

DATED _____ **2016**

LONDON UNDERGROUND LIMITED

and

EKE-ELECTRONICS LTD

MANUFACTURE, SUPPLY AND SERVICES

AGREEMENT

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THIS MANUFACTURE AND SUPPLY AGREEMENT is made on 2016

BETWEEN:

- (1) **LONDON UNDERGROUND LIMITED**, (Registered No: 1900907) a company incorporated under the laws of England and Wales whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the "**Purchaser**"); and
- (2) **EKE-ELECTRONICS LTD.** (Registered No: 01007204) a company incorporated under the laws of Finland whose registered office is at Piispanportti 7, 02240 Espoo, Finland (the "**Manufacturer**").

WHEREAS:

- (A) The Purchaser wishes to procure the Replacement Systems, Goods and Services for use on the London Underground.
- (B) The Purchaser and the Manufacturer have agreed to enter into an agreement for (among other things) the design, manufacture and supply of the Replacement Systems and supply of the Goods and Services, on the terms and conditions set out hereinafter.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"Acceptance for Service" means:

- (A) in respect of any Replacement System, that it fully complies with the Acceptance for Service Criteria as evidenced by and occurring upon the issue by the Purchaser Representative of an Acceptance for Service Certificate for that Replacement System; and
- (B) in respect of any other item of Goods, that it has been delivered to the Purchaser in accordance with the provisions of this Agreement;

and "Accept for Service" and "Accepted for Service" shall be construed accordingly;

"Acceptance for Service Certificate" means a certificate in the form or substantially in the form set out in Schedule 6 (*Form of Certificates*) Part C (*Form of Acceptance for Service Certificate*);

"Acceptance for Service Criteria" has the meaning ascribed to it in Clause 12.7.1;

"Additional Spares" means Spares for use in planned or unplanned maintenance, an indicative list of which is included in Schedule 3 (*Spares and Special Tools*) Part B (*Additional Spares*) (as may be amended in accordance with the Variation Procedure), to be made available by the Manufacturer in accordance with Clause 11.4;

"Agreed FRACAS and DRACAS Database" has the meaning ascribed to it in Schedule 1B (*Contract Management*) Part C (*FRACAS/DRACAS*);

"Agreement" means this Agreement including the Schedules;

"Alternative Location" means an alternative location in the United Kingdom approved by the Purchaser in writing (acting reasonably) to be used by the Manufacturer (or its Subcontractors) to complete the Design and undertake the First Train Tests and Routine Production Testing;

"Applicable Laws" means, as the context may require, all or any laws, statutes, by-laws, codes of practice which have force of law, directives, regulations, Industry Standards, statutory instruments, rules, orders, rules of court, delegated or subordinate legislation, rules of common law or any European Union legislation at any time or from time to time in force in the United Kingdom or the European Union and which are or may become applicable to this Agreement, any agreement or document referred to herein, any item of Goods, the Services and/or the Manufacturer's obligations (including their performance) under this Agreement;

"Bond Provider" means a bond provider having a credit rating of at least the Required Rating and having been approved in writing by the Purchaser (in its absolute discretion);

"Change Date" means the date set out in the Contract Particulars;

"Change in Law" means the application to any person of any Applicable Laws and/or LU Standards which did not apply to them at the Change Date, or any change in the application or interpretation after the Change Date of any Applicable Laws and/or LU Standards but excluding any Foreseeable Change in Law;

"Commencement Date" means the date specified as such in the Contract Particulars, or if no date is specified, the date specified in a written notice by the Purchaser to the Manufacturer instructing it to commence the provision of works and Services under this Agreement;

"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;

"Condition" means a condition stated in Schedule 16 (*Contract Particulars*) as may be further described in Schedule 1A (*Specification*);

"Declaration of Ineffectiveness" means a declaration of ineffectiveness in relation to this Agreement made by a court of competent jurisdiction in accordance with Regulation 98 of the Public Contracts Regulations 2015 (as amended);

"Design Approval" means approval of the Design pursuant to Clause 6.3.5;

"Confidential Information" has the meaning ascribed to it in Clause 30.1;

"Consequential Loss" means in relation to a breach of this Agreement or other circumstances in which an Indemnified Party is entitled to recover any costs, expenses or liabilities suffered or incurred, any loss of production, loss of profit, loss of revenue, loss of contract, loss of goodwill, liability under other agreements or liability to third parties and/or indirect or consequential or other financial loss resulting from such breach and whether or not the Party committing the breach knew, or ought to have known, that such indirect or consequential loss would be likely to be suffered as a result of such breach;

"Contract Information" means (i) this Agreement in its entirety (including from time to time agreed changes to this Agreement) and (ii) data extracted from the invoices

submitted by the Manufacturer which shall consist of the Manufacturer's name, the expenditure account code, the expenditure account code description, the SAP document number, the clearing date and the invoice amount;

"Contract Particulars" means the contract particulars set out in Schedule 16 (*Contract Particulars*);

"Contract Price" means the amount payable by the Purchaser to the Manufacturer under this Agreement as specified in the Contract Particulars and as further detailed in Schedule 4 (*Contract Price*), as such amount may be amended from time to time pursuant to this Agreement;

"Contract Programme" means the programme set out in Schedule 2 (*Contract Programme*) or, where no programme is so included or the included programme has subsequently been revised (and such revisions have been accepted by the Purchaser Representative), the latest programme accepted by the Purchaser Representative pursuant to Clause 8. The latest programme accepted by the Purchaser Representative supersedes previous Contract Programmes;

"Contractual Date" means, in relation to the Replacement Systems and each other item of Goods, the date(s) specified in Schedule 2 (*Contract Programme*) for:

- (A) delivery of the Replacement Systems and other item of Goods for a Train (other than the First Train) into Storage,
- (B) achieving DC Acceptance for Service of such Replacement Systems or other item of Goods installed on or delivered with DC Trains (including the First Train),
- (C) achieving Acceptance for Service of such Replacement Systems or other item of Goods, and/or
- (D) achieving Fleet Acceptance;

"Corrective Action" has the meaning ascribed to it in Clause 10.6.1;

"Critical Design Review" has the meaning ascribed to it Schedule 1A (*Specification*);

"Critical Design Review Approval" means approval of the Critical Design Review;

"DC Acceptance for Service" means in relation to a DC Train (including the First Train), that it fully complies with the DC Acceptance for Service Criteria as evidenced by and occurring upon the issue by the Purchaser Representative of a DC Acceptance for Service Certificate, and **"DC Accept for Service"** and **"DC Accepted for Service"** shall be construed accordingly;

"DC Acceptance for Service Certificate" means a certificate in the form or substantially in the form set out in Schedule 6 (*Form of Certificates*) Part B (*Form of DC Acceptance for Service Certificate*);

"DC Acceptance for Service Criteria" has the meaning ascribed to it in Clause 12.4.1;

"DC Rectification Works" has the meaning ascribed to it in Clause 12.3.6;

"DC Traction System" means the existing DC traction system as more particularly described in Schedule 1A (*Specification*);

"DC Train" has the meaning ascribed to it in Clause 12.3.1;

"Declaration" has the meaning ascribed to it in Clause 54.1;

"Default Interest" means interest on late payment at the rate of two per cent per annum above the base rate of the Bank of England from time to time;

"Defect" means that the Goods or any part of them are defective, damaged, of unsatisfactory quality or not Fit for Purpose whether in consequence of:

- (A) defective materials, workmanship or design;
- (B) transit of the Goods (including the Prototype Units and the First Train), including from the Manufacturer's Works into Storage or to the Delivery Location (as the case may be) or from the Delivery Location to the Manufacturer's Works; or
- (C) any act or omission of the Manufacturer during the Defect Rectification Period, and is not principally caused by:
 - (i) any failure by the Purchaser or any third party appointed by the Purchaser to use, operate or maintain the Goods in accordance with the Manuals, Installation Instructions and/or any Applicable Laws and applicable LU Standards;
 - (ii) vandalism, collision or accidental damage caused by any person other than the Manufacturer, its Subcontractors or suppliers or the directors, agents, representatives or employees of any of them; or
 - (iii) any failure by the Installer to comply with the Installation Instructions during the installation of the Replacement Systems;

"Defect Rectification Period" means (without prejudice to the further provisions of this definition):

- (A) in relation to each Replacement System installed on a DC Train including the First Train (and those Parts forming part of the Replacement Systems installed on the DC Train), the period commencing on the date that the Replacement Systems has been DC Accepted for Service and ending on the date of Fleet Acceptance;
- (B) in relation to all other Replacement Systems other than DC Trains or the First Train (and those Parts forming part of the Replacement Systems), the period commencing on the date that the Replacement System has been Accepted for Service and ending on the date of Fleet Acceptance;

"Delivery Location" means:

- (A) in relation to the Prototype Units, the First Train and any other Goods (excluding the Supplementary Spares) the relevant London Underground delivery location as notified in writing by the Purchaser to the Manufacturer;
- (B) in relation to the Supplementary Spares, the Purchaser's premises as notified in writing by the Purchaser to the Manufacturer;
- (C) in relation to any Replacement Systems for a Train (other than the First Train) and any item of Goods required for installation of the Replacement Systems the Installer's premises as notified in writing by the Purchaser to the Manufacturer;
- (D) in relation to the Training Programme and Training Materials the Installer's premises as notified in writing by the Purchaser to the Manufacturer and to the Purchaser's maintenance team at a location as notified in writing by the Purchaser to the Manufacturer; or
- (E) in relation to the Design to the Purchaser electronically;

"Design" means all design documentation (whether in written or electronic form) produced by or on behalf of the Manufacturer for the Replacement Systems;

"Design Approval" means approval of the Design pursuant to Clause 6.3.5;

"Design Authority" means the entity responsible for ensuring that the Replacement Systems and each Part, Spare and Special Tool continues to comply with the Specification and for maintaining Relevant Consents following approved changes to the Design;

"Dispute" has the meaning ascribed to it in Schedule 10 (*Dispute Resolution Procedure*);

"Dispute Resolution Procedure" means the process for resolving Disputes set out in Schedule 10 (*Dispute Resolution Procedure*);

"Environmental Damage" means any material injury or damage to persons, living organisms or property (including offence to man's senses) or any pollution or impairment of the environment resulting from the discharge, emission, escape or migration of any substance or energy, noise or vibration save to the extent any of the foregoing are within the requirements of Schedule 1A (*Specification*);

"Equality & Diversity Infraction" has the meaning ascribed to it in Schedule 17 (*Responsible Procurement*) Part A (*Equality and Supplier Diversity*);

"Escrow Agent" means NCC Escrow International Limited (Company Number 03081952) or any successor or replacement to all or any of its functions;

"Escrow Agreement" means an agreement in the form or substantially in the form set out in Schedule 13 (*Form of Escrow Agreement*);

"Escrow Materials" means the Software, the Source Code and any other such materials notified in writing by the Purchaser to the Manufacturer that are required by the Purchaser to enable the Purchaser to perform or procure the performance of the Manufacturer's obligations under this Agreement including, but not limited to, Design drawings, product specifications and quality control measures;

"European Railway Agency" means the European Railway Agency established pursuant to Regulation (EC) No 1335/2008 of the European Parliament and of the Council of 16 December 2008 amending Regulation (EC) No 881/2004 establishing a European Railway Agency (Agency Regulation) and includes any successor to all or any of its functions;

"Excepted Liabilities" means:

- (A) the Manufacturer's liability for death or personal injury, or fraud, fraudulent misrepresentation or corruption;
- (B) the Manufacturer's liability for loss suffered or incurred by the Purchaser or any other person to the extent such loss is or is required to be insured by the Manufacturer in accordance with the provisions of Clause 28;
- (C) the Manufacturer's liability for Environmental Damage;
- (D) the Manufacturer's liability under Clause 13;
- (E) the Manufacturer's liability in respect of its express obligations in relation to warranty claims and for the rectification of any Defect pursuant to each of the Manufacturer's obligations under Clause 17;
- (F) the Manufacturer's liability in respect of any IPRs pursuant to Clause 24.6;
- (G) the Manufacturer's liability to pay any Taxes as expressly provided by this Agreement or as required by Applicable Law;

- (H) any Default Interest on any payments falling within (A) to (G) above;
- (I) the Manufacturer's liability on termination or cancellation of this Agreement or otherwise to refund and pay to the Purchaser all payments previously paid by the Purchaser in respect of the Replacement Systems and other items of Goods and Services which are the subject of termination or cancellation in accordance with this Agreement (together with all Default Interest payable on such refund or payment), as such refund is calculated in accordance with Clause 25.5;
- (J) any costs or expenses which the Manufacturer is obliged or does expend during the term of the Agreement in carrying out its obligations;
- (K) the Manufacturer's liability in respect of any actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis) brought against any Indemnified Party by the Replacement Traction System Manufacturer and/or the Installer as a result of the Manufacturer breaching its obligations under Schedule 3A (*Continuing Support*);
- (L) the Manufacturer's liability in respect of any third party actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis) brought against any Indemnified Party;

"Extended Storage Option" has the meaning ascribed to it in Clause 12.2A.3;

"Fault Free" means, in relation to a Replacement System which is installed in a Train, that such Replacement System runs without a Defect manifesting itself;

"Financial Close Protocol" means the financial close protocol set out in Schedule 4 (*Contract Price*) Part 7 (*Foreign Exchange*);

"First Train" has the meaning ascribed to it in Clause 6.6.2;

"First Train Deliverables" means the First Train deliverables specified in the Contract Particulars;

"First Train Test" has the meaning ascribed to it in Schedule 1A (*Specification*);

"First Train Rectification Works" has the meaning ascribed to it in Clause 12.3A.6;

"Fit for Purpose" means, in relation to any asset or service to be provided under this Agreement:

- (A) that it complies with all requirements and provisions of this Agreement including the Specification;
- (B) that it complies with all Applicable Laws, Relevant Consents and applicable LU Standards and, to the extent that there is non-compliance with an applicable LU Standard, that there is a valid derogation from that LU Standard; and
- (C) where it is a Part and/or Spare, that if such Part or Spare is incorporated into the Replacement System, such incorporation does not prevent the Replacement System from complying with (A) or (B) above;

"Fleet Acceptance" means that the Replacement Systems comply with the Fleet Acceptance Criteria as evidenced by and occurring upon the issue of a Fleet Acceptance Certificate for the Replacement Systems;

"Fleet Acceptance Certificate" means a certificate in the form or substantially in the form set out in Schedule 6 (*Form of Certificates*) Part E (*Form of Fleet Acceptance Certificate*) issued by the Purchaser Representative in respect of the Replacement Systems;

"Fleet Acceptance Criteria" means the criteria required to be satisfied in order to achieve Fleet Acceptance of the Replacement Systems in accordance with Clause 12.9.2;

"Fleet Acceptance Longstop Date" means the date specified in the Contract Particulars;

"Fleet Mean Distance Between Service Affecting Failure" has the meaning ascribed to it in Schedule 1A (*Specification*);

"FM Affected Party" has the meaning ascribed to it in Clause 27.1.1;

"FM Notice" has the meaning ascribed to it in Clause 27.4;

"FOI Legislation" means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance issued by the Information Commissioner, the Department of Constitutional Affairs, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;

"Force Majeure Event" means any:

- (A) fire, earthquake or flood;
- (B) act of terrorism;
- (C) war, invasion, acts of foreign enemies, hostilities, civil war, revolutions, insurrection, riots or civil unrest; and/or
- (D) strikes, lock outs or other industrial action not solely affecting the Manufacturer's and/or their Subcontractors' employees or those of any of its Subcontractors.

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

"Foreseeable Change in Law" means any Change in Law which:

- (A) is a requirement under the Specification;
- (B) is, provided it comes into force in the same or substantially similar form:
 - (i) enacted prior to the Change Date as coming into effect on a specified future date;
 - (ii) in a draft bill or statutory instrument published on or before the Change Date;
 - (iii) in a draft Industry Standard published on or before the Change Date by Transport for London, the Secretary of State for Transport, RSSB, Network Rail, or the European Rail Agency;
- (C) a prudent manufacturer of plant and machinery should have reasonably known about on or before the Change Date; and/or
- (D) otherwise arises on or before the Change Date;

"General Packing and Delivery Instructions" means the document set out in Appendix 1 of Schedule 8 (*Storage*) Part A (*Storage Requirements*);

"GLA Act" means the Greater London Authority Act 1999;

"Goods" means the Replacement Systems, Spares, Special Tools, Manufacturer Documentation and other items to be provided by the Manufacturer in accordance with this Agreement;

"Greater London" means that term as it is used in the GLA Act;

"Greater London Authority" means the authority 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 company which is a holding company or subsidiary of that company and any subsidiary of any such holding company; for which purposes **"subsidiary"** and **"holding company"** have the meanings respectively given to them by section 1159 of the Companies Act 2006;

"Indemnified Parties" has the meaning ascribed to it in Clause 29.2;

"Independent Auditor" has the meaning ascribed to it in Clause 25.10.3;

"Industry Standards" means all the laws, rules, regulations, recommendations and instructions, including (without limitation) guidance, codes of practice and conduct which have the force of law or with which it is generally accepted within the United Kingdom rail industry that it is good practice to comply, relating to the performance of this Agreement and/or applicable to the Goods which are or have been issued by the Secretary of State, Network Rail, the Office of Rail and Road, RSSB, or any other Relevant Consents Authority or other person from time to time legally authorised to set standards in respect of the rail industry including the European Railway Agency and shall include, without limitation, Railway Group Standards, the Rule Book, Notified National Technical Rules and Technical Specifications for Interoperability;

"Information" means information recorded in any form held by or on behalf of the Purchaser;

"Information Request" means a request for any Information under the FOI Legislation;

"Insolvency Event" in relation to any person means:

- (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 seven (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;

"Installation Instructions" means the instructions produced by the Manufacturer for installing the Replacement Systems on to each Train;

"Installer" has the meaning ascribed to it in Schedule 1A (*Specification*);

"Intellectual Property Rights" or **"IPRs"** means all intellectual property rights in any part of the world, including any patent, rights to inventions, patent application, trade mark and service mark (including any trade, brand or business names), trade mark application, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, design rights, registered design, registered design application, utility model, trade name, discovery, invention, process, formula, specification, copyright and related rights, unregistered design right, technical information or drawing (including rights in software, database rights and topography rights), rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

"Intermediate Design Review" has the meaning ascribed to it in Schedule 1A (*Specification*);

"Intermediate Design Review Approval" means approval of the Intermediate Design Review;

"Key Date" means a date, as stated in Schedule 2 (*Contract Programme*) unless later changed in accordance with this Agreement, by which the Manufacturer is required to meet a Condition;

"Key Personnel" means the persons listed in Schedule 5 (*Key Personnel*) (or any replacements appointed in accordance with Clause 9.1);

"Late Delivery" has the meaning ascribed to it in Clause 13.1;

"Late Delivery of Supplementary Spares" has the meaning ascribed to it in Clause 13.1;

"Late Design Approval" has the meaning ascribed to it in Clause 13.1;

"London Living Wage" means the basic hourly wage current at the date of this Agreement (before tax, other deductions and any increase for overtime) as may be revised from time to time by the Mayor of London or any other body or agency whose directives, decisions, instructions, rulings, laws, or regulations are directly enforceable against the Purchaser;

"Losses" means any expense, liability, loss, claims, fines, damages, costs (including reasonable legal and other professional fees and disbursements), penalties, settlements and judgments incurred by the Purchaser, its employees or agents or any other person;

"LU Standards" means the various standards documents and associated codes of practice identified in Schedule 1A (*Specification*);

"LUL Network" means the stations and depots (wherever situate), assets, systems, track and other buildings which are used for the maintenance and provision of the underground service known as the London Underground;

"**Milestone**" means, in the case of the Goods, the achievement of each of the stages in the Design, manufacture, testing, commissioning, delivery and Acceptance for Service of the Goods, in each case as more particularly set out in the table in Schedule 4 (*Contract Price*) Part 4 (*Payment Milestones*);

"**Milestone Payment**" has the meaning ascribed to it to it in Clause 20.2.4;

"**New Systems Rectification Works**" has the meaning ascribed to it in 12.5.3;

"**OIL**" has the meaning ascribed to it to it in Clause 6.3.3;

"**Old Components**" means the existing data transmission systems and any other components that are removed from the First Train by the Manufacturer in order to install the Replacement Systems, title to which remains with the Purchaser;

"**Part**" means any equipment, component or furnishing forming part of the Replacement System or Spare;

"**Party**" means each of the Purchaser and the Manufacturer and "**Parties**" shall be construed accordingly;

"**Permitted Delay Event**" has the meaning ascribed to it in Clause 15.1;

"**Payment Certificate**" has the meaning ascribed to it in Clause 20.2.4;

"**Performance Bond**" means, where the Contract Particulars specifies a Performance Bond is required, a performance bond issued by a Bond Provider in favour of the Purchaser in substantially the form set out in Schedule 11 (*Form of Performance Bond*);

"**Performance Failure**" has the meaning ascribed to it in Clause 13.3;

"**Persistent Breach**" has the meaning ascribed to it in Clause 25.4.2;

"**PI Insurance**" has the meaning ascribed to it in paragraph 4.1 of Schedule 9 (*Insurance*) Part B (*Insurance required from the Commencement Date until Fleet Acceptance*);

"**Preconditions**" has the meaning ascribed to it in Clause 12.8.1;

"**Pre-installation Inspection and System Test**" means the pre-installation inspection and system tests identified in Schedule 1A (*Specification*);

"**Preliminary Design Review**" has the meaning ascribed to it in Schedule 1A (*Specification*);

"**Preliminary Design Review Approval**" means approval of the Preliminary Design Review;

"**Proceedings**" has the meaning ascribed to it in Clause 47.2;

"**Production Plan**" has the meaning ascribed to it in Schedule 1A (*Specification*);

"**Prohibited Act**" means:

- (A) offering or agreeing to give to any servant, employee, officer or agent of the Purchaser or the TfL Group any grant, gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Purchaser; or

"LUL Premises" means the relevant location on the LUL Network as notified by the Purchaser in writing to the Manufacturer from time to time;

"Maintenance Spares" means those Spares listed in Schedule 3 (*Spares and Special Tools*) Part A (*Maintenance Spares*);

