

1<sup>st</sup> July 2015

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**RAIL FOR LONDON LIMITED**  
(the Purchaser)

**BOMBARDIER TRANSPORTATION UK LIMITED**  
(the Manufacturer)

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**MANUFACTURE AND SUPPLY AGREEMENT**  
for new Electric Multiple Unit Trains

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**Freshfields Bruckhaus Deringer**

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65 Fleet Street  
London EC4Y 1HS

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THIS MANUFACTURE AND SUPPLY AGREEMENT is made on 1<sup>st</sup> July 2015

**BETWEEN:**

- (1) **RAIL FOR LONDON LIMITED** (Registered Number 05965930) a company incorporated under the laws of England and Wales whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL (*Purchaser*); and
- (2) **BOMBARDIER TRANSPORTATION UK LIMITED**, (Registered Number 02235994) a company incorporated under the laws of England and Wales whose registered office is at Litchurch Lane, Derby DE24 8AD (*Manufacturer*).

**WHEREAS:**

- (A) LOROL currently operates passenger services on the LO Infrastructure pursuant to the LO Concession. The Purchaser intends to appoint a new Operator to run such services on or around 13 November 2016.
- (B) Transport for London is sponsoring a programme to electrify the GOB Infrastructure route and enhance the level of passenger services operating on it. Transport for London has also been delegated the responsibility by the Secretary of State for Transport for procuring the operation of passenger service on West Anglia Inner and certain associated routes as part of the LO Infrastructure. Transport for London is also sponsoring a programme for the increase in train frequency on the East London Railway and the North London Railway.
- (C) Transport for London has determined that new rolling stock will be required to support the delivery of the programmes described in recital (B) and has held a competition, in accordance with the Utilities Contracts Regulations, to identify the most economically advantageous means of procuring the supply of the rolling stock which meets the necessary technical, financial and operational requirements.
- (D) The Parties wish to enter into this Agreement to record the terms on which the Manufacturer will design, build, test, commission and supply rolling stock and the related equipment for use in the provision of passenger services on the LO Infrastructure and provide other related services.

**IT IS AGREED:**

**1. Definitions and Interpretation**

**Definitions**

- 1.1. In this Agreement the following words and expressions shall have the following meanings save where the context requires otherwise:

**AC Only Unit** means an electric multiple unit to be operated by the Operator, fitted with Traction System equipment installed such that the AC Only Unit is only capable of operation from a 25kV AC Traction Power Supply, and ordered from the Manufacturer under this Agreement (whether as part of the Initial Order or pursuant to an Option Notice);

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*Acceptance* means:

- (a) in respect of any Unit, Provisional Acceptance or Qualified Provisional Acceptance of that Unit; and
- (b) in respect of any other item of Purchased Equipment, Equipment Acceptance of that item of Purchased Equipment;

and *Accept* and *Accepted* shall be construed accordingly;

*Acceptance Criteria* means the Pre-Provisional Acceptance Criteria, the Provisional Acceptance Criteria, the Final Acceptance Criteria and the Fleet Acceptance Criteria and all or any of them as the context requires;

*Accredited Test House* means a testing facility accredited by the United Kingdom Accreditation Service (*UKAS*), or by an equivalent national or international body that independently assesses the competence of testing facilities;

*Acquired WIP* has the meaning given to such term in paragraph 4.1 of Schedule 19 (*Termination Payments*);

*Act* means the Railways Act 1993;

*Actual Mass* means the actual mass (measured under the conditions for which design mass is defined in BS:EN 15663: 2009) of a complete Unit as presented for Acceptance;

*Additional Infrastructure Information* has the meaning given to such term in clause 8.4(a)(iii);

*Adjudicator* has the meaning given to such term in paragraph 4.3 of Schedule 18 (*Dispute Resolution Procedure*);

*Advance Payment Bond* means an Advance Payment Bond issued by an Advance Payment Bond Provider in the form set out in Appendix 1 (*Form of Advance Payment Bond*) of Part A (*Advance Payment Bond*) of Schedule 10 (*Milestones and Security*);

*Advance Payment Bond Provider* means a financial institution providing an Advance Payment Bond in accordance with the requirements of Part A (*Advance Payment Bond*) of Schedule 10 (*Milestones and Security*);

*Affiliate* means in relation to any person, any Holding Company or subsidiary of that person or any subsidiary of such Holding Company and *subsidiary* is to be construed in accordance with section 1159 of the Companies Act 2006, save that for the purposes of determining whether one entity is an Affiliate of another any transfer of shares by way of security or to a nominee of the transferor shall be disregarded;

*Agreed Forward Rates* means the forward rates which are agreed between the Purchaser and the Manufacturer at the time that the relevant Option is exercised (or, failing agreement, are reasonably determined by the Purchaser) and which are used to calculate the Option Price so that it can be denominated in pounds sterling;

**Agreed Schedule of Tests** means the schedule of tests set out in Part C (*Schedule of Testing*) of Schedule 7 (*Testing*);

**Agreed Testing Programme** means the testing programme set out in Part D (*Testing Programme*) of Schedule 7 (*Testing*);

**Agreed Testing Strategy** means the testing strategy set out in Part B (*Testing Strategy*) of Schedule 7 (*Testing*);

**Agreement** means this Agreement including the Schedules;

**ALARP** has the meaning given to such term in paragraph 9.5(a) of Schedule 6 (*Assurance Acceptance*);

**Alternative Suppliers** has the meaning given to such term in paragraph 4.3 of Part A (*Advance Payment Bond*) of Schedule 10 (*Milestones and Security*);

**APB Bond Amount** means, in respect of each Advance Payment Bond from time to time, the maximum amount that may be demanded under that Advance Payment Bond at such time;

**APB Step-Down Date** has the meaning given to such term in paragraph 3.1 of Part A (*Advance Payment Bond*) of Schedule 10 (*Milestones and Security*);

**APB Provider Downgrade** means the long-term credit rating of the Advance Payment Bond Provider falls below [REDACTED] from Standard and Poor's Rating Services or the equivalent of [REDACTED] from each one of the entities of equivalent international reputation that provide a long-term credit rating for the Advance Payment Bond Provider;

**Applicable Laws and Standards** means, as the context may require, all or any Laws and standards at any time or from time to time in force in the United Kingdom or the European Union and which are or become applicable to this Agreement, any agreement or document referred to herein, any item of Purchased Equipment, the Training Services and/or the Manufacturer's obligations (including their performance) under this Agreement including, without prejudice to the generality of the foregoing, Industry Standards, the requirements of the Regulator, Environmental Laws, HSWA, CSM Regulation, ROGS and the Interoperability Regulations;

**Approved Subcontractor** means in relation to a Subsystem the proposed Subcontractors for that Subsystem as set out in Schedule 11 (*Subcontracts*);

**Approved Party** has the meaning given to such term in clause 5.2;

**Assurance Acceptance** means the review and approval given by the Purchaser or its nominee in accordance with the procedure described in paragraph 2 (*Assurance Acceptance Process*) of Schedule 6 (*Assurance Acceptance*) and *Assurance Accepted* and *Assurance Accepted* shall be construed accordingly;

**Assurance Period** means the period from the Commencement Date until the date of Fleet Acceptance or as otherwise agreed between the Parties;

**Assurance Regime** means the regime for Progressive Assurance to be provided by the Manufacturer to the Purchaser in relation to the Manufacturer's performance of its

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obligations under this Agreement as set out in paragraph 8 (*Progressive Assurance*) of Schedule 6 (*Assurance Acceptance*);

**ATOC** means the Association of Train Operating Companies;

**Authorisation** has the meaning given to such term in paragraph 2.1 of Schedule 5 (*Contract Management*) and **Authorised** shall be construed accordingly;

**Automatic Warning System** or **AWS** means the automatic and enforceable warning system in the form of a track mounted, non-contact inductor;

**Available Infrastructure** means, in respect of any Railway Infrastructure, that such Railway Infrastructure is ready and approved for placing into service for operation of rolling stock in Unrestricted Passenger Revenue-Earning Service in accordance with all Applicable Laws and Standards, and once any part or section of the LO Infrastructure becomes Available Infrastructure, it cannot subsequently become Unavailable Infrastructure;

**Bid Costs** means the amount specified as the bid costs in the table in Appendix 2 (*Total Contract Price*) of Part B (*Milestones*) of Schedule 10 (*Milestones and Security*);

**Bombardier Transportation Rolling Stock Group** comprises all Affiliates of the Manufacturer whose active business is the supply of railway vehicles, railway equipment and the provision of related services;

**Bond Event** means:

- (a) an Insolvency Event of the Advance Payment Bond Provider;
- (b) an Advance Payment Bond ceases to be in full force and effect; or
- (c) the Advance Payment Bond Provider's obligations under an Advance Payment Bond are or become wholly or partly invalid or unenforceable;

**Business Hour(s)** means any hour on which banks are open for domestic business in the City of London;

**CAHA** means the railway industry claims allocation and handling agreement pursuant to which liability for applicable third party claims is allocated;

**Capital Expenditure** means any expenditure which is treated as capital expenditure in accordance with generally accepted accounting principles in the United Kingdom from time to time;

**CCTV System** means the train-carried CCTV system, as described in the Train Technical Specification;

**Certificate of Commencement** means the certificate issued by the Purchaser in accordance with clause 2.6 in the form or substantially in the form set out in Part A (*Pro Forma Certificates*) of Schedule 20 (*Pro Forma Certificates*);

**Certificate of Engineering Acceptance** has the meaning given to such term in Railway Group Standard GM/RT2000, Issue 2, October 2000;

*Certificate of Technical Acceptance* has the meaning given to such term in Railway Group Standard RT/GM 8270, Issue 1, February 2003 (as may be amended from time to time) and includes any other equivalent certificate or document (of whatever name) which may replace the same;

*Certificate of Verification* has the meaning given to such term in the Interoperability Regulations;

*Change* means a change (whether by addition, amendment, substitution, omission or otherwise) of whatever nature to this Agreement including to:

- (a) any of the Train Technical Requirements;
- (b) the Units or any item of Equipment;
- (c) the manner in which the Manufacturer undertakes its activities; or
- (d) any term of the Agreement;

*Change Appraisal* means any written report delivered by the Manufacturer in accordance with paragraph 4.1 of Part B (*Purchaser Changes*) of Schedule 12 (*Change Procedure*) and containing the information specified in paragraph 4.2 of Part B of Schedule 12;

*Change Appraisal Instruction* means a written notification provided by the Purchaser pursuant to paragraph 3.2(b) of Part B (*Purchaser Changes*) of Schedule 12 (*Change Procedure*) and containing the information specified in paragraph 3.3 of Part B of Schedule 12;

*Change Confirmation Notice* means a notice issued (and counter-signed as appropriate) by the Purchaser to the Manufacturer pursuant to paragraph 3.2(a), 3.5 or 5.4(a) of Part B (*Purchaser Changes*) of Schedule 12 (*Change Procedure*) instructing the Manufacturer to proceed with the implementation of a Change or part of a Change in accordance with paragraph 7 (*Implementation of Purchaser Change*) of Part B of Schedule 12;

*Change in Costs* means in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated costs, losses or liabilities of the Manufacturer (without double counting), including, as relevant, the following:

- (a) the reasonable costs of complying with the requirements of clauses 17 (*Extensions of Time*), 28 (*Change in Law*) and/or Part B (*Purchaser Changes*) or Part D (*Compensation Changes*) (save where these parts have an alternative mechanism for dealing with such costs) of Schedule 12 (*Change Procedure*), including the reasonable costs of preparation of design and estimates;
- (b) the costs of continued employment of, or making redundant, staff who are no longer required;
- (c) the costs of employing additional staff;

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- (d) reasonable professional fees;
- (e) the effects of costs on implementation of any insurance reinstatement in accordance with this Agreement, including any adverse effect on the insurance proceeds payable to the Manufacturer (whether arising from physical damage insurance (or its equivalent)) in respect of that insurance reinstatement and any extension of the period of implementation of the insurance reinstatement;
- (f) operating costs, or life cycle maintenance or replacement costs;
- (g) Capital Expenditure;
- (h) any deductible or increase in the level of deductible, or any increase in premium under or in respect of any insurance policy;
- (i) Direct Losses; and
- (j) the margin to be earned by the Manufacturer (as determined in accordance with Appendix 3 (*Manufacturer's Margin*) to Part E (*Option Unit Changes*) of Schedule 12 (*Change Procedure*),

provided that all costs other than limb (j) above shall be calculated in accordance with the principles set out in Appendix 2 (*Calculation of Change in Costs*) to Part E (*Option Unit Changes*) of Schedule 12 (*Change Procedure*);

***Change in Law*** means the coming into effect after the date of this Agreement of:

- (a) Legislation (whether by means of any enactment, repeal or amendment), other than Legislation which on or before the date of this Agreement has been published in substantially the same form or with substantially the same effect as the relevant Legislation finally takes when it has legal effect:
  - (i) in a draft Bill as a part of a government department consultation paper;
  - (ii) in a Bill;
  - (iii) in a draft statutory instrument; or
  - (iv) published as a proposal in the Official Journal of the European Union or as a Common Position adopted by the European Parliament;
- (b) any applicable Industry Standards, other than any such Industry Standard which on the date of the Agreement has been published (in the same form (except for non-material changes) as that which comes into effect) by the relevant arbiter of that Industry Standard and which, when so published, was intended to have force of law; or
- (c) any applicable judgment of a relevant court of law made after the date of the Agreement which changes a binding precedent,

which in any such case affects the Purchaser, TfL, the Manufacturer, the Purchased Equipment or the Network;

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**Change of Control** means if a person (or persons acting in concert) who directly or indirectly controls the Manufacturer as at the date of this Agreement ceases to do so or if a person (or persons acting in concert) obtains directly or indirectly control of the Manufacturer after the date of this Agreement, and *control* for the purposes of this definition means:

- (a) the holding and/or possession of the legal or beneficial interest in, and/or the ability to exercise or direct the exercise of the voting rights applicable to, shares or securities of the Manufacturer by the relevant person (or persons acting in concert) such that the business and/or affairs and/or policies of the Manufacturer are conducted in accordance with the wishes of that person (or persons); or
- (b) any powers or rights of the relevant person (or persons acting in concert) conferred by the articles of association or contractual rights which (directly or indirectly) have effect to secure that the business and/or affairs and/or policies of the Manufacturer are conducted in accordance with the wishes of that person (or persons);

**Change Procedure** means the procedure for implementing Changes set out in Schedule 12 (*Change Procedure*);

**Claim Appraisal** means any written report delivered by the Manufacturer in accordance with paragraph 3.1 of Part D (*Compensation Changes*) of Schedule 12 (*Change Procedure*) and containing the information specified in paragraph 3.2 of Part D of Schedule 12;

**Claim Appraisal Instruction** means a written notification provided by the Purchaser pursuant to paragraph 2.1 of Part D (*Compensation Changes*) of Schedule 12 (*Change Procedure*) and containing the information specified in paragraph 2.2 of Part D of Schedule 12;

**Claim Confirmation Notice** means a notice issued by the Purchaser pursuant to paragraph 2.1 or 4.4 of Part D (*Compensation Changes*) of Schedule 12 (*Change Procedure*), setting out the agreed or determined position in respect of a Compensation Event;

**Close-Out Meeting** has the meaning given to such term in paragraph 1 (*Definitions*) of Schedule 6 (*Assurance Acceptance*);

**Commencement Date** means the date specified in the Certificate of Commencement;

**Commencement Date Milestone Payment** means the amount specified in column (3) of the Schedule of Milestones relating to the first Milestone;

**Compensation Event** means any of the following events:

- (a) the Purchaser's failure to comply with or delay in complying with its obligations to serve notices or documents pursuant to clause 7.9;
- (b) the Purchaser's failure to submit or delay in submitting the applications prepared by the Manufacturer in accordance with clause 11.2(d);

- (c) the Purchaser's failure to carry out or procure or delay in carrying out or procuring those things in relation to Route Acceptance required by clause 11.4(b);
- (d) the Purchaser's failure to make available access to the Willesden Depot in accordance with paragraph 2.1 of Schedule 9 (*Maintenance Facilities and Chingford Stabling Site*) for the purposes of Provisional Acceptance of a Unit;
- (e) the Purchaser's breach of its obligations contained in clause 38.2 in respect of confidentiality;
- (f) the Purchaser's failure to give the Manufacturer the required notice pursuant to clause 45.1(e); and
- (g) subject to the terms of clause 28 (*Change in Law*), a Qualifying Change in Law,

except to the extent that any of the events listed above arises (directly or indirectly) as a result of any breach, wilful default or wilful act of the Manufacturer or any of its Subcontractors, and provided that each of the events above shall be subject to the provisions of the relevant clause(s);

**Competent Authority** means any legislative, judicial, regulatory or administrative body or agency (or any subdivision of them) of the United Kingdom or the European Union or any supranational body which has rule-making power or whose directions, instructions, rulings, laws or regulations are directly enforceable against a Party in connection with the performance of this Agreement;

**Competitor** means any person conducting large-scale manufacturing of rolling stock and supply of such rolling stock in or into the United Kingdom and who directly competes with the Manufacturer in the United Kingdom in such business;

**Compliance Assurance Plan** has the meaning given to such term in paragraph 9.1(g) of Schedule 5 (*Contract Management*);

**Comptroller and Auditor General or C&AG** means the head of the National Audit Office from time to time as defined in the National Audit Act 1983, and includes any successor to all or any of his functions;

**Confidential Information** means information of a technical, commercial or financial nature received from a Party to this Agreement or its agents, representatives or advisers including information received by the Manufacturer from the Operator or TfL;

**Configuration Database** means a database containing, as a minimum, the following information relating to the Units to be provided by the Manufacturer in accordance with clause 15 (*Delivery and Acceptance of Units and Equipment*):

- (a) each Unit's and each Vehicle's number (including its European Vehicle Number as displayed on the rolling stock);

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- (b) all Manuals and safety approval documents relating to each Unit and/or Vehicle;
- (c) the Manufacturer's or Maintainer's serial numbers of all systems, Subsystems and components and Parts, to the extent that these are identified by the Manufacturer's or Maintainer's serial number;
- (d) the position of each Part within each Unit and/or Vehicle; and
- (e) the modification status of all systems and Subsystems within each Unit and/or Vehicle;

*Continuing Operations* has the meaning given to such term in paragraph 3.3 of Schedule 9 (*Maintenance Facilities and Chingford Stabling Site*);

***Contract Information*** means:

- (a) this Agreement in its entirety (including agreed changes to the Agreement from time to time); and
- (b) the Train Services Agreement, the Escrow Agreement and any other document, contract or data relating to this Agreement which is required to be published pursuant to the Transparency Commitment from time to time;

***Contract Price*** means:

- (a) in relation to a Unit forming part of the Initial Order, the price to be paid in respect of such Unit as set out in Appendix 2 (*Total Contract Price*) to Part B (*Milestones*) of Schedule 10 (*Milestones and Security*);
- (b) in relation to an item of Purchased Equipment forming part of the Initial Order (other than the Units), the price to be in respect of such item of Purchased Equipment as set out in Appendix 2 to Part B of Schedule 10; and
- (c) in relation to any Option Unit Change, the Option Price to be paid in respect of that Option Unit Change in accordance with clause 6.6;

as the same may be amended, supplemented or varied from time to time pursuant to the Change Procedure, together in each case with any VAT chargeable in accordance with clause 25.2;

***Contract Manager(s)*** means either or both of the Purchaser Contract Manager and/or the Manufacturer Contract Manager;

***Contracted Design Mass*** means the Design Mass (as defined in BS:EN 15663: 2009) of a Unit as specified in paragraph Bombardier PartB 1.1.5 with supporting information in Bombardier PartB 1.1.5 NRSLO Proforma of the Manufacturer Train Proposal;

***Contractual Acceptance Date*** means:

- (a) in relation to a Unit forming part of the Initial Order, the intended date of issue of a Provisional Acceptance Certificate for such Unit as set out in the Project Programme;

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- (b) in relation to the Fleet, the intended date of issue of the Fleet Acceptance Certificate as set out in the Project Programme;
- (c) in relation to the Simulator, the Simulator Acceptance Date set out in the Project Programme;
- (d) in relation to the Initial Spares, the date for Equipment Acceptance relating to those Initial Spares set out in the Project Programme or, if no such date is set out in the Project Programme, the Contractual Acceptance Date that relates to the Provisional Acceptance of the Units with which those Initial Spares must be Accepted;
- (e) in relation to the Initial Special Tools, the date for Equipment Acceptance relating to those Initial Special Tools set out in the Project Programme or, if no such date is set out in the Project Programme, the Contractual Acceptance Date that relates to the Provisional Acceptance of the Units with which those Initial Special Tools must be Accepted;
- (f) in relation to the Manufacturer Fit Out Assets, the date for Equipment Acceptance relating to those Manufacturer Fit Out Assets set out in the Project Programme; or
- (g) in relation to an Option Unit Change the intended date for the item which is the subject of the Option to be Accepted by the Purchaser as set out in the Project Programme;

in each case as may be amended, supplemented or varied from time to time in accordance with this Agreement;

***Contractual Final Acceptance Date*** means in relation to a Unit forming part of the Initial Order, the intended date the date for Final Acceptance of each Unit as set out in the Project Programme;

***Contractual Fleet Acceptance Date*** means the date for Fleet Acceptance set out in the Project Programme;

***Contractual Provisional Acceptance Date*** means in relation to a Unit forming part of the Initial Order, the intended date of issue of a Provisional Acceptance Certificate for such Unit as set out in the Project Programme;

