall be confirmed by conducting reviews on a regular basis);
- (iii) publicity for vacancies that encourages applicants from priority equality groups and recruitment processes that ensure that all potential barriers to recruitment, particularly with regards to priority equality groups, have been removed;
- (iv) well defined procedures to deal with harassment and grievances and details of staff assigned to deal with issues of this nature;
- (v) a robust mechanism for implementation and inclusion of equality objectives into staff appraisal mechanisms;
- (vi) identification of the aims to be achieved in respect of equality and diversity and what actions will be incorporated to ensure that progress remains on schedule;
- (vii) how the plan will continue to be shaped by key stakeholders through ongoing dialogue with the Purchaser, employees and trade unions;
- (viii) availability of adequate numbers of suitably qualified personnel together with resources and allocation of time to deliver this important activity;
- (ix) the Maintainer shall ensure each of its subcontractors (and use reasonable endeavours to ensure subcontractors and suppliers of any tier) adopt and implement an equality and diversity policy in respect of their respective employees engaged in the performance of the Agreement which is at least as extensive in scope as the Equality and Diversity Strategic Plan; and
- (x) the means by which subcontractors and suppliers of any tier will provide supplier diversity data to the Maintainer, how baseline evaluation will be undertaken and how individual members of the workforce will be monitored.

(j) CompeteFor

The Maintainer 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 Maintainer 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 Maintainer shall monitor the number, type and value of contract opportunities advertised and placed in its own supply chain.

(k) Meet the Buyer Event

The Maintainer 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 Maintainer has created and shall implement a Strategic Labour Needs and Training Plan (the *SLNT Plan*) for this Agreement. The SLNT Plan shall form part of the Responsible Procurement Plan. The SLNT Plan states the Maintainer's strategic labour needs and training objectives and the means by which the objectives shall be achieved. The Maintainer 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 Maintainer's proposals to deliver the strategic labour needs and training (SLNT) for the performance of the Services 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 Maintainer's processes for ensuring the SLNT requirements will be met through the Maintainer's subcontractors and suppliers, where they are responsible for delivering part of the Services, including:
 - (I) how SLNT considerations will be included in the selection, contracting and management of subcontractors and suppliers;
 - (II) how the Maintainer 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 Maintainer's proposed SLNT outputs; and

- (III) how the Maintainer will facilitate engagement between the Purchaser and the Maintainer's supply chain to ensure that available funding streams and training programmes can be maximised.
- (C) the Maintainer 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 Maintainer's organisation; and
 - (II) the administrative and management arrangements that will be operated in relation to the Maintainer's SLNT activity.
- (D) the Maintainer 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 Maintainer will attract, develop and retain personnel with the skills (including numeracy and literacy) necessary to deliver the Services for the Duration.
- (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 Maintainer has created the SLNT for this Agreement and shall further develop, update and implement the SLNT in accordance with this Schedule 12 and the form Appendix 4 (*SLNT Explanation and Response Requirements*).

(ii) The profile for delivery of the SLNT targets may be set with reference to the anticipated pre-indexation annual value of this Agreement and there can be a tolerance of the greater of:

(A) +/- 10 per cent.; or

(B) 1 SLNT Output (as set out in Table 1 in Appendix 4),

per Contract Year in the delivery requirements between each year.

(c) Community Relations

(i) The Maintainer 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 Maintainer 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 schedule to appear or appeared (if applicable);

(B) attend a minimum of two (2) events each year, at a time and location specified by the Purchaser, to publicise employment and training opportunities arising from the provision of the Services.

(d) Labour and Skills Gap Plan

(i) The Maintainer shall formulate a Labour and Skills Gap Plan (the *Labour and Skills Gap Plan*) for this Agreement. The plan shall

form part of the Responsible Procurement Plan and shall detail the labour and staff needs and skills gaps identified by the Maintainer to deliver the Services. The Labour and Skills Gap Plan shall demonstrate as a minimum:

- (A) job roles, and number of individuals within those roles, required to deliver the Services (indicating those to be resourced in-house and those to be resourced through the supply chain);
 - (B) labour and staff needs (how many vacant roles the Maintainer anticipates will require to be resourced within each job role detailed in (A) and how many of those vacancies are going to be sourced in the Local Community); and
 - (C) skills gaps (skills areas where the Maintainer expects to either up skill existing labour and staff in new areas or develop new labour and staff to fill skills shortage areas within each job role detailed in (A)).
- (e) London Overground Skills Pledge

The Maintainer 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 Maintainer's commitment to the development of the skills and qualifications of its workforce, supply chain and the Local Community. The Maintainer 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 Services.

Ethical Sourcing Practices

- 3.3 (a) The Maintainer 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; and
 - (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:

- (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 Maintainer 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.