"Manuals" means documents which fully describe how the Replacement Systems should be operated, serviced, maintained, dismantled, reassembled, repaired and overhauled;

"Manufacturer Documentation" means the documentation to be provided by the Manufacturer as more particularly described in Schedule 1A (*Specification*) including, but not limited to, the Manuals, the Installation Instructions, the Testing Instructions, the Training Materials and the Training Programme;

"Manufacturer Event of Default" means any of the events or circumstances listed in Clause 25.1;

"Manufacturer Group" means the Manufacturer and any member of its Group from time to time;

"Manufacturer Guarantee" means, where the Contract Particulars specifies a Manufacturer Guarantee is required, the parent company guarantee of the Manufacturer's obligations under this Agreement provided by the Manufacturer Guarantor in favour of the Purchaser and substantially in the form set out in Schedule 7 (*Form of Manufacturer Guarantee*);

"Manufacturer Guarantor" means the Manufacturer's parent company (if any) identified as such in the Contract Particulars;

"Manufacturer IPR" means any existing or new Intellectual Property Rights owned by the Manufacturer, any Subcontractor or other third party that:

- (A) are used for, or;
- (B) arise in connection with,

the performance by the Manufacturer of its obligations under this Agreement, including design, manufacture, supply, testing (including the systems integration test rig), installation (in relation to the First Train), maintenance and delivery of the Replacement Systems and other items of Goods;

"Manufacturer Public Procurement Termination Event" means the Manufacturer has, as at the Commencement Date, been in one of the situations referred to in Regulation 57(1) of the Public Contracts Regulations 2015 and should therefore have been excluded from the procurement procedure in accordance with those regulations;

"Manufacturer Risk Register" has the meaning ascribed to it in Schedule 1B (*Contract Management*) Part B (*Risk Management*);

"Manufacturer's Records" has the meaning ascribed to it in Clause 10.3.1(A);

"Manufacturer's Works" means the premises specified as such in the Contract Particulars;

"Mayor of London" means the person elected to hold the office as Mayor of London with the powers and function set out in the Greater London Authority Act 1999;

- (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Purchaser;
- (B) entering into this Agreement or any other contract with the Purchaser in connection with which commission has been paid or has been agreed to be paid by the Manufacturer or on its behalf or to his knowledge unless, before the relevant contract or document is entered into, particulars of any such commission and the terms and conditions of any such contract or document for the payment thereof have been disclosed in writing to the Purchaser;
- (C) committing any offence:
 - (i) under the Prevention of Corruption Acts 1889-1916 and/or the Bribery Act 2010;
 - (ii) under any law or legislation creating offences 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 the Purchaser; or
- (D) defrauding or attempting to defraud the Purchaser;

"Project Progress Meetings" has the meaning ascribed to it in Schedule 1B (*Contract Management*) Part A (*Project Execution Plan*);

"Project Quality Plan" means the project quality plan produced by the Manufacturer and approved by the Purchaser set out in Appendix 5 of Schedule 1B (*Contract Management*) Part A (*Project Execution Plan*);

"Prototype Units" has the meaning ascribed to it in Clause 6.6.1;

"Public Procurement Termination Event" means:

- (A) this Agreement has been subject to any substantial modification that would require a new procurement procedure in accordance with Regulation 72(9) of the Public Contracts Regulations 2015; or
- (B) the Purchaser determines that this Agreement should not have been awarded to the Manufacturer in view of a serious infringement of the obligations contained under the EU Treaties and Directive 2014/24/EU of the European Parliament Council dated 26 February 2014;

"Purchaser Representative" means the person specified as such in the Contract Particulars;

"Purchaser Termination Notice" has the meaning ascribed to it in Clause 25.2.2;

"Qualified Acceptance for Service" means the qualified acceptance for service of any Replacement System which does not comply in all respects with the DC Acceptance for Service Criteria pursuant to Clause 12.4.1 or the Acceptance for Service Criteria pursuant to Clause 12.7.1, as evidence by the issue of a signed QASC;

"Qualified Acceptance for Service Certificate" or **"QASC"** means a certificate in the form or substantially in the form set out in Schedule 6 (*Form of Certificates*) Part D (*Form of Qualified Acceptance for Service Certificate*);

"Quality Support" has the meaning ascribed to it in Schedule 3A (*Continuing Support*);

"Railway Group Standards" means, to the extent applicable to the Replacement Systems or Goods and their operation:

- (A) technical standards with which railway assets, or equipment used as part of railway assets, must conform; and
- (B) operating procedures with which the operation of railway assets must comply,

known generally as the Railway Group Standards and which are established and maintained by the RSSB and in each case as authorised pursuant to the document known as the Railway Group Standards Code;

"Recurrent Defect" means:

- (A) a Defect in any Spare or Part and which:
 - (i) in any consecutive 12-month period occurs in or affects three or more items of Spares or Parts; or
 - (ii) occurs three (3) or more times in the same Spare or Part in any consecutive 12-month period; or
 - (iii) the Purchaser reasonably believes will occur in or affect three or more items of the same items of Spares or Parts in any 12-month period; or
- (B) any defect, or actual or potential failure (whether relating to safety, reliability or maintainability), occurring in or affecting any plant and machinery, spares or parts provided by the Manufacturer which is similar to the Goods to be supplied pursuant to this Agreement;

"Relevant Consents" has the meaning ascribed to it in Clause 4.4;

"Relevant Conviction" means any unspent criminal conviction relating to actual or potential acts of terrorism or acts which threaten national security;

"Relevant Individual" means any servant, employee, officer, consultant or agent of the Manufacturer or any Subcontractor carrying out, or intended to carry out, any aspects of this Agreement on the LUL Network or any other property owned by the Purchaser;

"Remedial Plan" has the meaning ascribed to it in Clause 25.3.1(B);

"Remedy Notice" has the meaning ascribed to it in Clause 25.3.1;

"Replacement Systems" has the meaning ascribed to it in Schedule 1A (*Specification*);

"Replacement Traction System" has the meaning ascribed to it in Schedule 1A (*Specification*);

"Replacement Traction System Manufacturer" means the manufacturer of the Replacement Traction System;

"Required Insurances" means the insurances specified in Schedule 9 (*Insurance*);

"Required Rating" means a long term, stable credit rating of at least "A+" or better from Standard & Poor's or the equivalent rating from Moody's or Fitch;

"Responsible Procurement Principles" means the seven (7) principles of responsible procurement more particularly described in the GLA Group Responsible Procurement

Policy dated March 2006, as updated in January 2008 and as may be further updated from time to time and which is available from the Purchaser on request;

"Retention Period" has the meaning ascribed to it in Clause 10.3.1(B);

"Routine Production Tests" means the tests detailed in the Routine Production Test Schedule;

"Routine Production Test Schedule" means the test plan to be developed and provided by the Manufacturer and agreed with the Purchaser in accordance with Schedule 1A (*Specification*);

"Routine Train Dynamic Test" means the routine train dynamic tests identified in the Schedule 1A (*Specification*);

"Routine Train Static Test" means the routine train static tests identified in Schedule 1A (*Specification*);

"RSSB" means the Rail Safety and Standards Board;

"Security" means:

- (A) any right of ownership, lien, mortgage, charge, 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) above over any interest described in (A) to (E) above;

"Service Affecting Failure" means a failure of the Replacement Systems which causes a disruption to the Train service of 120 seconds or greater, or which requires a Train to be withdrawn from service;

"Service Affecting Failure Period" means the period commencing on the date that the second Train's worth of Replacement Systems has been DC Accepted for Service and ending on the date of Fleet Acceptance;

"Services" means the technical and quality support to be provided by the Manufacturer in accordance with the Training Schedule, Schedule 3A (*Continuing Support*) and any other support services provided by the Manufacturer during the term of this Agreement;

"Site Tests" means the Pre-installation Inspection and System Tests, the Routine Train Static Tests and the Routine Train Dynamic Tests;

"Software" means, as may be developed, enhanced, modified, adapted, altered or updated from time to time, the lists of instructions, stored in permanent or semi-permanent form, used:

- (A) to define the functions of microprocessors and similar devices installed on any Goods or any part thereof or in equipment to be used in conjunction with, or for the operation, testing, commissioning, modification and/or refurbishment of, any Goods or any part thereof; and/or
- (B) to run programmes, spreadsheets and/or databases in connection with the operation, testing, commissioning, modification and/or refurbishment of the Goods, in each case except for such as are standard commercial products, usable as made, and which have not been modified in order to perform any of the tasks set out in sub-clause (A) above, which:
 - (i) forms part of the Goods; and
 - (ii) is not Third Party Software;

"Source Code" means the source code version of any Manufacturer-owned Software which is licensed to the Purchaser pursuant to this Agreement in a form capable of being read and interpreted by humans, together with related interpretative documentation and material;

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

"Special Tools" has the meaning ascribed to it in Schedule 1A (*Specification*), a list of which is included in Schedule 3 (*Spares and Special Tools*) Part B (*Additional Spares*);

"Specification" means the specification set out in Schedule 1A (*Specification*), as such requirements may be amended in accordance with this Agreement;

"Storage" has the meaning ascribed to it in Clause 12.2A.2;

"Storage Instructions" means the storage instructions set out in Schedule 8 (*Storage*);

"Subcontract" means any contract awarded by, or to be awarded by, the Manufacturer in relation to, or connected with, the carrying out of any of the Manufacturer's obligations under this Agreement and unless the context herein requires otherwise, includes a subcontractor or supplier of any such person;

"Subcontractor" means any party to a Subcontract other than the Manufacturer;

"Supplementary Spares" has the meaning ascribed to it in Clause 11.3A.1;

"Systems Design Review" has the meaning ascribed to it in Schedule 1A (*Specification*);

"Systems Design Review Approval" means approval of the Systems Design Review;

"Systems Test Readiness Review" has the meaning ascribed to it in Schedule 1A (*Specification*);

"Systems Test Readiness Review Approval" means approval of the Systems Test Readiness Review;

"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;

"Technical Failure" means a failure of the Replacement Systems which causes a disruption to the train service of 119 seconds or less, and does not require the Train to be withdrawn from service;

"Technical Support" has the meaning ascribed to it in Schedule 3A (*Continuing Support*);

"Testing Instructions" means the instructions for operating the data transmission system components of the test rig produced by the Manufacturer to enable the Installer to undertake the Site Tests;

"Tests" means the tests identified in the Specification to be carried out by the Manufacturer in accordance with Schedule 1A (*Specification*) and **"Testing"** shall be construed accordingly;

"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 Software" means software owned by third parties prior to the Commencement Date which has not been produced in connection with or for the purpose of the Goods;

"Train" means four (4) Two-Car Units;

"Training Programme" has the meaning ascribed to it in Schedule 18 (*Training*);

"Training Materials" means all of the training materials further described in the Training Schedule;

"Training Schedule" means Schedule 18 (*Training*);

"Training Services" means the training services stated in the Training Schedule to be provided by the Manufacturer;

"Train Test Readiness Review" has the meaning ascribed to it in Schedule 1A (*Specification*);

"Train Test Readiness Review Approval" means approval of the Train Test Readiness Review;

"Train Wiring Works Variation" means the Variation set out in Appendix A of Schedule 1A (*Specification*);

"Transparency Commitment" means the transparency commitment stipulated by the UK government in May 2010 (including any subsequent legislation) in accordance with which the TfL Group is committed to publishing its contracts, tender documents and data from invoices received;

"Transportation Instructions" means the instructions for collection, transportation and delivery of the Two-Car Units set out in Schedule 8 (*Storage*) Part B (*Transportation Instructions*);

"Two-Car Unit" means a multiple unit in two (2) 92TS car formation on which a Replacement System has been (or will be) installed pursuant to this Agreement, such multiple unit being in one of the following formation variants:

- (A) A-B Unit (comprising one driving motor car and one non-driving motor car);
- (B) B-C Unit (comprising two non-driving motor cars); or
- (C) B-C (D) Unit (comprising one de-icing non-driving motor car and one non-driving motor car);

"**Unit Test Readiness Review**" has the meaning ascribed to it in Schedule 1A (*Specification*);

"**Unit Test Readiness Review Approval**" means approval of the Unit Test Readiness Review;

"**Variation**" means any addition, omission or other change whatsoever to or in respect of this Agreement, including the Specification and/or the Goods and/or any other technical requirement contained in this Agreement;

"**Variation Procedure**" means the variation procedure set out in Clause 23;

"**Variation Quote**" has the meaning ascribed to it in Clause 23.1.1;

"**Variation Valuation**" has the meaning ascribed to it in Clause 23.3.1;

"**VAT**" means

- (A) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (B) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (A), or imposed elsewhere; and

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

1.2 Interpretation

In this Agreement, except where the context otherwise requires:

- 1.2.1 any reference to this Agreement includes the Schedules to it, each of which forms part of this Agreement for all purposes;
- 1.2.2 a reference to an enactment, statutory provision or Industry Standard shall unless otherwise expressly specified in this Agreement include a reference to any subordinate legislation made under the relevant enactment, statutory provision or Industry Standard and unless otherwise expressly specified in this Agreement is a reference to that enactment, statutory provision, Industry Standard or subordinate legislation as from time to time amended, consolidated, modified, reenacted or replaced;
- 1.2.3 words in the singular shall include the plural and vice versa;
- 1.2.4 references to one gender include other genders;
- 1.2.5 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 an individual's executors or administrators;
- 1.2.6 a reference to a Clause or Schedule (other than to a schedule to a statutory provision) shall be a reference to a clause or schedule (as the case may be) of or

to this Agreement and a reference in a Schedule to a paragraph shall mean a reference to a paragraph of that Schedule;

- 1.2.7 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;
- 1.2.8 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;
- 1.2.9 references to writing shall include any modes of reproducing words in any legible form and shall exclude email except where expressly stated otherwise;
- 1.2.10 a reference to "includes" or "including" shall mean "includes without limitation" or "including without limitation";
- 1.2.11 the contents page and headings in this Agreement are for convenience only and shall not affect its interpretation;
- 1.2.12 references to this Agreement include this Agreement as amended, varied or supplemented in accordance with its terms;
- 1.2.13 a reference to the "Purchaser" or the "Manufacturer" includes its respective (and any subsequent) successors in title, and its respective permitted transferees or assignees;
- 1.2.14 references in the 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;
- 1.2.15 reference to a "third party" is a reference to any person who is not a Party;
- 1.2.16 references in this Agreement to any other agreement or other instrument (other than an enactment or statutory provision) shall be deemed to be references to that agreement or instrument as from time to time amended, varied, supplemented, substituted, novated or assigned; and
- 1.2.17 references to time of day are to that time in London.

2. EXERCISE OF RIGHTS AND PERFORMANCE OF OBLIGATIONS BY A THIRD PARTY

- 2.1 The Manufacturer acknowledges and agrees that the Purchaser may, after notifying the Manufacturer in writing, delegate at any time some or all of its actions in connection with this Agreement to the Purchaser Representative and may cancel any delegation.
- 2.2 The Purchaser Representative may, after notifying the Manufacturer in writing, delegate at any time some or all of its actions in connection with this Agreement and may cancel any delegation. Any reference to an action of the Purchaser Representative in this Agreement includes an action by his delegate.
- 2.3 The Manufacturer will perform its obligations under this Agreement in accordance with

the relevant provisions of this Agreement as if the Purchaser Representative was, to the extent notified, the Purchaser, and, to that extent, accept the instructions, requests, notifications, claims and demands of the Purchaser Representative in substitution for the Purchaser accordingly.

- 2.4 The Manufacturer shall be entitled to rely and act upon the exercise by a Purchaser Representative of any right permitted in accordance with Clauses 2.1 and 2.2 and any performance by a Purchaser Representative of any obligation on the part of the Purchaser shall contribute good and valid discharge of the Purchaser's obligation in question.
- 2.5 Except as provided under this Clause 2, no person or entity is authorised to act or give any instruction to the Manufacturer in connection with this Agreement on behalf of the Purchaser.

3. PURCHASE

3.1 Purchase

The Manufacturer shall supply each item of Goods to the Purchaser and perform the Services, in each case by the relevant Key Date or Contractual Date (as applicable) for that item in consideration for the Purchaser procuring payment to the Manufacturer of the Contract Price in respect of each such item or such Services, in each case in accordance with the terms of this Agreement.

3A. REPRESENTATIONS AND WARRANTIES

3A.1 Manufacturer's Representations and Warranties

The Manufacturer represents and warrants to the Purchaser that as at the date of this Agreement:

- 3A.1.1 it is validly incorporated and has the power, capacity and legal right to enter into this Agreement and any related ancillary documents to which it is a party and perform its obligations and exercise its rights, hereunder and thereunder and has taken all necessary corporate and other action to authorise the entry into, performance and delivery of this Agreement and any related ancillary documents to which it is a party;
- 3A.1.2 this Agreement and any related ancillary documents to which it is a party constitute its legal, valid and binding obligations;
- 3A.1.3 the entry by it into this Agreement and performance of its obligations under this Agreement will not conflict with its constitutional documents, which are true, accurate and up-to-date;
- 3A.1.4 the entering into or the performance of its obligations or the exercise of its rights under this Agreement and any related ancillary documents to which it is a party will not breach, or cause to be breached, any restriction (whether arising in contract or otherwise), that is binding on the Manufacturer or any of its assets or undertakings;
- 3A.1.5 the Manufacturer has not knowingly provided any information or made any statement of fact (whether oral or in writing) to the Purchaser which is untrue or inaccurate or which was intended by the Manufacturer to mislead the Purchaser;

3A.1.6 except as disclosed on or before the Commencement Date, no legal proceedings are pending or, to the Manufacturer's knowledge, threatened against it which if decided against the Manufacturer would have a material adverse effect upon the Manufacturer's financial condition or business or its ability to perform its obligations under this Agreement and any related ancillary documents; and

3A.1.7 no Insolvency Event has occurred or is reasonably likely to occur in relation to the Manufacturer.

3A.2 The Manufacturer acknowledges and agrees that the Purchaser is relying on the representations and warranties above and is entering into this Agreement on the basis of them.

4. MANUFACTURER'S GENERAL OBLIGATIONS

4.1 General Undertaking and Warranties

The Manufacturer undertakes and warrants to the Purchaser, for the benefit of the Purchaser that it shall design, manufacture, supply, test, commission and deliver the Replacement Systems, and other items of Goods:

4.1.1 so that the Replacement Systems and Goods are Fit for Purpose;

4.1.2 so that the Replacement Systems and Goods satisfy the Acceptance for Service Criteria and the Fleet Acceptance Criteria;

4.1.3 so that the Replacement Systems and Goods are manufactured in accordance with the design agreed in accordance with this Agreement;

4.1.4 in accordance with, and so that the Replacement Systems and Goods shall function in accordance with, sound modern design and engineering principles and practices in the rail industry except where these would conflict with Clauses 4.1.1 and 4.1.2;

4.1.5 in accordance with the Specification and the Contract Programme so as to achieve Acceptance for Service and/or Fleet Acceptance (as applicable) of the First Train, Replacement Systems and other items of Goods on their respective Contractual Dates;

4.1.6 in compliance with all Applicable Laws and all applicable LU Standards;

4.1.7 in accordance with good industry practice and with all due skill, care and diligence to be expected of appropriately qualified and experienced professional designers and engineers with experience in carrying out work of a similar scope, type, nature and complexity to that required under this Agreement;

4.1.8 using materials and goods that comply with the Specification and all Applicable Laws and LU Standards and so that the Goods will be of new manufacture and comply with the Specification;

4.1.9 in accordance with the requirements of any instructed Variation and in all other respects in accordance with this Agreement; and

4.1.10 in respect of the Spares, so that each of those is sufficient and adequate to enable maintenance to be carried out on the Replacement Systems.

4.2 **Third Party Warranties**

The Manufacturer shall extend to the Purchaser the benefit of any guarantee, condition or warranty which may be expressly given to it by any of the Subcontractors in respect of the Replacement Systems and any Goods, and shall use its best endeavours to extend to the Purchaser the benefit of any guarantee, condition or warranty which may have been expressly given to it by any other person in respect of such Replacement Systems and Goods.

4.3 **Compliance**

In performing its obligations under this Agreement, the Manufacturer shall, and shall procure that its Subcontractors shall:

- (A) comply with the version of the Contract Programme in place from time to time; and
- (B) comply with all Applicable Laws, all applicable LU Standards and all directions of the Purchaser and any other Competent Authority.

4.4 **Licences and Consents**

The Manufacturer shall obtain and maintain all consents, approvals, authorisations, acceptances, certificates, licences (including export licences), exemptions, registrations, filings, permits and other matters, give all notices and pay all fees, in each case which are required or necessary for the proper performance of the Manufacturer's duties and obligations under this Agreement ("**Relevant Consents**").

4.5 **Tax Allowances**

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 the Replacement Systems or any other item of Goods.

4.6 **Key Dates**

The Manufacturer shall perform its duties and obligations under this Agreement so that the Condition stated for each Key Date is met by the relevant Key Date.

5. **CHANGE IN LAW**

- 5.1 The Parties have agreed to allocate the risks associated with any Change in Law as set out in this Clause 5.
- 5.2 On becoming aware of the occurrence of any Change in Law, the Purchaser Representative shall notify the Manufacturer in writing with an instruction to address and comply with such Change in Law and the Manufacturer shall forthwith comply with that Change in Law as specified in the instruction. The Purchaser's instruction under this Clause 5.2 shall constitute a Variation and the consequences of implementing such Change in Law shall be dealt with in accordance with Clause 23.
- 5.3 The Manufacturer shall, without prejudice to its general obligation to comply with the terms of this Agreement:

- 5.3.1 use its reasonable endeavours to mitigate the adverse effects of any Change in Law and take all reasonable steps to minimise any increase in costs arising from such Change in Law; and
- 5.3.2 use its reasonable endeavours to take advantage of any positive or beneficial effects of the Change in Law and take all reasonable steps to maximise any reduction in costs arising from such Change in Law.
- 5.4 The Purchaser Representative and the Manufacturer shall adjust the Contract Price by the amount calculated in accordance with the Variation Procedure. The Manufacturer shall not be entitled to any other payment or compensation or, save as expressly provided otherwise in this Agreement, relief in respect of such Change in Law or associated Variation (or the consequence of either) and the provisions of this Agreement shall be construed accordingly.
- 5.5 The Parties agree that the Manufacturer shall not be entitled to propose a Variation for any Foreseeable Change in Law and the Manufacturer shall be required to comply with and implement such Foreseeable Change in Law at its own risk, cost and expense and with no entitlement to additional remuneration, adjustment to the Contract Price and/or any Key Date or Contractual Date.
- 5.6 The Manufacturer shall take all steps necessary to ensure that it performs all of its obligations under this Agreement in accordance with the terms of this Agreement following any Change in Law.