***Corrective Action*** has the meaning given to such term in clause 9.8(a);

***Courts*** has the meaning given to such term in paragraph 5.1 of Schedule 18 (*Dispute Resolution Procedure*);

***CSM Regulation*** means EC Regulation (EC) No 352/2009 of 24 April 2009 on the adoption of a common safety method on risk evaluation and assessment as referred to in Article 6(3)(a) of Directive 2004/49/EC of the European Parliament and of the Council;

***Declaration of Ineffectiveness*** has the meaning given to such term in the Utilities Contracts Regulations;

**Default Interest** means interest on late payment at the Default Rate;

**Default Rate** means the Bank of England Base Rate plus [REDACTED] per cent.;

**Delivery** means the passing of possession of a Unit, other item of Purchased Equipment or Moveable Asset and **Deliver** and cognate terms shall be construed accordingly;

**Delivery Liquidated Damages** means liquidated damages payable by the Manufacturer pursuant to clauses 16.1, 16.2 and 16.5;

**Design** means the design of the Units;

**Design Freeze Date** means in relation to a Permitted Design Change the date specified as the **Design Freeze Date** for that Permitted Design Change in Appendix 1 (*Permitted Design Changes*) to Schedule 6 (*Assurance Acceptance*);

**Design Phase** means the period starting on the Commencement Date and ending on the date of the notice served by the Purchaser pursuant to paragraph 11.7(b) of Schedule 6 (*Assurance Acceptance*) and includes the Preliminary Unit Design Phase and the Detailed Unit Design Phase;

**Designated Body** or **DeBo** means any duly accredited entity appointed by the Manufacturer as a designated body in accordance with the Interoperability Regulations;

**Designated Delivery Location** means the location at which Provisional Acceptance of a Unit or Equipment Acceptance of an item of Equipment is intended to occur, being:

- (a) in the case of each AC Only Unit, the Ilford A Maintenance Depot;
- (b) in the case of each Dual Voltage Unit, the Willesden Depot;
- (c) in the case of any Spares, Special Tools and Manufacturer Fit Out Assets, the relevant Maintenance Facility or the Chingford Stabling Site at which such Equipment will be located for the purposes of the TSA; or
- (d) in the case of the Simulator, the Simulator Initial Location notified by the Purchaser pursuant to clause 6.3,

or, in each case, such other location as may be agreed in writing between the Parties pursuant to clause 15.1(d);

**Detailed Unit Design Phase** means that part of the Design Phase commencing on the expiry of the Preliminary Unit Design Phase and ending on the date of the notice served by the Purchaser pursuant to paragraph 11.7(b) of Schedule 6 (*Assurance Acceptance*);

**Detailed Unit Design Submissions** has the meaning given to such term in paragraph 11.7(a) of Schedule 6 (*Assurance Acceptance*);

**Diagram** has the meaning given to such term in the TSA;

**Diagram Leg** has the meaning given to such term in the TSA;

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**Direct Losses** means all Losses excluding Indirect Losses;

**Disclosed Contracts** means:

- (a) any track access agreement entered into from time to time between the Operator and an Infrastructure Manager in relation to the LO Infrastructure,
- (b) the LO Concession; and
- (c) the Headlease (as defined in the TSA) in respect of the Willesden Depot;

**Disclosed Data** has the meaning given to such term in clause 53.2;

**Disposal Notice** has the meaning given to such term in clause 23.2;

**Dispute** means a dispute or difference of whatsoever nature between the Manufacturer and the Purchaser (or the Operator) in relation to the formation, operation or interpretation of, or otherwise in connection with, or arising out of, this Agreement;

**Dispute Referral Notice** has the meaning given to such term in paragraph 2.1 of Schedule 18 (*Dispute Resolution Procedure*);

**Dispute Resolution Procedure** means the procedure for resolving Disputes or Expert Disputes set out in Schedule 18 (*Dispute Resolution Procedure*);

**DPA** means the Data Protection Act 1998;

**Dual Voltage Unit** means an electric multiple unit to be operated by the Operator, fitted with Traction System equipment installed so that the Unit is capable of operation from either a 25kv AC Traction Power Supply or a third rail DC Traction Power Supply, and ordered from the Manufacturer under this Agreement (whether as part of the Initial Order or pursuant to an Option Notice);

**EC Declaration of Conformity or Suitability for Use** has the meaning given to such term in the Interoperability Regulations;

**ECS Movement(s)** or **Empty Coaching Stock Movement(s)** means the movement of empty, out-of-service Units from one location to another;

**Emergency Change** has the meaning set out in paragraph 1.3 of Part B (*Purchaser Changes*) of Schedule 12 (*Change Procedure*);

**Emergency Change Interim Payments** has the meaning set out in paragraph 1.4(b) of Part B (*Purchaser Changes*) Schedule 12 (*Change Procedure*);

**Enhanced Capital Allowances** means those allowances that are part of the capital allowances regime (specifically Sections 45A and 45H of the Capital Allowances Act 2001) with respect to expenditure incurred on energy saving and water conserving plant and machinery, as appears on either:

- (a) The Energy Technology List (for energy saving technologies) – managed on behalf of the Department of Energy & Climate Change (*DECC*) by the Carbon Trust - <https://etl.decc.gov.uk/etl/site/criteria.html>; or

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- (b) The Water Technology List (for water conserving technologies) – managed on behalf of the Department of Environment, Food & Rural Affairs (*DEFRA*) by AEA Technology - [http://wtl.defra.gov.uk/product\\_search\\_landing.asp?section=66&itemTitle=Product+Search](http://wtl.defra.gov.uk/product_search_landing.asp?section=66&itemTitle=Product+Search),

as each may be updated from time to time;

*Environment* means all gases, air, vapours, liquids, water (whether above or below surface and including controlled waters as defined in section 104(1) of the Water Resources Act 1991 and within drains and sewers), land, property, surface and sub-surface soils, rocks, flora, fauna and other living organisms including man, wetlands, ecosystems and all other natural resources or part thereof including artificial or man-made buildings, structures or enclosures and electricity and human health and *Environmental* shall be construed accordingly;

*Environmental Damage* means any material injury or damage to the Environment resulting from the discharge, emission, escape or migration of any substance, energy, noise or vibration;

*Environmental Laws* means all Applicable Laws and Standards and all orders, regulations, ordinances, decrees or regulatory codes of practice, circulars, guidance notes and equivalent controls relating to or concerning the Environment;

*Environmental Management System* has the meaning given to such term in clause 42.3;

*Equipment* means the Simulator, the Spares, the Special Tools and the Manufacturer Fit Out Assets;

*Equipment Acceptance* means, in relation to the Simulator, the Spares, the Special Tools and the Manufacturer Fit Out Assets, that any such item complies fully with the relevant Equipment Acceptance Criteria as evidenced by and occurring upon the issue of a Simulator Acceptance Certificate, a Spares Acceptance Certificate, a Special Tools Acceptance Certificate or a Manufacturer Fit Out Assets Acceptance Certificate (as the case may be) for that item of Equipment and *Equipment Accepted* shall be construed accordingly;

*Equipment Acceptance Criteria* means the criteria in clause 15.23 setting out the requirements to be satisfied in order for the Simulator, the Spares, the Special Tools and the Manufacturer Fit Out Assets to achieve Acceptance;

*Equipment Acceptance Tests* means those tests to be carried out by the Manufacturer to demonstrate compliance of each item of Equipment with the relevant parts of the Train Technical Specification in accordance with paragraph 5 (*Equipment Acceptance Tests*) of Part A (*Testing Requirements*) of Schedule 7 (*Testing*);

*Escrow Agent* means the National Computing Centre or any successor or replacement to all or any of its functions;

*Escrow Agreement* means the Manufacturer Escrow Agreement and/or any Subcontractor Escrow Agreement;

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*Escrow Material* means the Source Code and any relevant Software;

*Escrow Subcontractor* means any Subcontractor that owns or licenses Escrow Material;

*European Vehicle Number* or *EVN* has the meaning given to such term in the Interoperability Regulations;

*Event of Loss* means, with respect to a Unit:

- (a) the actual or constructive total loss, or destruction of such Unit or its being damaged beyond repair or rendered permanently unfit for normal use for any reason whatsoever, including any destruction or damage caused by a Force Majeure Event or requisition for use or hire which, in either case, results in an insurance settlement on the basis of a total loss;
- (b) the requisition of title, or other compulsory acquisition, requisition, expropriation or confiscation for any reason of such Unit by any Competent Authority, other than the Purchaser, TfL or other member of the TfL Group, but excluding acquisition for use or hire not involving requisition of title; or
- (c) the condemnation, confiscation, capture, deprivation, seizure or requisition for use or hire of such Unit (other than requisition for use or hire by any Competent Authority) which deprives any person permitted by this Agreement to have possession and/or use of such Unit its possession and/or use for more than 180 days;

*Exception Report* has the meaning given to such term in paragraph 7.1(d) of Schedule 5 (*Contract Management*);

*Execution Plan* has the meaning given to such term in paragraph 9.1 of Schedule 5 (*Contract Management*);

*Expert* shall mean an individual with relevant experience or expertise in the subject matter of any Expert Dispute, who may or may not be legally qualified, depending on the nature of the Expert Dispute;

*Expert Dispute* means a Dispute that is required under the provisions of this Agreement to be resolved in accordance with paragraph 3 (*Expert determination*) of Schedule 18 (*Dispute Resolution Procedure*) or which has been designated by the Parties as an Expert Dispute, to be resolved by the procedure set out in paragraph 3 (*Expert determination*) of Schedule 18 (*Dispute Resolution Procedure*);

*Expiry Date* means, in respect of each Advance Payment Bond, the date specified as such in that Advance Payment Bond;

*Extended Unit* means, in relation to an Option Unit Change that includes an order for Option Vehicle(s), a Unit that, having previously been Accepted, is extended by the insertion of an Option Vehicle;

*Exterior Features* means those elements of the visible exterior design of the Vehicles (including branding, the overall shape, form and configuration and constituent parts

thereof) that are original and distinctive (meaning not commonplace in the relevant design field);

**Exterior Features IPR** means any and all Manufacturer IPR and Third Party IPR as may be developed, used, acquired or licensed in relation to or exist in the Exterior Features;

**Facility Owner** has the meaning given to such term in the Act,

**Factory Acceptance Test** or **FAT** has the meaning given to such term in paragraph 3.1 of Part A (*Testing Requirements*) of Schedule 7 (*Testing*), and **Factory Acceptance Testing** shall be construed accordingly;

**Factory Acceptance Test Plan** has the meaning given to such term in paragraph 9.1(i) of Schedule 5 (*Contract Management*);

**Fault** means in relation to a Unit or item of Equipment, that the Unit or item of Equipment is not Fault Free;

**Fault Free** means, in relation to any asset or service to be provided under this Agreement:

- (a) that it complies with all applicable requirements and provisions of this Agreement including the Train Technical Requirements;
- (b) that it complies with all Applicable Laws and Standards, Relevant Approvals or, to the extent that there is non-compliance with any Applicable Laws and Standards, that there is a valid derogation from such Applicable Laws and Standards;
- (c) where the item is a Unit, that it is fit for operation and/or use in Unrestricted Passenger Revenue-Earning Service and all Relevant Approvals have been obtained in respect of that Unit; and
- (d) where the item is a Part, Spare, and/or any Major Component, that if such Part, Spare, and/or any Major Component is incorporated into a Unit, such incorporation does not prevent such Unit from complying with (a) to (c);

**Final Acceptance** means, in respect of each Unit, that the Unit complies with the Final Acceptance Criteria as evidenced by and occurring upon the issue of a Final Acceptance Certificate for that Unit;

**Final Acceptance Certificate** means a certificate in the form or substantially in the form set out in Part A (*Pro Forma Certificates*) of Schedule 20 (*Pro Forma Certificates*) issued by the Purchaser in respect of any Unit;

**Final Acceptance Criteria** means each of the criteria for issue of a Final Acceptance Certificate set out in clause 15.15;

**Final and Fleet Acceptance Management Plan** has the meaning given to such Plan in paragraph 9.1(l) of Schedule 5 (*Contract Management*);

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**Financial Close Protocol** means the foreign exchange rate protocol substantially in the form as included in Schedule 23 (*Financial Close Protocol*), as initialled for the purposes of identification as such by (i) the Purchaser Contract Manager (or any other duly authorised representative(s)), on behalf of the Purchaser, and (ii) the Manufacturer Contract Manager (or any other duly authorised representative(s)), on behalf of the Manufacturer;

**Financiers** has the meaning given to such term in paragraph 2(a) of Part A (*Manufacturer Obligations*) of Schedule 13 (*Insurance*);

**Financial Closing Spreadsheet** or **FCS** has the meaning given to such term in Schedule 23 (*Financial Close Protocol*);

**Fit Out Specification** has the meaning given to such term in paragraph 1.1 of Schedule 9 (*Maintenance Facilities and Chingford Stabling Site*);

**Fixed Assets** has the meaning given to such term in paragraph 4.1 of Schedule 9 (*Maintenance Facilities and Chingford Stabling Site*);

**Fixed Price Quotation** means a fixed price provided by the Manufacturer to the Purchaser for any Change in Costs, which may consist of a single lump sum payment, a number of payments or a change to the Milestone Payments;

**Fleet** means the Units to be provided pursuant to this Agreement excluding any Option Units;

**Fleet Acceptance** means satisfaction of the Fleet Acceptance Criteria as evidenced by and occurring upon the issue of a Fleet Acceptance Certificate;

**Fleet Acceptance Certificate** means a certificate in the form or substantially in the form set out in Part A (*Pro forma Certificates*) of Schedule 20 (*Pro Forma Certificates*) issued by the Purchaser in respect of the Fleet as to compliance of the Fleet with the Fleet Acceptance Criteria;

**Fleet Acceptance Criteria** means each of the criteria for issue of a Fleet Acceptance Certificate set out in clause 15.19;

**Fleet MDBSAF Target** has the meaning given to such term in clause 15.19(c);

**Fixed Price Quotation** means a fixed price provided by the Manufacturer to the Purchaser for a Change in Costs which may consist of a single lump sum payment, a number of payments or a change to the Milestone Payments;

**FM Affected Party** has the meaning given to such term in clause 32.2;

**FM Termination Notice** has the meaning given to such term in clause 32.8;

**FOI Information Request** means a request under the FOI Legislation for information recorded in any form held by the Purchaser or held by the Manufacturer on behalf of the Purchaser;

**FOI Legislation** means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or

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re-enactment of any of them and any guidance issued by the Information Commissioner in relation to such Legislation;

**Foreign Exchange Adjusted Option Price** means the Option Price as adjusted in accordance with the calculation set out in paragraph 1.1 of Part C (*Options for Supply of Further Units and Equipment*) of Schedule 10 (*Milestones and Security*);

**Force Majeure Event** means the occurrence after the date of this Agreement of:

- (a) act of terrorism;
- (b) war, invasion, acts of foreign enemies, hostilities, civil war, revolutions, insurrection, riots or civil unrest; and/or
- (c) nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of actions of the Maintainer; or
- (d) pressure waves caused by devices travelling at supersonic speeds;

save to the extent that such event is caused by the Maintainer, any Subcontractor, or their respective agents, officers and/or employees;

**Free Issue Materials** means those materials (if any) provided by the Purchaser to the Manufacturer at no cost to the Manufacturer for inclusion in the Units on the basis set out in clause 23.5 and the Train Technical Specification;

**GE/RT8270 Equivalent** means a set of procedures and processes relating to route acceptance for railway vehicles on to Railway Infrastructure to apply to any areas of the LO Infrastructure which do not belong to Network Rail, which is similar to the procedure set out in RGS GE RT8270;

**GOB Infrastructure** means all of the Railway Infrastructure described in Schedule 4 (*LO Infrastructure - Routes*) relating to the Gospel Oak to Barking route (as upgraded from time to time);

**Good Industry Practice** means the exercise by the Manufacturer of that degree of skill, care, diligence, prudence, foresight and practice which would ordinarily be expected of a skilled and experienced contractor engaged in the relevant discipline;

**Greater London Authority** or **GLA** means the Greater London Authority, a body corporate established by section 1 of the Greater London Authority Act 1999 and its successors;

**Group** means, in relation to any company (which for the purposes of this Agreement shall include TfL), that company and any group undertaking of that company from time to time and all of them and each of them as the context admits; for which purposes *group undertaking* has the meaning given to such term by section 1161 of the Companies Act 2006;

**Guarantee** means the guarantee to be provided by the Guarantor in favour of the Purchaser in the form set out in Schedule 21 (*Form of Parent Company Guarantee*);

**Guarantee Event** means:

- (a) the Guarantee ceases to be in full force and effect; or
- (b) the Guarantor's obligations under the Guarantee are or become wholly or partly invalid or unenforceable;

**Guarantor** means Bombardier Inc., a company incorporated under the laws of Canada whose registered office is at 800 René Lévesque Boulevard West, Montréal, Québec Canada H3B 1YB;

**Hazard Log** has the meaning given to such term in paragraph 9.4(b) of Schedule 6 (*Assurance Acceptance*);

**Hazard Management Procedure** means the procedure for hazard management created by the Manufacturer in accordance with paragraph 9.4 of Schedule 6 (*Assurance Acceptance*) and as set out in Appendix 3 (*Hazard Management Procedure*) of Schedule 6;

**HMRI** means Her Majesty's Railway Inspectorate and any successor body;

**Holding Company** has the meaning given to such term in section 1159 of the Companies Act 2006, save that for the purposes of determining whether one entity is a Holding Company of another, any transfer of shares by way of security or to a nominee of the transferor shall be disregarded;

**HSE** means the Health and Safety Executive;

**HSWA** means the Health and Safety at Work Act 1974;

**Iford A Maintenance Depot** means the light maintenance depot operated by the Maintainer and to be used by the Maintainer for light and heavy maintenance and stabling of Units in accordance with the TSA;

**Immediately Effective Clauses** means clauses 1 (*Definitions and Interpretation*), 2 (*Commencement and Conditions Precedent*), 3 (*Representations and Warranties*), 29 (*Intellectual Property Rights*), 32 (*Force Majeure*), 34 (*Corrupt Gifts Termination*), 35 (*Consequences of Termination*), 37 (*Indemnities and Limitations on Liabilities*), Clause 40 (*Dispute Resolution*) and 42 (*Safety, Quality and Environment*) to 55 (*Set-Off*) (inclusive), together with any Schedules required to give effect to those clauses;

**Indemnified Parties** means:

- (a) the Purchaser;
- (b) the Owner
- (c) any Operator; and
- (d) TfL,

and, in each case, all or any of their respective Affiliates, employees, servants, agents, directors, officers, contractors and subcontractors and **Indemnified Party** shall mean either of them, as appropriate;

REDACTED

**Indemnifying Party** means a Party that has agreed under the terms of this Agreement to indemnify another person on the basis set out in this Agreement;

**Independent Auditor** has the meaning given to such term in paragraph 7.6 of Schedule 19 (*Termination Payments*);

**Indirect Losses** means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, consequential loss and for indirect loss of any nature;

**Industry Standards** means all the laws, rules, regulations, guidance, directions, recommendations and instructions, including codes of practice and conduct which have the force of law or with which it is generally accepted within the rail industry in the United Kingdom that it is good practice to comply, relating to the performance of this Agreement and/or applicable to the Units or the Equipment which are or have been issued by the Regulator, Network Rail, the Railway Safety Directorate, HSE, the Safety Authority, a Notified Body, a Designated Body, ATOC, RSSB (in each case to the extent acting in its capacity as a relevant authority under the Applicable Laws and Standards) or any other Competent Authority or other person from time to time legally authorised to set standards in respect of the rail industry, and shall include Railway Group Standards, Network Rail Standards, the Rule Book, TSIs, Notified National Technical Rules and/or any equivalent standard or any standard amending, replacing or superseding any of the foregoing;

**Ineffective** and **Ineffectiveness** have the meanings given to such terms in the Utilities Contract Regulations and shall be construed accordingly;

**Infrastructure Manager** means the person taking on the role of infrastructure manager in respect of Railway Infrastructure under the ROGS;

**Infringement** shall have the meaning given to such term in clause 29.13;

**Initial Change Appraisal** means any written report delivered by the Manufacturer in accordance with paragraph 2.1 of Part B (*Purchaser Changes*) of Schedule 12 (*Change Procedure*);

**Initial Claim Appraisal** means any written report delivered by the Manufacturer in accordance with paragraph 1.1 of Part D (*Compensation Changes*) of Schedule 12 (*Change Procedure*);

**Initial PD Claim Appraisal** has the meaning given to such term in clause 17.5;

**Initial Order** has the meaning given to such term in clause 6.1;

**Initial Spares** means all of those items listed in Part A (*Initial Spares*) of Schedule 8 (*Spares and Special Tools*) and **Initial Spare** shall mean any one of them;

**Initial Special Tools** means all of the items listed in Part B (*Initial Special Tools*) of Schedule 8 (*Spares and Special Tools*) and **Initial Special Tool** shall mean any one of them;

**Insolvency Event** in relation to any person means any of the following:

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- (a) such person stopping or suspending or threatening to stop or suspend payment of all or a material part of its debts, or becoming unable to pay its debts, or being deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986;
- (b) any step being taken by any person with a view to the winding up of such person or any person presenting a winding-up petition in respect of such person which is not dismissed within 7 days;
- (c) any step being taken to enforce security over or a distress execution or other similar process being levied or served out against the whole or a substantial part of the assets or undertaking of such person;
- (d) a receiver, administrative receiver, administrator, compulsory manager or other similar officer being appointed in respect of such person;
- (e) such person ceasing or threatening to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the Purchaser (in its absolute discretion) before that step is taken;
- (f) the making by such person of a general assignment or an arrangement or composition with or for the benefit of creditors; or
- (g) any event occurring which, under the laws of any relevant jurisdiction other than England and Wales, has an analogous or equivalent effect to any of the events listed above;