- (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 Maintainer 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 Maintainer 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 Maintainer 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 Maintainer, the Maintainer shall detail in the Responsible Procurement Plan the action that will be undertaken by the Maintainer to map the at-risk supply chains and provide information on the labour conditions at relevant production sites. The Maintainer 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 Maintainer shall undertake social audits of production sites;
 - (E) as soon as practicable following the Commencement Date, the Maintainer shall be registered with an ethical supplier database, such as SEDEX (Supplier Ethical Data Exchange). The Maintainer 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 Maintainer to carry out one or more audits using a reputable auditor to verify whether the Maintainer is complying with the Ethical Sourcing Practices. The identity of the auditor is to be approved by the

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Purchaser, such approval not to be unreasonably withheld or delayed. The costs of the audit shall be borne by the Purchaser; and

- (G) if the Purchaser has reasonable cause to believe that the Maintainer is not complying with any of the Ethical Sourcing Practices, then the Purchaser shall notify the Maintainer and the Parties shall agree an action plan with appropriate timeframes for compliance by the Maintainer (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 Maintainer 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 Maintainer.

London Living Wage

- 3.4 (a) Without prejudice to any other provision of this Agreement, the Maintainer 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 Services within one of the London Boroughs.
- (b) The Maintainer 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 Maintainer 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 Maintainer or the Purchaser discovers any non-compliance with the requirements of this paragraph 3.4, the Maintainer shall co-operate fully with the Purchaser to resolve the non-compliance.
- (e) The Maintainer shall disseminate on behalf of the Purchaser to its employees and subcontractors engaged in the provision of the Services 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 Maintainer pursuant to the performance of the Maintainer Obligations, where the destination of such Delivery and Servicing Vehicle is a TSA Site (as defined in paragraph 4.2).

Definitions

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

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 Maintainer (including an agency driver), who operates Delivery and Servicing Vehicles on behalf of the Maintainer;

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;

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;

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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;

TSA Site means:

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

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

Fleet Operator Recognition Scheme Accreditation

4.3 Where the Maintainer operates Delivery and Servicing Vehicles, it shall within 90 days of the Existing Fleet 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 Maintainer 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 Maintainer shall ensure that every Lorry, shall:

- (a) have Side Guards, unless the Maintainer 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;

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- (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 Maintainer operates Delivery and Servicing Vehicles, the Maintainer 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
- (b) each of its Drivers engaged in connection with the performance of the Maintainer Obligations has a driving licence check with the DVLA or such equivalent before that Driver commences any delivery in connection with the performance of the Maintainer Obligations and that the driving licence check with the DVLA or equivalent authority is repeated in accordance with either the following risk scale (in the case of the DVLA issued licences only), or the Maintainer's risk scale, provided that the Maintainer's risk scale has been Assurance Accepted by the Purchaser within the last 12 months:
 - (i) 0 – 3 points on the driving licence – annual checks;
 - (ii) 4 – 8 points on the driving licence – six monthly checks;
 - (iii) 9 – 11 points on the driving licence – quarterly checks; or
 - (iv) 12 or more points on the driving licence – monthly checks.

Driver Training

4.6 Where the Maintainer operates Delivery and Servicing Vehicles, the Maintainer shall ensure that each of its Drivers undergo approved progressive training (to include a mix of theoretical, e-learning, practical and on the job training) and continued professional development to include training covering the safety of vulnerable road users and on-cycle hazard awareness, throughout the period commencing on the Existing Fleet Commencement Date and ending (subject to earlier termination in accordance with the provisions of this Agreement) on the Expiry Date.

Collision Reporting

4.7 Where the Maintainer operates Delivery and Servicing Vehicles, the Maintainer shall:

- (a) ensure that it has a system in place to capture, investigate and analyse road traffic collisions that results in fatalities, injury or damage to vehicles, persons or property and for generating Collision Reports; and
- (b) within 15 days of the Existing Fleet Commencement Date, provide to the Purchaser a Collision Report. The Maintainer shall provide to the Purchaser

an updated Collision Report within five working days of a written request from the Purchaser.

Self Certification of Compliance

4.8 Where the Maintainer operates Delivery and Servicing Vehicles, within 90 days of the Existing Fleet Commencement Date, the Maintainer shall make a written report to the Purchaser detailing its compliance with paragraphs 4.4, 4.5 and 4.6 of this Schedule 14 (the *WRRR Self-certification Report*). The Maintainer shall provide updates of the WRRR Self-certification Report to the Purchaser on each three month anniversary of its submission of the initial WRRR Self-certification Report.

Obligations of the Maintainer Regarding Subcontractors

4.9 The Maintainer shall ensure that those of its sub-contractors who operate Delivery and Servicing Vehicles shall:

- (a) comply with paragraphs 4.3 and 4.4; and
- (b) where its subcontractors operates the following vehicles in connection with the performance of the Maintainer Obligations shall comply with the corresponding provisions of this paragraph 4:
 - (i) For Lorries – paragraphs 4.4, 4.5, 4.6 and 4.7; and
 - (ii) For Vans – Clauses 4.5, 4.6 and 4.7,

as if those sub-contractors were a party to this paragraph 4.

Failure to Comply with Work Related Road Risk Obligations

4.10 Without limiting the effect of any other clause of this Agreement relating to termination, if the Maintainer fails to comply with paragraphs 4.3, 4.4, 4.5, 4.6, 4.7, 4.8 and 4.9 the Purchaser may refuse the Maintainer, its employees, agents and Delivery and Servicing Vehicles entry onto any TSA Site that is owned, occupied, managed or leased by the Purchaser, any member of the TfL Group or the Operator for any purpose (including but not limited to deliveries).