6. SPECIFICATION AND DEVELOPMENT OF DESIGN

6.1 Specification

The Manufacturer acknowledges and agrees that it has reviewed and considered the Specification and is satisfied:

- 6.1.1 as to their feasibility with respect to the design, manufacture, supply, testing, commissioning and delivery of the Replacement Systems and other items of Goods; and
- 6.1.2 that it will be able to implement them within the timescales set out in the Contract Programme.

6.1A Trust and co-operation

The Parties shall act as stated in this Agreement and in a spirit of mutual trust and co-operation.

6.2 Design Procedures

The Manufacturer shall undertake the design of the Replacement Systems in accordance with the requirements of this Agreement and the Specification.

6.3 Design Acceptance Process

- 6.3.1 The Manufacturer shall provide the required Design review submission documents to the Purchaser at each stage of the Design review process in accordance with the Design acceptance process detailed in Schedule 1A (*Specification*).

- 6.3.2 Following submission of such Design review submission documents for each stage in the Design review process as listed in Schedule 1A (*Specification*), the Purchaser Representative shall respond to the submissions in the Design review meetings as envisaged in Schedule 1A (*Specification*).
- 6.3.3 Where a Design review submission document(s) does not provide evidence of compliance with this Agreement and Schedule 1A (*Specification*), the Purchaser shall in consultation with the Manufacturer, and taking into account at each stage of the Design review process any comments, prepare an outstanding issues list whereby actions, action holders and close out dates shall be assigned and agreed (the "OIL").
- 6.3.4 Following agreement of the OIL to the satisfaction of the Purchaser, or if there are no outstanding issues, the Purchaser shall have the sole discretion as to whether to move the Manufacturer to the next Design review stage. For the avoidance of doubt, Clauses 6.3.1 to 6.3.4 inclusive shall apply to each stage in the Design review process.
- 6.3.5 Following the completion of final stage in the Design review process as detailed in Schedule 1A (*Specification*) to the satisfaction of the Purchaser, the Manufacturer shall have achieved "**Design Approval**".
- 6.3.6 The Manufacturer may at its own risk, cost and expense commence the manufacture of the Replacement Systems prior to achieving Design Approval in accordance with Clause 6.3.5. The Manufacturer acknowledges and agrees that it shall not be entitled to any extension of time or adjustment to the Contract Price as a consequence of implementing any changes that may be required in the manufacture of the Replacement Systems following achievement of Design Approval in accordance with Clause 6.3.5.
- 6.3.7 Should the Manufacturer subsequently wish to make any material modification to the Design, it shall notify the Purchaser Representative and Clauses 6.3.1 to 6.3.6 shall apply mutatis mutandis (and, in the case of Clause 6.3.6, reference to manufacture of the Replacement Systems shall mean any manufacturing activity resulting from the implementation of such modification).

6.4 **Design Liability**

All design liability in relation to the Replacement Systems and/or any other item of Goods shall be borne solely by the Manufacturer regardless of any assurance that may be given by the Purchaser.

6.5 **Liability for Performance**

Notwithstanding any other provision of this Agreement, no examination or lack of examination and/or assurance given by the Purchaser in respect of any document submitted by the Manufacturer shall in any way 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.

6.6 **First Train - Design**

- 6.6.1 Subject to Clause 6.6.3, the Purchaser shall make available to the Manufacturer at the Delivery Location such Two-Car Units installed with the DC Traction System as set out in the Specification to enable the Manufacturer to collect measurements, drawings and other similar data for its Design (the "**Prototype Units**").

- 6.6.2 Subject to Clause 6.6.3, once the Manufacturer has collected the necessary data from the Prototype Units that it needs in order to assist the Manufacturer with its Design, the Purchaser shall make available to the Manufacturer at the Delivery Location such Two-Car Units installed with the DC Traction System as set out in the Specification to make a Train to enable the Manufacturer to complete the Design in accordance with the Specification. This Train shall be the "**First Train**" for the purpose of this Agreement.
- 6.6.3 If agreed by the Purchaser in writing (acting reasonably), the Manufacturer (or its Subcontractors) shall be entitled to transport the Prototype Units and the First Train from the Delivery Location to the Alternative Location to enable the Manufacturer to complete its Design in accordance with Clauses 6.6.1 and 6.6.2.
- 6.6.4 If Clause 6.6.3 applies, then relation to all Two-Car Units in the First Train (including the Prototype Units) the following shall apply:
- (A) the Manufacturer shall be responsible for the transportation of all Two-Car Units in the First Train (including the Prototype Units) from the Delivery Location to the Alternative Location and from the Alternative Location to the Delivery Location (once the Replacement System has been fitted) in accordance with the Transportation Instructions;
 - (B) title shall remain with the Purchaser at all times; and
 - (C) risk of loss, theft, damage or destruction of the First Train (or any part thereof) shall remain with the Manufacturer from when the First Train (or part thereof) is removed by the Manufacturer from the Delivery Location until the First Train (or part thereof) is returned to the Delivery Location.

6.7 **Design Authority**

- 6.7.1 The Manufacturer shall act as the Design Authority for the duration of this Agreement.
- 6.7.2 The Manufacturer shall comply with the following obligations in its role as Design Authority:
- (A) operate and maintain a system that tracks changes to the original Design of the Replacement Systems and all other items of Goods;
 - (B) operate a system that can provide the "know-why" (factors which influenced the choice of the Design) in relation to Design information relating to the Replacement Systems and all other items of Goods;
 - (C) operate a system that facilitates validation of technical changes to the current Design of the Replacement Systems and all other items of Goods;
 - (D) maintain a comprehensive understanding of the technical and operational requirements of the Replacement Systems and all other items of Goods;
 - (E) maintain comprehensive knowledge of how the technical and operational requirements influence the Design of the Replacement Systems and all other items of Goods and retain records accordingly;
 - (F) retain information relating to the Design to enable performance and assessment of modifications, evaluation of change of use, understanding of vehicle system and component behaviour, and support incident investigation as reasonably required by the Purchaser;

- (G) make informed judgements and validate operational safety implications relating to change of use and modifications including where the same is required by the Purchaser; and
- (H) ensure that records are kept of the configuration levels of Design throughout the duration of this Agreement to ensure the above is carried out accurately and safely and that any modifications are compatible with the original Design and any subsequent modifications.

6.7.3 The Parties agree that any failure to comply with this Clause 6.7 will constitute a material breach for the purposes of Clause 25.1.

6.8 Train Wiring Works

The Purchaser shall be entitled in its absolute discretion to instruct the Manufacturer to carry out the Train Wiring Works Variation, in accordance with the Variation Procedure.

7. CONFLICTS AND DISCREPANCIES

7.1 Priority of provisions in the Agreement

Unless expressly stated otherwise, where there is any conflict, error, inconsistency or other discrepancy between any Clause of this Agreement and the provisions of any Schedule(s) or between the provisions of any Schedules to this Agreement, the order of priority shall be as follows:

- 7.1.1 first, the Contract Particulars (as set out in Schedule 16 (*Contract Particulars*));
- 7.1.2 second, the Clauses comprising the main body of this Agreement;
- 7.1.3 third, the Specification (excluding the LU Standards);
- 7.1.4 fourth, the LU Standards; and
- 7.1.5 fifth, the remaining Schedules to this Agreement.

7.2 Manufacturer's acknowledgements regarding discrepancies and errors

The Manufacturer confirms to the Purchaser that as at the Commencement Date:

- 7.2.1 it has considered in detail this Agreement and has satisfied itself that no conflicts, inconsistencies, discrepancies or errors exist within the Agreement; and
- 7.2.2 it has:
 - (A) obtained all necessary information as to the risks, contingencies and all other circumstances which may influence or affect the level of payment arising under or in connection with this Agreement; and
 - (B) satisfied itself that the performance of its obligations under and in accordance with this Agreement will be in accordance with all Applicable Laws; and
- 7.2.3 as to the feasibility of the Specification with respect to the design, manufacture, supply, assembly, testing, commissioning and delivery of the Replacement Systems and other items of Goods.

7.3 Notification of errors and inconsistencies

- 7.3.1 Without prejudice to Clause 7.3.3, the Manufacturer shall notify the Purchaser in writing forthwith upon becoming aware of any conflict, inconsistency, discrepancy or error within the Agreement that cannot be resolved in accordance with Clause 7.1 and the Manufacturer shall provide with the notice detailed written proposals for resolving such conflict, inconsistency, discrepancy or error. The Purchaser shall decide how such conflict, inconsistency, discrepancy or error should be dealt with and shall notify the Manufacturer of such decision within fifteen (15) Working Days of the Manufacturer's notice of such conflict, inconsistency, discrepancy or error. The Manufacturer shall immediately proceed to comply with such decision. The Purchaser's notification under this Clause 7.3.1 shall constitute a Variation provided that the Manufacturer shall not be entitled to any increase in the Contract Price or any other payment, compensation, extension of time or relief in respect of such Variation instructed in accordance with this Clause 7.3.1.
- 7.3.2 Without prejudice to Clause 7.3.1 and subject to Clause 7.3.3, whenever a conflict, inconsistency, discrepancy or error appears within this Agreement, the Parties shall consult with each other over, and seek to agree, the manner in which the conflict, error, inconsistency or discrepancy should be resolved.
- 7.3.3 Where any conflict, inconsistency, discrepancy or error appears within the LU Standards, or between a LU Standard and the equivalent Industry Standard, each Party shall notify the other forthwith in writing upon becoming aware of such conflict, inconsistency, discrepancy or error. The Purchaser shall decide how such conflict, inconsistency, discrepancy or error should be dealt with and shall notify the Manufacturer within fifteen (15) Working Days of receiving or issuing the notice (as the case may be). The Manufacturer shall comply with such decision in carrying out the manufacture of the Replacement Systems and Goods. The Purchaser's notification under this Clause 7.3.3 shall constitute a Variation and the provisions of Clause 23 shall apply.

7.4 Exclusions of Claims or Relief

The Manufacturer acknowledges and agrees that it accepts all risks arising from any conflicts, errors, inconsistencies or discrepancies 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 any claim against the Purchaser for any additional payment or compensation, adjustment to the Contract Price, extension of time or relief from the due performance of its obligations, in respect of any such conflicts, errors, inconsistencies or discrepancies.

8. CONTRACT PROGRAMME

8.1 Contract Programme

8.1.1 The Manufacturer shall provide a programme to the Purchaser Representative for his acceptance (such acceptance to be achieved on or prior to the date stated in the Contract Particulars) showing:

- (A) the Commencement Date, Key Dates, Contractual Dates and payment dates;

- (B) the sequence and timing of activities by which the Manufacturer proposes to carry out the Agreement (including design, manufacture, testing, commissioning and delivery);
- (C) the respective dates for submission by the Manufacturer of the Design, Manuals and Installation Instructions for approval thereof by the Purchaser Representative;
- (D) the dates by which, in order to carry out the Agreement, the Manufacturer will need (to the extent provided for under this Agreement):
 - (i) access to the Purchaser's premises;
 - (ii) acceptances or approvals from the Purchaser and/or Purchaser Representative;
 - (iii) any plant, materials, drawings, information or other things to be provided by the Purchaser;
- (E) the dates when the Manufacturer plans to conduct the Tests or inspections; and
- (F) any other information which the Specification requires the Manufacturer to show on the Contract Programme.

8.1.2 The Manufacturer undertakes to carry out the design, manufacture, supply, testing, commissioning and delivery of the Replacement Systems and all other items of Goods in a regular and diligent manner and in accordance with the Contract Programme.

8.1.3 The matters set out in the Contract Programme shall be wholly without prejudice to the Manufacturer's obligation to achieve Acceptance for Service and (as appropriate) Fleet Acceptance for the Replacement Systems and each other item of Goods on their respective Contractual Dates.

8.2 Form of programme

8.2.1 The programme shall be in such form as may be specified in the Contract Particulars or, if not so specified, as may reasonably be required by the Purchaser Representative.

8.3 Acceptance of programme

8.3.1 The Purchaser Representative shall either accept a programme (or any revised programme submitted pursuant to Clauses 8.5 or 8.6) or notify the Manufacturer of his reasons for not accepting it. Reasons for not accepting the programme may include:

- (A) the Manufacturer's plans shown on it are not practicable;
- (B) it does not show the information which this Agreement requires;
- (C) it does not represent the Manufacturer's plans realistically; or
- (D) it does not comply with the Contract Particulars or Specification.

8.3.2 Acceptance by the Purchaser Representative of the programme shall not relieve the Manufacturer of any of his obligations under this Agreement.

8.4 **Alterations to programme**

8.4.1 The Manufacturer shall not without the Purchaser Representative's prior written consent make any alteration to the Contract Programme.

8.5 **Revision of programme**

8.5.1 The Manufacturer shall submit a revised programme to the Purchaser Representative, such programme to be acceptable to the Purchaser:

(A) every four (4) weeks from the Commencement Date pursuant to Schedule 1B (*Contract Management*); and

(B) if instructed to do so pursuant to Clause 8.6.

8.6 **Rate of progress**

8.6.1 The Purchaser Representative may notify the Manufacturer if it assesses that any of the Replacement Systems, any Train and/or each other item of Goods will not be capable of meeting any of their respective Key Dates and/or Contractual Dates and that this is not due to a circumstance for which the Manufacturer is entitled to an extension of time pursuant to Clause 15.

8.6.2 Following receipt of such notice the Manufacturer shall take such steps as may be necessary and as the Purchaser Representative may approve to remedy or mitigate the likely delay, including submitting a revised programme to the Purchaser Representative for acceptance. The Manufacturer will not be entitled to additional payment or an extension of time for taking such steps.

9. **KEY PERSONNEL, MEETINGS AND REPORTS**

9.1 **Key Personnel**

The Manufacturer shall not replace any Key Personnel without:

9.1.1 giving not less than sixty (60) days' notice; and

9.1.2 proposing a replacement Key Personnel to the Purchaser who the Purchaser has approved (such approval not to be unreasonably withheld or delayed).

9.2 **Management of Delivery**

The Parties shall comply with Schedule 1B (*Contract Management*) in relation to design management, project management and programme management.

10. **MANUFACTURING FACILITIES AND RIGHTS OF AUDIT AND INSPECTION**

10.1 **Manufacturing facilities**

The Manufacturer shall ensure that the design, manufacture, assembly and testing of the Replacement Systems shall be carried out by the Manufacturer at:

10.1.1 (in the case of the design, manufacture and assembly of the Replacement Systems, and subject to subclause 10.1.2 below) the Manufacturer's Works;

- 10.1.2 (in the case of using the Prototype Units and the First Train to complete the Manufacturer's Design as set out in Clause 6.6):
- (A) the Delivery Location; or
 - (B) the Alternative Location; and
- 10.1.3 (in the case of the Site Tests or the First Train Tests):
- (A) the LUL Premises; or
 - (B) (if agreed by the Purchaser in writing, acting reasonably) the Alternative Location,

and the Manufacturer shall not use any other manufacturing facility for such manufacture, assembly and testing without the prior written agreement of the Purchaser.

10.2 Access to Facilities for Purpose of Audits

For the purposes of the Purchaser exercising any of its rights under Clause 10, the Manufacturer shall:

- 10.2.1 grant the Purchaser access on reasonable prior notice to any of the Manufacturer's premises involved in the design, manufacture, supply, testing, commissioning and delivery of the Replacement Systems and any other item of Goods including the Manufacturer's Works; and
- 10.2.2 use its reasonable endeavours to procure such access to those premises of its agents and Subcontractors, including the Alternative Location.

10.3 Right of Audit and Inspection

- 10.3.1 The Manufacturer shall, and shall (unless the Purchaser Representative otherwise agrees in writing) procure that its Subcontractors shall:
- (A) 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 Subcontractor of its obligations under its Subcontract (in respect of the Subcontractor) (the "**Manufacturer's Records**"); and
 - (B) retain all the Manufacturer's Records until the date six (6) years (or such longer period as may be required by law or specified in the Contract Particulars) following expiry or termination of this Agreement for whatever reason (the "**Retention Period**").
- 10.3.2 Notwithstanding any other right of audit that the Purchaser is entitled to under this Agreement, in order to verify the Manufacturer's performance of and compliance with the Agreement the Purchaser shall be entitled on reasonable notice (whether in writing or verbally), either itself or using such agents or representatives as it may authorise to:
- (A) audit, inspect or witness any aspects of the manufacturing testing or commissioning of the Replacement Systems or any other item of Goods or any of their Parts and to audit the design and certification thereof including being present at, and participating in, amongst other things:
 - (i) any inspection and conformance control of subsystems supplied by Subcontractors;

- (ii) any inspection and conformance control of the Replacement Systems construction at stages to be agreed between the Purchaser and the Manufacturer;
 - (iii) any system tests (at stages to be agreed) during construction;
 - (iv) any dynamic run testing of the completed Replacement Systems; and
 - (v) any inspection and certification of the Replacement Systems' compliance with the Specification after completion of manufacture and dynamic testing;
- (B) inspect any and all of the Manufacturer's Records during the Retention Period as are reasonably necessary to investigate the Manufacturer's (and any Subcontractor's) performance of its obligations under this Agreement;
 - (C) audit the management systems of the Manufacturer and those of any Subcontractor; and
 - (D) inspect and/or audit compliance by the Manufacturer and its Subcontractors with the Manufacturer's obligations under this Agreement.

10.4 **Co-operation with Audit Procedure**

To the extent necessary for the purpose of exercising any of the rights granted under Clause 10.3.2 the Manufacturer shall provide, and shall procure that its Subcontractors shall provide, all reasonable co-operation to the Purchaser including:

- 10.4.1 upon request from the Purchaser, acting reasonably, providing electronic or paper copies of any Manufacturer's Records required for the purposes of Clause 10.3.2(B) free of charge and within a reasonable time of any request; and
- 10.4.2 making the Manufacturer's employees available for discussion with the Purchaser.

10.5 **No Claim for Relief**

No audit, inspection and/or testing by the Authority pursuant to Clause 10.3.2 shall 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.

10.6 **Corrective Actions Arising**

- 10.6.1 Any actions found to be reasonably necessary having regard to the Manufacturer's obligations under this Agreement as a consequence of the Purchaser undertaking any inspections or audits (a "**Corrective Action**") shall be carried out by the Manufacturer. The Manufacturer shall acknowledge formally within two (2) Working Days receipt of any request for a Corrective Action raised by the Purchaser, together with the Manufacturer's confirmation of the timescale allocated by the Purchaser for the Manufacturer to close out the Corrective Action. The Manufacturer shall advise the Purchaser 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 10.1.1 to 10.5.

- 10.6.2 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 32.

10.7 Plans for Remedial Action

If, at any time in the course of any participation or inspection by the Purchaser in accordance with Clauses 10.3 and 10.6, the Purchaser reasonably determines that any item of Goods does not, or is unlikely in the future to comply with any of the Specification or the requirements of Clause 4.1, the Purchaser shall notify the Manufacturer of such determination. The Purchaser and the Manufacturer shall thereafter use all reasonable endeavours to agree a plan for necessary remedial action to be implemented by the Manufacturer, at the Manufacturer's cost, to ensure that that the item of Goods does or will conform to the Specification and the requirements of Clause 4.1.

11. SPARES AND CONTINUING SUPPORT

11.1 Quality and Identifiability

The Manufacturer shall ensure that:

- (A) each of the Spares is a brand new part manufactured from materials of sound and satisfactory quality, is Fit for Purpose and has no Defects;
- (B) to the extent of good industry practice, each Spare has a serial number which is clearly identifiable when fitted to the Train; and
- (C) each Spare is clearly labelled or otherwise identifiable as being the property of the Purchaser.

11.2 Time for Delivery

11.2.1 Without prejudice to Clause 4.1, the Manufacturer shall deliver all Spares and Special Tools to the relevant Delivery Location in accordance with the requirements of Schedule 3 (*Spares and Special Tools*) and on the dates and in the quantities specified below:

- (A) 20 per cent of all Maintenance Spares, all Special Tools and any Additional Spares shall be delivered by no later than Acceptance for Service of the First Train;
- (B) 30 per cent of all Maintenance Spares and any Additional Spares shall be delivered by no later than Acceptance for Service of the second Train's worth of Replacement Systems; and
- (C) 50 per cent of all Maintenance Spares and any Additional Spares shall be delivered by no later than Acceptance for Service of the tenth Train's worth of Replacement Systems.

11.2.2 The Manufacturer shall deliver the minimum quantity of each type of Maintenance Spare as specified in Schedule 3 (*Spares and Special Tools*) Part A (*Maintenance Spares*) (unless the Parties otherwise agree, acting reasonably).

11.3 Sufficiency of Maintenance Spares

The Manufacturer warrants to the Purchaser at the date of this Agreement that the Maintenance Spares to be delivered to the Purchaser pursuant to Clause 11.2 are sufficient (in terms of both quality and quantity) to enable the Purchaser to carry out, or procure the carrying out of, all maintenance of the Replacement Systems during the period from Acceptance for Service of the first Replacement System (other than in relation to the First Train) to Fleet Acceptance and for the Purchaser to operate the Replacement Systems on the LUL Network in accordance with the Manuals. If this warranty proves to have been incorrect when made, the Manufacturer shall at its own cost procure and supply the necessary additional Maintenance Spares.

11.3A Supplementary Spares

11.3A.1 The Manufacturer shall, following the issue of the Acceptance for Service Certificate for the First Train, be responsible for acquiring at its own cost new or overhauled Spares (the "**Supplementary Spares**") to replace any Maintenance Spare which is installed by the Purchaser (or such other party as may be nominated by the Purchaser) on a Train to remedy a Defect, in order to maintain the stock of Maintenance Spares in accordance with the levels specified in Schedule 3 (*Spares and Special Tools*) Part A (*Maintenance Spares*).