*Insolvent* means:

- (a) in the case of a company that it has suffered, or is the subject of, an Insolvency Event that is current and/or has not been dismissed or fully remedied; or
- (b) in the case of an individual that:
  - (i) he has had a bankruptcy order or an interim order made against him and such order has not been discharged;
  - (ii) he has entered into a composition with his creditors or a scheme of arrangement of his affairs; or
  - (iii) there is current an appointment of an interim receiver in respect of his property; or
- (c) in either case that circumstances exist or proceedings have been instituted (and not dismissed) or events have occurred or are occurring outside the jurisdiction of the courts of England which have an analogous effect to any referred to in paragraphs (a) and (b);

*Insurances* means any insurances taken out by the Manufacturer in accordance with Schedule 13 (*Insurance*);

REDACTED

**Intellectual Property Rights** or **IPR** means all rights in or in relation to any and all patents, utility models, trade and service marks, rights in designs, get-up, trade, business or domain names, copyrights, topography rights (whether registered or not and any applications to register or rights to apply for registration of any of the foregoing), rights in inventions, know-how, trade secrets and other confidential information, rights in databases and all other intellectual property rights of a similar or corresponding character which may now or in the future subsist in any part of the world;

**Interior Features** means those elements of the visible interior design of the Vehicles (including the overall internal layout, seating positions, fittings, "look and feel" and branding) that are original and distinctive (meaning not commonplace in the relevant design field);

**Interior Features IPR** means any and all Manufacturer IPR and Third Party IPR as may be developed, used, acquired or licensed in relation to or exist in the Interior Features;

**Interoperability Regulations** means the Railways (Interoperability) Regulations 2011;

**Invitation to Negotiate** means the invitation to negotiate issued by the Purchaser dated 22 August 2014 inviting pre-qualified bidders to submit tenders for the award of the Concession;

**Invoice Date** means the date on which the Manufacturer provides to the Purchaser a written invoice detailing all amounts due and payable to the Manufacturer under the relevant paragraphs of Schedule 19 (*Termination Payments*);

**IPR Assets** means the Technical Documents and the Software (including its Source Code);

**IPR Claim** has the meaning given to such term in clause 29.12;

**Irrecoverable VAT** has the meaning given to it in clause 28.6;

**Key Posts** means those key roles within the Manufacturer organisation listed in Appendix 1 (*Key Posts*) to Schedule 5 (*Contract Management*) to be undertaken only by persons approved by the Purchaser in advance in accordance with paragraph 3 (*Organisational Arrangements*) of Schedule 5 (*Contract Management*);

**Key Subcontract** means a Subcontract listed in Schedule 11 (*Subcontracts*);

**Key Subcontractor** means a Subcontractor that is Party to a Key Subcontract;

**Law** means any Legislation or common law of the United Kingdom, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of section 2 of the European Communities Act 1972 in each case enforceable in the United Kingdom or any other principles of law or equity established by the Courts;

**LCIA** has the meaning given to such term in paragraph 3.2 of Schedule 18 (*Dispute Resolution Procedure*)

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**Legislation** means any Act of Parliament or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of section 2 of the European Communities Act 1972 in each case enforceable in the United Kingdom (and including any modification, amendment or re-enactment of such Legislation from time to time and any instruments, orders or regulations made pursuant thereto);

**LD Notice** has the meaning given to such term in clause 16.8;

**LFEPA** means the London Fire and Emergency Planning Authority and any successor body;

**LO Concession** means the concession or franchise for the operation of, inter alia, the LO Services awarded by TfL or a subsidiary of TfL from time to time;

**LO Infrastructure** means all of the routes and Railway Infrastructure set out in Schedule 4 (*LO Infrastructure - Routes*) (as upgraded from time to time);

**Losses** means any claims, proceedings, losses, liabilities, suits, judgements, costs, expenses, Taxes, penalties or fines whether arising under statute, contract or at common law;

**Lost Unit** has the meaning given to such term in clause 22.1;

**LO Services** means the services (including all passenger services, diversionary routes and ECS Movements) to be operated on the LO Infrastructure by or on behalf of the Purchaser or the Operator as set out in the Diagrams and/or the Train Plan (each as defined in the TSA) from time to time;

**Maintainer** means the person appointed by the Purchaser to provide maintenance and other services in accordance with the Train Services Agreement;

**Maintenance Facility** means each of the facilities at the Ilford A Maintenance Depot and the Willesden Depot where the Maintainer may undertake stabling, cleaning and maintenance of the Units in accordance with the TSA, and/or such other facility or facilities as may be agreed between the Manufacturer and the Purchaser from time to time;

**Major Component** means each of the items set out in column 1 of the table set out in clause 20.2;

**Management Plan** has the meaning given to such term in paragraph 9.1(a) of Schedule 5 (*Contract Management*);

**Mandatory Modification** means a Modification required by Applicable Laws and Standards;

**Manuals** means the documents which fully describe how the Units, the Simulator, the Spares and the Special Tools should be operated, serviced, maintained, repaired and overhauled (including, in the case of the Simulator, any relocation instructions) to be provided by the Manufacturer pursuant to clause 6.5;

REDACTED

**Manufacturer Change** has the meaning given to such term in paragraph 1.1 of Part C (*Manufacturer Changes*) of Schedule 12 (*Change Procedure*);

**Manufacturer Change Notice** has the meaning given to such term in paragraph 1.1 of Part C (*Manufacturer Changes*) of Schedule 12 (*Change Procedure*);

**Manufacturer Compensation Proposal** has the meaning given to such term in paragraph 5.1(a) of Part D (*Compensation Changes*) of Schedule 12 (*Change Procedure*);

**Manufacturer Confidential Information** means the Confidential Information listed in Schedule 17 (*Manufacturer Confidential Information*);

**Manufacturer Contract Manager** has the meaning given to such term in paragraph 1.3 of Schedule 5 (*Contract Management*);

**Manufacturer Cost Proposal** has the meaning given to such term in paragraph 7.1(a) of Part B (*Purchaser Changes*) of Schedule 12 (*Change Procedure*);

**Manufacturer Escrow Agreement** means an agreement in the form or substantially in the form set out in Part A (*Manufacturer Escrow Agreement*) of Schedule 22 (*Software Escrow Agreements*) between the Manufacturer, the Purchaser and the Escrow Agent;

**Manufacturer Escrow Material** means the Escrow Material owned by the Manufacturer;

**Manufacturer Event of Default** means any of the events or circumstances listed in clause 30.1;

**Manufacturer Fault** means a Fault which is not a Purchaser Fault;

**Manufacturer Fit Out Assets** means those assets relating to the Manufacturer Fit Out Works as identified in Appendix 1 (*Manufacturer Fit Out Assets*) of Schedule 9 (*Maintenance Facilities and Chingford Stabling Site*);

**Manufacturer Fit Out Assets Acceptance Certificate** means a certificate in the form or substantially in the form set out in Part A (*Pro forma Certificates*) of Schedule 20 (*Pro Forma Certificates*), issued by the Purchaser in respect of a Manufacturer Fit Out Asset, certifying that it complies with the applicable Equipment Acceptance Criteria;

**Manufacturer Fit Out Works** has the meaning given to such term in paragraph 1.2 of Schedule 9 (*Maintenance Facilities and Chingford Stabling Site*);

**Manufacturer Group** means the Manufacturer, the Guarantor and any member of their/its Group from time to time;

**Manufacturer IPR** means the IPR, whether existing at the date of this Agreement or arising hereafter, that is owned by the Manufacturer or any of its Affiliates;

**Manufacturer Escrow Release Events** means those release events designated as a "Release Event" in the Manufacturer Escrow Agreement;

REDACTED

**Manufacturer Termination Notice** has the meaning given to such term in clause 31.3;

**Manufacturer Train Proposal** means the Manufacturer's proposal in Schedule 2 (*Manufacturer Train Proposal*), setting out how the Manufacturer proposes to achieve the requirements of the Train Technical Specification;

**Manufacturer's Records** has the meaning given to such term in clause 9.3(a)(i);

**Manufacturer's Works** means the Manufacturer's premises at Litchurch Lane, Derby DE24 8AD;

**Manufacturing Tooling** means:

- (a) all jigs, fixtures and patterns required for forming and/or moulding parts or laminating elements, dies for hot and/or cold treated shape sections and tooling for pressed parts; and
- (b) all other tools and/or equipment used in the production of a Unit including all related manuals and other related documentation,

and the Intellectual Property Rights to the same;

**Maximum IO Required APB Amount** has the meaning given to such term in paragraph 1.6 of Part A (*Advance Payment Bond*) of Schedule 10 (*Milestones and Security*);

**Maximum Liability** has the meaning given to such term in clause 37.5;

**MDBSAF** or **Mean Distance Between Service Affecting Failure** means the mean distance travelled per Service Affecting Failure measured across all of the Units comprising the relevant test sample;

**Method Statement** has the meaning given to such term in paragraph 1.2 of Schedule 9 (*Maintenance Facilities and Chingford Stabling Site*);

**Milestone** means the completion of a specified activity or collection of activities or the occurrence of an event defined or identified as such in the Schedule of Milestones;

**Milestone Payment** means the sum payable to the Manufacturer in respect of each Milestone in accordance with Schedule 10 (*Milestones and Security*);

**Milestone Payment Invoice** has the meaning given to such term in paragraph 5.1 of Part B (*Milestones*) of Schedule 10 (*Milestones and Security*);

**Minimum Fleet** means the first 8 Dual Voltage Units required under the Project Programme;

**Minimum Fleet Handback Date** has the meaning given to such term in clause 30.6(c);

**Minimum Fleet Handback Notice** has the meaning given to such term in clause 30.6;

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**Mock-Up** means a mock-up of a Unit to be delivered by the Manufacturer in accordance with the Train Technical Requirements and the terms of this Agreement;

**Modification** means any change, modification or addition to any Unit, Vehicle or item of Equipment;

**Moveable Asset** has the meaning given to such term in paragraph 4.2 of Schedule 9 (*Maintenance Facilities and Chingford Stabling Site*);

**National Vehicle Register** has the meaning given to such term in the Interoperability Regulations;

**Network** means the rail network of which Network Rail is the owner and/or operator and which is situated in Great Britain and any other part of the LO Infrastructure;

**Network Rail** or **NR** means Network Rail Infrastructure Limited a company incorporated under the laws of England and Wales (registered number 2904587), whose registered office is at Kings Place, 90 York Way, London N1 9AG and any successors to its functions or any relevant part thereof;

**Network Rail Standards** means to the extent applicable to the Units, the Simulator, the Spares and the Special Tools, those operational and engineering standards published by Network Rail associated with the safe interworking of the operation of rolling stock or depots with Network Rail's facilities or infrastructure;

**Notice of Appointment** has the meaning given to such term in paragraph 3.4 of Schedule 18 (*Dispute Resolution Procedure*)

**Notice of Dispute** has the meaning given to such term in paragraph 3.1 of Schedule 18 (*Dispute Resolution Procedure*);

**Notice of Milestone Achievement** has the meaning given to such term in paragraph 3.1 of Part B (*Milestones*) of Appendix 2 to Schedule 10 (*Milestones and Security*);

**Notice to Proceed** has the meaning given to such term in clause 4.1;

**Notified Body** or **NoBo** means any duly accredited entity appointed by the Manufacturer as a notified body in accordance with the Interoperability Regulations;

**Notified National Technical Rules** or **NNTRs** has the meaning given to such term the Interoperability Regulations;

**On Train Monitoring Recorder** or **OTMR** means the black box recorder used to record each state change of all monitored signals;

**Open Book Basis** means the provision of any costs or other expenses in accordance with the principles set out in Schedule 15 (*Open Book Accounting*);

**Operator** means the person(s) appointed by TfL or a subsidiary of TfL to deliver, inter alia, the LO Services;

**Option** means any of the options exercisable by the Purchaser contained in clause 6.6;

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**Option Expiry Date** means the latest of the option exercise dates for Option Units and/or Option Vehicles contained in the table in Part C (*Options for supply of further Units and Equipment*) of Schedule 10 (*Milestones and Security*);

**Option Notice** has the meaning given to such term in clause 6.6;

**Option Order** means an order for Option Units, Option Vehicles and/or Option Spares as set out in an Option Notice;

**Option Price(s)** means the prices in respect of each Option as set out in Part C (*Options for supply of further Units and Equipment*) of Schedule 10 (*Milestones and Security*);

**Option Spares** means supplementary Spares to be procured pursuant to the exercise of an Option by the Purchaser in accordance with clause 6.6;

**Option Unit** means any additional Unit to be supplied by the Manufacturer pursuant to the exercise of an Option by the Purchaser in accordance with clause 6.6;

**Option Unit Change** means a Purchaser Change which requires Option Units and/or Option Vehicles and/or Option Spares to be manufactured, tested, commissioned and delivered in accordance with the terms of this Agreement;

**Option Vehicle** means any supplementary railway vehicle to be supplied by the Manufacturer pursuant to the exercise of an Option by the Purchaser in accordance with clause 6.6;

**Other Party** has the meaning given to such term in clause 29.12(b);

**Owner** means the Purchaser or such other person nominated by the Purchaser in accordance with clauses 18.3 and 42.1 to take title to, have supplied to it, and own, the Purchased Equipment;

**Part** means any component, furnishing or equipment forming part of a Unit, Major Component, Initial Spare, Initial Special Tool, Option Spare or Simulator from time to time;

**Party** means each of:

- (a) the Purchaser;
- (b) the Manufacturer,

and **Parties** shall be construed accordingly;

**Passenger Information System** or **PIS** has the meaning given to such term in the Train Technical Specification;

**PD Claim Appraisal** has the meaning given to such term in clause 17.8;

**PD Claim Appraisal Instruction** has the meaning given to such term in clause 17.6;

**PD Claim Confirmation Notice** has the meaning given to such term in clause 17.10;

**Permitted Delay Event** has the meaning given to such term in clause 17.1;

**Permitted Design Change** means any of the changes to the design of the Units, Equipment or related equipment identified as "Permitted Design Changes" in Appendix 1 (*Permitted Design Changes*) of Schedule 6 (*Assurance Acceptance*);

**Permitted Party** has the meaning given to such term in clause 44.3(a);

**Permitted Use** means the operation of the Units on any part of the LO Infrastructure and on such other parts of the Network as any authority to operate, with or without passengers, issued by the relevant Government Authority may permit, and the operation of the Simulator, in each case in accordance with all Applicable Laws and Standards, Relevant Approvals and the Manuals;

**Personal Data** means personal data as defined in the DPA which is supplied to the Manufacturer by the Purchaser or obtained by the Manufacturer in the course of performing its obligations under this Agreement;

**Persistent Breach** has the meaning given to such term in clause 30.3;

**Plan** means any of the plans, procedures, statements, policies and/or other documentation required to be produced by the Manufacturer in accordance with this Agreement;

**Preconditions** has the meaning given to such term in clause 15.12;

**Preconditions Timetable** has the meaning given to such term in clause 15.12;

**Preliminary Unit Design Phase** means that period starting on the Commencement Date and ending on the date of the notice served by the Purchaser pursuant to paragraph 11.6(a) of Schedule 6 (*Assurance Acceptance*);

**Preliminary Unit Design Submissions** has the meaning given to such term in paragraph 11.6(a) of Schedule 6 (*Assurance Acceptance*);

**Pre-Provisional Acceptance** means, in relation to any Unit, that the Unit complies fully with the Pre-Provisional Acceptance Criteria as evidenced by and occurring upon the issue of a Pre-Provisional Acceptance Certificate for that Unit;

**Pre-Provisional Acceptance Certificate** means a certificate in the form set out in Part A (*Pro Forma Certificates*) of Schedule 20 (*Pro Forma Certificates*), issued by the Purchaser in respect of a Unit, as to compliance by such Unit with the Pre-Provisional Acceptance Criteria;

**Pre-Provisional Acceptance Criteria** means, in respect of any Unit, each of the criteria for issue of a Pre-Provisional Acceptance Certificate as set out in clause 15.4;

**Pre-Provisional Fault Free Running** means, in respect of a Unit, that such Unit has successfully completed 3,000 miles SAFFM in the case of the first five Units and 1,000 SAFFM in the case of each subsequent Unit on infrastructure that is (to the reasonable satisfaction of the Purchaser) representative of the LO Infrastructure;

**Primary Assembly and Manufacture** means the assembly of each modular body shell, the installation of all Subsystems within each body shell, and the routine testing of all final assembled vehicles;

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*Procurement Schedule* has the meaning given to such term in Appendix 5 (*Procurement Schedule Requirements*) of Schedule 14 (*Responsible Procurement*);

*Progressive Assurance* means the process by which the Manufacturer provides evidence on a progressive basis to the Purchaser throughout the Assurance Period to demonstrate to the Purchaser that the Manufacturer has understood the Train Technical Requirements and it is carrying out its obligations and delivering each item of Purchased Equipment in accordance with the Train Technical Specification, all Applicable Laws and Standards, Relevant Approvals, Good Industry Practice, safety and quality requirements and all other requirements of this Agreement;

*Prohibited Act* means:

- (a) offering, giving or agreeing to give any servant, agent, contractor or representative of a Public Sector Body any gift or consideration of any kind as an inducement or reward:
  - (i) for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with a Public Sector Body;
  - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with a Public Sector Body;
- (b) entering into this Agreement or any of the Project Documents or any contract with a Public Sector Body in connection with which commission has been paid or has been agreed to be paid by the Manufacturer or on its behalf, or to its knowledge, unless the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Purchaser;
- (c) committing any offence:
  - (i) under the Bribery Act 2010;
  - (ii) under law created in respect of fraudulent acts; or
  - (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with a Public Sector Body; or
- (d) defrauding or attempting to defraud or conspiring to defraud a Public Sector Body;

*Project* means the Works and the provision of the Services by the Maintainer in accordance with the TSA;

*Project Document* means:

- (a) this Agreement;
- (b) the Train Services Agreement;
- (c) the Guarantee;

- (d) the Guarantee (as defined in the TSA);
- (e) any Advance Payment Bond;
- (f) the Performance Bond (as defined in the TSA);
- (g) the agency agreement to be entered into between the Operator, the Purchaser and the Maintainer; and
- (h) the Escrow Agreement;

**Project Entity** has the meaning given to such term in the Interoperability Regulations;

**Project Office** has the meaning given to such term in clause 7.8(b);

**Project Programme** means the programme set out in Schedule 3 (*Project Programme*) as may be amended from time to time in accordance with this Agreement;

**Project Progress Report** has the meaning given to such term in paragraph 7.1 of Schedule 5 (*Contract Management*);

**Project Review Meeting** has the meaning given to such term in paragraph 8.1 of Schedule 5 (*Contract Management*);

**Provisional Acceptance** means, in relation to any Unit, that the Unit complies fully with the Provisional Acceptance Criteria as evidenced by and occurring upon the issue of a Provisional Acceptance Certificate for that Unit, and **Provisionally Accept** and **Provisionally Accepted** shall be construed accordingly in each case;

**Provisional Acceptance Certificate** or **PAC** means a certificate in the form set out in Part A (*Pro forma Certificates*) of Schedule 20 (*Pro Forma Certificates*), issued by the Purchaser in respect of a Unit, certifying that such Unit complies with the Provisional Acceptance Criteria;

**Provisional Acceptance Criteria** means, in respect of any Unit, each of the criteria for issue of a Provisional Acceptance Certificate set out in clause 15.6;

**Public Sector Body** means all Ministers of the Crown, government departments, Crown agencies and authorities, local authorities or similar public sector bodies and any body corporate owned or controlled by any of them (including for the avoidance of doubt the Purchaser, TfL and the SoS);

**Purchased Equipment** means each item comprising the Initial Order and any Option Units, Option Vehicles, Option Spares, other Spares and other Special Tools ordered from the Manufacturer in accordance with this Agreement;

**Purchaser Change** has the meaning given to such term in paragraph 1.1 of Part B (*Purchaser Changes*) of Schedule 12 (*Change Procedure*);

**Purchaser Change Notice** has the meaning given to such term in paragraph 1.2 of Part B (*Purchaser Changes*) of Schedule 12 (*Change Procedure*);

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**Purchaser Contract Manager** has the meaning given to such term in paragraph 1.1 of Schedule 5 (*Contract Management*);

**Purchaser's Estate** means any area that is owned, occupied or managed by the Purchaser, TfL or any member of the TfL Group;

**Purchaser Event of Default** means any of the events or circumstances listed in clause 31.1;

**Purchaser Fault** means a Fault which results from:

- (a) the Operator or the Purchaser:
  - (i) operating the relevant Unit or item of Equipment materially other than in accordance with the Permitted Use; or
  - (ii) maintaining the relevant Unit or item of Equipment materially other than in accordance with the Maintenance Plan and the Manuals; or
- (b) damage to a Unit whilst that Unit is not, in accordance with the terms of this Agreement or the TSA, in the Manufacturer's, the Maintainer's or any Subcontractor's (or Subcontractor of the Maintainer) care, custody or control; or
- (c) damage caused to a Unit (as proved by the Manufacturer and demonstrated in written evidence from a reputable and independent third party with relevant experience) as a direct result of any Railway Infrastructure (other than any Railway Infrastructure maintained by the Manufacturer or the Maintainer) being in a condition which is worse than that to be expected of such Railway Infrastructure which is being maintained by a competent maintenance contractor having regard to:
  - (i) the standards applicable to such Railway Infrastructure (being Railway Group Standards in the case of Railway Infrastructure controlled by Network Rail); and
  - (ii) the condition of such Railway Infrastructure (to the extent that such Railway Infrastructure exists) at the date of this Agreement taking into account that the condition of certain parts of such Railway Infrastructure may not be compliant with Railway Group Standards,

in each case, where such Fault is not caused by: (A) an act, omission, neglect or default of the Manufacturer, the Maintainer, any other member of the Manufacturer's Group, any Subcontractor or Subcontractor of the Maintainer, or the employees or suppliers of any of them; or (B) the Manufacturer's or the Maintainer's performance, non-performance or purported performance of their respective obligations under this Agreement or the TSA;