4.11 The Maintainer acknowledges that the Safer Lorry Scheme Order will come into force on 1 September 2015 and that it shall not be entitled to make any claim against the Purchaser or to seek any relief or remedy of any nature nor shall the Maintainer be relieved from any risks or obligations imposed on or undertaken by it under this, Agreement on the grounds of any sanction imposed on it or any of its sub-contractors by any Competent Authority in relation to the Safer Lorry Scheme Order.

5. Appendices

- Appendix 1 Responsible Procurement Performance Review and Action Plan
- Appendix 2 Strategic Labour Needs and Training Monitoring Report Template
- Appendix 3 London Overground Skills Pledge
- Appendix 4 SLNT Explanation and Response Requirements

Appendix 5 Procurement schedule requirements

Appendix 6 SLNT Plan

Appendix 1
Responsible Procurement Performance Review and Action Plan Template

Agreement Title:				
Agreement Description:				
Maintainer Name:				
Requirement Description	Maintainer's statement of compliance with requirement	Action taken by Maintainer since previous reporting period	Proposed action to be taken by Maintainer during next reporting period	Action taken by Maintainer within supply chain to implement this requirement during previous reporting period
Equality and Diversity Strategic Plan				
CompeteFor				
Meet the Buyer Event				
Community Relations				
Labour and Skills Gap Plan				
Strategic Labour Needs and Training Plan (including submittal of the Strategic Labour Needs and Training Monitoring Report)				
Ethical Sourcing Practices				

Appendix 2
Strategic Labour Needs and Training Monitoring Report Template

Maintainer Name:
 Agreement Ref:
 Date:
 Monitoring period:

Supplier	
Period	1
Total Apprentices Starts	0
Total Worklessness Starts	0

Apprenticeship & Worklessness Job Starts Monitoring Form

PLEASE NOTE: The data you provide on this form is only for internal GLA Group use; it is held securely and is not shared more widely. The data is used to generate monitoring reports on the ages, ethnicity and gender of employees across the GLA Group supply chain, and individuals are not identified in these reports. To protect an employee's identity, please use an employee reference number rather than name if you prefer, and any information that you do not hold/do not wish to share please select 'Prefer not to say'. This monitoring data is requested by the GLA to ensure that we are monitoring diversity in our supply chains across London, and your cooperation is appreciated.

Name / Employee No.	Worklessness	Apprentice	Start Date	Postcode	DOB	Gender	Ethnic Origin	Disability	Criminal Conviction	Job Title	Apprenticeship Framework	Level	Duration	TFL Mode

Job Starts

Previous Reporting Period

Purchaser	Job Starts this quarter (Nos)	Total Number employed on site	Male (Nos)	Female (Nos)	Disability (Nos)	Ethnicity	Age	Home Borough	Home Postcode	Occupations	Number of Non-completions/withdrawals before six months	Start Date

Graduates

Previous Reporting Period

Purchaser	Graduates starts this quarter (Nos)	Total Number employed on site	Male (Nos)	Female (Nos)	Disability (Nos)	Ethnicity	Age	Home Borough	Home Postcode	Occupations	Number of Non-completions	Start Date

Placement Positions

Previous Reporting Period

Purchaser	Placement starts this quarter (Nos)	Total Number employed on site	Male (Nos)	Female (Nos)	Disability (Nos)	Ethnicity	Age	Home Borough	Home Postcode	Occupations	Number of Non-completions	Start Date

Workforce Skills

Previous Reporting Period

Purchaser	Workforce Skills this quarter (Nos)	Total Number employed on site	Male (Nos)	Female (Nos)	Disability (Nos)	Ethnicity	Age	Home Borough	Home Postcode	Occupations	Number of Non-completions

Previous Reporting period

Number who have completed Mandatory Training	Qualification / Level	Number who have completed Non-Mandatory Training	Qualification / Level

Work Experience

Previous Reporting Period

Purchaser	Work Experience starts this quarter (Nos)	Total Number employed on site	Male (Nos)	Female (Nos)	Disability (Nos)	Ethnicity	Age	Home Borough	Home Postcode	Occupations	Number of Non-completions	Start Date

KEY – ETHNICITY

- 1. White: British
- 2. White: Irish
- 3. White: Other
- 4. Mixed White & Black: Caribbean
- 5. Mixed White & Black: African
- 6. Mixed White & Asian
- 7. Mixed Other
- 8. Asian or Asian British: Indian
- 9. Asian or Asian British: Pakistani
- 10. Asian or Asian British: Bangladeshi
- 11. Asian or Asian British: Other
- 12. Black or Black British: African
- 13. Black or Black British: Other
- 14. Chinese
- 15. Other Ethnic group
- 16. Prefer not to say

KEY - AGE

- A. 14 – 16 years
- B. 16 – 18 years
- C. 18 – 24 years
- D. 25 years plus

Appendix 3
London Overground Skills Pledge