11.3A.2 The Manufacturer shall ensure any Supplementary Spares are placed into the Delivery Location within twenty-four (24) hours of notification by the Purchaser that installation of a Spare in accordance with Clause 11.3A has occurred.

11.3A.3 Where the Manufacturer fails to place the Supplementary Spares into the Delivery Location within the timeframe specified in Clause 11.3A.2 and such failure leads to a Two-Car Unit being withdrawn from service, Liquidated Damages shall be payable by the Manufacturer in accordance with Clause 13.1.

11.3A.4 Title and risk in each Supplementary Spare shall, from the earlier of the date of (i) their delivery to Storage or the Delivery Location (as applicable) or (ii) their incorporation in the relevant Train, pass to the Purchaser with full unencumbered legal and beneficial title.

11.4 Additional Spares

11.4.1 The Purchaser may from time to time instruct the Manufacturer in writing to provide Additional Spares by instructing a Variation setting out reasonable details of its requirements, and the provisions of Clause 23 shall apply.

11.4.2 The Manufacturer shall use all reasonable endeavours to make Additional Spares available to the Purchaser by delivering them to the Purchaser within the time period specified in the Variation.

11.5 Obsolescence of Spares

11.5.1 The Manufacturer shall ensure that, where it intends to or becomes aware that any of its suppliers and/or Subcontractors intends to:

- (A) dispose of any item of Spares due to such Spare becoming obsolete or being replaced by a comparable spare; and/or
- (B) stop the production or sale of any item of Spares,

the Manufacturer shall notify the Purchaser Representative prior to any such disposal or cessation of production and sale, and the Purchaser may in such circumstances require the Manufacturer to:

- (i) produce one or more of such Spares for the Purchaser; and/or
- (ii) sell any remaining Spares or Spares produced in accordance with Clause 11.5.1(i) to the Purchaser Representative at the rates set out in Schedule 3 (*Spares and Special Tools*).

11.6 Ongoing Spares

The Purchaser may, at its option at any time during the term of this Agreement, procure pursuant to a separate support and spares supply agreement, the supply of Spares and other support services from the Manufacturer.

11.7 Continuing Support

The Parties shall comply with Schedule 3A (*Continuing Support*) in relation to continuing support.

12. TESTING, ACCEPTANCE AND DELIVERY PROCEDURE

12.1 Compliance with the Programmes and Procedures

The Manufacturer shall ensure that:

- 12.1.1 the Replacement Systems and other items of Goods are delivered, tested and made ready for DC Acceptance for Service, Acceptance for Service and Fleet Acceptance (as applicable) by the Purchaser Representative in accordance with the Specification, the Contract Programme, and the other provisions of this Agreement; and
- 12.1.2 no Replacement System or other item of Goods is delivered to the relevant Delivery Location prior to its Key Date or Contractual Date respectively unless otherwise agreed by the Purchaser Representative in its absolute discretion. For the avoidance of doubt the Purchaser is not obliged to accept early delivery of any Replacement System or other item of Goods.

12.2 Routine Production Testing

- 12.2.1 The Manufacturer shall develop and submit to the Purchaser Representative a Routine Production Test Schedule in accordance with Schedule 1A (*Specification*).
- 12.2.2 Following approval of the Routine Production Test Schedule in accordance with Schedule 1A (*Specification*), the Manufacturer shall conduct the Routine Production Tests at its own cost in accordance with the Production Plan.
- 12.2.3 The Purchaser Representative shall be entitled to attend any Routine Production Tests together with such other representatives of the Purchaser as the Purchaser Representative may nominate and the Manufacturer shall be responsible for procuring such access. The Manufacturer shall provide the Purchaser Representative with not less than fifteen (15) Working Days' notice of the time, location and subject matter of any such Routine Production Tests.

- 12.2.4 The Manufacturer shall be responsible for all costs and expenses associated with the Routine Production Tests.
- 12.2.5 Any repetition or prolongation of the Routine Production Tests which is necessary by reason of a failure of any of the Replacement Systems to meet the requirements of the Routine Production Tests shall be at the Manufacturer's cost. The Manufacturer shall not be entitled to any additional costs, any extension of time or any other relief in connection with such failure.

12.2A Storage

- 12.2A.1 This Clause 12.2A shall apply to all Replacement Systems to be installed on Trains other than in relation to the First Train.
- 12.2A.2 Other than in relation to the First Train, following completion of the Routine Production Tests in respect of the Replacement Systems for a Train and the quantities of Spares set out in Clauses 11.2.1(B) and 11.2.1(C) pursuant to Clause 12.2, the Manufacturer shall place and maintain such Replacement Systems and Spares in storage in a location within 100 miles of London in mainland United Kingdom on the relevant Contractual Date in accordance with the Storage Instructions ("**Storage**") until the delivery of such Replacement Systems and Spares is made to the Delivery Location on the relevant Key Date.
- 12.2A.3 The Purchaser may notify the Manufacturer that:
- (A) it does not wish the Replacement Systems for a Train or quantities of Spares set out in Clauses 11.2.1(B) and 11.2.1(C) to be delivered to the Delivery Location on the relevant Key Date for such Replacement Systems or Spares; and
 - (B) it requires the Manufacturer to continue to store and maintain such Replacement Systems and Spares in Storage in accordance with the Storage Instructions and in a manner that would enable the Replacement Systems or Spares to be delivered to the Delivery Location on a revised Key Date specified by the Purchaser and achieve Acceptance for Service at the relevant revised Contractual Date for Acceptance for Service,
- (the "**Extended Storage Option**").
- 12.2A.4 If the Purchaser exercises the Extended Storage Option pursuant to Clause 12.2A.3 then any increase in the Contract Price to pay for the Extended Storage Option as envisaged by this Clause 12.2A shall be calculated in accordance with Schedule 8 (*Storage*) Part A (*Storage Requirements*).
- 12.2A.5 If the revised Key Date pursuant to the Extended Storage Option is delayed for:
- (A) more than six (6) months from the original Key Date for delivery of the Replacement Systems and any Spares to the Delivery Location, then there will be a partial Milestone Payment payable for storing such Replacement Systems and Spares in Storage, being 30 per cent of the Milestone Payment specified for completion of the Pre-Installation Inspections and Systems Tests in Schedule 4 (*Contract Price*) Part 4 (*Payment Milestones*); and

- (B) more than twelve (12) months from the original Key Date for delivery of the Replacement Systems and any Spares to the Delivery Location, then there will be a further partial Milestone Payment payable for maintaining such Replacement Systems and Spares in Storage, being 30 per cent of the Milestone Payment specified for completion of the Pre-Installation Inspections and Systems Tests in Schedule 4 (*Contract Price*) Part 4 (*Payment Milestones*), and the Manufacturer shall be entitled to a Variation.

12.3A First Train Tests

12.3A.1 The Manufacturer shall first install the Replacement Systems on one (1) Two-Car Unit that forms part of the First Train only. The Manufacturer shall perform such installation at:

- (A) the LUL Premises; or
 (B) (if agreed by the Purchaser, acting reasonably) the Alternative Location,

provided that if installation takes place at the Alternative Location then the Manufacturer shall, following installation, deliver (at its own cost) such Two-Car Unit to the LUL Premises and comply with the requirements of Schedule 8 (*Storage*) Part B (*Transportation Instructions*).

12.3A.2 Following installation of the Replacement Systems on the first Two-Car Unit and (if applicable) delivery of the first Two-Car Unit pursuant to Clause 12.3A.1, the Manufacturer shall conduct the tests required for the First Train Tests as defined in Schedule 1A (*Specification*) on such Two-Car Unit at its own cost.

12.3A.3 Following successful completion of the First Train Tests for the first Two-Car Unit to the satisfaction of the Purchaser, the Manufacturer shall at the Purchaser's discretion install the Replacement Systems on the remaining Two-Car Units for the First Train. The Manufacturer shall perform such installation at:

- (A) the LUL Premises; or
 (B) (if agreed by the Purchaser in writing, acting reasonably) the Alternative Location,

provided that if installation takes place at the Alternative Location then the Manufacturer shall, following installation, deliver (at its own cost) those remaining Two-Car Units to the LUL Premises and comply with the requirements of Schedule 8 (*Storage*) Part B (*Transportation Instructions*).

12.3A.4 Following installation of the Replacement Systems on the remaining Two-Car Units and (if applicable) delivery of the remaining Two-Car Units pursuant to Clause 12.3A.3, the Manufacturer shall conduct the First Train Tests on such Two-Car Units for the First Train at its own cost.

12.3A.5 The Manufacturer shall be responsible for all costs and expenses associated with the First Train Tests.

12.3A.6 In the event that any of the Two-Car Units in the First Train do not pass any of the tests required for the First Train Tests, the Manufacturer shall be responsible at its own cost for:

- (A) carrying out the works required to ensure that the failed test(s) can be passed (the "**First Train Rectification Works**");
- (B) (if required by the Purchaser Representative):
 - (i) removing such Two-Car Units from the LUL Premises or such other location as notified by the Purchaser in writing; and
 - (ii) re-delivering such Two-Car Units to the LUL Premises once the First Train Rectification Works are complete on a date to be arranged with the Purchaser Representative; and
- (C) the repetition and/or prolongation of the test(s) required for First Train Tests necessary by reason of the failure of such Two-Car Units to meet the requirements of the First Train Tests,

and, for the avoidance of doubt, the Manufacturer shall not be entitled to any additional costs, any extension of time or any other relief in connection with such failure.

12.3A.7 Once the First Train has passed the First Train Tests, the Manufacturer may apply for DC Acceptance for Service of the First Train in accordance with and subject to the terms and conditions of Clause 12.4.

12.3 Site Tests for DC Trains

- 12.3.1 The Manufacturer acknowledges and agrees that the Purchaser may procure that the Installer installs the Replacement Systems and conducts the Site Tests on such number of Trains that are fitted with the DC Traction System as notified in writing by the Purchaser from time to time (each a "**DC Train**"). Clauses 12.3.2 to 12.3.6 below shall apply to all DC Trains (excluding the First Train, in respect of which Clause 12.3A shall apply).
- 12.3.2 Subject to Clause 12.2A, the Manufacturer shall (at its own cost) deliver the Replacement Systems and Goods for a DC Train, together with such evidence as the Purchaser Representative may reasonably require that the Replacement Systems have passed the Routine Production Tests, to the Delivery Location on the relevant Key Date for such Replacement Systems or Goods.
- 12.3.3 Where the Manufacturer fails to deliver the Replacement Systems and Goods for a DC Train on the relevant Key Date for such Replacement Systems or Goods, liquidated damages shall be payable by the Manufacturer in accordance with Clause 13.1.
- 12.3.4 Following delivery of the Replacement Systems and Goods pursuant to Clause 12.3.2, the Purchaser shall procure that:
 - (A) the Site Tests will be conducted by the Installer in accordance with the Specification; and
 - (B) the Installer will install the Replacement Systems on to the DC Train in accordance with the Installation Instructions.

- 12.3.5 The Manufacturer undertakes, at its own cost, to provide to the Purchaser (or, at the Purchaser's direction, its nominee (including the Installer)):
- (A) the systems integration test rigs as set out in the Specification, together with such operating instructions as may be required to operate the test rigs;
 - (B) the Training Programme and Training Materials; and
 - (C) on-site technical and quality support as more particularly described in Schedule 3A (*Continuing Support*),

to enable the Installer to conduct the Site Tests and to install the Replacement Systems on to the DC Trains in accordance with the Contract Programme.

- 12.3.6 In the event that any Replacement System installed on a DC Train does not pass any Site Test, the Manufacturer shall be responsible at its own cost for:
- (A) carrying out the works required to ensure that the failed Site Test(s) can be passed (the "**DC Rectification Works**");
 - (B) (if required by the Purchaser Representative):
 - (i) removing the relevant Replacement System from the Delivery Location; and
 - (ii) re-delivering the relevant Replacement System to the Delivery Location once the DC Rectification Works are complete on a date to be arranged with the Purchaser Representative; and
 - (C) the repetition and/or prolongation of the Site Test(s) necessary by reason of the failure of the Replacement System to meet the requirements of the Site Test(s),

and, for the avoidance of doubt, the Manufacturer shall not be entitled to any additional costs, any extension of time or any other relief in connection with such failure, provided that the costs of undertaking any DC Rectification Works and/or repeated/prolonged Site Test(s) shall be met by the Purchaser if the Manufacturer can demonstrate that the failure of such Replacement System to meet the requirements of the Site Test(s) arose wholly and solely due to a failure by the Installer to install the Replacement Systems in accordance with the Installation Instructions.

12.4 DC Acceptance for Service

12.4.1 The DC Acceptance for Service Criteria shall be:

- (A) In relation to the First Train, those criteria as set out in Clause 12.7.1(B) below (excluding Clauses 12.7.1(B)(i) and 12.7.1(B)(ii)) and the following additional criteria:
 - (i) The Purchaser Representative has received evidence acceptable to the Purchaser Representative, including all relevant supporting documentation, that the First Train has passed the First Train Tests required to be performed prior to DC Acceptance for Service of the First Train;
 - (ii) the Manufacturer has provided to the Purchaser Representative the Manufacturer Documentation and any other documentation reasonably necessary to enable operation and maintenance of the Replacement Systems;
 - (iii) the Manufacturer has supplied the quantity of Spares set out in Clause 11.2.1(A), any Additional Spares and all Special Tools

in relation to the Replacement Systems in accordance with the provisions of this Agreement; and

- (iv) the Manufacturer has returned all Old Components to the Purchaser in a reusable condition, ensuring that all Old Components are stored and transported to the Purchaser with care and attention and in accordance with good industry practice;
- (B) In relation to all other DC Trains (excluding the First Train), those criteria as set out in Clause 12.7.1(B) below (excluding Clause 12.7.1(B)(i)) and the following additional criteria:
- (i) the Manufacturer has complied with its obligations under this Agreement with respect to the provision of Training Services (including any training of the Installer); and
 - (ii) the Purchaser Representative has received evidence acceptable to the Purchaser Representative, including all relevant supporting documentation, that the Replacement Systems and Goods for the DC Train have passed all Routine Production Tests and Site Tests required to be performed prior to DC Acceptance for Service of the relevant Replacement System.

If the Manufacturer meets the DC Acceptance for Service Criteria for a DC Train (including the First Train) it shall be entitled to request DC Acceptance for Service in accordance with Clause 12.4.2.

- 12.4.2 Where the DC Acceptance for Service Criteria are satisfied in respect of the Replacement Systems for a DC Train (including the First Train), the Manufacturer shall be entitled to submit to the purchaser Representative a DC Acceptance for Service Certificate for such DC Train (including the First Train) signed by a duly authorised representative of the Manufacturer certifying that the DC Acceptance for Service Criteria have been satisfied. Following receipt of a DC Acceptance for Service Certificate from the Manufacturer in accordance with this Clause 12.4.2, the Purchaser Representative shall within the period stated in the Contract Particulars (i) counter-sign and date that DC Acceptance for Service Certificate and DC Acceptance for Service shall occur, or (ii) refuse to do so under Clause 12.4.3.
- 12.4.3 The Purchaser Representative may refuse to sign a DC Acceptance for Service Certificate if it, acting reasonably, believes that the DC Acceptance for Service Criteria have not been satisfied in full in which case it shall, within five (5) Working Days of such refusal, notify the Manufacturer in writing setting out which of the DC Acceptance for Service Criteria have not been satisfied.
- 12.4.4 If the Manufacturer, acting reasonably, disputes any of the reasons set out in the notice issued by the Purchaser Representative pursuant to Clause 12.4.3, it shall notify the Purchaser Representative of this in writing within five (5) Working Days of receipt of such notice and the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

12.5 Installation of Replacement Traction System

- 12.5.1 The Purchaser shall provide a DC Train that has been DC Accepted for Service to the Replacement Traction System Manufacturer for installation of the Replacement Traction System. For the purposes of this Agreement, this Train shall be referred to as the "**New Systems Train**". The Manufacturer agrees to provide such on-site and off-site quality and technical support to the

Replacement Traction System Manufacturer in accordance with this Agreement including Schedule 3A (*Continuing Support*).

- 12.5.2 Following the installation of the Replacement Traction System, the Manufacturer shall attend the relevant location as notified by the Purchaser in writing and repeat the Site Tests on the New Systems Train.
- 12.5.3 In the event that any Replacement System installed on the New Systems Train does not pass any Site Test, the Purchaser shall identify the root cause of the failed Site Test(s). If the Purchaser determines, acting reasonably, that the Manufacturer is responsible for the failed Site Tests then the Manufacturer shall be responsible at its own cost for:
- (A) carrying out the works required to ensure that the failed Site Test(s) can be passed (the "**New Systems Rectification Works**");
 - (B) (if required by the Purchaser Representative) removing the relevant Replacement System from the Delivery Location;
 - (C) providing updated Installation Instructions and any additional materials to the Installer that are required as a result of the New Systems Rectification Works;
 - (D) progressing with the New Systems Rectification Works in a timely manner and re-delivering the relevant Replacement System to the Delivery Location once the New Systems Rectification Works are complete as soon as possible on a date to be arranged with the Purchaser Representative; and
 - (E) the repetition and/or prolongation of the Site Test(s) necessary by reason of the failure of the Replacement Systems to meet the requirements of the Site Test(s);

and, for the avoidance of doubt, the Manufacturer shall not be entitled to any additional costs, any extension of time or any other relief in connection with such failure.

- 12.5.4 If the Purchaser determines that the Manufacturer is not responsible for the failed Site Tests described in Clause 12.5.3, the Purchaser shall be entitled at its absolute discretion to instruct the Manufacturer in writing to carry out any of the works set out in Clauses 12.5.3(A) to 12.5.3(E) by instructing a Variation setting out reasonable details of its requirements, in accordance with the Variation Procedure.
- 12.5.5 Without prejudice to Clause 12.7, the Manufacturer may only request Acceptance for Service in relation to the New Systems Train once the Purchaser Representative has received evidence acceptance to the Purchaser Representative that the requirements of Clauses 12.5.1 to 12.5.4 inclusive are satisfied.
- 12.5.6 Following Acceptance for Service of the New Systems Train, the Purchaser shall procure that:
- (A) the Installer will install the Replacement Traction System on all other DC Trains (including, as applicable, the First Train) in accordance with the Installation Instructions; and
 - (B) the Installer will repeat the Site Tests on the remaining DC Trains (including, as applicable, the First Train) in accordance with the Specification,

and the provisions of Clause 12.3.5 and 12.3.6 shall apply *mutatis mutandis*.

12.6 Site Tests for all other Replacement Systems

- 12.6.1 In relation to all other Replacement Systems and Goods (excluding the New Systems Train and all DC Trains (including the First Train)), subject to Clause 12.2A the Manufacturer shall (at its own cost) deliver the Replacement Systems and Goods for a Train, together with such evidence as the Purchaser Representative may reasonably require that the Replacement Systems have passed the Routine Production Tests, to the Delivery Location on the relevant Key Date for such Replacement Systems or Goods.
- 12.6.2 Where the Manufacturer fails to deliver all other Replacement Systems and Goods for a Train on the relevant Key Date for such Replacement Systems or Goods, liquidated damages shall be payable by the Manufacturer in accordance with Clause 13.1.
- 12.6.3 Following delivery of the relevant Replacement Systems and Goods pursuant to Clause 12.6.1, the provisions of Clauses 12.3.4 to 12.3.6 inclusive shall apply mutatis mutandis (and any reference to DC Train shall be deemed to be a reference to the remaining Replacement Systems and Goods).

12.7 Acceptance for Service

- 12.7.1 The Acceptance for Service Criteria shall be:
- (A) in relation to the New Systems Train and all other DC Trains (including the First Train), those criteria as set out in Clause 12.7.1(B) below and the following additional criteria:
 - (i) the Replacement Systems and Goods have achieved DC Acceptance for Service;
 - (B) in relation to all Replacement Systems and Goods (including the New Systems Train, all DC Trains and the First Train):
 - (i) the Purchaser Representative has received evidence acceptable to the Purchaser Representative, including all relevant supporting documentation, that the Replacement Systems and Goods have passed all Routine Production Tests and Site Tests required to be performed prior to Acceptance for Service of the relevant Replacement System (including, without limitation, any re-testing as required as a result of the installation of the Replacement Traction System);
 - (ii) in the case of the second Train's worth of Replacement Systems and the tenth Train's worth of Replacement Systems (as the case may be), the Manufacturer has supplied the applicable quantity of Spares in accordance with Clause 11.2.1(B) and Clause 11.2.1(C) of this Agreement;
 - (iii) the Replacement Systems and Goods meet in all material respects the Specification;
 - (iv) the Replacement Systems and Goods are Fit for Purpose and have no Defects, or items missing;
 - (v) the Replacement Systems and Goods comply with all Applicable Laws and LU Standards;

- (vi) the Replacement Systems and Goods have achieved all Relevant Consents; and
- (vii) the Train in which the Replacement Systems have been installed has successfully completed 1,000 consecutive Fault Free kilometres in passenger service, provided that in all cases the Parties agree that each time a Defect occurs, the Fault Free running distance shall be reset to zero and recommence until the target is achieved.

If the Manufacturer meets the Acceptance into Service Criteria, it shall be entitled to request Acceptance for Service in accordance with Clause 12.7.2.