**Purchaser Milestone Payment Certificate** has the meaning given to such term in paragraph 4.1(a) of Part B (*Milestones*) of Schedule 10 (*Milestones and Security*);

**Purchaser Statement** means a statement issued by the Purchaser to the Manufacturer in relation to the tender for Acceptance of a Unit or an item of Equipment, setting out

which of the relevant conditions and/or Acceptance Criteria (as applicable) have not been satisfied;

*Purchaser Termination Notice* has the meaning given to such term in clause 30.7;

*Qualified Provisional Acceptance* means the qualified provisional acceptance by the Purchaser of a Unit which does not comply fully with the Provisional Acceptance Criteria, in accordance with clause 15.12, as evidenced by and occurring upon the issue of a Qualified Provisional Acceptance Certificate for that Unit;

*Qualified Provisional Acceptance Certificate* or *QPAC* means a certificate in the form set out in Part A (*Pro Forma Certificates*) of Schedule 20 (*Pro Forma Certificates*), issued by the Purchaser in respect of a Unit in accordance with clause 15.12;

*Qualifying Change in Law* means a Change in Law which:

- (a) is specific to any or all of the design, manufacturing, supply, testing, approval and operation of rolling stock or the fit out and/or operation of the Maintenance Facilities; and
- (b) leads to a material and demonstrable adverse effect on the Manufacturer's costs and/or time in performance of its obligations under this Agreement;

*Quality Management Plan* has the meaning given to such term in paragraph 10.1 of Schedule 5 (*Contract Management*);

*RAIB* means the Railway Accident Investigation Branch;

*Railway Group Standards* or *RGS* means:

- (a) technical standards with which railway assets, or equipment used on or as part of railway assets, must conform; and
  - (b) operating procedures with which the operators of railway assets must comply,
- in each case as issued and maintained by the Rail Safety and Standards Board and authorised pursuant to the document known as the Railway Group Standards Code;

*Railway Infrastructure* means the fixed assets used for the operation of a railway including its permanent way and plant used for signalling or exclusively for supplying electricity for operational purposes to the railway;

*Railway Period* means each consecutive 28 day period, the first of which starts at 2am on 1 April in each year and, in respect of the first or last such period in any year, as may be varied by Network Rail;

*Railway Safety Directorate* means the Regulator's safety body and any successor to all or any of its functions;

*Recipient* has the meaning given to such term in clause 37.4;

*Rectification Plan* has the meaning given to such term in clause 30.7(b)(i);

REDACTED

**Recognised Investment Exchange** has the meaning given to such term in section 285 of the Financial Services and Markets Act 2000;

**Recurrent Defect** means a Manufacturer Fault in a Unit, Vehicle, Spare, Simulator or Part and which either (a) in any consecutive 12-month period affects five or more Units; or (b) the Purchaser reasonably believes will affect five or more Units in any 12-month period;

**Recurrent Defect Period** means, in respect of a Unit, the period commencing on the date of Provisional Acceptance or Qualified Provisional Acceptance of that Unit and expiring on the date which is ten years after Provisional Acceptance or Qualified Provisional Acceptance of the last Unit to be Provisionally Accepted;

**Refurbishment** has the meaning given to such term in the TSA;

**Regulator** means the office of rail regulation from time to time established under the Railways and Transport Safety Act 2003 and includes any successor to all or any of its functions;

**Relevant Approvals** means all up-to-date consents, approvals, permissions, authorisations, acceptances, certifications, licences, exemptions, filings, permits, registrations, notarisations, declarations, letters of no objection and other matters required in each case from any Competent Authority, pursuant to any Applicable Laws and Standards in relation to any of the Manufacturer's obligations under this Agreement including (without limitation) under the Act, ROGS and the Interoperability Regulations;

**Relevant Approvals Management Plan** has the meaning given to such term in paragraph 9.1(j) of Schedule 5 (*Contract Management*);

**Relevant Date** has the meaning given to such term in clause 45.1(d);

**Relevant Event** means:

- (a) a Purchaser Change;
- (b) a Qualifying Change in Law;
- (c) a Compensation Event; or
- (d) any other matter as a result of which there may be adjustments to the Milestone Payments in accordance with this Agreement;

**Relevant Minutes Lateness** has the meaning given to such term in the TSA;

**Relevant Property** means the LO Infrastructure and any other property belonging to any of the Indemnified Parties;

**Relief Event** means:

- (a) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation (to the extent it does not constitute a Force Majeure Event), earthquakes, riot and civil commotion;

- (b) failure by any statutory undertaker, utility company, local authority or other like body to carry out works or provide services;
- (c) any failure or shortage of power or transport;
- (d) any blockade or embargo which does not constitute a Force Majeure Event;
- (e) any:
  - (i) official or unofficial strike;
  - (ii) lockout;
  - (iii) go-slow; or
  - (iv) other dispute,

generally affecting the train manufacturing industry or a significant sector of it,

unless any of the events listed in limbs (a) to (e) inclusive arises (directly or indirectly) as a result of any breach or wilful default or wilful act of the Manufacturer or any of its Subcontractors of any tier;

**Remedial Plan** has the meaning given to such term in clause 30.2(a)(iii);

**Replacement Strategy** has the meaning given to such term in clause 22.2(a);

**Replacement Works** has the meaning given to such term in clause 22.2(a);

**Request for Information** or **RFI** has the meaning given to such term in clause 7.6(b);

**Required APB Bond Amount** means the amount for which the Manufacturer is required to provide one or more Advance Payment Bonds from time to time in accordance with Part A (*Advance Payment Bond*) of Schedule 10 (*Milestones and Security*), being the Initial APB Bond Amount at the Commencement Date, as increased and/or decreased thereafter in accordance with paragraphs 1.5 to 1.8 of Part A of Schedule 10;

**Required Change** means a Change required in order to comply with a Change in Law or a Change which is required pursuant to the terms of this Agreement;

**Required Insurance** has the meaning given to such term in paragraph 1.1 of Part A (*Manufacturer Obligations*) of Schedule 13 (*Insurance*);

**Requirements** means each of the Train Technical Specification, Schedule 5 (*Contract Management*) and the Assurance Regime and **Requirement** shall be construed as meaning any one of them;

**Requirements Management System** has the meaning given to such term in paragraph 9.9(a) of Schedule 6 (*Assurance Acceptance*);

**Retail Price Index** or **RPI** means the "all items" RPI figure excluding mortgage payments (RPI(x)) published on a monthly basis by the Office for National Statistics;

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*Retention Period* has the meaning given to such term in clause 9.3(a)(ii);

*Revocation* has the meaning given to such term in paragraph 2.1 of Schedule 5 (*Contract Management*) and *Revoked* shall be construed accordingly;

*RIDDOR* means the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995;

*ROGS* means the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

*Rolling Stock Library* means the national central database of rail vehicle design and operational data, which is maintained by the infrastructure controller's authorised agent;

*Route Acceptance* has the meaning ascribed to that term in Railway Group Standard GE/RT8270, issue 1, dated February 2003 or in any GE/RT8270 Equivalent;

*RSSB* means the Rail Safety and Standards Board Limited, a company incorporated in England and Wales with registered number 04655675, and any successor body;

*Rule Book* means the document with reference GE/RT 8000 issued by RSSB as updated from time to time;

*Rules* has the meaning given to such term in paragraph 14 of the Advance Payment Bond;

*Safety Authorisation* has the meaning given to such term in the ROGS;

*Safety Authority* has the meaning given to such term in the Interoperability Regulations;

*Safety Certificate* has the meaning given to such term in the ROGS;

*Safety Management System* has the meaning given to such term in the ROGS;

*Safety Obligations* means all applicable obligations concerning health and safety arising under Applicable Laws and Standards (including any duty of care arising at common law, and any obligation arising under statute, statutory instrument or mandatory code of practice in Great Britain or other applicable jurisdiction);

*Scheduled Commencement Date* means the date falling 10 Working Days after execution of this Agreement, or such other date as may be agreed between the Parties for commencement of this Agreement;

*Schedule of Costs* means the schedule of costs included in Appendix 1 (*Schedule of Costs*) to Schedule 12 (*Change Procedure*);

*Schedule of Finishes* means the schedule of finishes for the Units included in the Manufacturer Train Proposal;

*Schedule of Milestones* means the document as set out in Appendix 1 (*Schedule of Milestones*) to Part B (*Milestones*) of Schedule 10 (*Milestones and Security*) as may be amended from time to time in accordance with this Agreement;

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**Schedule of Payments** means the schedule of payments to be made by the Purchaser in respect of either:

- (a) a Change, provided by the Manufacturer in accordance with paragraph 2.2(b) or 4.2(h) of Part B (*Purchaser Changes*) of Schedule 12 (*Change Procedure*) and containing the information specified in paragraph 8.1 of Part B of Schedule 12; or
- (b) a Compensation Event, provided by the Manufacturer in accordance with paragraph 1.2(b) or 3.2(f) of Part D (*Compensation Changes*) of Schedule 12 (*Change Procedure*) and containing the information specified in paragraph 6.1 of Part D of Schedule 12;

**Second Party** has the meaning given to such term in paragraph 2.1 of Schedule 18 (*Dispute Resolution Procedure*);

**Security Interest** means:

- (a) any right of ownership, lien, mortgage, charge (whether fixed or floating), pledge, hypothecation, attachment, security interest, assignment by way of security, right of possession, right of detention or other encumbrance; or
- (b) any other preferential arrangement resulting in a secured transaction or having the same economic or legal effect as any of the foregoing; or
- (c) any agreement to give any of the foregoing; or
- (d) any arrangement to prefer one creditor over another creditor; or
- (e) the interest of the vendor or lessor under any conditional sale agreement, lease, hire purchase agreement or other title retention arrangement; or
- (f) any interest described in (a) to (e) over any interest described in (a) to (e);

**Selective Door Opening System** has the meaning given to such term in the Train Technical Specification;

**Senior Representatives** has the meaning given to such term in paragraph 2.2 of Schedule 18 (*Dispute Resolution Procedure*);

**Service Affecting Failure** means, in relation to a Unit:

- (a) a Fault causing the Unit to experience Relevant Minutes Lateness (as defined in Schedule 5 (*Performance Regime*) of the TSA, and making any necessary changes to the meaning of such term in the context of Pre-Provisional Fault Free Running and Provisional Acceptance running to take account of the fact that the Unit will be performing a test run rather than a Diagram Leg (as defined in the TSA)); or
- (b) a Fault causing:
  - (i) the Unit to be withdrawn from service before it reaches the end of its test run (in the context of Pre-Provisional Fault Free Running or Provisional Acceptance running); or

- (ii) a Cancellation (as defined in Schedule 5 (*Performance Regime*) of the TSA) (in the context of Final Acceptance running); or
- (c) a delay of more than three minutes in a Unit being made Available (making any necessary changes to the meaning of such term in the context of Pre-Provisional Fault Free Running and Provisional Acceptance running to take account of the fact that the Unit will be performing a test run and not necessarily starting at the Entry Point), where the root cause is a Fault,

in each case except to the extent caused by an Allowable Failure (as defined in the TSA);

***Service Affecting Failure Free Miles*** or ***SAFFM*** means miles run by the relevant Unit or Units without the occurrence of any Service Affecting Failure;

***Services*** has the meaning as ascribed to in the Train Services Agreement;

***Simulator*** means the simulator equipment described in the Train Technical Specification;

***Simulator Acceptance*** means the acceptance by the Purchaser of the Simulator pursuant to clause 15.22, upon and as evidenced by the issue by the Purchaser of a Simulator Acceptance Certificate;

***Simulator Acceptance Certificate*** means a certificate in the form or substantially in the form set out in Part A (*Pro forma Certificates*) of Schedule 20 (*Pro Forma Certificates*), issued by the Purchaser in respect of the Simulator, certifying that it complies with the applicable Equipment Acceptance Criteria;

***Simulator Acceptance Date*** means, in relation to the Simulator, the intended date of issue of the Simulator Acceptance Certificate as set out in the Project Programme;

***Simulator Development Plan*** has the meaning given to such term in paragraph 9.1(n) of Schedule 5 (*Contract Management*);

***Simulator Initial Location*** has the meaning given to such term in clause 6.3;

***Software*** means any computer program installed in or on any Unit, Equipment or IPR Asset or in equipment to be used in conjunction with, or for the operation, testing, commissioning, modification and/or refurbishment of, any Purchased Equipment and any computer program required to access, install, build or compile or otherwise use any such computer program, including the access to and editing of any online/web-based IPR Assets or Special Tools;

***SoS*** means the Secretary of State for Transport from time to time or any successor to what are the current transport functions of the Secretary of State for Transport;

***Source Code*** means, with respect to any Software, the source code version of that Software, being all logic, logic diagrams, flow charts, orthographic representations, algorithms, routines, sub-routines, utilities, models, file structures, coding sheets, coding, source codes, listings, functional specifications and program specifications and all other materials and documents necessary to enable a reasonably skilled

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programmer to maintain, amend and enhance that Software without reference to any other person or document, and whether in eye-readable or machine-readable form;

**Spares** means all spare parts of any description including fluids, consumables, parts and assemblies required in connection with the Units supplied or to be supplied by the Manufacturer or any Subcontractor under this Agreement;

**Spares Acceptance Certificate** means a certificate in the form or substantially in the form set out in Part A (*Pro forma Certificates*) of Schedule 20 (*Pro Forma Certificates*), issued by the Purchaser in respect of any Spares, certifying that such Spares comply with the applicable Equipment Acceptance Criteria;

**Special Tools** means each Initial Special Tool and/or any other special tool to be supplied by the Manufacturer under this Agreement, including all diagnostic software relating to all such items supplied under this Agreement;

**Special Tools Acceptance Certificate** means a certificate in the form or substantially in the form set out in Part A (*Pro forma Certificates*) of Schedule 20 (*Pro Forma Certificates*), issued by the Purchaser in respect of any Special Tools, certifying that such Special Tools comply with the applicable Equipment Acceptance Criteria;

**Stabling Sites** has the meaning given to such term in the TSA;

**Stage** has the meaning given to such term in paragraph 8.1(c) of Schedule 6 (*Assurance Acceptance*);

**Stage Gate Reviews** has the meaning given to such term in paragraph 8.1(c) of Schedule 6 (*Assurance Acceptance*);

**Standards Matrix** has the meaning given to such term in paragraph 9.7(a) of Schedule 6 (*Assurance Acceptance*);

**Statement of Compatibility** has the meaning given to such term in RGS GE/RT 8270 in respect of the operational compatibility between the Units and the LO Infrastructure and the Units and existing rolling stock operating on the LO Infrastructure;

**Subcontract** means any contract (a subcontract) awarded by, or to be awarded by, the Manufacturer and any contract awarded by any person who is a Party to a subcontract with the Manufacturer or awarded by any Party to a subcontract with a Subcontractor, and so on, in relation to, or connected with, the carrying out of the obligations of the Manufacturer under this Agreement;

**Subcontractor** means any Party to a Subcontract other than the Manufacturer and shall include the Notified Body and the Designated Body and, for the avoidance of doubt, includes an Approved Subcontractor;

**Subcontractor Escrow Agreement** means an agreement in the form or substantially in the form set out in Part B (*Subcontractor Escrow Agreement*) of Schedule 22 (*Software Escrow Agreements*) between the Manufacturer, the Purchaser, an Escrow Subcontractor and the Escrow Agent;

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***Subcontractor Escrow Material*** means the Escrow Material owned or licensed by any Subcontractor;

***Subcontractor Manufacturer Escrow Release Event*** means those release events designated as "Release Events" in clause 6.1 of each Subcontractor Escrow Agreement;

***Subcontractor Purchaser Escrow Release Event*** means those release events designated as "Release Events" in clause 6.9 of each Subcontractor Escrow Agreement;

***Subsystems*** means in the context of a Unit, each of the following:

- (a) watertight bodyshell;
- (b) DC traction equipment;
- (c) dual voltage equipment;
- (d) bogie equipment;
- (e) brakes and air supply;
- (f) electrical systems;
- (g) pipe and wire and general underframe equipment;
- (h) heating, ventilation and air-conditioning equipment;
- (i) exterior power doors;
- (j) passenger environment;
- (k) inter-vehicular connections;
- (l) cab external equipment;
- (m) cab internal equipment;
- (n) electronic and safety systems;
- (o) mechanical systems;
- (p) audio/visual communication and train management equipment;
- (q) emergency equipment;
- (r) CCTV System; and
- (s) selective door-opening and correct sidedoor enabling systems;

***Suitable Lessor*** means a person (other than a Competitor) that, in the Purchaser's reasonable opinion, has the capability to meet any payment obligations under this Agreement as may be transferred to it;

***Supplier Management Plan*** has the meaning given to such term in paragraph 9.1(c) of Schedule 5 (*Contract Management*);

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**Taxes** means all present and future taxes, charges, imposts, duties or levies of any kind whatsoever, payable at the instance of or imposed by any Competent Authority, together with any penalties, additions, fines, surcharges or interest relating thereto and **Tax** and **Taxation** shall be construed accordingly;

**TC Component** has the meaning given to such term in paragraph 4.2(b) of Schedule 6 (*Assurance Acceptance*);

**TECBAR** means the Technology and Construction Bar Association;

**Technical Assurance Plan** or **TAP** means the plan set out in Schedule 6 (*Assurance Acceptance*) as may be amended from time to time in accordance with this Agreement;

**Technical Case** has the meaning given to such term in paragraph 4.2(a) of Schedule 6 (*Assurance Acceptance*);

**Technical Case Plan** means the document set out in paragraph 4.1 of Schedule 6 (*Assurance Acceptance*);

**Technical Documents** means all documents, drawings and data to be provided by the Manufacturer to the Purchaser (in original or copy form (as applicable)) and updated pursuant to the terms of this Agreement, including but not limited to:

- (a) the Plans;
- (b) copies of all Relevant Approvals and notices from Competent Authorities and Network Rail;
- (c) all documentation to be provided pursuant to the Assurance Regime;
- (d) all design documentation in respect of the Works, including documentation relating to:
  - (i) the Technical Assurance Plan;
  - (ii) the Technical Case Plan;
  - (iii) the Technical Case;
  - (iv) the Mock-Ups;
  - (v) the Schedule of Finishes; and
  - (vi) any Permitted Design Changes;
- (e) all testing documentation relating to the Units, including:
  - (i) the Agreed Testing Strategy, the Agreed Schedule of Tests and the Agreed Testing Programme;
  - (ii) test specifications; and
  - (iii) test reports and results;
- (f) all documentation submitted pursuant to the Acceptance Criteria, including:

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- (i) the Statement of Compatibility;
  - (ii) the Technical File, the Certificate of Verification, the Verification Declaration and authorisation from the Safety Authority to place in service the Units (and any other documentation required pursuant to ROGS and the Interoperability Regulations);
  - (iii) the "as-built" design information in relation to the Units;
  - (iv) the register of Parts;
  - (v) the Manuals;
  - (vi) the Maintenance Plan; and
  - (vii) the Training Materials;
- (g) all documents, appraisals and notices submitted pursuant to the Change Procedure including any Modifications or Mandatory Modifications; and
- (h) all reports, reviews, plans and strategies in relation to the performance and progress of the Project to be provided pursuant to Schedule 5 (*Contract Management*);

**Technical File** has the meaning given to such term in clause 11.6(f);

**Termination Date** means the date upon which this Agreement is terminated in accordance with its terms;

**Test** means to prove correct operation by trial, and **Testing** shall be construed accordingly;

**Testing Requirements** means the requirements with regard to the testing of Units set out in Part A (*Testing Requirements*) of Schedule 7 (*Testing*);

**TfL** or **Transport for London** means the body established pursuant to section 154 of the Greater London Authority Act 1999 and any successor body;

**TfL Group** means Transport for London and any member of its Group;

**Third Party IPR** means IPR, whether existing at the date of this Agreement or arising hereafter, other than the Manufacturer IPR;

**Total Contract Price** means the amount specified in the final row of the table set out in Appendix 2 (*Total Contract Price*) to Part B (*Milestones*) of Schedule 10 (*Milestones and Security*) as the **Total Contract Price** of the Purchased Equipment comprising the Initial Order, as such amount may be adjusted in accordance with any Change Confirmation Notice or Claim Confirmation Notice;

**Traction Power Supply** means the nominal 25kV AC overhead and nominal 750v DC third rail infrastructure power supplies to the Units that allow operation on the routes of the LO Train Infrastructure;

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**Traction System** means the train subsystem that provides motive power and electric dynamic brake for the Unit and shall be considered to comprise all the power and control components, hardware, software and firmware, from the pantograph (AC) or third rail shoe gear (DC) to the traction motors, gearboxes and motor wheelsets;

**Train Services Agreement** or **TSA** means the agreement under which the Maintainer undertakes maintenance and other services in respect of the Units;