- 12.7.2 Where the Acceptance for Service Criteria are satisfied in respect of the Replacement Systems for a Train (including the First Train, the New Systems Train and DC Trains), the Manufacturer shall be entitled to submit to the Purchaser Representative an Acceptance for Service Certificate for such Train signed by a duly authorised representative of the Manufacturer certifying that the Acceptance for Service Criteria have been satisfied. Following receipt of an Acceptance for Service Certificate from the Manufacturer in accordance with this Clause 12.7.2, the Purchaser Representative shall within the period stated in the Contract Particulars (i) counter-sign and date that Acceptance for Service Certificate and Acceptance for Service shall occur, or (ii) refuse to do so under Clause 12.7.3.
- 12.7.3 The Purchaser Representative may refuse to sign an Acceptance for Service Certificate for the First Train or Replacement Systems for a Train (including the New Systems Train and the DC Trains) if it, acting reasonably, believes the Acceptance for Service Criteria have not been satisfied in full in which case it shall, within five (5) Working Days of such refusal, notify the Manufacturer in writing setting out which of the Acceptance for Service Criteria have not been satisfied.
- 12.7.4 If the Manufacturer, acting reasonably, disputes any of the reasons set out in the notice issued by the Purchaser Representative pursuant to Clause 12.7.3, it shall notify the Purchaser Representative of this in writing within five (5) Working Days of receipt of such notice and the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

12.8 **Qualified Acceptance for Service**

- 12.8.1 If the Purchaser Representative, acting reasonably, believes that one or more of the DC Acceptance for Service Criteria or the Acceptance for Service Criteria (as the case may be), other than those set out in Clauses 12.7.1(B)(i) and 12.7.1(B)(v), has not been satisfied, and provided that the First Train, DC Train(s), New Systems Train or any other Replacement Systems (as the case may be) can nevertheless be operated safely and in accordance with all Applicable Laws and the terms of all Relevant Consents, the Purchaser Representative shall be entitled, at its absolute discretion, to issue a QASC in respect of the First Train, DC Train(s), New Systems Train or that Replacement System, in which case the Purchaser Representative shall list in detail in the QASC the outstanding conditions to be satisfied and tasks to be performed by the Manufacturer in order for full DC Acceptance for Service or Acceptance for

Service of the First Train, DC Train(s), New Systems Train or Replacement System to occur (the "**Preconditions**"), and require the Manufacturer to satisfy the Preconditions in accordance with the timetable set out in the relevant QASC, which timetable shall state that all Preconditions must be completed on or before the date on which Fleet Acceptance of the Replacement Systems is scheduled to occur pursuant to the Contract Programme.

- 12.8.2 Upon the Purchaser Representative confirming in writing that such Preconditions have been satisfied, the First Train, DC Train, New Systems Train or Replacement System (as the case may be) shall be DC Accepted for Service or Accepted for Service (as the case may be) and the Purchaser Representative shall issue a DC Acceptance for Service Certificate or an Acceptance for Service Certificate (as the case may be) in respect of the First Train, DC Train, New Systems Train or that Replacement System.
- 12.8.3 Fleet Acceptance of the Replacement Systems shall not occur until all the Preconditions have been satisfied.
- 12.8.4 In relation to the Milestone Payments, the First Train, DC Train(s), New Systems Train or Replacement Systems for which a QASC is issued shall be treated as if they have been DC Accepted for Service or Accepted for Service (as the case may be) pursuant to Clauses 12.4 and 12.6.

12.9 Fleet Acceptance

- 12.9.1 The Purchaser shall, using all reasonable endeavours, procure that the Installer will complete installation of the Replacement Systems on time and without delay to enable the Manufacturer to achieve Fleet Acceptance of the Replacement Systems by the relevant Contractual Date.
- 12.9.2 The Manufacturer shall make a submission for Fleet Acceptance to the Purchaser Representative once the Fleet Acceptance Criteria have been satisfied. The Fleet Acceptance Criteria are:
- (A) up to the date upon which the Manufacturer makes a submission for Fleet Acceptance, all Replacement Systems have met the Fleet Mean Distance Between Service Affecting Failure within the Service Affecting Failure Period;
 - (B) any liquidated damages payable pursuant to Clause 13.3 have been paid to the Purchaser;
 - (C) the Preconditions set out in any QASC under Clause 12.8.1 have been satisfied to the satisfaction of the Purchaser Representative in respect of the relevant Replacement Systems;
 - (D) each Replacement System has no Defects;
 - (E) there are no Recurrent Defects or, in the event there is a Recurrent Defect, the Manufacturer has either:
 - (i) provided to the Purchaser's satisfaction a programme for rectification works in respect of such Recurrent Defects in accordance with Clause 17.5; or

- (ii) confirmed to the Purchaser's satisfaction that a Recurrent Defect occurring in or affecting any Replacement System, Spares or Parts provided by the Manufacturer which is similar to the Goods to be supplied pursuant to this Agreement will not affect the Goods supplied pursuant to this Agreement;

(F) each Replacement System has been Accepted for Service.

12.9.3 Upon the Fleet Acceptance Criteria having been satisfied in accordance with Clause 12.9.2, the Manufacturer shall be entitled to submit a Fleet Acceptance Certificate for the Replacement Systems signed by a duly authorised representative of the Manufacturer to the Purchaser Representative, and the Purchaser Representative shall counter-sign and date that Fleet Acceptance Certificate and Fleet Acceptance shall occur. Subject to Clause 12.9.4 and for the avoidance of doubt, the Milestone Payment for Fleet Acceptance shall not become payable until (i) the requirements of this Clause 12.9.3 have been satisfied in full in respect of the Replacement Systems and (ii) the Fleet Acceptance Certificate has been counter-signed and dated by the Purchaser Representative.

12.9.4 If the Manufacturer fails to meet its obligations under Clause 12.9.2(A), the Purchaser Representative shall be entitled to extend the Service Affecting Failure Period until the Fleet Acceptance Longstop Date. If all Replacement Systems have failed to meet the Fleet Mean Distance Between Service Affecting Failure by the Fleet Acceptance Longstop Date then the Purchaser Representative shall be entitled at its absolute discretion to issue a Fleet Acceptance Certificate irrespective of such failure and in such circumstances Fleet Acceptance shall occur, provided that:

- (A) the Purchaser Representative may, in its absolute discretion, reduce or withdraw the Milestone Payment for Fleet Acceptance; and
- (B) the occurrence of Fleet Acceptance shall not constitute a waiver of the Purchaser's right to claim damages against the Manufacturer arising out of the Manufacturer's failure to meet the Fleet Mean Distance Between Service Affecting Failure.

13. LIQUIDATED DAMAGES

13.1 Delay Liquidated Damages

If the Replacement Systems for a Train (including DC Trains) have not been delivered to the Delivery Location by the applicable Key Date ("**Late Delivery**"), or if Design Approval has not been achieved by the applicable Key Date ("**Late Design Approval**"), or if the Manufacturer fails to place the Supplementary Spares into the Delivery Location within the timeframe specified in Clause 11.3A.2 and such failure leads to a Two-Car Unit being withdrawn from service ("**Late Delivery of Supplementary Spares**"), the Manufacturer shall pay to the Purchaser on demand liquidated damages calculated in accordance with Clause 13.2:

- 13.1.1 in the case of Late Delivery, for the period commencing on the Key Date for delivery of the Replacement Systems for the relevant Train to the Installer and ending on the actual date when the Replacement Systems for the relevant Train have been delivered to the Installer;

- 13.1.2 in the case of Late Design Approval, for the period commencing on the applicable Key Date and ending on the actual date when Design Approval has been achieved; and
- 13.1.3 in the case of Late Delivery of Supplementary Spares, for the period commencing on the date which the Manufacturer should have placed the Supplementary Spares into the Delivery Location and ending on the actual date when the Supplementary Spares are placed into the Delivery Location.

Such liquidated damages shall (without prejudice to the provisions of Clause 25) be the sole and exclusive remedy of the Purchaser in respect of such late delivery.

13.2 **Calculation of Delay Liquidated Damages**

Any liquidated damages payable under Clause 13.1 shall accrue at the rate specified in the Contract Particulars up to the maximum amount specified in the Contract Particulars.

13.3 **Performance Liquidated Damages**

On each occasion that a Service Affecting Failure or a Technical Failure occurs during the Service Affecting Failure Period (a "**Performance Failure**"), the Manufacturer shall pay to the Purchaser on demand liquidated damages calculated in accordance with Clause 13.4. Such liquidated damages shall (without prejudice to the provisions of Clause 25) be the sole and exclusive remedy of the Purchaser in respect of such Performance Failure.

13.4 **Calculation and Payment of Performance Liquidated Damages**

13.4.1 Any liquidated damages payable under Clause 13.3 shall accrue at the rate specified in the Contract Particulars per Performance Failure up to the maximum amount specified in the Contract Particulars.

13.4.2 Where Clause 13.3 applies, the Purchaser shall be entitled (without prejudice to Clause 40) to demand payment of the relevant sum from the Manufacturer.

13.5 **Genuine Pre-Estimate of Loss**

The Manufacturer acknowledges and agrees that the liquidated damages specified in Clause 13.2 and 13.4 represent a genuine pre-estimate of the Purchaser's losses arising from Late Design Approval, Late Delivery to Storage and/or Performance Failures, respectively.

14. **REJECTION**

14.1 **Rejection**

In the event that the Purchaser, acting reasonably, at any time believes that any Replacement System (or any part thereof) will not meet the Acceptance for Service Criteria and/or the Fleet Acceptance Criteria, the Purchaser shall be entitled to notify the Manufacturer in writing that it rejects such Replacement System or relevant part (as applicable) pursuant to this Clause 14, and Clause 14.2 shall apply.

14.2 **Consequences of rejection**

Forthwith upon rejection of the relevant Replacement System or relevant part (as applicable) pursuant to Clause 14.1:

- 14.2.1 the Manufacturer shall, at its own cost, remove any of its equipment, plant or materials from any of the Purchaser's premises (including the Delivery Location and the LUL Network where so instructed by the Purchaser); and
- 14.2.2 the Manufacturer shall pay to the Purchaser, as a debt, the aggregate of all amounts paid by the Purchaser to the Manufacturer in respect of the relevant Replacement System or relevant part (as applicable) and other items of Goods pursuant to this Agreement and all other reasonable costs suffered or incurred by the Purchaser in respect of rejection of such Replacement System or relevant part (as applicable), together with Default Interest thereon from the Commencement Date to the date of rejection.

For the avoidance of doubt the Purchaser's right to reject any Replacement System pursuant to this Clause 14 will be without prejudice to the Manufacturer's obligations under this Agreement, including Clauses 12 and 17.

15. EXTENSIONS OF TIME

15.1 Permitted Delays

For the purposes of this Agreement, the occurrence of one or more of the following shall constitute a "**Permitted Delay Event**":

- 15.1.1 a Force Majeure Event which prevents the Manufacturer from performing its obligations under this Agreement;
- 15.1.2 any breach by the Purchaser or Purchaser Representative of an express obligation under this Agreement;
- 15.1.3 the suspension of this Agreement in accordance with Clause 18 (other than where the suspension results from the circumstance in Clause 18.3.1 or 18.3.2);
- 15.1.4 any Variation instructed pursuant to the Variation Procedure (including any Variation instructed to:
- (A) resolve a Change in Law; or
 - (B) a conflict, inconsistency, error or discrepancy other than a Variation instructed pursuant to Clause 7.3.1;
- 15.1.5 the Manufacturer is denied access to the LUL Network in the circumstances described in Clause 57.12; and
- 15.1.6 the Purchaser exercises the Extended Storage Option pursuant to Clause 12.2A.3,

but (in the case of the events described in Clauses 15.1.1 to 15.1.5) only insofar as any such event:

- (A) has a direct and material adverse effect on the Manufacturer's ability to achieve any of the Key Dates or the Contractual Dates; and
- (B) has not been caused or contributed to by the act, omission or default of the Manufacturer.

15.2 Qualification to Permitted Delays

Where any delay in achieving the applicable Key Date or a Contractual Date for the Replacement System(s) for the relevant Train or any other item of Goods arises, the Manufacturer shall be entitled to an extension to the applicable Key Date or a Contractual Date for the Replacement System and/or any other item of Goods (as the case may be) but only to the extent that such delay is directly caused by a Permitted Delay Event and provided that the Manufacturer:

- 15.2.1 has fully complied with the requirements of Clause 15.3 and subsequently provided such further information as the Purchaser may reasonably require regarding the nature and likely duration of such event;
- 15.2.2 has provided the Purchaser with reasonable access to the Manufacturer's Works and/or the facilities of its Subcontractors for investigating the validity of the potential Permitted Delay Event;
- 15.2.3 has used its reasonable endeavours to mitigate the delay to the applicable Key Date or the Contractual Date for the Replacement System and/or other item of Goods (as the case may be); and
- 15.2.4 shall not be entitled to an extension of time to the extent that the Permitted Delay Event was caused by or resulted from any act, neglect or default of the Manufacturer, its Subcontractors or suppliers or the directors, agents, representatives or employees of any of them and/or any breach of this Agreement by the Manufacturer, its Subcontractors or suppliers or the directors, agents, representatives or employees of any of them.

15.3 Notification of Permitted Delay Event

The Manufacturer shall give notice to the Purchaser of the occurrence of a Permitted Delay Event promptly and in any event no later than ten (10) Working Days of when the Manufacturer became aware of such occurrence. Any notice given under this Clause 15.3 shall specify the Permitted Delay Event upon which the claim for an extension of time is based. Within twenty (20) Working Days (or such other period as the parties may agree) of:

- 15.3.1 in the case of a Permitted Delay Events under Clauses 15.1.1, 15.1.2 and 15.1.5, the Manufacturer serving notice on the Purchaser of such event; and
- 15.3.2 in the case of a Permitted Delay Event under Clauses 15.1.3 or 15.1.4, the Purchaser instructing a Variation or a suspension of this Agreement (as the case may be),

the Manufacturer shall provide the Purchaser with the following details:

- (A) full and detailed particulars of the cause and extent of the delay and the effect of the Permitted Delay Event on the Manufacturer's ability to comply with its obligations under this Agreement;
- (B) details of the documents and records which the Manufacturer will rely upon to support its claim for an extension of time; and
- (C) details of the measures which the Manufacturer has adopted and/or proposes to adopt to mitigate the consequences of the Permitted Delay Event.

Save with respect to Variations instructed under the Variation Procedure, if the Manufacturer fails to notify the Purchaser of any Permitted Delay Event or fails to provide details of any Permitted Delay Event, in either case within the time periods specified in Clause 15.3, the Manufacturer shall not be entitled to request an extension of time for that Permitted Delay Event and such event shall not constitute a Permitted Delay Event.

15.4 Grant of Extension of Time

Subject to the Manufacturer complying with the requirements of this Clause 15 and the Purchaser, acting reasonably, being satisfied that a Permitted Delay Event has occurred, the Purchaser shall, as soon as reasonably practicable, agree with the Manufacturer a reasonable extension of time to the relevant Key Date and/or Contractual Date and any such extension shall amend the Contract Programme and each relevant Key Date and/or Contractual Date.

15.5 Extensions of Time – General

15.5.1 Any extension of time agreed by the Purchaser and the Manufacturer under this Clause 15 to a Key Date and/or a Contractual Date shall not of itself entitle the Manufacturer to any extension to any other Key Date and/or Contractual Date.

15.5.2 Except as expressly provided elsewhere in this Agreement, any extension of time agreed between the Purchaser and the Manufacturer pursuant to this Clause 15.5 shall be in full compensation and satisfaction for any loss sustained or sustainable by the Manufacturer in respect of any Permitted Delay Event in connection with which that extension is granted.

16. TRANSFER OF TITLE AND RISK

16.1 Title to Items of Goods

16.1.1 Title to each item of Goods shall pass to the Purchaser either immediately upon (i) delivery into Storage in accordance with Clause 12.2A in respect of the relevant item of Goods or (ii) delivery to the Purchaser in respect of the relevant item of Goods (as the case may be), and such title shall be full unencumbered legal and beneficial title to that item of Goods.

16.1.2 Until delivery of any item of Goods to its applicable Delivery Location (including while any item of Goods is in Storage), the Manufacturer shall ensure that all items of Goods are readily identifiable as the Purchaser's property, including by marking them as the Purchaser's property. The Manufacturer shall provide access to any premises at which such items are stored, including where the Goods are in Storage in accordance with Clause 12.2A, so that the Purchaser can verify compliance with this Clause 16.1.2.

16.2 Risk of loss etc.

Risk of loss, theft, damage or destruction of an item of Goods shall pass to the Purchaser immediately upon delivery of the relevant item of Goods into Storage or to the Delivery Location (as the case may be). The Manufacturer shall be responsible for the safe custody and transit of any item of Goods until the relevant item of Goods has been delivered into Storage or to the Delivery Location (as the case may be).

16.3 **Warranty in respect of Title**

The Manufacturer warrants to the Purchaser that the title to the Replacement Systems and each other item of Goods transferred to it under this Agreement shall be with full title guarantee and free and clear of all Security.

16.4 **Prohibition on Creating Security**

The Manufacturer undertakes that it shall not at any time create or purport to create any Security over the Replacement Systems or any other item of Goods (including any Manual, Installation Instructions or other documentation) to be Accepted for Service in accordance with this Agreement and which has been, or is to be, supplied to the Purchaser under and in accordance with the terms of this Agreement.

17. **DEFECT RECTIFICATION**

17.1 **Removal of defective Parts**

Where the Purchaser identifies a Defect in an item of Goods, the Purchaser shall notify the Manufacturer of such Defect within a reasonable time of its discovery. The Purchaser reserves the right to remove the affected item of Goods, send the affected item of Goods to the Manufacturer for rectification pursuant to Clause 17.2 (*Rectification of Defects*) and replace the affected item of Goods with a Spare.

17.2 **Rectification of Defects**

17.2.1 The Manufacturer shall:

- (A) subject to Clause 17.2.3 at its own cost, rectify (which, for the purposes of this Clause 17, means repair, replace, modify or (as appropriate) amend) each Defect which arises, occurs or becomes apparent in relation to any item of Goods during the Defect Rectification Period for that item and where necessary shall execute or procure the execution by another of all rectification works; and
- (B) submit to the Purchaser a report identifying the root cause of the Defect within twenty-eight (28) days after having identified, or been notified pursuant to Clause 17.1, of such Defect.

17.2.2 Subject to Clause 17.2.3, the Manufacturer shall commence the rectification of any Defect as set out in Clauses 17.2.1 without delay and complete the rectification within a reasonable period having regard to the circumstances.

17.2.3 The Manufacturer agrees that the Purchaser may instruct a third party personnel or resources to carry out any rectification works on any item of Goods supplied by the Manufacturer to the Purchaser hereunder.

17.3 **Extended Defect Rectification Period**

Where an item of Goods and/or any Part of the same is rectified or replaced due to a Defect, the Defect Rectification Period for that item shall be twelve (12) months from the date of repair or (as the case may be) replacement certified in writing by the Purchaser.

17.4 **Rectification by the Purchaser**

17.4.1 Subject to Clause 17.2.3, where the Purchaser identifies a Defect in an item of Goods, the Purchaser shall be entitled to remedy such Defect at any time using its own or third party personnel or resources.

- 17.4.2 If, in order to remedy a Defect, the Purchaser must install a Maintenance Spare on a Train, the Manufacturer shall provide the Purchaser with a Supplementary Spare in accordance with and within the timeframes specified in Clause 11.3A.
- 17.4.3 All costs and expenses properly and reasonably incurred by the Purchaser in undertaking any work pursuant to Clause 17.4.1, together with VAT chargeable thereon shall be recoverable by the Purchaser within ten (10) Working Days of demand from the Purchaser as a debt due and owing from the Manufacturer.

17.5 **Recurrent Defects**

If, during the Defect Rectification Period, the Parties identify that a Recurrent Defect has occurred or in the reasonable opinion of the Purchaser is reasonably likely to occur, each Party shall notify the other Party of such occurrence. The Manufacturer warrants to the Purchaser that it shall remedy such Recurrent Defect and undertake necessary rectification on all Replacement Systems, Spares and Parts (as appropriate), and undertake such work as may be feasible in order to enable such Replacement System, Spare or Part (as the case may be) to continue in operation in compliance with the terms of this Agreement pending such rectification. Within twenty (20) Working Days of having identified, or having been notified of, such Recurrent Defect, the Manufacturer shall submit to the Purchaser a programme for rectification of such Recurrent Defect and any necessary rectification required on any Replacement Systems, Spares or Parts (as the case may be) as soon as is practicable and the Parties shall negotiate and agree such programme in good faith, within a period of twenty (20) Working Days after receipt of such programme.

18. **SUSPENSION**

18.1 **Right to Suspend Work**

The Purchaser may at any time instruct the Manufacturer to suspend the design, manufacture, supply, testing, commissioning or delivery of the Replacement Systems (or any part thereof) and/or any other item of Goods, or performance of the Services (or part thereof).

18.2 **Protection of Work in Progress**

The Manufacturer shall during any such suspension take reasonable steps to protect, secure and insure the Replacement Systems and/or any other items of Goods affected at the Manufacturer's premises (or other location agreed with the Purchaser).

18.3 **Entitlement to Costs for Suspension**

If a suspension occurs, the additional reasonable and documented costs incurred by the Manufacturer in complying with an instruction under Clause 18.1 (including those costs incurred in protecting, securing and insuring the items described in Clause 18.2) shall be reimbursed by the Purchaser save that the Manufacturer shall not be entitled to be paid any additional costs:

- 18.3.1 where the suspension arises by reason of material default on the part of the Manufacturer or any of its Subcontractors or suppliers or the directors, agents, representatives or employees of any of them; or
- 18.3.2 arising from remedying any deterioration, defect or loss caused by the Manufacturer's faulty workmanship or materials or by the Manufacturer's failure

to comply with any of its obligations under this Agreement, including under Clause 18.2.

18.4 Prolonged Suspension

Unless otherwise agreed, if any suspension lasts for three hundred and sixty (360) or more days the Purchaser shall, if requested to do so by the Manufacturer, terminate this Agreement in accordance with Clause 25.7.

18.5 Resumption

Subject to Clause 18.4, the Purchaser may at any time instruct the Manufacturer to resume any activities suspended pursuant to Clause 18.1.

18.6 Making Good Deterioration

Upon receipt by the Manufacturer of an instruction from the Purchaser to proceed with any suspended activities pursuant to Clause 18.5, the Manufacturer shall examine the Replacement Systems and other Goods affected by the suspension. The Manufacturer shall make good any deterioration or defect in or loss of such Replacement System and other Goods that may have occurred during suspension.

18.7 Entitlement to Costs for Resumption

The additional reasonable and documented costs incurred by the Manufacturer in complying with an instruction under Clause 18.5 and its obligations under Clause 18.6 shall be added to the Contract Price, provided that the Manufacturer shall not be entitled to be paid any cost arising from:

- 18.7.1 remedying any deterioration, defect or loss caused by the Manufacturer's faulty workmanship or materials; or
- 18.7.2 the Manufacturer's failure to comply with its any of its obligations under this Agreement, including under Clause 18.2.