**Train Technical Requirements** means together the Train Technical Specification and the Manufacturer Train Proposal;

**Train Technical Specification** means the requirements set out in Schedule 1 (*Train Technical Specification*);

**Training Management System** or **TMS** has the meaning given to such term in the Train Technical Specification;

**Training Materials** has the meaning given to such term in clause 12.2;

**Training Programme** has the meaning given to such term in clause 12.4;

**Training Services** means those training services to be provided by the Manufacturer pursuant to clause 12 (*Training Services*), as set out in the Training Services Programme and in accordance with the Project Programme;

**Transparency Commitment** means the transparency commitment stipulated by the UK Government in May 2010 in accordance with which the Purchaser must publish its contracts, tender documents and data from invoices received, as the same may be amended from time to time;

**TSIs** has the meaning given to such term in the Interoperability Regulations;

**TSSSA Change** has the meaning given to such term in the TSA;

**Type Tests** means testing carried out by or on behalf of the Manufacturer on one or more components, Subsystems, systems, vehicles or Units, to demonstrate the compliance of that item with the relevant requirements of this Agreement, and in such a manner that the test may be regarded as representative of all items of that type, and **Type Testing** shall be construed accordingly;

**Unavailable Infrastructure** means any Railway Infrastructure which is not Available Infrastructure;

**Undesirable Transferee** means

- (a) any person who is Insolvent; or
- (b) any person who is, or who is directly or indirectly controlled (having the meaning given in paragraph (a) or (b) of the definition of "Change of Control") by a person who is, a person:
  - (i) who has been convicted of a criminal offence, or a series of offences (where any relevant time period permitting the lodging of an appeal has expired or in the event an appeal has taken place no further

appeal is possible) (*Convictions*), in the last three years prior to the date of the notice issued by the Manufacturer pursuant to clause 46.2(a), provided that the Convictions are significant and the Manufacturer could reasonably be expected to have knowledge of the Convictions by the undertaking of appropriate due diligence (for the purposes of this clause, "significant" means that the Convictions are capable of having a material adverse effect on the performance of the Agreement by the Manufacturer);

- (ii) whom it would be reasonable for a contracting authority to exclude from consideration on grounds of national security; or
- (iii) from a country which is, or who is otherwise, the subject of economic or security sanctions imposed by the United Kingdom in the form of sanctions which prevent or restrict transactions for the supply of goods or services which are the same or materially the same or which employ related technology as any goods or services to be procured or delivered under this Agreement or the TSA with the country or relevant persons from that country, whether the sanctions are in full force or suspended;

*Uninsured Loss* means that the relevant Losses are not recoverable under the Required Insurances to be taken out by the Manufacturer in accordance with clause 19 (*Insurance*) (assuming that such Required Insurances have been taken out and maintained in force as required by clause 19 and taking no account of any Losses which are not recoverable as a result of any excess or deductible under any such policy of insurance);

*Unit* means either an AC Only Unit or a Dual Voltage Unit, as applicable;

*Unit and Equipment Manuals and Training Plan* has the meaning given to such term in paragraph 9.1(m) of Schedule 5 (*Control Management*);

*Unit Design Submission Programme* has the meaning given to such term in paragraph 11.5 of Schedule 6 (*Assurance Acceptance*);

*Unit Final Fault Free Running* has the meaning given to such term in clause 15.15(b);

*Unit Log Book* has the meaning given to such term in paragraph 6.1 of Schedule 6 (*Assurance Acceptance*);

*Unit Longstop Date* means, in respect of any Unit, the date 12 months after the date set out for Provisional Acceptance of that Unit in the Project Programme;

*Unrestricted Passenger Revenue-Earning Service* means the operation without restriction of a Unit on the relevant parts of the LO Infrastructure in connection with the carriage of passengers by railway;

*Utilities Contracts Regulations* means the Utilities Contracts Regulations 2006 (as amended);

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**VAT** means value added tax as provided for in the Value Added Tax Act 1994 and legislation supplemental thereto and any similar sales, consumption or turnover tax replacing or introduced in addition thereto;

**Vehicle** means any of the individual vehicles which forms part of a Unit on Acceptance of that Unit (including any Option Vehicle after Acceptance of the relevant Option Vehicle as part of the applicable Unit in 5-car formation), whether or not that Vehicle continues to form part of that Unit after Acceptance;

**Vehicle Design Area** has the meaning given to such term in paragraph 11.4(a) of Schedule 6 (*Assurance Acceptance*);

**Vehicle Design Area Breakdown Structure** means the document set out in Appendix 2 (*Vehicle Design Area Breakdown Structure*) to Schedule 6 (*Assurance Acceptance*) as may be amended in accordance with this Agreement;

**Verification Declaration** has the meaning given to such term in the Interoperability Regulations;

**Voluntary Termination** means a termination by the Purchaser pursuant to clause 32.12;

**Voluntary Termination Notice** has the meaning given to the term in clause 4.2;

**Warranted Design Life** means, in respect of each Major Component, the corresponding design life set out in the table in clause 20.2;

**Working Day** means a weekday (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London; and

**Works** means the design, manufacture, testing, commissioning and supply of the Units and Equipment carried out pursuant to the terms of this Agreement in accordance with the Train Technical Requirements.

## Interpretation

1.2. In this Agreement, except where the context otherwise requires:

- (a) any reference to this Agreement includes the Schedules, Appendices and Annexes to it, each of which forms part of this Agreement for all purposes;
- (b) a reference to an enactment or statutory provision shall, unless otherwise expressly specified in this Agreement, include:
  - (i) a reference to any subordinate legislation made under the relevant enactment or statutory provision whether before or after the date of this Agreement; and
  - (ii) be a reference to that enactment, statutory provision or subordinate legislation as from time to time amended, consolidated, modified, reenacted or replaced, whether before or after the date of this Agreement;
- (c) words importing the singular only shall include the plural and vice versa;

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- (d) references to one gender include other genders;
- (e) a reference to a person shall include a reference to a firm, a body corporate, an unincorporated association, a partnership, limited partnership, limited liability partnership or to that person's legal personal representatives, successors and permitted assignees;
- (f) a reference to a clause or Schedule (other than to a schedule to a statutory provision), paragraph, part, Appendix or Annex shall be a reference to a clause, schedule, paragraph, Part, appendix or annex (as the case may be) of or to this Agreement and a reference in a schedule to a Part, paragraph, Annex or Appendix shall mean references to a Part, paragraph, annex or appendix of that Schedule;
- (g) if a period of time is specified as *from* or *within* a given day, or *from* or *within* the day of an act or event, it shall be calculated exclusive of that day;
- (h) references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than England be deemed to include what most nearly approximates the English legal term in that jurisdiction and references to any English statute or enactment shall be deemed to include any equivalent or analogous laws or rules in any other jurisdiction;
- (i) references to *writing* shall include any modes of reproducing words in any legible form and shall exclude email except where expressly stated otherwise;
- (j) a reference to includes or including is to be construed as includes without limitation or including without limitation;
- (k) the contents page and headings in this Agreement are for convenience only and shall not affect its interpretation;
- (l) references to this Agreement or any other agreement or document include permitted variations, amendments, replacements, novations or supplements to this Agreement or other agreement or document (as the case may be);
- (m) words and expressions defined in the Railways Act 1993 shall, unless otherwise defined in this Agreement or unless the context otherwise requires, have the same meaning in this Agreement;
- (n) a reference to the *Purchaser* or the *Manufacturer* includes their respective (and any subsequent) successor(s) in title, and their respective permitted transferee(s) or assignee(s);
- (o) any obligation on any Party to do or not to do anything shall be deemed to include an obligation to procure or not to permit or suffer such things to be done by such Party's agents, servants, contractors and subcontractors of any tier and acts or omissions of either Party's agents, servants, contractors or subcontractors of any tier shall be deemed to be acts of such Party for the purposes of this Agreement;

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- (p) references in this Agreement to costs, expenses and losses which are to be indemnified to, or recovered by, the person incurring the same shall be construed as references to an amount equal to the amount of such costs, expenses and losses together with any amount that represents VAT or other similar tax properly chargeable therein in any jurisdiction;
- (q) references to amounts expressed to be *Indexed by RPI* are references to such amounts multiplied by:

$$\frac{RPI_t}{RPI_{Base}}$$

where:

- (i)  $RPI_t$  is the value of RPI most recently published prior to the relevant calculation date; and
- (ii)  $RPI_{Base}$  is the value of RPI for March 2014 as published in April 2014;
- (r) reference to a *third party* is a reference to any person who is not a Party;
- (s) a reference to any agreement or other document *in the agreed form* shall be deemed to be a reference to that agreement or document in the form which has been accepted by each of the Purchaser and the Manufacturer and initialled on behalf of each such Party for the purposes of identification;
- (t) references to *otherwise* and words following *other* shall not be limited by any foregoing words where a wider construction is possible;
- (u) a reference to provisions of this Agreement expressed as being from one provision *to* another provision shall be construed as including both mentioned provisions;
- (v) save to the extent expressly defined in this Agreement (or where the context otherwise so requires) words and expressions defined in the TSA shall have the same meaning when used in this Agreement; and
- (w) references to a *nominee* of the Purchaser shall mean an Approved Party appointed by the Purchaser from time to time in accordance with clause 5 (*Relationship with the Operator and Representatives*).

## 2. Commencement and Conditions Precedent

### Immediately Effective Clauses

- 2.1. The rights and obligations of the Parties arising under the Immediately Effective Clauses shall be of immediate effect upon execution by the last Party to execute this Agreement.

### Conditions Precedent to Commencement

- 2.2. The rights and obligations of the Parties under this Agreement (other than the rights and obligations arising under the Immediately Effective Clauses) shall be conditional

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upon satisfaction or waiver of the conditions set out in clauses 2.3 and 2.4, and shall come into effect upon the Commencement Date as specified in the Certificate of Commencement.

**Manufacturer Conditions Precedent**

2.3. Subject to clause 2.5(a), the Manufacturer shall provide to the Purchaser:

- (a) the Guarantee duly executed by the Guarantor;
- (b) an Advance Payment Bond for the Initial APB Bond Amount, which is duly executed by an Advance Payment Bond Provider and which complies with the provisions of paragraphs 1.1 and 1.2 of Part A (*Advance Payment Bond*) of Schedule 10 (*Milestones and Security*);
- (c) the Train Services Agreement duly executed by the Maintainer;
- (d) the Manufacturer Escrow Agreement duly executed by the Manufacturer and the Escrow Agent;
- (e) a certified copy of:
  - (i) a resolution of the board of directors of the Manufacturer or, where the Manufacturer is not incorporated in England and Wales, an equivalent statement of authority (in either case in a form and substance satisfactory to the Purchaser) passed at a duly convened and held meeting:
    - (A) approving the terms of, and the transactions contemplated by, this Agreement and all the other related documents to which it is a Party; and
    - (B) authorising a specified person to approve amendments to, and execute, this Agreement and all the other related documents to which it is a Party;
  - (ii) a resolution of the board of directors of the Guarantor or, where the Guarantor is not incorporated in England and Wales, an equivalent statement of authority (in either case in a form and substance satisfactory to the Purchaser) passed at a duly convened and held meeting:
    - (A) approving the terms of, and the transaction contemplated by, the Guarantee; and
    - (B) authorising a specified person to approve amendments to, and execute, the Guarantee; and
  - (iii) certified copies of the most recent:
    - (A) statutory audited accounts;
    - (B) memorandum of association; and

(C) articles of association,

(or the equivalent documentation in any jurisdiction other than England and Wales) in respect of the Manufacturer and the Guarantor;

- (f) a legal opinion (in a form and substance satisfactory to the Purchaser) that the Guarantor has the requisite power and authority to execute the Guarantee and that, following such execution, the terms of the Guarantee will be binding on and enforceable against the Guarantor;
- (g) evidence that the insurances that the Manufacturer is required to take out and maintain in accordance with this Agreement are in full force and effect and a letter of undertaking in the form set out in Part C (*Broker's Letter of Undertaking*) to Schedule 13 (*Insurance*);
- (h) a completed Procurement Schedule in the form set out in Appendix 5 (*Procurement Schedule Requirements*) of Schedule 14 (*Responsible Procurement*); and
- (i) a letter in the form set out in Part E (*Bombardier's Insurance Confirmations*) of Schedule 13 (*Insurance*), duly signed by Bombardier Inc.

The Manufacturer shall use its reasonable endeavours to procure that the conditions referred to in this clause 2.3 are satisfied on or before the Scheduled Commencement Date.

#### **Purchaser Condition Precedent**

2.4. Subject to clause 2.5(b), the Purchaser shall provide to the Manufacturer a certified resolution of Transport for London's Finance and Policy Committee (by way of an extract of the minutes) passed at a duly convened and held meeting:

- (a) approving the terms of, and the transactions contemplated by, this Agreement and all the other related documents to which it is a Party; and
- (b) authorising a specified person or persons to approve amendments to, and execute, this Agreement and all the other related documents to which it is a Party.

The Purchaser shall use its reasonable endeavours to procure that the conditions referred to in this clause 2.4 are satisfied on or before the Scheduled Commencement Date.

#### **Waiver**

- 2.5. (a) The Purchaser may, by written notice to the Manufacturer, waive or defer any condition precedent specified in clause 2.3 in whole or in part.
- (b) The Manufacturer may, by written notice to the Purchaser, waive or defer any condition precedent specified in clause 2.4 in whole or in part.

#### **Certificate of Commencement**

2.6. On the later of:

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- (a) the Purchaser being satisfied that each of the conditions precedent set out in clause 2.3 has been satisfied, waived or deferred; and
- (b) the Manufacturer being satisfied that each of the conditions precedent set out in clause 2.4 has been satisfied, waived or deferred (as notified by the Manufacturer to the Purchaser in writing),

the Purchaser shall issue to the Manufacturer a Certificate of Commencement which shall specify the Commencement Date.

#### Foreign Exchange

- 2.7. (a) The Manufacturer agrees that within twenty-four hours following execution of this Agreement (or any other time approved by the Purchaser), the Manufacturer shall complete the steps set out in the Financial Close Protocol, subject only to obtaining appropriate consents from the Purchaser as required by the Financial Close Protocol. The Purchaser agrees to comply with its obligations pursuant to the Financial Close Protocol.
- (b) The Parties agree that:
- (i) the Maximum IO Required APB Bond Amount set out in paragraph 1.6 of Part A (*Advance Payment Bond*) of Schedule 10;
  - (ii) the Milestone Payments set out in column (3) of the table set out in Appendix 1 (*Schedule of Milestones*) to Part B (*Milestones*) of Schedule 10;
  - (iii) the adjusted amounts reflecting the increases in the Required APB Bond Amount in column (4) of the table set out in Appendix 1 (*Schedule of Milestones*) to Part B (*Milestones*) of Schedule 10; and
  - (iv) the contract price items as well as the Total Contract Price set out in the table in Appendix 2 (*Total Contract Price*) to Part B (*Milestones*) of Schedule 10,
- shall be adjusted in accordance with the application of the Financial Close Protocol.
- (c) The Financial Close Protocol provides that the adjusted amounts referred to in paragraph (b) will be incorporated in a new Schedule 10 which each Party will initial as part of the Financial Close Protocol.
- (d) The Parties further agree that the new Schedule 10, as completed and initialled in accordance with the Financial Close Protocol, shall become the only valid and effective Schedule 10 of this Agreement with effect as from the date of signing of this Agreement, and any reference to Schedule 10 of this Agreement shall be deemed a reference to the new Schedule 10, as completed and initialled in accordance with the Financial Close Protocol

#### Information

- 2.8. If at any time the Manufacturer becomes aware of any matter that might prevent or delay a condition precedent in clause 2.3 from being satisfied, it shall inform the

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Purchaser as soon as is reasonably practicable. If at any time the Purchaser becomes aware of any matter that might prevent or delay the condition precedent set out in clause 2.4 from being satisfied it shall inform the Manufacturer as soon as is reasonably practicable.

**Effect of non-satisfaction of conditions precedent**

- 2.9. Unless all of the conditions precedent in clauses 2.3 and 2.4 are satisfied or, in the case of the conditions set out in clause 2.3 waived or deferred in writing by the Purchaser, and, in the case of the condition set out in clause 2.4 waived or deferred in writing by the Manufacturer on or before the Scheduled Commencement Date (or such later date as the Parties may agree), this Agreement (other than the Immediately Effective Clauses) shall have no force or effect, each Party shall bear their own costs in connection with the negotiation of this Agreement and neither Party shall have any obligation to the other hereunder save for any antecedent breach or under clause 38 (*Confidentiality*) which shall remain in full force and effect notwithstanding the non-satisfaction of the conditions precedent hereto.

**3. Representations and Warranties**

- 3.1. The Manufacturer represents and warrants to the Purchaser as at the date of this Agreement that:
- (a) it is a corporation, duly incorporated and validly existing under the laws of England and Wales and that it has the power to own its assets and carry on its business as it is being conducted;
  - (b) the execution by it of this Agreement does not contravene any provision of:
    - (i) any existing law, treaty or regulation in force and binding on the Manufacturer;
    - (ii) the memorandum of association or articles of association of the Manufacturer or their equivalent in a jurisdiction other than England and Wales;
    - (iii) any order or decree of any Court or arbitrator existing as at the date of this Agreement and binding on the Manufacturer; or
    - (iv) any obligation which is binding upon the Manufacturer or upon any of its assets or revenues;
  - (c) it has the requisite power and authority to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of this Agreement and the transactions contemplated by this Agreement;
  - (d) it has obtained all necessary shareholder and board approvals in respect of the execution of this Agreement and the performance of its obligations under it;
  - (e) its obligations under this Agreement are valid, binding and enforceable at law and in equity in accordance with its terms;

- (f) so far as it is aware, no litigation, arbitration or administrative proceeding is current, pending or threatened to restrain the entry into, exercise of any of its rights under and/or performance or enforcement of or compliance with any of its obligations under this Agreement;
- (g) no meeting has been convened or is intended to be convened and/or so far as it is aware, no petition, application or the like is outstanding with a view to its winding-up;
- (h) the certified copies of the most recent statutory audited accounts, memorandum of association and articles of association (or the equivalent documentation in any other jurisdiction other than England and Wales) of the Manufacturer delivered to the Purchaser under clause 2.3(c)(iii) are true and accurate and that no proposals are outstanding to amend those documents;
- (i) the Manufacturer (and/or the relevant Subcontractors) is/are the absolute and unencumbered proprietor of all Intellectual Property Rights described in clause 29 (*Intellectual Property Rights*) or, where such Intellectual Property Rights are licensed, has/have the right to exercise those Intellectual Property Rights and grant the relevant licences of those Intellectual Property Rights to the Purchaser as contemplated by this Agreement;
- (j) the entering into or performance of its obligations or exercising of its rights under this Agreement or any related document will not be in breach of, or cause to be breached, any restriction (whether arising in contract or otherwise) binding on the Manufacturer or any Subcontractor or any of their respective assets or undertakings;
- (k) no Manufacturer Event of Default has occurred which is continuing; and
- (l) in entering into this Agreement none of it, any other member of the Manufacturer Group nor, to the best of its knowledge and belief having made due enquiry, any Subcontractor of the Manufacturer has committed any Prohibited Act.

#### **Repetition of Warranties**

- 3.2. The Parties agree that the representations and warranties set out in clause 3.1 shall be deemed to be repeated by the Manufacturer on the Commencement Date and on each date the Manufacturer receives an Option Notice in accordance with this Agreement. The Manufacturer understands and acknowledges that the Purchaser is relying on these representations and warranties and is entering into this Agreement on the basis of them.

#### **4. Notice to Proceed and Voluntary Cancellation**

##### **Notice to Proceed**

- 4.1. The Manufacturer acknowledges that, notwithstanding the issue of a Certificate of Commencement pursuant to clause 2.6, until the Purchaser has confirmed by way of notice in writing to the Manufacturer that the Purchaser or an assignee of the Purchaser pursuant to clause 44 (*Assignment and Novation or Granting of Security by*

the Purchaser) will, subject to the terms and conditions of this Agreement, make the remaining Milestone Payments (a *Notice to Proceed*), the Manufacturer shall not be entitled to receive any Milestone Payment other than in respect of Milestone Payments 1 - 12 set out in Appendix 1 (*Schedule of Milestones*) to Part B (*Milestones*) of Schedule 10 (*Milestones and Security*).

#### **Cancellation of Order**

- 4.2. The Purchaser shall have the right, at any time after the issue of a Certificate of Commencement and before it has issued a Notice to Proceed, to terminate this Agreement by giving written notice to the Manufacturer stating that the Purchaser is terminating this Agreement under this clause 4.2 and the date when such termination shall become effective (a *Voluntary Termination Notice*).

#### **Delay in issue of Notice to Proceed**

- 4.3. If the Purchaser has not issued a Notice to Proceed by the date falling three months after the Commencement Date, then any additional delay to the issuance of a Notice to Proceed shall constitute a Permitted Delay Event and the Manufacturer shall be entitled, in accordance with clause 17 (*Extensions of Time*), to apply for an extension to the Contractual Acceptance Date and Unit Longstop Date for each Unit and item of Equipment limited to the additional period of delay in the issuance of a Notice to Proceed beyond the end of the third month after the Commencement Date.
- 4.4. Subject to clause 4.5, if the Purchaser issues a Notice to Proceed after the date falling sixth months after the Commencement Date, the Contract Price shall, with effect from the issuance of the Notice to Proceed, be multiplied by an indexation adjustment, reflecting the changes in applicable indices between the relevant values published in the sixth month after the Commencement Date and the relevant values most recently published at the date of issue of the Notice to Proceed.

#### **Longstop Date**

- 4.5. If the Purchaser has not issued a Notice to Proceed by the date falling twelve months after the Commencement Date, then without prejudice to clause 4.2, the Manufacturer shall be entitled, by way of written notice to the Purchaser, to require the Purchaser to issue a Voluntary Termination Notice, in which case the Purchaser shall promptly issue such a notice.