19. HEALTH AND SAFETY

Where the Manufacturer or any of its Subcontractors carries out any work, including testing and commissioning work on the Replacement Systems on the LUL Premises, the LUL Network or any other site under the control or supervision of the TfL Group, the Manufacturer shall and shall procure that its Subcontractors shall:

- 19.1.1 comply with all applicable Standards and Applicable Laws and carry out such work in a manner which would be adopted by a diligent and skilled contractor;
- 19.1.2 comply with any direction or instruction (whether written or oral) given by the Purchaser or their respective employees, contractors or agents, including any direction to cease working; and
- 19.1.3 comply with Schedule 14 (*QUENSH*).

20. PAYMENT

20.1 Not used

20.2 Payment

Payment

- 20.2.1 In consideration of performance of the Manufacturer's obligations under this Agreement, the Purchaser shall pay the Manufacturer the amount of the Contract Price in the manner set out in this Clause 20.
- 20.2.2 Each Milestone Payment shall be sequential and no Milestone Payment shall be due to the Manufacturer unless and until:
- (A) if no programme is included in Schedule 2 (*Contract Programme*), the Manufacturer has submitted an initial programme to the Purchaser Representative showing the information required under Clause 8.1.1 and which is capable of acceptance in accordance with Clause 8.3.1; and
 - (B) the Performance Bond or the Manufacturer Guarantee (as applicable) are in place in accordance with Clause 22.

Payment applications

- 20.2.3 On completion of each Milestone, the Manufacturer shall submit a payment application for:
- (A) the amount set out against the relevant Milestone, setting out in reasonable detail a description of the Milestone achieved; and
 - (B) any amounts due (less any payments already made) pursuant to Clause 23.3, and in accordance with the principles set out in paragraph 2 of Schedule 4 (*Contract Price*) Part 2 (*Payment*), in respect of any properly completed Variation (or, where the Parties have agreed that a Variation shall be paid on a sectional basis, in respect of any properly completed section of the Variation) provided that the Manufacturer's payment application sets out the details and value of any Variation payment being sought,

to the Purchaser Representative at the address specified in Clause 36. The Manufacturer shall ensure that each payment application is dated and issued no earlier than the date on which the relevant Milestone and/or the Variation to which it relates has been completed.

- 20.2.4 The Purchaser Representative shall consider the Manufacturer's payment application, and assess and verify the amount due (the "**Milestone Payment**") in a timely manner. The Purchaser Representative shall certify the Milestone Payment (the "**Payment Certificate**") within seven (7) days of receipt of the payment application and shall give the Manufacturer details of how the Milestone Payment due has been assessed. Where the Purchaser fails to comply with its obligations under this Clause 20.2.4 and there is an undue delay in considering and verifying the Milestone Payment, the Payment Certificate shall be regarded as issued for the purposes of Clause 20.2.6 after a reasonable time has passed.

VAT invoice

- 20.2.5 Within ten (10) days of receipt of the Payment Certificate the Manufacturer shall issue a corresponding VAT invoice for the amount of the relevant Milestone Payment, accompanied by a copy of the Payment Certificate, to the

Purchaser Representative in accordance with any instructions received from him. The Manufacturer shall ensure that such VAT invoice:

- (A) is dated and issued no earlier than the date when the Payment Certificate was issued; and
- (B) clearly states the purchase order number.

Payment due date

20.2.6 Subject to Clause 20.3, the Purchaser Representative shall, on receipt by it of an appropriate VAT invoice in accordance with Clause 20.2.5, pay to the Manufacturer within ten (10) days of receipt by it of such VAT invoice the relevant Milestone Payment calculated in accordance with Clause 20.2.4. If the Manufacturer fails to issue a VAT invoice that complies with the requirements of this Clause 20 within the time period stated in Clause 20.2.5, then the time period for payment of the relevant Milestone Payment set out in this Clause 20.2.6 shall be automatically extended by the number of days that the VAT invoice remains outstanding.

Payments owed by Manufacturer

20.2.7 Where a payment application shows a net amount owed by the Manufacturer to the Purchaser the Manufacturer shall pay the amount to the Purchaser within thirty (30) days of such application being provided to the Purchaser Representative or, at the option of the Purchaser Representative, carry forward that amount to the next Milestone Payment application in reduction of amounts which would otherwise have been owed by the Purchaser to the Manufacturer.

Payment recovery

20.2.8 Any payment made by the Purchaser under this Agreement does not prevent the Purchaser from recovering any amount over-paid or wrongfully paid however such payment may have arisen, including but not limited to, those amounts paid to the Manufacturer by mistake of law or fact.

Late payment

20.2.9 Save where otherwise specifically provided where any payment or sum of money due from one Party to the other Party under any provision of this Agreement is not paid in accordance with the timescales set out in this Agreement and providing that there has been no Dispute in respect of the sums therein, without prejudice to the Parties' other rights under the Agreement, that sum shall bear simple interest thereon from the due date until payment is made in full at the Default Interest rate current at the date a payment under this Agreement becomes overdue. The Parties agree that this is a substantial remedy for late payment of any sum payable under this Agreement in accordance with section 8(2) of the Late Payment of Commercial Debts (Interest) Act 1998. The Manufacturer is not entitled to suspend works under the Agreement or delivery of the Goods as a result of any sums being outstanding.

20.3 Disputed Payment Applications

The Purchaser Representative shall notify the Manufacturer in writing of any disputed amounts or payment applications stating the reasons for such dispute within seven (7) days of receipt of such payment application, and any dispute shall be resolved in

accordance with Clause 32. In the event of any disputed payment application, the undisputed element of such payment application shall be certified by the Purchaser Representative in accordance with this Clause 20.

20.4 Exchange Rate Risk

All risks associated with movements in foreign currency exchange rates and/or the costs of activities performed outside of the United Kingdom shall be borne by the Manufacturer from the Commencement Date, subject to the application of the Financial Close Protocol.

21. VAT

21.1 Payment of VAT

The Contract Price is, unless otherwise stated, exclusive of VAT. To the extent that VAT is properly chargeable in respect of the Contract Price and the Manufacturer is liable to account for such VAT to any Competent Authority, such VAT shall be charged by the Manufacturer to the Purchaser at the rate in force on the date of the relevant payment application and must be shown as a separate amount on such payment application and shall accordingly be paid by the Purchaser to the Manufacturer. To the extent that VAT is chargeable in respect of the Contract Price and the Purchaser is liable to account for such VAT to any Competent Authority, the Contract Price shall not be affected by such VAT and no additional payments in respect of such VAT shall be made by the Purchaser to the Manufacturer pursuant to this Agreement but the Purchaser shall instead account for such VAT to the relevant Competent Authority.

21.2 Reimbursement of VAT

Where under this Agreement one Party is to reimburse or indemnify another Party in respect of any payment made or cost incurred by the other Party, the first Party shall also reimburse any VAT paid by the other Party in question which forms part of its payment made or cost incurred to the extent such VAT is not available for credit for the other Party in question (or for any person with whom the indemnified party is treated as a member of a group for VAT purposes).

21.3 VAT Credit Note to be Issued on Repayment

Where under this Agreement any rebate or repayment of any amount is payable by one Party to another Party, and the first Party is entitled as a matter of law or of HM Revenue and Customs practice to issue a valid VAT credit note, such rebate or repayment shall be paid together with an amount representing the VAT paid on that part of the consideration in respect of which the rebate or repayment is made, and the first Party shall issue an appropriate VAT credit note to the other Party in question.

22. SECURITY

22.1 Performance Bond

22.1.1 Where the Contract Particulars specify a Performance Bond is required, this Clause 22.1 shall apply.

22.1.2 On or prior to the date of this Agreement, the Manufacturer shall procure at its cost a valid and effective Performance Bond in favour of the Purchaser. The Performance Bond shall:

- (A) be in the amount stated in the Contract Particulars;

- (B) substantially in the form set out in Schedule 11 (*Form of Performance Bond*);
- (C) expire upon Fleet Acceptance; and
- (D) be duly executed and delivered by a Bond Provider.

22.2 **Manufacturer Guarantee**

22.2.1 Where the Contract Particulars specify a Manufacturer Guarantee is required, this Clause 22.2 shall apply.

22.2.2 On or prior to the date of this Agreement, the Manufacturer shall procure at its cost a valid and effective Manufacturer Guarantee in favour of the Purchaser. The Manufacturer Guarantee shall:

- (A) substantially in the form set out in Schedule 7 (*Form of Manufacturer Guarantee*);
- (B) expire upon Fleet Acceptance; and
- (C) be duly executed and delivered by the Manufacturer Guarantor.

22.3 **Replacement Bonds**

22.3.1 If at any time:

- (A) a Performance Bond ceases to be in full force and effect;
- (B) the Bond Provider's obligations under the Performance Bond are or become wholly or partly invalid or unenforceable;
- (C) the Bond Provider ceases to meet the Required Rating; or
- (D) an Insolvency Event occurs in relation to a Bond Provider;

then the Manufacturer shall provide a replacement Performance Bond (as the case may be) issued by a Bond Provider and that otherwise complies with this Clause 22 within ten (10) Working Days of the Performance Bond (as the case may be) ceasing to meet the relevant requirement(s) of this Clause 22.3.

22.3.2 In the event that the Manufacturer does not provide a replacement Performance Bond in accordance with Clause 22.3.1, the Purchaser may at its option:

- (A) make a demand upon the full amount (or remaining balance thereof if a demand or demands have already been made) of the Performance Bond which amount shall be paid to the Purchaser and retained by the Purchaser pending receipt of a replacement Performance Bond meeting the requirements of this Clause 22 (provided that if, prior to receipt of such Performance Bond this Agreement is terminated, the Purchaser may apply such amount towards any sums owing to it under this Agreement); or
- (B) procure the issue of a replacement Performance Bond meeting the requirements of this Clause 22 and invoice the Manufacturer for the cost thereof. The Manufacturer shall reimburse the Purchaser for the

amount of such cost, together with Default Interest from the date of such invoice until the date on which the invoice is paid.

23. VARIATION PROCEDURE

23.1 Right to request a quote

23.1.1 The Purchaser Representative may, at any time prior to instructing a Variation, request the Manufacturer to provide, in writing, a quotation in respect of any variation envisaged, such quotation to detail any adjustment to the Contract Price and any effect on the Contract Programme as a result of implementing the proposed variation (the "**Variation Quote**").

23.1.2 The Manufacturer shall:

(A) provide the Purchaser Representative with a Variation Quote within five (5) Working Days (or such longer period as the Purchaser Representative may agree) of a request from the Purchaser Representative; and

(B) hold its Variation Quote open for ninety (90) Working Days and shall endorse the Variation Quote to this effect.

23.1.3 The Purchaser Representative may, in its absolute discretion, accept the Variation Quote and instruct a Variation in accordance with Clause 23.2.1, and the remaining provisions of this Clause 23.1 shall apply in respect of such Variation.

23.1.4 The Manufacturer shall be responsible for all costs and expenses associated with the preparation of any Variation Quote.

23.2 Right to vary

23.2.1 The Purchaser Representative may at any time until the date of the Fleet Acceptance Certificate instruct the Manufacturer in writing to proceed with a Variation of any kind in accordance with the provisions of this Clause 23.2.

23.2.2 Upon instruction of a Variation by the Purchaser Representative, the Manufacturer shall carry out such Variation and be bound by the terms of this Agreement in so doing, as though the Variation was stated in the Agreement.

23.2.3 Nothing in this Clause 23.2 shall prevent the Manufacturer from making a proposal to the Purchaser Representative for a Variation but no Variation so proposed shall be carried out by the Manufacturer except as directed in writing by the Purchaser Representative.

23.3 Valuation of Variations

23.3.1 As soon as possible after having received any instruction under Clause 23.2, the Manufacturer shall notify the Purchaser Representative if, in the Manufacturer's opinion, the Variation will involve an adjustment to the Contract Price (the "**Variation Valuation**").

23.3.2 Subject to Clause 23.3.3, the Variation Valuation shall, if not the subject of a Variation Quote from the Manufacturer which has been accepted by the Purchaser Representative in accordance with Clause 23.1.3, be determined by the Purchaser Representative:

- (A) in the case of a Variation instructed pursuant to Clause 11.4, in accordance with the prices stated in the price list set out in Schedule 3 (*Spares and Special Tools*) Part B (*Additional Spares*) in the case of a Spare of the kind listed in that list and otherwise at cost plus 3%;
- (B) in the case of a Variation instructed pursuant to Clause 6.8, in accordance with the prices set out in Appendix A of Schedule 1A (*Specification*); and
- (C) in all other cases, in accordance with the rates and prices set out in Schedule 4 (*Contract Price*) or, to the extent that such rates are not applicable, on a fair and reasonable basis in all the circumstances reflecting, so far as possible, the then current market rates.

Due account shall be taken of any partial performance of the Agreement which is rendered useless by any such Variation.

23.3.3 The Manufacturer shall not be entitled to any increase in the Contract Price with respect to any Variation:

- (A) instructed pursuant to Clause 7.3.1; or
- (B) to the extent that it was directly or indirectly caused by or resulted from any act, neglect, default or breach of this Agreement by the Manufacturer its Subcontractors or suppliers or the directors, agents, representatives or employees of any of them or to the extent that the Manufacturer has failed to take all reasonable steps to mitigate any actual or potential increase in the Contract Price.

23.4 Notice of variations

23.4.1 When instructing any Variation, the Purchaser Representative shall, to the extent possible, give the Manufacturer such reasonable notice as will enable him to make his arrangements accordingly.

23.5 Progress with variations

23.5.1 The Manufacturer shall, on receipt of an instruction from the Purchaser Representative to proceed with a Variation, immediately proceed to carry out such Variation in accordance with its terms notwithstanding that the Variation Valuation has not yet been determined. The carrying out of the Variation by the Manufacturer shall not, without the prior written consent of the Purchaser Representative, be delayed pending determination of the Variation Valuation in accordance with Clause 23.3.

23.5.2 The Parties shall enter into such amendments to this Agreement to give effect to any Variation instructed by the Purchaser Representative pursuant to Clause 23.2.1.

24. INTELLECTUAL PROPERTY RIGHTS

24.1 Not used

24.2 Licence of Manufacturer IPR

The Manufacturer grants, or shall procure the grant, to the Purchaser a non-exclusive, perpetual, irrevocable, royalty-free, sub-licensable and transferable licence to use the Manufacturer IPR, Software and Source Code for:

- 24.2.1 the testing, commissioning, operation, maintenance, modification, refurbishment or sale of the Replacement Systems and other items of Goods or any related activity, or permitting the Purchaser to use the Replacement Systems and any other item of Goods and/or any other item to be supplied pursuant to this Agreement for the purposes envisaged pursuant to the Specification;
- 24.2.2 modifying, refurbishing, repairing, maintaining and overhauling the Replacement Systems, and/or any other item of Goods supplied pursuant to this Agreement or any related activity;
- 24.2.3 complying with all Applicable Laws, LU Standards and all Relevant Consents;
- 24.2.4 using and copying the Manuals and/or Installation Instructions in order to perform any of the above;
- 24.2.5 training personnel to carry out any of the activities described in Clause 24.2.1, 24.2.2 and 24.2.4;
- 24.2.6 inviting tenders for any of the activities described in Clause 24.2.1 to 24.2.5 inclusive;
- 24.2.7 in the event of termination of this Agreement, procuring fulfilment and performance of the Manufacturer's obligations under this Agreement, including the manufacture of any Parts, Spares and any other items of Goods or other equipment for use in connection with the Replacement Systems; and
- 24.2.8 the Purchaser performing its obligations under this Agreement.

Other than in accordance with this Clause 24, the Purchaser shall not, and no party to whom it sub-licences or transfers any rights under this Clause 24 shall, have the right to manufacture (i) the Replacement Systems or (ii) any Part that is the subject of Manufacturer IPR.

24.3 Subcontractors

The Manufacturer shall ensure that all Subcontracts entered into by the Manufacturer shall permit the Manufacturer to assign or novate its rights and obligations under such agreement relating to any Intellectual Property Rights to the Purchaser without the consent of the relevant Subcontractor and such Subcontracts shall specify the Purchaser as a permitted assignee.

24.4 Documentation

The Manufacturer shall execute such further documents, and do such other things, as the Purchaser may reasonably request in order to obtain for the Purchaser the full benefit of this Clause 24 at no cost to the Purchaser.

24.5 Warranties

The Manufacturer represents and warrants to the Purchaser that:

- 24.5.1 the Manufacturer IPR, and the Software constitute all the Intellectual Property Rights required by the Purchaser for the purposes of this Agreement;
- 24.5.2 it has the right and power to grant the licence set out in Clause 24.2; and
- 24.5.3 use of any Manufacturer IPR, Software, the Replacement Systems, Part and/or any other item of Goods or part thereof does not infringe any Intellectual Property rights of another person.

24.6 Indemnity

The Manufacturer shall indemnify the Purchaser and any member of the TfL Group as provided for in Clause 29.2 against any claim for infringement of any Intellectual Property Rights.

24.7 Remedy for Infringement

Without prejudice to the provisions of Clauses 24.5 and 29.2.4, if the use of any Manufacturer IPR, Software, Replacement Systems, Part and/or any other item of Goods or part thereof is, or in the reasonable opinion of the Purchaser is likely to become, an infringement of the Intellectual Property Rights of another person, the Manufacturer shall, at its cost, either:

- 24.7.1 procure for the Purchaser the right to continue to use that Manufacturer IPR, Software, Replacement Systems, Part and/or item of Goods; or
- 24.7.2 (to the extent Clause 24.7.1 is not applicable) modify the Replacement Systems, Part and/or item of Goods so that it no longer infringes those rights, or replace the item of Goods with a non-infringing Replacement Systems, Part and/or item of Goods (or part thereof) provided however that the modified or replacement Replacement Systems, Part and/or item of Goods (as the case may be) shall at all times comply with all the requirements of this Agreement.

24.8 Software

24.8.1 The Manufacturer shall ensure in respect of all Software that is used for the design, manufacture, testing, commissioning, supply, operation, maintenance, modification, refurbishment or sale of the Replacement Systems and/or any other item of Goods that:

- (A) there is orderly documented progress from the functional requirements to the final code and provision for regular verification and testing at each stage of the design process;
- (B) the documentation for Software is such as to enable an appropriately qualified person (who was not involved in the original design) to relate the Software to the performance of the relevant equipment under normal and fault conditions, and to verify its compliance with the functional requirements of that equipment; and
- (C) where no particular LU Standard is specified by the Specification, it is designed and documented following a nationally or internationally recognised standard using recognised quality control methods.

The Manufacturer shall provide copies of the documentation and information at Clause (A) and (B) above to the Purchaser on the request of the Purchaser.

24.8.2 The Manufacturer shall in respect of Manufacturer-owned Software, at all times during the period from the Commencement Date until the end of the thirty (30) year design life of the Replacement Systems:

- (A) retain updated "as made" copies, in machine readable form, of the final structure of the Software, and of the intermediate stages leading to it (including Source Code and object codes);
- (B) retain updated usable copies of any ancillary computer programmes used to generate such codes (such as, without limitation, compilers);
- (C) subject to the provisions of any Escrow Agreement entered into under Clause 24.11, keep copies of the materials referred to in this Clause 24.8.2 in a secure manner and place such that they will not deteriorate;
- (D) retain the Software designed by the Manufacturer; and
- (E) allow the Purchaser reasonable access to the Software and the Source Code and its documentation.

24.9 Cessation of Software Support

If the Manufacturer or any Subcontractor supplying any of the Software stops trading or makes known its intention to withdraw support for that Software, the Manufacturer shall, without additional charge (save where the Subcontractor stops trading or makes such intention to withdraw support known in which case the Purchaser shall pay the reasonable and properly incurred costs of the Manufacturer in complying with this Clause 24.9), use reasonable endeavours to procure the transfer to the Purchaser of all rights in and to the Software in question for the relevant type of Goods.

24.10 Survival

Each licence granted under this Clause 24 and/or any liability arising in connection with the same shall survive the termination of this Agreement.

24.11 Escrow

Within twenty (20) Working Days of the Commencement Date the Manufacturer shall execute the Escrow Agreement. The Manufacturer shall place the Escrow Materials in escrow with the Escrow Agent on the terms set out in the Escrow Agreement as soon as reasonably possible after its completion and in any event within twenty (20) Working Days thereof. The Manufacturer shall pay all fees of the Escrow Agent in connection with the placement, storage and release of the Escrow Materials and shall provide evidence of the same to the Purchaser on written request.