#### **Effect of Termination**

- 4.6. If the Purchaser issues a Voluntary Termination Notice:
- (a) this Agreement shall terminate on the date stated in the Voluntary Termination Notice;
  - (b) the Purchaser shall pay to the Manufacturer:
    - (i) to the extent not already reimbursed, the Bid Costs; and
    - (ii) to the extent not already reimbursed through the Milestone Payment 1 - 12, the costs, expenses and other liabilities reasonably and properly incurred by the Manufacturer other than those costs that are properly regarded by the Purchaser as forming part of the Bid Costs,

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provided that the Purchaser shall only be required to make such payment upon receipt from the Manufacturer of evidence on an Open Book Basis reasonably satisfactory to the Purchaser of such costs, expenses and other liabilities actually incurred; and

- (c) the Manufacturer shall, to the extent that the evidence provided pursuant to paragraph (b) represents an amount less than the Milestone Payments for Milestone 1 - 12 that have been made by the Purchaser, repay to the Purchaser on demand the difference of such amounts.

4.7. The Purchaser's liability under paragraph 4.6(b) shall be limited to £ [REDACTED] in aggregate, inclusive of the Bid Costs and any Milestone Payments for Milestone 1 - 12 already made.

4.8. For the avoidance of doubt, no amount on account of Bid Costs will be payable after the first Milestone set out in the Schedule of Milestones.

## **5. Relationship with the Operator and Representatives**

### **Acknowledgement of the Operator Concession**

5.1. The Manufacturer acknowledges that the Purchaser may contract with the Operator to undertake the operation of the LO Concession or may undertake the operation of the LO Services by TfL or an Affiliate of TfL.

5.2. Consequently, the Manufacturer acknowledges that, subject to clause 5.3, the Purchaser is entitled to, by notice in writing to the Manufacturer:

- (a) subcontract all or any of its obligations and functions under this Agreement to the Operator and/or TfL or its Affiliates; and/or
- (b) appoint the Operator or any Affiliate of the Purchaser to exercise all or any of the Purchaser's rights, powers and entitlements under this Agreement as agent for or nominee of the Purchaser,

in each case the *Approved Party*, provided always that the Purchaser shall retain full responsibility (under, and subject to the terms and conditions (including limitations) of, this Agreement) for the acts and omissions of the Approved Party when carrying out any of the Purchaser's rights, powers and entitlements under this Agreement as if such acts and omissions were those of the Purchaser itself.

5.3. The Purchaser shall not be entitled to appoint the Operator to undertake on the Purchaser's behalf:

- (a) the Purchaser's payment obligations under this Agreement;
- (b) the Purchaser's rights and obligations in relation to Changes under this Agreement; and
- (c) the Purchaser's rights to terminate this Agreement.

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#### **Notification**

- 5.4. Without prejudice to clause 5.2, the Purchaser shall be entitled to notify the Manufacturer from time to time of any specific functions which the Approved Party will be carrying out on behalf of the Purchaser and, following any such notification, the Manufacturer shall co-operate with the Approved Party in the performance of such functions as if they were being carried out by the Purchaser.
- 5.5. The Manufacturer may rely on the authority granted under a notice served pursuant to clause 5.4 and such authority shall only lapse in accordance with the terms of the notice or where otherwise notified by the Purchaser.

#### **Co-operation**

- 5.6. The Manufacturer shall co-operate in all respects with the Approved Party as if it were the Purchaser and at the request of the Purchaser shall provide to the Approved Party any assistance reasonably required by the Approved Party to undertake any functions.
- 5.7. The Parties acknowledge that the Purchaser may provide any information or documents it receives in respect of or relating to this Agreement from the Manufacturer or from any third party in relation to or on behalf of the Manufacturer to the Approved Party to enable it to undertake its functions.

#### **Representatives**

- 5.8. In carrying out or exercising any rights, duties and obligations under this Agreement or the other Project Documents, the Purchaser shall always be entitled to consult the Approved Party and shall be entitled to bring a representative of the Approved Party to any meeting or discussion on any matter relating to this Agreement and to disclose any information and/or documents relating to the subject matter of the Project Documents to such Approved Party.

#### **Subsequent franchisees**

- 5.9. If the Purchaser appoints any subsequent or additional Operator or Operators, the terms of this clause 5 shall apply in relation to such subsequent or additional Operator or Operators.

#### **Amendments in light of appointment of the Operators**

- 5.10. If the Manufacturer's obligation to co-operate with the Operator (including facilitating the performance by the Operator of the obligations and functions contained in its franchise agreement) causes a change in the requirements or obligations of the Manufacturer under this Agreement at the request of the Purchaser, there will be a Purchaser Change for the purposes of this Agreement.

#### **Definition of the Operator**

- 5.11. References in this clause 5 to *Operator* or *Operators* or *TfL* shall be deemed to include any agents, subcontractors of any tier, officers and employees of such Operator or Operators or TfL from time to time.

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## 6. Initial Order and Options

### Initial Order

6.1. The Manufacturer shall supply each item of the Initial Order to the Purchaser by the relevant Contractual Acceptance Date for that item in consideration for the Purchaser procuring payment to the Manufacturer of the Contract Price in respect of each item of the Initial Order, in each case in accordance with the terms of this Agreement. The *Initial Order* shall comprise:

- (a) 45 Units, comprising 14 Dual Voltage Units (in 4-Vehicle formation) and 31 AC Only Units (in 4-Vehicle formation);
- (b) the Simulator;
- (c) the Initial Spares;
- (d) the Initial Special Tools; and
- (e) the Manuals.

### Provision of Initial Spares

6.2. (a) The Purchaser shall be entitled, at any time prior to the date which is 12 months before the Contractual Acceptance Date of the first Unit, to modify Part A (*Initial Spares*) of Schedule 8 (*Spares and Special Tools*) by:

- (i) changing the quantity of any Initial Spare categorised as an *Additional Services Initial Spare*;
- (ii) amending the list of Initial Spares categorised as *Additional Services Initial Spares* by adding any Spare not included in such list as at the Commencement Date and/or by deleting reference to any item included in such list,

provided that the Purchaser shall not be entitled to alter or otherwise amend Part A of Schedule 8 if such alterations or amendments would result in any net decrease to the Contract Price for the Initial Spares as set out in Appendix 2 (*Total Contract Price*) to Part B (*Milestones*) of Schedule 10 (*Milestones and Security*).

- (b) If the Purchaser wishes to exercise its rights under clause 6.2(a) it shall give written notice to the Manufacturer describing the amendments it wishes to make to Part A of Schedule 8 accompanied by a revised version of Part A of Schedule 8 that incorporates the relevant modifications. In the absence of any dispute as to the proposed modifications to Part A of Schedule 8 and/or the quantum of any increase to the Contract Price for the Initial Spares, the notice served pursuant this clause 6.2(c) and the revised version of Part A of Schedule 8 shall together be deemed a complete Change Confirmation Notice which shall be deemed confirmed immediately and the relevant provisions of paragraph 7 (*Implementation of Purchaser Change*) of Part B (*Purchaser Changes*) of Schedule 12 (*Change Procedure*) shall apply accordingly.

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- (c) Where the Manufacturer disputes whether any of the amendments to Part A of Schedule 8 and/or any change to the Contract Price for the Initial Spares have been made in accordance with clause 6.2(a) either the Manufacturer or the Purchaser may refer the matter or matters in dispute as an Expert Dispute for resolution pursuant to Schedule 18 (*Dispute Resolution Procedure*). Following the determination of any dispute in accordance with this clause 6.2(c), the modifications to Part A of Schedule 8 and/or any increase to the Contract Price for the Initial Spares as so determined shall be deemed to be a complete Change Confirmation Notice which shall be deemed confirmed immediately and the relevant provisions of paragraph 7 of Part B of Schedule 12 shall apply accordingly.
- (d) The Manufacturer shall, upon written request by the Purchaser, provide the Purchaser with such assistance (including the provision of technical advice in relation to Spares, including the differences between the same type of Spares and the preferred configuration of Spares to be held as stock items) and/or information (including information relating to the price of any Spare not listed in Part A of Schedule 8), in each case as may be reasonably necessary for the Purchaser to understand the pricing, technical and/or logistical aspects of exercising its rights under clause 6.2(a) and/or exercising its right to order Option Spares pursuant to clause 6.6.
- (e) The Manufacturer shall ensure that:
  - (i) each of the Initial Spares is a brand new part manufactured from materials of sound and satisfactory quality and is Fault Free;
  - (ii) to the extent of Good Industry Practice, each Initial Spare has a serial number which is clearly identifiable; and
  - (iii) each Initial Spare is clearly labelled or otherwise identifiable as being the property of the Purchaser.
- (f) Without prejudice to the provisions of Schedule 5 (*Contract Management*), the Manufacturer shall include in each Project Progress Report:
  - (i) a description of the type and quantity of Initial Spares that have been delivered to the Manufacturer and, to the extent applicable, the serial numbers of such Initial Spares since the previous Project Progress Report; and
  - (ii) a cumulative list of each of the Initial Spares (and their respective serial numbers) that are in the custody or possession of the Manufacturer as at the date of the Project Progress Report.
- (g) Where any Option Spares are acquired by the Purchaser pursuant to the exercise of an Option, the Manufacturer acknowledges and agrees that the provisions of clauses 6.2(a) to 6.2(c) shall apply to those Option Spares as if they were Initial Spares.

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#### Simulator

- 6.3. The Manufacturer shall deliver the Simulator to the Purchaser for Acceptance at such location as the Purchaser may specify with reasonable notice (the *Simulator Initial Location*).

#### Initial Special Tools

- 6.4. (a) The Purchaser shall be entitled, at any time prior to the date which is 12 months before the Contractual Acceptance Date of the first Unit, to modify Part B (*Initial Special Tools*) of Schedule 8 (*Spares and Special Tools*) by:

- (i) changing the quantity of any Initial Special Tools; and
- (ii) amending the list of Initial Special Tools by adding any Special Tool not included in such list as at the Commencement Date and/or by deleting reference to any item included in such list,

provided that the Purchaser shall not be entitled to alter or otherwise amend Part B of Schedule 8 if such alterations or amendments would result in any net decrease to the Contract Price for the Initial Special Tools as set out in Appendix 2 (*Total Contract Price*) to Part B (*Milestones*) of Schedule 10 (*Milestones and Security*).

- (b) If the Purchaser wishes to exercise its rights under clause 6.4(a) it shall give written notice to the Manufacturer describing the amendments it wishes to make to Part B of Schedule 8 accompanied by a revised version of Part B of Schedule 8 that incorporates the relevant modifications. In the absence of any dispute as to the proposed modifications to Part B of Schedule 8 and/or the quantum of any increase to the Contract Price for the Initial Special Tools, the notice served pursuant this clause 6.4(b) and the revised version of Part B of Schedule 8 shall together be deemed a complete Change Confirmation Notice which shall be deemed confirmed immediately and the relevant provisions of paragraph 7 (*Implementation of Purchaser Change*) of Part B (*Purchaser Changes*) of Schedule 12 (*Change Procedure*) shall apply accordingly.
- (c) Where the Manufacturer disputes whether any of the amendments to Part B of Schedule 8 and/or any change to the Contract Price for the Initial Special Tools have been made in accordance with clause 6.4(a) either the Manufacturer or the Purchaser may refer the matter or matters in dispute as an Expert Dispute for resolution pursuant to Schedule 18 (*Dispute Resolution Procedure*). Following the determination of any dispute in accordance with this clause 6.4(c), the modifications to Part B of Schedule 8 and/or any increase to the Contract Price for the Initial Special Tools as so determined shall be deemed to be a complete Change Confirmation Notice which shall be deemed confirmed immediately and the relevant provisions of paragraph 7 of Part B of Schedule 12 (*Change Procedure*) shall apply accordingly.
- (d) The Manufacturer shall, upon written request by the Purchaser, provide the Purchaser with such assistance (including the provision of technical advice in relation to Special Tools, including the differences between the same type of

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Special Tools and the preferred configuration of Special Tools to be held as stock items) and/or information (including information relating to the price of any Special Tool not listed in Part B of Schedule 8), in each case as may be reasonably necessary for the Purchaser to understand the pricing, technical and/or logistical aspects of exercising its rights under clause 6.4(a).

- (e) The Manufacturer shall ensure that:
  - (i) each of the Initial Special Tool is a brand new part manufactured from materials of sound and satisfactory quality and is Fault Free;
  - (ii) to the extent of Good Industry Practice, each Initial Special Tool has a serial number which is clearly identifiable; and
  - (iii) each Initial Special Tool is clearly labelled or otherwise identifiable as being the property of the Purchaser.
- (f) Without prejudice to the provisions of Schedule 5 (*Contract Management*), the Manufacturer shall include in each Project Progress Report:
  - (i) a description of the type and quantity of Initial Special Tools that have been delivered to the Manufacturer and, to the extent applicable, the serial numbers of such Initial Special Tools since the previous Project Progress Report; and
  - (ii) a cumulative list of each of the Initial Special Tools (and their respective serial numbers) that are in the custody or possession of the Manufacturer as at the date of the Project Progress Report.

**Manuals**

- 6.5. The Manufacturer shall supply the first draft version of the Manuals to the Purchaser for Assurance Acceptance within 12 months after the Commencement Date and the final version of the Manuals three months before Provisional Acceptance of the first Unit to be Accepted.

**Options**

- 6.6. The Parties acknowledge that the Purchaser shall have the option to order, by delivery of any number of notices (each an *Option Notice*) to the Manufacturer, that the Manufacturer supplies to the Purchaser:

- (a) up to a maximum 24 Option Units;
- (b) Option Vehicles up to a maximum of the number required to convert all 4-Vehicle Units purchased (whether as part of the Initial Order or pursuant to an Option Notice and whether AC Only Units or Dual Voltage Units) into 5-Vehicle Units; and/or
- (c) Option Spares,

in each case on the terms of this Agreement (including Part E (*Option Unit Changes*) of Schedule 12 (*Change Procedure*) and the Option Prices set out in Part C (*Options for supply of further Units and Equipment*) of Schedule 10 (*Milestones and*

Security))), and the Parties shall implement each such Option Order as an Option Unit Change in accordance with the Change Procedure.

#### Technical Options

- 6.7. The Parties acknowledge that the Purchaser shall have an option, in respect of each technical feature described in Part D (*Technical Options*) of Schedule 10 (*Milestones and Security*) to require the Manufacturer to exclude such technical feature from the Units comprising the Initial Order and/or the Units comprising an Option Order, in each case on the terms of this Agreement, including Part D (*Technical Options*) of Schedule 10 (*Milestones and Security*), and the Change Procedure shall not otherwise apply in respect of the implementation of such a Technical Option.

#### 7. Manufacturer's General Obligations

##### General Undertaking and Warranties

- 7.1. The Manufacturer undertakes and warrants to the Purchaser, for the benefit of the Purchaser and the Owner (where it is not the Purchaser), that it shall design, manufacture, supply, test, commission, and deliver (whether by Delivery or otherwise) each item of Purchased Equipment, the Training Services and any other item, goods or services to be supplied pursuant to this Agreement:
- (a) so that it is Fault Free;
  - (b) so that, in relation to the Units, each Unit satisfies the Pre-Provisional Acceptance Criteria, the Provisional Acceptance Criteria and the Final Acceptance Criteria;
  - (c) so that, in relation to the Purchased Equipment other than the Units, each item satisfies the relevant Equipment Acceptance Criteria;
  - (d) so that in relation to the Units, each Unit is manufactured in accordance with the design agreed in accordance with this Agreement and has a design life of at least 35 years;
  - (e) so that, in relation to the Simulator, it is manufactured in accordance with the design agreed pursuant to this Agreement;
  - (f) in accordance with, and so that the Units shall function in accordance with, sound modern design and engineering principles and practices in the rail industry;
  - (g) in accordance with the Train Technical Requirements and the Project Programme so as to achieve Acceptance of each item of Purchased Equipment on the Contractual Acceptance Date for that item;
  - (h) in compliance with all Applicable Laws and Standards and Relevant Approvals;
  - (i) in accordance with Good Industry Practice and with all due skill, care, diligence, prudence and foresight to be expected of appropriately qualified and experienced professional designers and engineers with experience in

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carrying out work of a similar scope, type, nature and complexity to that required under this Agreement;

- (j) in a safe manner and free from any material risk to the health and well being of persons (including passengers) using, operating, maintaining, or involved in the management of the Units or the other Purchased Equipment, and free so far as is reasonably practicable (taking into account the Manufacturer's obligations under this Agreement) from any risk of Environmental Damage;
- (k) using materials and goods which comply with the Train Technical Requirements and Applicable Laws and Standards, and which are of satisfactory quality such that the Units and the Equipment will be of new manufacture and, with respect to compliance with the Train Technical Requirements, will be of satisfactory quality;
- (l) in accordance with the requirements of any Change Confirmation Notice and in all other respects in accordance with this Agreement;
- (m) in respect of the Initial Spares and the Initial Special Tools, so that those Initial Spares and Initial Special Tools are sufficient and adequate to enable maintenance to be carried out on the Units comprising the Initial Order in accordance with the Train Services Agreement; and
- (n) in accordance with the requirements of each of the Plans,

provided always that the Manufacturer and the Purchaser acknowledge that certain Parts will require repair and/or replacement as a result of wear and tear during the 35 year design life of the Units and that the Manufacturer's liability relating to the rectification of Manufacturer Faults will expire at the end of the applicable rectification periods set out in clause 20 (*Warranties*).

#### **Compliance with laws**

- 7.2. In performing its obligations under this Agreement, the Manufacturer shall and shall procure that its Subcontractors shall (where relevant):
- (a) comply with all Applicable Laws and Standards;
  - (b) comply with their respective Safety Obligations, including all relevant requirements of the HSWA, the ROGS, the Transport and Works Act 1992 and/or any Safety Management System applicable to the testing of the Units on the Network;
  - (c) comply with all directions of the Regulator, Network Rail, the Purchaser or such other person (in its role as Infrastructure Manager of any part of the Network, LFEPA, HMRI and any other Competent Authority (in each case acting properly and lawfully in its role as Competent Authority)), provided that the Manufacturer acknowledges and agrees that compliance with the same shall not relieve the Manufacturer from compliance with any of its obligations under this Agreement nor entitle it to any compensation or relief;
  - (d) comply with the provisions of Schedule 14 (*Responsible Procurement*); and

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- (e) perform their respective obligations in a manner which would be adopted by a reasonably diligent contractor acting in accordance with Good Industry Practice.

#### **General Assistance**

7.3. The Manufacturer shall, at its own cost,

- (a) provide in a timely manner all reasonable assistance and/or information reasonably requested from time to time by the Purchaser or its nominee in relation to any Purchased Equipment;
- (b) co-operate fully with any reasonable request made by the Purchaser, its nominee or any Infrastructure Manager in connection with the design, construction, testing and commissioning of the LO Infrastructure and related Railway Infrastructure or any part thereof; and
- (c) without prejudice to clause 9 (*Manufacturing Facilities and Rights of Audit*), on request in writing from the Purchaser, make available to the Purchaser (without charge) all documents and data of any nature acquired or brought into existence in any manner whatsoever by or on behalf of the Manufacturer and which might reasonably be required by the Purchaser for the purposes of carrying out its duties and obligations under this Agreement and any other functions, duties or responsibilities or obligations of the Purchaser or the Operator in relation to the operation of the Units. Further, the Parties agree that the provisions of Schedule 15 (*Open Book Accounting*) shall apply.

#### **Manufacturer as independent contractor**

7.4. In entering into and performing its obligations under this Agreement, the Manufacturer shall be an independent provider and is not and shall not hold itself out as, and shall ensure that none of its employees or any Subcontractor, their subcontractors of any tier or any employee of any of them holds themselves out as, an agent of the Purchaser or the Operator unless this Agreement expressly states that any such person is to act as an agent of the Purchaser or the Operator.

#### **Manufacturer costs of performance of obligations**

7.5. Save as otherwise provided in this Agreement, the Manufacturer shall, in undertaking and in carrying out its obligations under this Agreement, give all notices, pay all fees, expenses, compensation, liabilities, damages and other outgoings and do all other acts or things which are or may be required to be given, paid or done whether under Applicable Laws and Standards or otherwise.

#### **Manufacturer to inform itself fully**

- 7.6. (a) The Manufacturer shall be deemed prior to entering into this Agreement to have inspected and examined all documents and specifications and terms, and all established Applicable Laws and Standards, associated specifications and material requirements and to have obtained for itself all necessary information as to risks, contingencies and all other circumstances which may influence or affect the amounts payable to the Manufacturer and the performance of the obligations of the Manufacturer under this Agreement.

The Manufacturer shall be responsible for the interpretation of all such information for the purposes of this Agreement.

- (b) The Manufacturer may at any time submit a reasonable request for information which is not reasonably available to the Manufacturer from the Purchaser (a *Request for Information* or *RFI*) and, if the Purchaser is reasonably able to provide such information, the Parties shall agree a timescale for the provision of such information. For the avoidance of doubt, the Purchaser shall provide any information which it is able to procure on an unwarranted basis and under no circumstances shall a failure by the Purchaser to provide information to the Manufacturer in response to an RFI amount to a claim by the Manufacturer for relief or compensation under this Agreement.
- (c) Save as expressly provided herein, the Manufacturer shall not be entitled to make any claim against the Purchaser or to seek any relief or remedy of any nature nor shall the Manufacturer be relieved from any risks or obligations imposed on or undertaken by it under this Agreement on the grounds:
  - (i) of any misunderstanding or misapprehension in respect of any of the matters referred to in clause 7.6(b); or
  - (ii) that incorrect or insufficient information (including the information made available to the Manufacturer at any stage) was given to it by any person whether or not in the employ of the Purchaser; or
  - (iii) that, at the date hereof, it did not or could not foresee any matter which may affect or have affected the ability of the Manufacturer to comply with its obligations under this Agreement.

#### Assurance

- 7.7. The Manufacturer shall provide Progressive Assurance to the Purchaser in accordance with the requirements of Schedule 6 (*Assurance Acceptance*).

#### Contract Management

- 7.8. (a) The Manufacturer shall comply with the provisions of Schedule 5 (*Contract Management*).
- (b) The Manufacturer shall provide an office in London (the *Project Office*) at a location to be agreed with the Purchaser for the purposes of administering its activities under this Agreement and liaising with the Purchaser's contractors and shall provide sufficient workspace and reasonable facilities to accommodate up to four of the Purchaser's staff or contractors at any one time.
- (c) The Manufacturer shall ensure that certain Key Posts are based in the Project Office in accordance with Appendix 1 (*Key Posts*) of Schedule 5.
- (d) The Manufacturer may change the location of the Project Office with the prior approval of the Purchaser or shall move the Project Office if reasonably required by the Purchaser at different stages of the Works.

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#### Assistance of the Purchaser

- 7.9. (a) Wherever, pursuant to any Applicable Laws and Standards or otherwise, the service of notices or documents is required by the Purchaser or its nominee (including the service of notices in respect of functions or obligations retained by the Purchaser or its nominee), and such notices or documents cannot be provided directly by the Manufacturer, the Purchaser or its nominee shall serve all such notices or documents as the Manufacturer may reasonably require to enable the Manufacturer to perform its duties and obligations under this Agreement.
- (b) Where clause 7.9(a) applies, the Manufacturer shall:
- (i) provide the Purchaser with the requisite information in a timely manner;
  - (ii) permit the Purchaser to review the relevant information;
  - (iii) take account of any reasonable comments of the Purchaser; and
  - (iv) indemnify the Purchaser and its nominee in respect of their reasonable costs incurred by reason of any assistance provided in accordance with clause 7.9(a).
- (c) As soon as reasonably practicable following receipt, the Purchaser shall pass to the Manufacturer copies of all notices received from third Parties to the extent that the subject matter of such notices relates to matters which are obligations of the Manufacturer under this Agreement.
- 7.10. Neither the Purchaser nor its nominee shall assume any responsibility for the effect or result of an application or notice which it submits to a Competent Authority or other third party on the part of the manufacturer pursuant to this Agreement and the manufacturer agrees that it shall retain full responsibility.

#### Collaborative Business Relationships

- 7.11. Without prejudice to the generality of clause 5.6, the Manufacturer shall ensure that, in its relationship with the Purchaser, it shall with the cooperation of the Purchaser work in accordance with BS11000 (*Collaborative Business Relationships*) and shall, no later than twelve months after the Commencement Date, submit to the Purchaser evidence (reasonably satisfactory to the Purchaser) of certification to ISO11000 of the Manufacturer's working practices with the Purchaser.

#### 8. Documentation

##### Priority of contract documents

- 8.1. Unless expressly stated otherwise, where there is a conflict or other discrepancy between the Requirements and the Manufacturer Train Proposal, the Requirements shall prevail.

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**Priority of provisions in the Agreement**

- 8.2. Unless expressly stated otherwise, where there is a conflict or other discrepancy between a clause of this Agreement and the provisions of a Schedule, the provisions of the clause of this Agreement shall prevail.

**Project Programme**

- 8.3. (a) The Manufacturer undertakes to carry out the design, manufacture, testing and supply of the Units and the other items of Purchased Equipment in accordance with the Project Programme.
- (b) Unless expressly stated otherwise, the Project Programme shall not be amended in any manner or form without the Purchaser or its nominee granting Assurance Acceptance to such amendment.
- (c) The matters set out in the Project Programme shall be wholly without prejudice to the Manufacturer's obligation to achieve Acceptance for each Unit and each other item of Purchased Equipment on the Contractual Acceptance Date for that Unit or item of Purchased Equipment.

**Manufacturer's acknowledgements regarding discrepancies and errors**

- 8.4. (a) The Manufacturer confirms to the Purchaser that, as at the Commencement Date, it has reviewed and considered in detail this Agreement and has satisfied itself:
- (i) that no discrepancies or errors exist within this Agreement;
  - (ii) as to the feasibility of the Train Technical Specification with respect to the design, manufacture, testing, commissioning and supply of the Units;
  - (iii) it has all relevant information with regard to the LO Infrastructure to enable the Manufacturer to carry out the Works and to achieve Unit Acceptance and that, to the extent that any additional infrastructure parameter information (*Additional Infrastructure Information*) is required, the Manufacturer shall obtain this at its own risk from the relevant Infrastructure Manager and shall not be entitled to make any claim against the Purchaser or seek any relief or remedy or be relieved from its obligations on the grounds of the obtaining by the Manufacturer of such Additional Infrastructure Information or the contents thereof;
  - (iv) that the Manufacturer Train Proposal conforms with and will implement in every respect the Train Technical Specification; and
  - (v) that the Manufacturer will be able to implement the Train Technical Requirements within the timescales set out in the Project Programme.
- (b) The Manufacturer acknowledges that, save as provided in clause 8.6(c), it accepts all risks arising from any discrepancies or errors that subsequently appear within this Agreement or between any provisions and/or schedules of this Agreement and that, subject as aforesaid, it shall not be entitled to make

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any claim against the Purchaser for extension of time, payment or otherwise in respect of any such errors or discrepancies.

#### **Infrastructure**

- 8.5. (a) The Manufacturer confirms that it has verified that as at the date of this Agreement all information in its possession (or in the possession of any Manufacturer Party) relating to the LO Infrastructure is consistent with the Train Technical Specification and that no discrepancies exist between the two or, if any such discrepancies do exist, that it has notified the Purchaser of any such discrepancies which may exist.
- (b) On and from the Commencement Date, the Manufacturer shall verify that all information and data relating to the LO Infrastructure (or part thereof) that it receives from or on behalf of the Purchaser or an Infrastructure Manager (or otherwise) is consistent with the Train Technical Specification and shall inform the Purchaser of any discrepancies or inconsistency as soon as reasonably practicable after receipt of such LO Infrastructure related information and (without prejudice to the fact that all such information is obtained at the Manufacturer's risk) shall co-operate with the Purchaser to mitigate the impact of any such discrepancies on this Project.

#### **Notification and resolution of any discrepancies or errors**

- 8.6. The Manufacturer shall notify the Purchaser forthwith upon becoming aware of a discrepancy or error within this Agreement that cannot be resolved in accordance with clauses 8.1 and 8.2. The Manufacturer agrees with the Purchaser that:
- (a) where there appears a discrepancy between the Train Technical Specification and the Manufacturer Train Proposal, the Train Technical Specification shall prevail;
- (b) subject as provided in paragraph (a), where there appears a discrepancy within the Train Technical Requirements which cannot be resolved by the Train Technical Specification, the Manufacturer shall provide with the notice of such discrepancy an explanation of how the discrepancy can be so resolved. Unless, within 15 Working Days of the Manufacturer's notice, the Purchaser notifies the Manufacturer in accordance with paragraph (c) to resolve the discrepancy in a different manner, the Manufacturer shall resolve the discrepancy in the manner proposed by it (subject always to that means of resolving the discrepancy being in compliance with the Applicable Laws and Standards);
- (c) subject as provided in paragraphs (a) and (b):
- (i) where there is a discrepancy or error within the Train Technical Specification, the Purchaser shall decide how such discrepancy or error should be dealt with, and shall notify the Manufacturer of such decision within 15 Working Days of the Manufacturer's notice of such discrepancy or error. The Manufacturer shall comply with such decision in carrying out the manufacture of the Units. The Manufacturer acknowledges that no omission of information in the

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Train Technical Specification or requirement for Additional Infrastructure Information shall constitute an error for the purposes of this clause 8.6. In the case of an error in the Train Technical Specification which does not constitute a discrepancy, the Purchaser's notification under this clause 8.6(c) shall constitute a Purchaser Change Notice and the provisions of Part B (*Purchaser Changes*) of Schedule 12 (*Change Procedure*) shall apply (and the Purchaser agrees not to withdraw such Purchaser Change to the extent that the terms of this paragraph 8.6(c)(i) apply); and

- (ii) where there is a discrepancy or error within the Manufacturer Train Proposal and/or the Project Programme, the Manufacturer shall at its own cost resolve such discrepancy or error in accordance with the provisions of Part C (*Manufacturer Changes*) of Schedule 12.
- (d) Without prejudice to paragraphs (a) to (c) (inclusive), whenever a discrepancy or error appears within this Agreement, the Parties shall consult with each other over the manner in which the error or discrepancy should be resolved.

**Manufacturer Train Proposal**

- 8.7. (a) The Manufacturer shall comply with the Manufacturer Train Proposal as may be amended from time to time in accordance with clause 8.7(b).
- (b) Unless expressly stated otherwise, the Manufacturer shall not amend the Manufacturer Train Proposal without obtaining the prior Assurance Acceptance of the Purchaser or its nominee to such amendments. Any Assurance Acceptance given by the Purchaser shall be without prejudice to the Manufacturer's obligation to ensure that each Unit and any other item of Purchased Equipment complies with the Requirements and clause 7.1.

**Plans**

- 8.8. (a) The Manufacturer shall comply with each of the Plans as may be amended from time to time in accordance with clause 8.8(b).
- (b) Unless expressly stated otherwise, the Manufacturer shall not be entitled to amend any Plan in any manner or form without obtaining the prior Assurance Acceptance of the Purchaser or its nominee to such amendments.

**No Extension of Time**

- 8.9. The Manufacturer acknowledges and agrees that compliance with its obligations in the Assurance Regime shall not entitle it to:
  - (a) any extension of time to the Contractual Acceptance Date in respect of any item of Purchased Equipment or otherwise entitle the Manufacturer to any adjustment to the Project Programme;
  - (b) any adjustment to:
    - (i) the Contract Price for any item of Purchased Equipment;

- (ii) the Option Price for any Option;
- (iii) the Total Contract Price and/or the Schedule of Milestones; or
- (c) be reimbursed for any costs and expenses incurred or otherwise be compensated in any form or manner.

**Liability for Performance**

8.10. Notwithstanding any other provision of this Agreement, no examination or lack of examination and/or Assurance Acceptance given by the Purchaser or its nominee of any document submitted by the Manufacturer in accordance with the requirements of the Assurance Regime shall in any respect relieve or absolve the Manufacturer from any obligation or liability under or in connection with this Agreement whether in relation to accuracy, safety, suitability, adequacy, performance, time or otherwise.

**9. Manufacturing Facilities and Rights of Audit**

**Manufacturing Facilities**

9.1. The Manufacturer shall ensure that the Primary Assembly and Manufacture of the Units shall be carried out by the Manufacturer at the Manufacturer's Works and the Manufacturer shall not use any other manufacturing facility for the Primary Assembly and Manufacture of the Units without the prior agreement of the Purchaser.

**Access to Facilities for Purpose of Audits, Verification and Inspection**

9.2. The Manufacturer shall without further charge grant access to the Purchaser during normal business hours and on reasonable prior notice, to any premises used by the Manufacturer or any of its Key Subcontractors in performing its obligations pursuant to this Agreement, to the extent necessary to allow the Purchaser to exercise any of its rights granted under this Agreement.

**Right of Audit**

- 9.3. (a) The Manufacturer shall, and shall procure that its Subcontractors shall:
- (i) maintain a complete and correct set of records pertaining to all activities relating to the performance of the Manufacturer's obligations under this Agreement and all transactions and Subcontracts entered into by the Manufacturer for the purposes of performing its obligations under this Agreement (in respect of the Manufacturer) and the performance by the Key Subcontractor of its obligations under its Key Subcontract (in respect of the Key Subcontractor) (the *Manufacturer's Records*); and
  - (ii) to the extent not handed over to the Purchaser on termination or expiry of this Agreement, retain all the Manufacturer's Records until the end of a period of not less than 6 years (or such longer period as may be required by law) following termination of this Agreement (the *Retention Period*).
- (b) Notwithstanding any other right of audit that the Purchaser is entitled to under this Agreement or under any Applicable Laws and Standards, in order

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to verify the Manufacturer's performance of and compliance with the Agreement the Purchaser (and/or its nominees) shall be entitled on reasonable written notice, to:

- (i) audit, inspect or witness any aspects of the manufacturing, testing or commissioning of the Units or any other item of Purchased Equipment or any of their Parts and to audit the design and certification thereof including being present at, and participating in, amongst other things:
  - (A) any inspection and conformance control of Subsystems supplied by Key Subcontractors;
  - (B) any inspection and conformance control of a Unit construction at stages to be agreed between the Purchaser and the Manufacturer;
  - (C) any system tests (at stages to be agreed) during construction;
  - (D) any dynamic run testing of completed Units; and
  - (E) any inspection and certification of each Unit's compliance with the Requirements and Manufacturer Train Proposal after completion of assembly and dynamic testing;
- (ii) inspect the sub-assembly of each Unit;
- (iii) inspect and be provided with copies (electronic and hard copy) without further charge to the extent necessary to verify the Manufacturer's compliance with this Agreement any and all of the Manufacturer's Records during the Retention Period (but not including any part of the Manufacturer's Records containing commercially confidential information to which the Purchaser is not otherwise entitled pursuant to this Agreement);
- (iv) audit the management systems of the Manufacturer and those of any Subcontractor; and
- (v) inspect and/or audit compliance by the Manufacturer and its Key Subcontractors with the Manufacturer's obligations under this Agreement,

provided that each of the audits and inspections described in paragraphs (i) to (v) shall not unreasonably disrupt the commercial and industrial operation of the Manufacturer or its Subcontractors.

- (c) The Manufacturer acknowledges and agrees that the Purchaser may nominate the C&AG to exercise any or all of the rights granted to the Purchaser under this clause 9, and the Manufacturer shall produce oral and/or written responses (as requested) to any of his questions.

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#### **Co-operation with Audit Procedure**

- 9.4. To the extent necessary for the purpose of exercising any of the rights granted under clause 9.3(b) the Manufacturer shall provide, and shall procure that its Subcontractors shall provide, all reasonable co-operation to the Purchaser and/or its nominee including:
- (a) ensuring that appropriate safety and security systems are in place to prevent unauthorised access, extraction of and/or alteration to any of the Manufacturer's Records;
  - (b) subject to clause 9.3(b)(iii), making all of the Manufacturer's Records available for inspection and within a reasonable time (or within such reasonable time specified by the Purchaser if such a time is specified) if requested; and
  - (c) making the Manufacturer's employees and/or any Subcontractor's employees available for discussion with the Purchaser or its nominee.

#### **Purchaser's Resident Representatives**

- 9.5. The Manufacturer shall:
- (a) procure that the Purchaser shall be entitled to locate suitably qualified representatives (the *Purchaser's Resident Representatives*) at the Manufacturer's Works at any time from the Commencement Date until Final Acceptance of the last Unit; and
  - (b) be responsible for providing the Purchaser's Resident Representatives with suitable office accommodation (consisting of desks, chairs, pedestal drawers, telephone handsets with power sockets, two phone lines (one with broadband capability), access to wi-fi, electronic scanning equipment, printers and photocopiers) and any necessary training they may require to access the Manufacturer's or any Subcontractor facilities.
- 9.6. The Manufacturer acknowledges and agrees that the Purchaser's Resident Representatives situated at the Manufacturer's Works may exercise any of the rights of audit granted to the Purchaser under this clause 9 and the Manufacturer shall provide the Purchaser's Resident Representative with unrestricted access to any documentation and records relating to the performance of the Works.

#### **No Claim for Relief**

- 9.7. Any audit, inspection and/or testing by the Purchaser, the Purchaser's nominee or a Purchaser's Resident Representative pursuant to this clause 9 shall not relieve the Manufacturer (nor any of its Subcontractors) from any of its obligations under this Agreement or prejudice any right, power and/or remedy of the Purchaser against the Manufacturer.

#### **Corrective Actions Arising**

- 9.8. (a) If and to the extent that the Purchaser, the Purchaser's nominee or a Purchaser Contract Manager when exercising their respective rights under this clause 9 or clause 14.3 discovers any breach or non-compliance with the

Manufacturer's obligations under this Agreement then the Manufacturer shall carry out any actions found to be reasonably necessary to remedy such breach or non-compliance (each, a *Corrective Action*) as soon as reasonably practicable in accordance with the following provisions of this clause 9.8.

- (b) The Manufacturer shall acknowledge formally within two (2) Working Days receipt of any request for a Corrective Action raised by the Purchaser, its nominee or a Purchaser Contract Manager, together with the Manufacturer's confirmation of the timescale allocated by the Purchaser, its nominee or a Purchaser Contract Manager for the Manufacturer to close out the Corrective Action. The Manufacturer shall advise the Purchaser and/or its nominee upon its close-out of the Corrective Action, together with details of the Corrective Action applied. The Purchaser shall be entitled to undertake a further audit of any Corrective Actions on the same basis as set out in clauses 9.2 to 9.6.
- (c) If the Manufacturer (acting reasonably) disputes any Corrective Action it shall notify the Purchaser whereupon the Manufacturer and the Purchaser shall consult with each other and seek to resolve such dispute and in default of such resolution either the Purchaser or the Manufacturer may refer the dispute for determination in accordance with clause 40 (*Dispute Resolution*).

## **10. Design and Mock-up**

### **Design Specification and Assurance Regime**

#### **10.1. The Manufacturer shall:**

- (a) undertake the design of the Units in accordance with the requirements of this Agreement including the Train Technical Specification, the Assurance Regime and the Project Programme; and
- (b) provide to the Purchaser throughout the Assurance Period, Progressive Assurance in accordance with the Assurance Regime that the Train Technical Requirements have been understood by the Manufacturer and that the Manufacturer's design proposals for the Units and Equipment satisfy the Train Technical Specification and will be at all times capable of meeting the Manufacturer's obligations under this Agreement.

### **Design risk and design authority**

- 10.2. The Manufacturer shall act as the design authority in respect of the Units and Equipment in accordance with all Applicable Laws and Standards. Other than in respect of a Modification made as a result of a Change in Law, the Manufacturer shall not be deemed to be in breach of its obligations as design authority to the extent that any Modification made without the Manufacturer's consent (not to be unreasonably withheld) causes that breach.

### **No design risk back to Purchaser**

- 10.3. (a) No involvement of the Purchaser or any Purchaser nominee in the Assurance Regime shall pass any design risk in respect of the Units and the Equipment to the Purchaser. Design risk in respect of the Units and the Equipment remains with the Manufacturer.

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- (b) All design risk in relation to a Unit and/or any item of Equipment shall be borne by the Manufacturer regardless of any Assurance Acceptance.

#### Schedule of Finishes

- 10.4. (a) The Manufacturer shall consult with the Purchaser on the schedule of finishes included in the Manufacturer Train Proposal for the interior and exterior of the Units and shall provide to the Purchaser, in hard copy and electronic copy form, an updated schedule of finishes for the interior and exterior of the Units within six months of the Commencement Date.
- (b) The Purchaser, acting reasonably, shall notify the Manufacturer of any amendments requested to the draft schedule of finishes relating to each of the interior and exterior of the Units, no later than the date falling 20 Working Days after receiving the relevant draft from the Manufacturer.
- (c) The Parties agree to discuss such amendments in good faith and the Manufacturer shall, in accordance with such discussion, incorporate the amendments requested by Purchaser and provide the Purchaser with the final version of the Schedule of Finishes (in hard copy and electronic copy form and without any amendments which the Purchaser has not reviewed or has not had a reasonable opportunity to review) within 20 Working Days after the Purchaser has notified the Manufacturer of any amendments to the Schedule of Finishes under this clause 10.4. The Manufacturer may only exclude amendments proposed by the Purchaser from the final version of the Schedule of Finishes if the Manufacturer has satisfied the Purchaser as to the reason for such exclusion.

#### Mock-Up

- 10.5. (a) The Manufacturer shall build the Mock-Up which complies with the requirements set out in the Train Technical Specification by no later than the dates set out in the Project Programme.
- (b) The Manufacturer shall deliver and transfer to the Purchaser, title to the Mock-Up free and clear of all Security Interests with full title guarantee in accordance with the Project Programme. The Manufacturer shall update the Mock-Up when necessary to reflect changes made as part of the design process to be delivered in each case as instructed by the Purchaser either:
  - (i) to a location in the United Kingdom specified by the Purchaser; or
  - (ii) if available, to a facility of the Manufacturer in the United Kingdom, ensuring that reasonable access is provided to the Purchaser for the purposes of assessing the Mock-Up,

and in either case the Manufacturer shall maintain a detailed log and photographic record (each of which shall be available to the Purchaser and the Operator at all times) of all updates which are made to the Mock-Up.