25. TERMINATION

25.1 Manufacturer Events of Default

The occurrence of one or more of the following shall constitute a Manufacturer Event of Default:

- 25.1.1 the Manufacturer commits a material breach of its obligations under this Agreement;

- 25.1.2 the Manufacturer commits a Persistent Breach as provided for in Clause 25.4;
 - 25.1.3 the Manufacturer commits a breach of Clause 10.1;
 - 25.1.4 the maximum amount of any liquidated damages payable by the Manufacturer pursuant to Clause 13.1 and/or Clause 13.3 shall have accrued;
 - 25.1.5 an Insolvency Event occurs in relation to the Manufacturer;
 - 25.1.6 the Manufacturer fails to make payment of any sum (including any liquidated damages) not in dispute when due and payable to the Purchaser in accordance with this Agreement within thirty (30) days of a written demand for payment;
 - 25.1.7 the Manufacturer fails to take out and/or maintain any of the Required Insurances in accordance with Schedule 9 (*Insurance*);
 - 25.1.8 the Manufacturer fails to provide (where the Contract Particulars specify, a Performance Bond is required) a Performance Bond or any replacement thereof in accordance with Clause 22.3;
 - 25.1.9 Acceptance for Service for the Replacement Systems still has not occurred by the Fleet Acceptance Longstop Date,
 - 25.1.10 (where the Contract Particulars specify a Manufacturer Guarantee is required,) the Manufacturer Guarantor's obligations under the Manufacturer Guarantee are or become wholly or partly invalid or unenforceable or the Manufacturer Guarantor fails to comply promptly with any of its obligations pursuant to the Manufacturer Guarantee;
 - 25.1.11 there is a breach by the Manufacturer of its obligations under Clause 34;
 - 25.1.12 the Manufacturer fails to remedy an Equality & Diversity Infraction to the satisfaction of the Purchaser or fails to terminate its Subcontract with a defaulting Subcontractor in accordance with and within the timeframes specified in paragraph 1.6 of Schedule 17 (*Responsible Procurement*) Part A (*Equality and Supplier Diversity*);
 - 25.1.12 without the Purchaser's written consent, at any time a person (or persons acting together) takes a controlling interest in the Manufacturer's share capital, and for this purpose, a "**controlling interest**" being either:
 - (A) the ownership or control (directly or indirectly) of more than 30% of the Manufacturer's voting share capital or the share capital of the Manufacturer's holding company; or
 - (B) the ability to direct the casting of more than 30% of the votes exercisable at the Manufacturer's general meetings or those of the Manufacturer's holding company on all, or substantially all, matters; or
 - 25.1.13 a Manufacturer Public Procurement Termination Event occurs.
- 25.2 **Procedures in relation to Termination for a Manufacturer Event of Default**
- 25.2.1 The Manufacturer shall notify the Purchaser forthwith on the Manufacturer becoming aware of the occurrence of a Manufacturer Event of Default.
 - 25.2.2 Following the occurrence of a Manufacturer Event of Default (and notwithstanding that the Manufacturer may not have notified it pursuant to

Clause 30.2.1), the Purchaser may by notice in writing to the Manufacturer ("**Purchaser Termination Notice**") specifying the Manufacturer Event of Default in question terminate this Agreement either in respect of all of the Goods which have not been Accepted for Service or (as specified in the notice) in relation to specific items of Goods which have not been Accepted for Service, such termination to take effect from the date specified in the Purchaser Termination Notice (being not less than seven (7) days after the date of the Purchaser Termination Notice or, in the case of Insolvency, forthwith) provided that, in respect of a Manufacturer Event of Default under Clauses 25.1.1, 25.1.3 or 25.1.6 which is capable of remedy, the provisions of Clause 25.2.3 shall apply.

25.2.3 This Clause 25.2 shall be without prejudice to the Purchaser's rights of termination implied into this Agreement by Regulation 73(3) of the Public Contracts Regulations 2015.

25.3 Remedial Plan

25.3.1 Where a Manufacturer Event of Default that is capable of remedy arises under Clauses 25.1.1, 25.1.3 or 25.1.6, the Purchaser shall by notice in writing to the Manufacturer signed on behalf of the Purchaser (a "**Remedy Notice**") require the Manufacturer either:

- (A) to remedy such breach(es) referred to in the Remedy Notice within thirty (30) Working Days of that notice or
- (B) within ten (10) Working Days of the Remedy Notice, to put forward a plan (a "**Remedial Plan**") acceptable to the Purchaser in its absolute discretion to remedy the breach(es) referred to in the Remedy Notice. Such Remedial Plan shall be in writing and shall specify the proposed remedy in reasonable detail and the latest date by which it is proposed that that remedy will be completed.

25.3.2 Where the Manufacturer puts forward a Remedial Plan in accordance with Clause 25.3.1, the Purchaser shall notify the Manufacturer in writing within twenty (20) Working Days of receipt of the Remedial Plan that it does not accept the Remedial Plan. If the Purchaser does not so notify the Manufacturer, the Purchaser shall be deemed to have accepted the Remedial Plan.

25.3.3 If the Purchaser notifies the Manufacturer that it does not accept that Remedial Plan pursuant to Clause 25.3.2, the Purchaser and the Manufacturer shall use reasonable endeavours in the following ten (10) Working Days to agree any necessary amendments to the Remedial Plan in order for it to be acceptable to the Purchaser. In the absence of agreement in that period of ten (10) Working Days, the Purchaser may treat the Manufacturer Event of Default as not being capable of remedy and terminate this Agreement in accordance with Clause 25.2.2 (notwithstanding the proviso thereto). Where the Purchaser and the Manufacturer agree the form of the Remedial Plan, the Manufacturer shall forthwith implement such Remedial Plan in accordance with its terms.

25.3.4 If any breach specified in a Remedy Notice served under Clause 25.3.1 is not remedied

- (A) within the thirty (30) Working Day period specified in Clause 25.3.1(A) (if applicable); or

- (B) in accordance with a Remedial Plan that has been accepted or deemed accepted by the Purchaser, or the Manufacturer otherwise fails to comply with the terms of that Remedial Plan,

then the Purchaser may exercise its rights under Clause 25.2.2 as if the Manufacturer Event of Default is not capable of remedy.

25.4 Persistent breach

25.4.1 If the Manufacturer breaches any of its obligations (where those obligations are of the same type or nature) under this Agreement, more than twice in any three (3) month period, then the Purchaser may serve a notice on the Manufacturer:

- (A) specifying that it is a formal warning notice;
- (B) giving reasonable details of such breach; and
- (C) stating that such breach is a persistent breach that, if it continues unremedied or if a breach of the same type or nature occurs within three (3) months of the date of service of the notice, may result in a termination of this Agreement in accordance with this Clause 25.4.

25.4.2 If, following service of such a warning notice pursuant to Clause 25.4.1, the breach specified has continued unremedied or a breach of the same type or nature has occurred within the three (3) months following the date of service of such notice, then the Purchaser may, no later than the date falling six (6) months following the date of service of the warning notice pursuant to Clause 25.4.1, serve another notice on the Manufacturer specifying that such breach constitutes a "**Persistent Breach**" for the purposes of Clause 25.1.2.

25.5 Consequences of Termination for Manufacturer Fault

25.5.1 Where the Purchaser has served (a) a Purchaser Termination Notice in accordance with Clause 25.2.2 (and, where relevant, the Manufacturer Event of Default has not been remedied pursuant to Clause 25.2.3), or (b) a notice of termination under Clauses 33.3, 33.4, 53.2 and 54.5 the Purchaser shall be entitled (in its absolute discretion) to:

- (A) procure the completion of the Replacement Systems and other items of Goods so that they satisfy the conditions necessary for the passing of title to the Purchaser and, upon completion, pay to the Manufacturer that part of the Contract Price for the Replacement Systems and any other item of Goods not yet paid as at the date of termination less the cost of completion including procurement of the same. Where this gives rise to a negative figure, the corresponding positive amount will be payable by the Manufacturer to the Purchaser together with Default Interest (calculated from the date of termination of this Agreement to the date of payment by the Manufacturer);
- (B) purchase any work in progress, wholly or partly manufactured Replacement Systems and other items of Goods at an amount representing a fair assessment of the value of the Replacement Systems and other items of Goods, less an amount equal to those instalments of the Contract Price and/or any advance payments already paid by the Purchaser in respect of such Replacement Systems and/other items of Goods;

- (C) be reimbursed for all payments made to the Manufacturer in relation to the supply of the Replacement Systems and other items of Goods (other than those in respect of which title has transferred to the Purchaser pursuant to Clause 16). The amount to be reimbursed shall attract Default Interest (calculated from the date of termination of this Agreement to the date of payment by the Manufacturer);
- (D) if Termination occurs prior to Acceptance for Service of the First Train, return any Replacement Systems (including the First Train) or other items of Goods in the possession of the Purchaser and be reimbursed for all payments made to the Manufacturer. The amount to be reimbursed shall attract Default Interest (calculated from the date of termination of this Agreement to the date of payment by the Manufacturer); or
- (E) require the Manufacturer to return all Old Components to the Purchaser in a reusable condition. If the Purchaser requires the Manufacturer to return Old Components pursuant to this Clause 25.5.1(E) the Manufacturer shall store and deliver the Old Components to the Purchaser with care and attention and in accordance with good industry practice.

25.5.2 Subject Clause 29.4, if this Agreement is terminated at any time between the Commencement Date and the Fleet Acceptance as a result of:

- (A) the occurrence of a Manufacturer Event of Default in accordance with Clause 25.2.2 (and, where relevant, the Manufacturer Event of Default has not been remedied pursuant to Clause 25.2.3); or
- (B) the occurrence of a Prohibited Act in accordance with Clause 33,

the Manufacturer shall, in addition to any amounts payable pursuant to Clause 25.5.1 above, be responsible for and release and indemnify the Indemnified Parties on demand on an after-Tax basis from and against all liability for the costs, losses and expenses suffered or incurred by the Indemnified Parties arising from the termination of this Agreement including, but not limited to:

- (i) the costs of procuring a replacement contract including any increase in the price of the replacement contract and all project management, legal and other professional costs and fees in relation to such replacement contract;
- (ii) all other reasonable direct losses, costs and claims of the Indemnified Parties (including but without limitation, project management, legal and other professional costs and fees);
- (iii) the costs of the Purchaser procuring replacement Replacement Systems; and
- (iv) the cost of satisfying any outstanding Preconditions relating to the First Train.

25.6 Additional Remedies

Without prejudice to Clause 38, where this Agreement has been terminated pursuant to Clause 25.1.13, 33.3, 33.4, 53.2, 54.5 or 56.9, the Purchaser shall be entitled to require the Manufacturer:

- 25.6.1 to assign the benefit of any warranties which have been given by any third parties, Subcontractors or suppliers to the Manufacturer in respect of the Goods; or
- 25.6.2 to provide all drawings of all Parts and all design, technical and maintenance records relating to the Goods including all Manuals and Installation Instructions relating to the Goods save to the extent the same have already been provided in accordance with this Agreement and such information shall be treated as Manufacturer IPR for the purposes of this Agreement.

25.7 Voluntary Termination

The Purchaser may terminate this Agreement without cause at any time by giving notice to the Manufacturer of such termination and the date when such termination shall become effective and the termination shall take effect upon such date.

25.8 Declaration of Ineffectiveness and Public Procurement Termination Event

The Purchaser may terminate this Agreement at any time in the event that:

- 25.8.1 there is a Declaration of Ineffectiveness; or
- 25.8.2 a Public Procurement Termination Event occurs (without prejudice to the Purchaser's rights of termination implied into this Agreement by Regulation 73(3) of the Public Contracts Regulations 2015).

25.9 Not used

25.10 Consequences of Voluntary Termination, Declaration of Ineffectiveness or Public Procurement Termination Event

25.10.1 Not used

25.10.2 Where this Agreement is terminated by the Purchaser in accordance with Clauses 25.7 or 25.8, the Purchaser shall pay to the Manufacturer:

- (A) an amount equivalent to the amount that would be payable by the Purchaser to the Manufacturer in respect of a termination as a result of a Force Majeure Event in accordance with Clause 25.11; and
- (B) provided that, where the amount would be a negative figure, the corresponding positive amount shall be payable by the Manufacturer to the Purchaser on the same basis as set out in Clause 25.5.1(A)); and
- (C) subject to Clauses 25.10.3 to 25.10.5 inclusive, the costs, expenses and other liabilities reasonably and properly incurred by the Manufacturer as a direct result of the termination of this Agreement provided that the Manufacturer shall use all reasonable endeavours to mitigate such costs, expenses and/or other liabilities.

The Manufacturer shall not be entitled to payment of any other loss and/or damage arising from such termination.

25.10.3 The Purchaser shall be entitled to appoint a suitably qualified independent person ("**Independent Auditor**") to audit any or all of the costs, expenses and/or other liabilities incurred by the Manufacturer as a direct result of termination of this Agreement and determine whether the amount of such costs,

expenses and/or liabilities were properly and reasonably incurred by the Manufacturer as a direct result of the termination of this Agreement.

- 25.10.4 Where the Purchaser exercises its rights pursuant to Clause 25.10.3, it shall give written notice to the Manufacturer identifying the Independent Auditor appointed by the Purchaser, the terms of the Independent Auditor's appointment and the proposed timeframes for undertaking the audit. The Manufacturer shall cooperate with the Independent Auditor and grant the Independent Auditor the same rights of audit as the Purchaser enjoys under this Agreement.
- 25.10.5 The Purchaser shall procure that the Independent Auditor provides a copy of its decision in writing (together with reasons for its decisions) to the Manufacturer. Where the Independent Auditor determines that some or all of a specific cost, expense and/or liability was not properly and reasonably incurred by the Manufacturer as a direct result of termination of this Agreement, the Purchaser shall not be obliged to pay such amount to the Manufacturer.
- 25.10.6 The costs incurred by the Independent Auditor in undertaking the audit shall be borne by the Purchaser save where the Independent Auditor determines that some or all of a specific cost, expense and/or liability was not properly and reasonably incurred by the Manufacturer, in which case the costs incurred by the Independent Auditor in undertaking the audit shall be borne by the Manufacturer.
- 25.10.7 In the event the Manufacturer disputes any findings of the Independent Auditor, such Dispute shall be referred for resolution in accordance with Clause 32.

25.11 **Consequences of Termination for Force Majeure**

- 25.11.1 Where this Agreement is terminated in whole or in part by the Purchaser as a result of a Force Majeure Event in accordance with Clause 27, the Purchaser will acquire any:
- (A) Design that has been produced in connection with this Agreement prior to the date of service upon the Manufacturer of the FM Notice; and
 - (B) partially completed Replacement Systems or other item of Goods that is the subject of the FM Notice.
- 25.11.2 The value of the Purchaser's acquisition will be assessed, where appropriate, in accordance with Schedule 4 (*Contract Price*) (and in particular the Contract Price Breakdown contained in Schedule 4 (*Contract Price*) Part 3 (*Contract Price breakdown*)) or, to the extent that this is not appropriate due to the level of Design development, the costs and expenses reasonably and properly incurred by the Manufacturer in carrying out its obligations under this Agreement less the amount of progress or advance payments made to the Manufacturer. Where this gives rise to a negative figure, the corresponding positive amount shall be payable by the Manufacturer to the Purchaser on the same basis as set out in Clause 25.5.1(A).

25.12 **Consequences of Termination for other reasons**

Where this Agreement is terminated by the Purchaser under Clause 33.3, 33.4, 53.2, 54.5 or 56.9, the provisions of Clause 25.5 and 25.6 shall apply.

25.13 **Rejection**

This Clause 25 shall not apply to any rejection of the Replacement Systems pursuant to Clause 14.

26. **SURVIVAL OF CLAUSES**

26.1 **Consequence of Termination or Expiry**

Upon termination or expiry of this Agreement, whether in respect of any one item of Goods or all Goods, the obligations of the Parties under this Agreement in respect of the terminated Goods shall cease except for:

- 26.1.1 any rights and obligations arising as a result of any antecedent breach of this Agreement or any rights and obligations which shall have accrued or become due prior to the date of termination; and
- 26.1.2 the provisions of Clauses 1, 3A, 4.1.1, 4.1.3, 4.1.5 to 4.1.10 inclusive, 4.2 to 4.5 inclusive, 5, 6.7, 10.1.1 to 10.7 inclusive, 17, 20, 21, 22, 24, 25.5, 25.6, 25.11, 25.12, 25.13, 26, 29, 30, 31, 32, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, 45, 47 and 51 and the related Schedules referred to in or required to give effect to those Clauses which shall survive the termination or expiry of this Agreement and continue in full force and effect.

27. **FORCE MAJEURE**

27.1 **Consequence of a Force Majeure Event and Notification Requirements**

No Party shall be in breach of an obligation under this Agreement to the extent that it is unable to perform that obligation in whole or in part by reason of the occurrence of a Force Majeure Event provided that:

- 27.1.1 if any Party seeks to rely on this Clause 27 (the "**FM Affected Party**"), as soon as reasonably practicable and in any event no more than five (5) Working Days after the start of the claimed Force Majeure Event, the FM Affected Party shall notify the other Parties in writing of the act, event or circumstance relied on as a Force Majeure Event; and
- 27.1.2 within a further five (5) Working Days, the FM Affected Party shall notify the other Parties in writing of the date on which such act, event or circumstance commenced, including an estimate of the period of time required to overcome it and its effects, details of any failure by the FM Affected Party to perform its obligations under this Agreement, the effect on the FM Affected Party's ability to perform its obligations under this Agreement and the action being taken to mitigate its consequences in accordance with Clause 27.2 below.

27.2 **Mitigation**

27.2.1 An FM Affected Party shall:

- (A) make all reasonable efforts to mitigate the effects of the claimed Force Majeure Event (including, in the case of the Manufacturer, complying with the requests of the Purchaser Representative and, in relation to the Manufacturer's Works, using all reasonable endeavours to find alternative facilities at which to carry out its obligations), to continue to

perform its obligations under this Agreement and to resume performance as soon as possible;

- (B) shall furnish written reports every seven (7) days to the other Party on its progress in doing so and any proposals to mitigate the effect of the claimed Force Majeure Event, including any reasonable alternative means for performance of the affected obligations; and
- (C) shall provide any information relating to the claimed Force Majeure Event and its effects that the other Party may reasonably request.

27.2.2 The FM Affected Party shall not be relieved from liability under this Agreement to the extent that it is not able to perform its obligations under this Agreement due to its failure to comply with its obligations under Clause 27.2.1 above.

27.3 Extensions of Time for Force Majeure

Subject to Clauses 27.2 and 27.4 the occurrence of a Force Majeure Event which directly causes delay to the supply of the Replacement Systems and/or any other item of Goods will constitute a Permitted Delay Event and the provisions of Clause 15 shall apply.

27.4 Termination for Force Majeure

Notwithstanding the provision of Clause 27.3 entitling the Manufacturer to a Permitted Delay Event, the Purchaser shall be entitled to terminate this Agreement by notice in writing (a "FM Notice") to the Manufacturer if the Acceptance for Service of the Replacement Systems or other item of Goods has been or would be delayed as the result of a Force Majeure Event for more than an aggregate total of ninety (90) days following the Contractual Date for such Replacement System or other item. The provisions of Clause 25.12 shall apply in respect of such termination.

27.5 Effect on payments

If a Force Majeure Event results in the Manufacturer being unable to carry out its obligations, the Purchaser shall cease to be liable to make any payment which would otherwise have been due on fulfilment of that obligation until and to the extent that the Manufacturer has performed that obligation.

27.6 Cessation of Force Majeure

Immediately after the end of the Force Majeure Event, the FM Affected Party shall notify the other Party in writing that the Force Majeure Event has ended and shall resume performance of its obligations under this Agreement insofar as the Agreement has not been terminated or varied in accordance with Clause 27.4.

27.7 Continuing Obligations

The Parties shall not be released from any of their obligations under this Agreement as a result of a Force Majeure Event, and this Agreement shall, subject to Clause 27.4, remain in effect for the duration of a Force Majeure Event.

28. INSURANCE

The Manufacturer and the Purchaser shall comply with the requirements of the insurance regime set out in Schedule 9 (*Insurance*).

29. INDEMNITIES AND LIMITATIONS ON LIABILITY

29.1 Application

The provisions of this Clause 29 shall apply notwithstanding any other provision of this Agreement.

29.2 General Indemnities

Subject to Clause 29.3, the Manufacturer shall be liable for and shall indemnify on demand on an after-Tax basis the Purchaser and Tfl and any member of the Tfl Group, including any of their respective employees, servants, agents, subcontractors, suppliers, directors, representatives and officers (each an "**Indemnified Party**" and together the "**Indemnified Parties**"), against all expenses, liabilities, losses, damages, claims, costs, demands, proceedings and Taxes whatsoever suffered or incurred or arising out of:

- 29.2.1 death or personal injury to any person;
- 29.2.2 any loss of, or damage to, any property or assets (including the LUL Network, the Replacement Systems or any other item of Goods);
- 29.2.3 any third party actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis) brought against any Indemnified Party;
- 29.2.4 breach of statutory duty; and
- 29.2.5 any Environmental Damage,

arising from or in connection with:

- (A) the design, manufacture, supply, assembly, testing, commissioning and delivery of the Replacement Systems (and/or any subsystem or Part forming part of the Replacement Systems) and/or any other items of Goods; and/or
- (B) the operation and/or use of the Replacement Systems and/or any other items of Goods in accordance with Manuals or Installation Instructions or as otherwise directed by the Manufacturer;
- (C) the performance or non-performance (including any negligent performance) of the obligations of the Manufacturer, its Subcontractors or suppliers or the directors, agents, representatives or employees of any of them under or in connection with this Agreement;
- (D) any acts or omissions, breach, negligence or wilful misconduct by the Manufacturer.

29.3 Qualifications

The Manufacturer shall not be liable to indemnify any Indemnified Party under the indemnity in Clause 29.2 in the case of any loss referred to in Clauses 29.2.1 and 29.2.2 to the extent that it results from negligence or breach of duty on the part of any Indemnified Party.

29.4 **Limitation on Manufacturer's Liability**

29.4.1 Subject to Clause 29.4.2, the Manufacturer's liability to the Indemnified Parties under this Agreement (whether arising in contract, tort (including negligence, breach of statutory duty or otherwise)) shall be limited as set out in the Contract Particulars.

29.4.2 The Manufacturer's liability to the Indemnified Parties under this Agreement in respect of the Excepted Liabilities shall not be subject to the limits referred to in Clause 29.4.1.

29.5 **Consequential Breach and Loss**

29.5.1 Neither the Manufacturer nor the Purchaser shall be treated as being in breach of this Agreement if such breach arises as a direct, necessary and inevitable consequence of the occurrence of a breach thereof on the part of the other Party.

29.5.2 Other than in respect of Excepted Liabilities, neither Party shall be liable for any matter howsoever arising out of or in connection with this Agreement (including Clause 29.2) in respect of any Consequential Loss. Each Party respectively undertakes not to sue the other Party, (or make any claim against that Party), the Purchaser or any member of the TfL Group in respect of Consequential Loss.

29.6 **No Double Recovery**

No Indemnified Party shall be entitled to recover (by way of indemnity or otherwise) more than once in respect of the same loss or damage suffered under this Agreement and/or any document entered into in connection with or pursuant to this Agreement. There shall be no duplication solely by reason of there being multiple beneficiaries to a claim hereunder.

29.7 **Duty to Mitigate**

The Manufacturer and the Purchaser shall each be under a duty to mitigate any damages and losses in respect of which it makes any claim pursuant to this Agreement.

30. **CONFIDENTIALITY**

30.1 **Obligations of Confidentiality**

Subject to Clause 30.2 the contents of this Agreement, any documents referred to in this Agreement and any information whether written or oral, provided by the Purchaser to the Manufacturer or by the Manufacturer to the Purchaser in connection with this Agreement shall be treated by the recipient as confidential ("**Confidential Information**"). The Purchaser and the Manufacturer shall not (and shall procure that their respective subcontractors, suppliers, officers, employees, advisers and agents and the officers, employees, advisers and agents of their subcontractors and suppliers shall not) without the prior written consent of the other Party or by failure to exercise due care or otherwise by any act or omission:

30.1.1 disclose Confidential Information to any person whomsoever;

30.1.2 use or exploit Confidential Information commercially for its or their own purposes other than in connection with the performance of this Agreement; or

30.1.3 use Confidential Information otherwise than for the purpose for which it was provided.

30.2 **Permitted Disclosure**

Without prejudice to the Purchaser's rights under its licence granted pursuant to Clause 24.2, the restrictions in Clause 30.1 shall not apply to the disclosure of Confidential Information:

- 30.2.1 in accordance with any requirement under any Applicable Law (including pursuant to Clause 31) or LU Standard to do so;
- 30.2.2 to the disclosing Party's respective professional advisers and auditors who are bound to such Party by a duty of confidentiality which applies to any information disclosed;
- 30.2.3 to any banks and financial institutions providing finance, or advising on or envisaging the provision of finance for any purpose in connection with this Agreement;
- 30.2.4 to any Competent Authority;
- 30.2.5 in the case of the Purchaser to the Mayor of London and/or the Greater London Authority and/or the Secretary of State for Transport;
- 30.2.6 in the case of the Purchaser to any member of the TfL Group;
- 30.2.7 to the extent that the relevant Confidential Information is in the public domain otherwise than by breach of this Agreement;
- 30.2.8 which was made available to the disclosing Party on a non-confidential basis;
- 30.2.9 which is required in connection with a disposition or other transfer of rights permitted in accordance with this Agreement;
- 30.2.10 which is required by law or by order of a Court of a competent jurisdiction (but only to the extent required by such law or order) to be disclosed in connection with any Dispute, litigation or other dispute resolution procedure; or
- 30.2.11 to any member of the Manufacturer Group for the purposes of the performance by the Manufacturer of its obligations under this Agreement.

30.3 **Confidentiality Undertaking**

Where disclosure is permitted under Clause 30.2, other than Clauses 30.2.1, 30.2.2, 30.2.7 or 30.2.8, the Party disclosing the Confidential Information shall procure that the recipient of the Confidential Information shall be subject to the same obligations of confidentiality as that contained in this Agreement.

30.4 **Prior Notice of Disclosure**

If a Party becomes required in circumstances contemplated by Clauses 30.2.1 to 30.2.11 to disclose any Confidential Information, such Party shall give to the other Party as much notice as is practical in the circumstances of such disclosure and shall co-operate with the other Parties, having due regard to the other Parties' views, and take such steps as the other Parties may reasonably require in order to enable it to mitigate the effect of, or avoid the requirements for, any such disclosure. Where the disclosing Party giving notice

is the Purchaser, it shall only be obliged to give notice to, co-operate with, have due regard to the views of, and take steps as reasonably required by the Manufacturer.

30.5 **Standard of Care**

In fulfilling its obligations under this Clause 30, each Party shall be required to use the same degree of care to prevent unauthorised disclosure of such Confidential Information as it would use to prevent the disclosure of its own commercial and financial information of the same or similar nature and which it considers proprietary or confidential.

30.6 **Announcements**

The Manufacturer shall not (and shall procure that each Subcontractor and supplier shall not) without the prior written consent of the Purchaser (such consent not to be unreasonably withheld or delayed) advertise or otherwise give any publicity in any form to any matter relating to this Agreement or announce their involvement in the design, manufacture, supply, testing, commissioning, delivery, maintenance or support of any Goods.

30.7 **Reputation**

The Manufacturer shall not knowingly do or omit to do anything in relation to this Agreement which may bring the standing or reputation of any other Party into disrepute or otherwise attract adverse publicity in relation to the other Parties.

30.8 **Survival**

The obligations of the Parties under this Clause 30 shall survive the expiry or the termination of this Agreement for whatever reason.

31. **FREEDOM OF INFORMATION**

31.1 The Manufacturer acknowledges that the Purchaser:

31.1.1 is subject to the FOI Legislation and agrees to assist and co-operate with the Purchaser to enable the Purchaser to comply with its obligations under the FOI Legislation, and

31.1.2 may be obliged under the FOI Legislation to disclose Information without consulting and/or obtaining consent from the Manufacturer.

31.2 Without prejudice to the generality of Clause 31.1, the Manufacturer agrees and shall procure that its Subcontractors and suppliers (if any) will agree to:

31.2.1 transfer to the Purchaser or such other persons as may be notified by the Purchaser to the Manufacturer each Information Request relevant to this Agreement or any member of the TfL Group that the Manufacturer or its Subcontractors (if any) (as the case may be) receive as soon as practicable and in any event within three (3) days of receiving such Information Request; and

31.2.2 in relation to Information held by the Manufacturer on behalf of the Purchaser, provide the Purchaser with details about and/or copies of all such Information that the Purchaser requests and provide such details and/or copies within six (6) days of a request from the Purchaser (or such other period as the Purchaser may reasonably specify), and in such forms as the Purchaser may reasonably specify.

31.3 The Purchaser (as may be directed by TfL) shall be responsible for determining whether

Information is exempt or excepted information under the FOI Legislation and for determining what Information (if any) will be disclosed in response to an Information Request in accordance with the FOI Legislation. The Manufacturer shall not himself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so in writing by the Purchaser.

- 31.4 The Manufacturer acknowledges that the Purchaser (as may be directed by TfL) may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Manufacturer.

32. DISPUTE RESOLUTION

If any Dispute should arise under this Agreement, either Party may refer it for resolution pursuant to Schedule 10 (*Dispute Resolution Procedure*).

33. PROHIBITED ACTS

- 33.1 The Manufacturer shall not and shall use its reasonable endeavours to procure that its Subcontractors (if any) shall not commit any Prohibited Act.

- 33.2 The Purchaser may audit and check any and all such records of the Manufacturer as are necessary in order to monitor compliance with this Clause 33 at any time during performance of this Agreement and during the three (3) years after the date on which the Fleet Acceptance Certificate has been given.

- 33.3 If the Manufacturer, any of its shareholders, Subcontractors, or anyone employed by or acting on behalf of the Manufacturer or any of its agents commits any Prohibited Act, this constitutes a material breach of this Agreement and shall entitle the Purchaser to serve written notice terminating this Agreement in whole or in part with immediate effect. In the event that this Agreement is terminated in accordance with this Clause 33.3, Clauses 25.5 and 25.6 shall apply.

- 33.4 If a Prohibited Act is committed by any Subcontractor or any employee or agent of such Subcontractor or the Manufacturer then the Purchaser may serve a warning notice upon the Manufacturer instead of exercising its rights to terminate with immediate effect and unless, within thirty (30) days of receipt of such warning notice, the Manufacturer removes or procures the removal of the relevant Subcontractor, employee or agent (as the case may be) from further involvement with any aspect of the performance of this Agreement and (if necessary) procures the provision of the affected works and/or services by another Subcontractor, employee or agent (as the case may be) this constitutes a material breach of this Agreement and entitles the Purchaser to serve written notice terminating this Agreement in whole or in part with immediate effect. In the event that this Agreement is terminated in accordance with this Clause 33.4, Clauses 25.5 and 25.6 shall apply.

34. ASSIGNMENT, TRANSFER AND SUB-CONTRACTING BY THE MANUFACTURER

34.1 Subcontracting

- 34.1.1 The Manufacturer may sub-contract its obligations under this Agreement either in whole or in part to any Subcontractor provided that:

- (A) the written consent of the Purchaser Representative is obtained by the Manufacturer prior to the Manufacturer entering into any Subcontract; and

- (B) the Manufacturer shall notify the Purchaser in writing of the name, contact details and details of the legal representatives of any Subcontractors.
- 34.1.2 Unless the Purchaser Representative otherwise agrees in writing, the Manufacturer shall procure that each Subcontractor duly executes and delivers to the Purchaser, within fifteen (15) Working Days of the date of the relevant Subcontract, a deed of warranty in the form set out at Schedule 15 (*Form of Subcontractor Warranty*).
- 34.1.3 The Manufacturer shall be fully responsible for any act, neglect, default or breach of this Agreement by any Subcontractor or supplier or the directors, agents, representatives or employees of the Manufacturer or of any of its Subcontractors or suppliers as if such act, neglect, default or breach had been carried out by the Manufacturer.
- 34.1.4 The Manufacturer shall ensure that it includes in any Subcontract provisions on substantially similar terms to Clause 20 (*Payment*).
- 34.1.5 The Purchaser reserves the right to verify whether there are any grounds for excluding any Subcontractor under Regulation 57 of the Public Contracts Regulations 2015. Where necessary for the purpose of the Purchaser's exercise of its right under this Clause 34.1.5, the Purchaser may request that the information provided by the Manufacturer under Clause 34.1.1(B) shall be accompanied by one or more European Single Procurement Document(s) (within the meaning of Regulation 59 of the Public Contracts Regulations 2015) in respect of the relevant Subcontractor(s). Further, the Purchaser:
- (A) shall require the Manufacturer to replace any Subcontractor in respect of which the verification has shown that there are compulsory grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015; and
- (B) may require the Manufacturer to replace any Subcontract in respect of which the verification has shown that there are non-compulsory grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015.

34.2 **Assignment**

Without prejudice to Clause 34.1, the Manufacturer shall not assign (whether absolutely or by way of security and whether in whole or in part), transfer, mortgage, charge, declare itself a trustee for a third party of, or otherwise dispose of (in any manner whatsoever) its rights and/or obligations under this Agreement, and any purported dealing in contravention of this Clause 34 shall be ineffective.

35. **ASSIGNMENT AND NOVATION OR GRANTING OF SECURITY BY THE PURCHASER**

35.1 **Permitted Transfers**

The Purchaser shall be entitled without the consent of the Manufacturer to assign (whether absolutely or by way of security and whether in whole or in part) transfer, novate, mortgage, charge or otherwise dispose of its rights and/or obligations under this Agreement to any person including for the purposes of financing its obligations under this Agreement.

35.2 **Implementation of Transfers**

If the Purchaser wishes to deal with its rights and/or obligations in this Agreement (either in whole or in part) pursuant to Clause 35.1, the Manufacturer shall execute such documents and do such other things as the Purchaser may reasonably request in order to facilitate and perfect such dealing.

36. **NOTICES**

36.1 **Form of Communications**

Any notice, approval, consent or other communication referred to in this Agreement:

36.1.1 must be in writing; and

36.1.2 must be left at the address of the addressee or sent by pre-paid first class post (airmail if posted to or from a place outside the United Kingdom) to the address of the addressee or sent by facsimile to the facsimile number of the addressee in each case which is specified in this Clause 36.1 in relation to the Party to whom the notice is addressed, and marked for the attention of the person so specified, or to such other address or facsimile number in England or Wales, and/or marked for the attention of such other person as the relevant Party may from time to time specify by notice given in accordance with this Clause 36.1.

The relevant details of each Party at the date of this Agreement are:

Purchaser: as specified in the Contract Particulars

Manufacturer: as specified in the Contract Particulars

36.2 Each such communication shall, unless otherwise shown, be deemed to have been received:

36.2.1 if personally delivered, at the time of delivery;

36.2.2 if sent by first class post, on the third Working Day following the date on which it was posted or, if posted to or from a place outside the United Kingdom, the seventh Working Day after posting;

36.2.3 in the case of a facsimile, on production of a transmission report from the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient; and

36.2.4 in the case of electronic mail, five (5) working hours (where "working hours" are 09:00 to 17:00 in a Working Day) following the time when the sender's electronic mail system dispatches the electronic mail provided that the correct email addresses as detailed in Clause 36.1 are used. The place of delivery of email will be deemed to be the postal address nominated by the recipient in Clause 36.1.

36.3 The Manufacturer irrevocably appoints and authorises Intertrust (UK) Limited of 11 Old Jewry (7th Floor), London EC2R 8DU to accept service on behalf of the Manufacturer of all legal process and service on Intertrust (UK) Limited at the address above shall be deemed to be service on the Manufacturer.

36.4 Receipt on a Non-Working Day

A notice received or deemed to be received in accordance with Clause 36.1 above on a day which is not a Working Day or after 5.00 p.m. on a Working Day according to local time in the place of receipt, shall be deemed to be received on the next following Working Day.

36.5 Change of Address

Each Party undertakes to notify immediately the other Parties by notice served in accordance with this Clause 36 if the address specified herein is no longer an appropriate address for the service of notice.

36.6 Service of Proceedings

This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

37. ENTIRE AGREEMENT

37.1 Whole Agreement

Each Party confirms that this Agreement and any other documents referred to in this Agreement represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the Parties with respect thereto.

37.2 Non Reliance

Each Party acknowledges and agrees that:

37.2.1 in entering into this Agreement it has not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out or referred to in this Agreement or any other documents referred to in this Agreement; and

37.2.2 no Party has any other right or remedy in respect of the matters set out in Clause 37.2.1 (whether by way of a claim for contribution or otherwise) in tort (including negligence) or for misrepresentation (whether negligent or otherwise, and whether made prior to, and/or in, this Agreement) save for any liability for fraudulent misrepresentation or fraudulent misstatement.

38. RIGHTS CUMULATIVE WITH THOSE AT LAW

38.1 Rights Cumulative

Except where expressly stated to the contrary the powers, rights and remedies conferred on the Parties herein shall be in addition and without prejudice to all other powers, rights and remedies available to the Parties by law.

38.2 Equitable Remedies

Without prejudice to any other rights or remedies that the Parties may have, the Parties acknowledge and agree that the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of the provisions of this Agreement by any Party shall be available to the Parties and that no proof of special damages shall be necessary for the enforcement of the provisions of this Agreement.

39. FURTHER ASSURANCE

Each Party to this Agreement shall (at its own cost) do and execute, or arrange for the performance and execution of, each necessary act or document to implement its obligations under this Agreement.

40. SET-OFF

The Purchaser shall be entitled to withhold from any sum or sums expressed in this Agreement to be payable by it to the Manufacturer, any amounts due or expressed to be due by the Manufacturer to the Purchaser. Any payment payable by the Manufacturer under this Agreement shall be made in full without any set-off or counterclaim howsoever arising and shall be free and clear of, and without deduction of, or withholding for or on account of, any amount which is due and payable to the Manufacturer under this Agreement.

41. WAIVER

The rights and remedies of the Parties shall not be affected by any failure to exercise or delay in exercising any right or remedy or by the giving of any indulgence by the other Party or by anything whatsoever except a specific waiver or release in writing and any such waiver or release shall not prejudice or affect any other rights or remedies of the Parties. No single or partial exercise of any right or remedy shall prevent any further or other exercise thereof or the exercise of any other right or remedy.

42. SEVERANCE

If any provision or part of this Agreement is void or unenforceable due to the operation of any Applicable Law, it shall be deemed to be deleted and the remaining provisions of this Agreement shall continue in full force and effect.

43. COSTS

Each Party shall be responsible for their own costs (including legal costs) in relation to the negotiation and execution of this Agreement.

44. LANGUAGE

This Agreement is executed in English and all communications under this Agreement shall be made in English.

45. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

45.1 With the exception of the right of:

45.1.1 any member of the TfL Group; and

45.1.2 any person expressly stated to be indemnified by a Party; and

45.1.3 the Installer,

to enforce any term of this Agreement which either expressly or by implication confers any benefit upon such person, no term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a signatory to this Agreement.

46. COUNTERPARTS

This Agreement may be executed in any number of counterparts and by the Parties to it on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.

47. GOVERNING LAW AND JURISDICTION

47.1 Governing Law

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, English law.

47.2 Exclusive Jurisdiction

Subject to the terms of Clause 32, the English Courts have exclusive jurisdiction in relation to any claim, dispute or difference ("**Proceedings**") concerning this Agreement and any matter arising from it. For these purposes, each Party irrevocably submits to the jurisdiction of the English Courts.

47.3 Forum

Each Party irrevocably waives any right that it may have to object to any Proceedings being brought in the English Courts, to claim that the Proceedings have been brought in an inconvenient forum, or to claim that the English Courts do not have jurisdiction.

48. RESPONSIBLE PROCUREMENT

48.1 The Manufacturer shall have regard to the Responsible Procurement Principles and shall comply at all times with the Responsible Procurement Principles insofar as they are relevant to this Agreement, the Manufacturer and/or any Subcontractor.

49. CRIME AND DISORDER

49.1 The Manufacturer acknowledges that the Purchaser is under a duty in accordance with Section 17 of the Crime and Disorder Act 1998 to:

49.1.1 have due regard to the impact of crime, disorder and community safety in the exercise of the Purchaser's duties;

49.1.2 where appropriate, identify actions to reduce levels of crime and disorder; and

49.1.3 without prejudice to any other obligation imposed on the Purchaser, exercise his functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area,

and in the performance of this Agreement the Manufacturer shall assist and co-operate, and use its reasonable endeavours to procure that its Subcontractors assist and co-operate, with the Purchaser where possible to enable the Purchaser to satisfy its duty.

50. LONDON LIVING WAGE

- 50.1 The Manufacturer acknowledges and agrees that the Mayor of London, pursuant to section 155 of the GLA Act, has directed the TfL Group (including the Purchaser) to ensure that the London Living Wage is paid to anyone engaged by the TfL Group who is required to perform contractual obligations in Greater London or on the LUL Network.
- 50.2 Without prejudice to the generality of Clause 50.1, the Manufacturer shall and shall procure that its Subcontractors (if any) shall:
- 50.2.1 ensure that none of its employees engaged in the performance of this Agreement in Greater London or on the LUL Network (but not otherwise) is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage;
 - 50.2.2 ensure that none of his employees engaged in the performance of this Agreement is paid less than the amount to which they are entitled in their respective contracts of employment; and
 - 50.2.3 co-operate and provide all reasonable assistance to the Purchaser and any member of the TfL Group in monitoring the effect of the London Living Wage.

51. DATA TRANSPARENCY

- 51.1 The Manufacturer acknowledges that the Purchaser is subject to the Transparency Commitment. Accordingly, notwithstanding any provisions of this Agreement relating to the FOI Legislation or confidentiality, the Manufacturer hereby gives its consent for the Purchaser to publish the Contract Information to the general public.
- 51.2 The Purchaser may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion the Purchaser may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The Purchaser may in its absolute discretion consult with the Manufacturer regarding any redactions to the Contract Information to be published pursuant to Clause 51.1. The Purchaser shall make the final decision regarding publication and/or redaction of the Contract Information.

52. DATA PROTECTION

- 52.1 The Manufacturer shall at all times comply with the Data Protection Act 1998 (including any subordinate legislation made under that Act from time to time) and any policies issued by the Purchaser from time to time in relation to the processing of data and shall not by any act or fault cause the Purchaser to be in breach of these requirements.
- 52.2 The Manufacturer shall:
- 52.2.1 take appropriate technical and organisational security measures satisfactory to the Purchaser against unauthorised or unlawful Processing of Purchaser Personal Data (as those terms are defined in the Data Protection Act) and against accidental loss, destruction of, or damage to such Personal Data;
 - 52.2.2 provide the Purchaser with such information as it may reasonably require to satisfy itself of compliance by the Manufacturer with the requirements of this Clause 52; and
 - 52.2.3 cooperate with the Purchaser in complying with requests or enquiries made pursuant to the Data Protection Act.

53. CONFLICT OF INTEREST

- 53.1 The Manufacturer acknowledges and agrees that it does not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with performing this Agreement or any member of the TfL Group, save to the extent fully disclosed to and approved in writing by the Purchaser.
- 53.2 The Manufacturer shall undertake ongoing and regular conflict of interest checks throughout the duration of this Agreement and in any event not less than once in every six months and shall notify the Purchaser in writing immediately on becoming aware of any actual or potential conflict of interest with performing this Agreement or any member of the TfL Group and work with the Purchaser to do whatever is necessary (including the separation of staff working on and/or data relating to this Agreement from the matter in question) to manage such conflict to the Purchaser's satisfaction and provided that, where the Purchaser is not so satisfied (in its absolute discretion), the Purchaser shall be entitled to serve written notice terminating this Agreement in whole or in part with immediate effect. In the event that this Agreement is terminated in accordance with this Clause 53, Clauses 25.5 and 25.6 shall apply.

54. CRIMINAL RECORDS DECLARATION

- 54.1 The Manufacturer shall procure from each Relevant Individual (as the case may be) a declaration that he has no Relevant Convictions ("**Declaration**") or disclosure of any Relevant Convictions he has committed. The Manufacturer shall confirm to the Purchaser in writing on an annual basis upon request that each Relevant Individual has provided a Declaration. The Manufacturer shall procure that a Relevant Individual notifies the Manufacturer immediately if he commits a Relevant Conviction throughout the duration of this Agreement and the Manufacturer shall notify the Purchaser in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.
- 54.2 The Manufacturer shall not engage or allow to act on behalf of the Manufacturer or any Subcontractor in the performance of any aspect of this Agreement any Relevant Individual who has disclosed a Relevant Conviction.
- 54.3 The Purchaser may audit and check any and all such records of the Manufacturer as are necessary in order to monitor compliance with this Clause 54 at any time during performance of this Agreement.
- 54.4 If the Manufacturer fails to comply with the requirements under Clause 54.1 and/or 54.2, the Purchaser may, without prejudice to its rights under Clause 54.5, serve notice on the Manufacturer requiring the Manufacturer to immediately take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the performance of any aspect of this Agreement unless (in the case of non-compliance with Clause 54.1) within seven (7) days of receipt of the notice the Manufacturer confirms to the Purchaser that it has procured all of the Declarations required under Clause 54.1.
- 54.5 A persistent breach of Clause 54.1 and/or 54.2 by the Manufacturer shall constitute a material breach of this Agreement and shall entitle the Purchaser to serve written notice terminating this Agreement in whole or in part with immediate effect. In the event that this Agreement is terminated in accordance with this Clause 54, Clauses 25.5 and 25.6 shall apply.
- 54.6 If either Party becomes aware that a Relevant Individual has committed a Relevant Conviction, the Manufacturer shall take such steps as are necessary to ensure that such