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**Permitted Design Change**

- 10.6. (a) The Purchaser shall be entitled to make a Permitted Design Change at any time prior to the Design Freeze Date applicable to that Permitted Design Change by serving written notice on the Manufacturer.
- (b) A notice served by the Purchaser pursuant to clause 10.6(a) shall:
- (i) identify the Permitted Design Change the Purchaser requires the Manufacturer to implement; and
  - (ii) describe, in reasonable detail, the scope and nature of the change required by the Purchaser.
- (c) Where the Purchaser serves written notice on the Manufacturer pursuant to clause 10.6(a) the Manufacturer shall notify the Purchaser in writing within ten (10) Working Days of receipt of such notice whether it considers that the Permitted Design Change required by the Purchaser (as described pursuant to clause 10.6(b)(ii)) is within the scope of and consistent with the Train Technical Requirements.
- (d) If the Manufacturer does not respond to the Purchaser within the period of time specified in clause 10.6(c), the Parties:
- (i) shall be deemed to have agreed that the Permitted Design Change (as described pursuant to clause 10.6(b)(ii)) is within the scope of and consistent with the Train Technical Requirements; and
  - (ii) shall act in accordance with clause 10.6(f).
- (e) If the Manufacturer considers that the Permitted Design Change required by the Purchaser is outside the scope of and/or inconsistent with the Train Technical Requirements:
- (i) the Manufacturer shall describe, in the notice given pursuant to clause 10.6(c) in reasonable detail those elements of the Permitted Design Change which are outside the scope of and/or inconsistent with the Train Technical Requirements; and
  - (ii) the Parties shall meet within three (3) Working Days of receipt by the Purchaser of the notice given by the Manufacturer pursuant to clause 10.6(c) and seek to agree whether the Permitted Design Change is within the scope of and consistent with the Train Technical Requirements. If the Parties are unable to reach agreement within ten (10) Working Days of first meeting then either Party may refer the matter as an Expert Dispute for resolution pursuant to Schedule 18 (*Dispute Resolution Procedure*).
- (f) If the Parties agree or it is otherwise determined that the Permitted Design Change is within the scope of and consistent with the Train Technical Requirements or if the implementation of any Permitted Design Change pursuant to this clause 10.6(f) is otherwise required under this clause 10.6:

- (i) the Manufacturer shall:
    - (A) comply with and implement the Permitted Design Change in the design, manufacture, supply, testing and commissioning of the Units; and
    - (B) revise the Manufacturer Train Proposal to take into account the Permitted Design Change and submit the revised Manufacturer Train Proposal to the Purchaser for Assurance Acceptance no later than ten (10) Working Days following such agreement or determination (as necessary); and
  - (ii) the Purchaser shall revise the Train Technical Specification to include the Permitted Design Change (as necessary).
- (g) If the Purchaser and the Manufacturer agree or it is otherwise determined that a Permitted Design Change is outside the scope of and/or inconsistent with:
- (i) the Train Technical Specification, the Purchaser shall be entitled to:
    - (A) revise the form and scope of the Permitted Design Change and resubmit the revised Permitted Design Change to the Manufacturer in accordance with clause 10.6(a), provided that the Design Freeze Date for the Permitted Design Change has not occurred; or
    - (B) issue a Purchaser Change Notice to modify the Train Technical Specification to the extent necessary for it to be consistent with the Permitted Design Change and the terms of clause 27 (*Change Procedure*) shall apply;
  - (ii) the Manufacturer Train Proposal (but not the Train Technical Specification), the Purchaser shall be entitled to:
    - (A) revise the form and scope of the Permitted Design Change and resubmit the revised Permitted Design Change to the Manufacturer in accordance with clause 10.6(a), provided that the Design Freeze Date for the Permitted Design Change has not occurred; or
    - (B) instruct the Manufacturer to implement the Permitted Design Change in accordance with clause 10.6(f).
- (h) The Parties acknowledge and agree that any amendment to the Train Technical Requirements by reason of the implementation of a Permitted Design Change and/or the serving of a notice by the Purchaser pursuant to clause 10.6(a) shall not:
- (i) except to the extent expressly provided for in clause 10.6(g)(i), constitute a Purchaser Change or a Required Change under the Change Procedure;

- (ii) constitute a Permitted Delay Event or entitle the Manufacturer to an extension of time to the Contractual Acceptance Date for any item of Purchased Equipment or otherwise entitle the Manufacturer to any adjustment to the Project Programme or to any relief or compensation pursuant to this Agreement; or
  - (iii) in any way affect the Contract Price for any item of Purchased Equipment, the Total Contract Price, the Option Price for any Option, the Schedule of Milestones, or otherwise entitle the Manufacturer to be reimbursed for any costs and expenses incurred or otherwise compensated in any form or manner.
- (i) Any change to this Agreement other than a Permitted Design Change, including without limitation any change to the Train Technical Specification and (except as provided for in clause 8.7) the Manufacturer Train Proposal, shall be made in accordance with the Change Procedure, save for any such changes made pursuant to the provisions of Schedule 6 (*Assurance Acceptance*).

## 11. Approvals and Infrastructure

### Licences and Consents

#### 11.1. The Manufacturer shall:

- (a) obtain and maintain at all times any Relevant Approvals which the Manufacturer shall be required to hold under any Applicable Laws and Standards or which are otherwise required for the Manufacturer to carry out its obligations under this Agreement;
- (b) be responsible for and shall bear the cost of preparing all materials necessary for each application for obtaining the Relevant Approvals;
- (c) be responsible for obtaining an independent safety assessment of all safety submissions to Competent Authorities;
- (d) be responsible for liaising with all relevant Parties in obtaining all Relevant Approvals including Competent Authorities;
- (e) each time a submission to a Competent Authority for Relevant Approvals is made, be primarily responsible for co-ordinating a review of the Relevant Approvals Management Plan and agreeing any amendments that are necessary to the Relevant Approvals Management Plan with the Purchaser; and
- (f) renew and/or update and/or obtain new Relevant Approvals where:
  - (i) either of the Parties wishes to change any aspect of the design, manufacture, construction, maintenance or use of the Units in a way which would invalidate an existing Relevant Approval or the Operator's Safety Certificate; or
  - (ii) any Relevant Approval needs to be renewed; or

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- (iii) any Relevant Approval needs to be updated for any other reason in accordance with all Applicable Laws and Standards,

subject, in the case of clause 11.1(f)(i) only, to the Change Procedure.

#### **Manufacturer Assistance for Operator Relevant Approvals**

- 11.2. (a) Without prejudice to the obligation to obtain Route Acceptance in clause 11.4, the Manufacturer shall provide to the Purchaser as soon as reasonably practicable any information relating to the Units and/or the Equipment and/or their maintenance required in relation to any preparation/ modification of the Operator's Safety Certificate to accommodate operation of the Units and/or Equipment.
- (b) Where a Relevant Approval may only be granted to an operator of rolling stock, the Purchaser shall (or shall procure that the Operator shall) make the formal presentation of the submissions for such Relevant Approval provided that the Manufacturer has supplied the required materials in accordance with this clause 11 and in accordance with the Relevant Approvals Management Plan.
- (c) All documentation which the Manufacturer provides under this clause 11 shall be in a format so as to be suitable for submission to the applicable Competent Authority by the Purchaser (or the Operator) without re-drafting.
- (d) The Purchaser shall prepare (or procure the preparation of) all documentation forming part of submissions to Competent Authorities for the Relevant Approvals which only the Purchaser/the Operator, in its capacity as operator/future operator of the Units, can prepare and which are therefore not within the Manufacturer's control provided that the Manufacturer has supplied the required materials in accordance with this clause 11 and in accordance with the Relevant Approvals Management Plan.

#### **Tax Allowances**

- 11.3. The Manufacturer undertakes and confirms to the Purchaser that neither it nor any other person which is a member of the Manufacturer Group, a Subcontractor, a supplier or a provider of finance to the Manufacturer or any of those persons has claimed and that it will not claim and shall procure that no such other person shall claim any capital allowances or analogous Tax allowances in respect of any Unit or any other item of Purchased Equipment.

#### **Route Acceptance**

- 11.4. (a) In respect of the LO Infrastructure, the Manufacturer shall be the Party proposing change for the purposes of RGS GE/RT8270 or any GE/RT8270 Equivalent and, as such, acknowledges and agrees that it will, at its own cost and risk, initiate and manage the process to obtain Route Acceptance on the LO Infrastructure in respect of the infrastructure and existing rolling stock in accordance with the requirements of RGS GE/RT8270 or any GE/RT8270 Equivalent, Schedule 6 (*Assurance Acceptance*), the Project Programme and the Agreed Testing Programme.

REDACTED

- (b) Without prejudice to clause 11.4(a), the Purchaser shall carry out (or procure that the Operator carries out) those things in relation to Route Acceptance which only the Operator, in its capacity as an operator of passenger-carrying rolling stock, is able to undertake including the preparation and approval of the Operator's Safety Certificate in relation to the testing and passenger service of the Units, provided that the Manufacturer promptly provides the Purchaser with all necessary documentation and information regarding the Units (and any relevant equipment) that is reasonably necessary or desirable for the Operator to prepare its Safety Certificate.

#### ROGS

- 11.5. Without limiting the Manufacturer's general obligations in this Agreement to comply with Applicable Laws and Standards and Relevant Approvals, the Manufacturer shall comply with all obligations under ROGS which relate to its obligations and activities under this Agreement including, without limitation, the obligation in regulation 22 of ROGS to co-operate with transport operators.

#### Interoperability Regulations

- 11.6. Without prejudice to the generality of clause 7.2, the Manufacturer shall comply with all relevant provisions of the Interoperability Regulations at its own cost and in particular shall:
  - (a) apply for the safety authorisation under regulation 5(1) of the Interoperability Regulations in respect of the Units and carry out and comply with any requirements of the Safety Authority and the Competent Authority (as such term is defined in the Interoperability Regulations) in connection with the Interoperability Regulations;
  - (b) be, and carry out all the requirements of, the Project Entity for the purposes of the Interoperability Regulations and appoint and meet the costs of the Notified Body and the Designated Body in accordance with the Interoperability Regulations;
  - (c) co-operate with and shall provide (or procure the provision of) all information to the Notified Body and the Designated Body which the Notified Body and the Designated Body (or any replacement of the same) may require in order to carry out their functions and duties under the Interoperability Regulations and shall provide to the Purchaser as Progressive Assurance copies of the results of the Notified Body's and Designated Body's verification procedures and Certificates of Verification issued;
  - (d) obtain prior written consent from the Purchaser (not to be unreasonably withheld) before making any change to the identity of the Notified Body or the Designated Body;
  - (e) procure that the Notified Body and the Designated Body (or any replacement of the same) carries out their functions and duties as the notified body or designated body respectively appointed under the Interoperability Regulations so as to procure the authorisation for the placing in service of the Units from the Safety Authority pursuant to the Interoperability Regulations

in a timely manner in accordance with the Project Programme and the obligations of the Manufacturer under this Agreement;

- (f) complete, draw up and maintain the Verification Declaration pursuant to the Interoperability Regulations relating to the Units, the LO Infrastructure and the obligations of the Manufacturer under this Agreement and submit the technical file drawn up in accordance with regulation 17 of the Interoperability Regulations (the *Technical File*) to the Safety Authority;
- (g) draw up an EC Declaration of Conformity of Suitability for Use in accordance with the Interoperability Regulations; and
- (h) apply for the Units and Vehicles to be registered with the relevant registration entities (including the National Vehicle Register, the Rolling Stock Library and the European register of authorised types of vehicles).

11.7. Without prejudice to the generality of clause 7.2, the Manufacturer shall ensure that, to the extent applicable, all the Purchased Equipment shall be imported in accordance with all Applicable Laws and Standards and the Manufacturer shall obtain all required approvals, licences and permits and pay or procure the payment of all taxes, import or export duties and tariffs relating to and/or incurred in connection with and/or arising out of the performance of the Works and further, the Manufacturer shall indemnify and keep the Indemnified Parties indemnified against all costs, damages and losses that any such person may suffer or that may arise as a result of and/or in connection with the importation of the Purchased Equipment into the United Kingdom. The Manufacturer, or its Subcontractor(s) shall be the importer of record in respect of any of the Purchased Equipment which is subject to any Applicable Laws and Standards relating to the importation of goods into the United Kingdom.

#### **Enhanced Capital Allowances**

- 11.8. (a) To enable the Purchaser to support TfL's claim to Her Majesty's Revenue & Customs (*HMRC*) in relation to Enhanced Capital Allowances, the Manufacturer shall provide the following information to the Purchaser as necessary:
- (i) details of eligible components, including the number of components, unique model reference numbers and manufacturer details and evidence of conformance with minimum performance;
  - (ii) the cost of each eligible component, any applicable professional fees directly associated with the provision of each eligible component, installation and delivery cost of each eligible component and associated preliminaries directly associated with the provision of each eligible component;
  - (iii) for each cost referred to in paragraph 11.8(a)(ii), an invoice or payment certificate shall be provided with supporting evidence that confirms that the relevant cost has sufficient nexus to each eligible component (where applicable). In addition, the delivery date for each cost referred to in paragraph 11.8(a)(ii) shall be provided ; and

- (iv) details of the site and/or Unit on which each eligible component purchased will be installed.
- (b) The Manufacturer agrees to co-operate with the Purchaser and TfL and its professional advisers in relation to the submission and agreement of any claim to HMRC in relation to Enhanced Capital Allowances relating to the Works.

## **12. Training Services**

### **General Obligations**

- 12.1. The Manufacturer shall provide, or procure the provision of, the training set out in and in accordance with the Training Programme and the Project Programme.

### **Initial Training Programme**

- 12.2. The Manufacturer shall, within six months of the Commencement Date, provide to the Purchaser a training programme, in hard copy and electronic copy form (including appropriate training of employees of the Purchaser (or the Operator) to administer such programme) in accordance with the Project Programme which will enable the Purchaser to train its employees (or those of the Operator or other nominees including, without limitation, any relevant Infrastructure Manager or station facility owner) to operate the Units, the Simulator and perform its obligations under this Agreement, the TSA and/or any leasing documentation relating to the Units in accordance with all Applicable Laws and Standards, Relevant Approvals and the Operator's Safety Certificate. The training programme shall accord with the timescales and duration required by this Agreement and all training will be provided at Litchurch Lane, Derby DE24 8AD (or at any other location as may be agreed by the Parties) and will detail such training materials and equipment (the *Training Materials*) as are reasonably necessary to permit the Purchaser's (or the Operator's) training instructors to undertake further training of the Purchaser's (or the Operator's) employees or those of any nominee.

### **Provision of Training Materials**

- 12.3. The Manufacturer shall provide to the Purchaser the Training Materials at least three months before Acceptance of the Simulator. The Purchaser shall be entitled, without further charge, to duplicate as many copies of the Training Materials as it requires for the purposes of training its employees or those of any nominee.

### **Agreement of Training Programme**

- 12.4. The Purchaser shall provide comments to the Manufacturer on the training programme provided by the Manufacturer pursuant to clause 12.2 and the Parties shall discuss such comments in good faith and the Manufacturer shall, in accordance with such discussion, incorporate the amendments requested by the Purchaser and provide the Purchaser with the final version of each training programme (in hard copy and electronic copy form and without any amendments which the Purchaser has not reviewed or has not had a reasonable opportunity to review) within 28 days after the Purchaser has provided its comments to the Manufacturer. The training programme agreed pursuant to this clause 12.4 shall be deemed to be the *Training Programme*

for the purposes of clauses 12.1 and 12.2, as defined for the purposes of this Agreement.

#### **Driver Training**

- 12.5. The Manufacturer will work with the Purchaser to make available as much driver training as practicable during the Pre-Provisional Fault Free Running.

#### **Additional Training**

- 12.6. At any time during the Duration (as defined in the TSA) of the TSA, the Manufacturer will at the Purchaser's request and cost, provide training in addition to that provided pursuant to this clause 12 as the Purchaser may require at the rate of £[REDACTED] (Indexed by RPI) per day or part thereof.

#### **Costs**

- 12.7. Where any training can only reasonably be provided by the Manufacturer at a location outside London, the Purchaser shall meet the subsistence costs of the staff to be trained (including hotels and travel).

#### **13. Maintenance**

- 13.1. Each Party shall comply with its respective obligations as set out in Schedule 9 (*Maintenance Facilities and Chingsford Stabling Site*).

#### **Maintenance Plan**

- 13.2. The Manufacturer shall provide to the Purchaser for Assurance Acceptance, no later than six months before the Contractual Provisional Acceptance Date of the first Unit, a rolling stock maintenance plan which shall demonstrate how the Maintainer will meet the requirements set out in schedule 1 (*Maintenance Services*) of the Train Services Agreement. Once such maintenance plan has been Assurance Accepted, it shall be the *Maintenance Plan* for the purposes of this Agreement and the Train Services Agreement.

#### **14. Testing and Certification**

##### **Compliance with Testing Requirements**

- 14.1. The Manufacturer shall:
- (a) carry out testing on the Units in accordance with the Testing Requirements, the Agreed Testing Strategy, the Agreed Schedule of Tests, the Agreed Testing Programme, the Project Programme, all Applicable Laws and Standards, all Relevant Approvals and all safety, quality and environmental requirements;
  - (b) provide the results of the tests to the Purchaser on the dates specified in the Testing Requirements and the Project Programme; and
  - (c) ensure that the Agreed Testing Programme shall incorporate all testing required to demonstrate compliance with the requirements of clause 14.1(a) and the Assurance Regime.

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**Manufacturer to provide testing equipment**

- 14.2. (a) For the testing of each Unit and each item of Equipment, the Manufacturer shall provide, procure or otherwise make available at its own cost all testing equipment, personnel (including drivers and appropriately qualified train operating staff for on-track testing), documentation and facilities (including paths for on-track testing) in order to comply with its obligations under this Agreement (including for any repeat testing that may be required as a result of a Unit or an item of Equipment not passing any tests or otherwise as required to obtain any Relevant Approvals or as required by Applicable Laws and Standards).
- (b) Without limiting the Manufacturer's obligations under this Agreement the Manufacturer shall endeavour to perform as much testing as possible away from the LO Infrastructure, provided that this is in accordance with the provisions of this Agreement, in order to minimise the number of paths the Manufacturer will need for on-track testing on the LO Infrastructure.

**Verification of Testing**

- 14.3. (a) No involvement by the Purchaser or the Operator or any nominees either in the Assurance Regime or testing carried out pursuant to, or otherwise relating to the subject matter of, this Agreement (including in respect of the Units and the Equipment) will result in any diminution of the responsibilities or obligations of the Manufacturer under this Agreement or any change in the allocation of risks and responsibilities set out in this Agreement. In particular the attendance at or otherwise the witnessing of any tests by the Purchaser or the Operator and/or the nominees of either will not affect the obligations of the Manufacturer to comply with its obligations under this Agreement.
- (b) Each time there is a major event in the production of the Units or the Equipment, a design review, testing or any other significant event, the Manufacturer shall provide the Purchaser with reasonable notice of the date upon which such event, review or testing is due to take place and the Purchaser and/or its nominee shall be entitled to attend.
- (c) Without prejudice to clause 9 (*Manufacturing Facilities and Rights of Audit*), in order to verify the Manufacturer's performance of, and compliance with this Agreement, the Purchaser (and/or its nominees) shall be entitled to inspect or witness any aspect of the design, manufacture, supply, testing, commissioning and delivery of the Units and the Equipment, their components or allied services, and to inspect the Technical Documents and to audit the management systems of the Manufacturer and those of any Subcontractor. The Purchaser (and/or any nominees) shall be entitled to enter on to the premises of the Manufacturer and any Subcontractor for this purpose, provided that no such inspection or audit shall unreasonably disrupt the commercial and industrial operation of the Manufacturer or any Subcontractor. Clause 9.8 shall apply in respect of any action found to be required as a consequence of such inspection or audit.

REDACTED

- (d) The Parties shall bear their own inspection and witnessing costs pursuant to this clause 14.3.

#### **Disputes**

- 14.4. If the Parties do not agree any matter referred to in clauses 14.1, 14.2 and 14.3, then either Party may refer the matter as an Expert Dispute for resolution under the Dispute Resolution Procedure.

#### **No extension of time or adjustment**

- 14.5. The Manufacturer acknowledges and agrees that compliance with its assurance obligations and the application of and implications of the Assurance Regime shall not entitle it to:
  - (a) any extension of time to any Contractual Acceptance Date in respect of any Unit or item of Equipment or otherwise entitle the Manufacturer to any adjustment to the Project Programme or the Contract Price for any item of Purchased Equipment, the Total Contract Price, the Option Price for any Option, the Schedule of Milestones, or to any other relief or compensation in accordance with this Agreement; or
  - (b) be reimbursed for any costs and expenses incurred or otherwise be compensated in any form or manner.

### **15. Delivery and Acceptance of Units and Equipment**

#### **General Acceptance requirements**

- 15.1. The Manufacturer shall ensure that:
  - (a) the Units, the Simulator, the Initial Spares, the Initial Special Tools and the Manufacturer Fit Out Assets are delivered, tested and made ready for Provisional Acceptance or Equipment Acceptance (as applicable), and the Units are delivered, tested and made ready for Final Acceptance and Fleet Acceptance in accordance with the Train Technical Requirements, the Project Programme, the Agreed Testing Programme and the procedures set out in the Assurance Regime;
  - (b) no Unit, Simulator, Initial Spare, Initial Special Tool or Manufacturer Fit Out Asset is delivered to the Purchaser for Provisional Acceptance or Equipment Acceptance (as applicable) prior to the relevant Contractual Acceptance Date (unless otherwise agreed by the Purchaser in its absolute discretion);
  - (c) the rate of delivery for Pre-Provisional Acceptance and for Provisional Acceptance of the Units does not exceed two Units per week (unless otherwise agreed by the Purchaser in its absolute discretion);
  - (d) each Unit and item of Equipment shall be Provisionally Accepted or Equipment Accepted (as applicable) at the applicable Designated Delivery Location set out in paragraphs (a) to (d) of the definition of such term in clause 1.1, or such other location as the Parties may, acting in good faith, agree following a proposal made by one Party to the other Party at least two