

**NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)
NEXT GENERATION HIGH SPEED TRAINSETS
EQUIPMENT AND SUPPLIES CONTRACT**

GENERAL PROVISIONS

CONTRACT NO: 2500108878

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1. DEFINITIONS

Capitalized terms used in these General Provisions without definition shall have the meaning ascribed to them in this Article 1. Certain additional capitalized terms are defined elsewhere in this Contract. Unless the context otherwise requires, the singular shall include the plural, and the masculine gender shall include the feminine and neuter genders and vice versa.

“Adverse Rights” has that meaning ascribed to it in Article 19.

“Agreed Testing Program” means the testing program to be produced by the Contractor and approved by and agreed to by Amtrak.

“Allowable Service Interruption” means a Service Interruption which arose as a result of:

- (a) damage arising from a crash, accident or vandalism; or any other act or omission of any person (other than a Contractor Party) amounting to improper use of a Trainset; and, in each case, not due to or contributed to by a Fault; or
- (b) the occurrence of a Force Majeure Event; or
- (c) negligence or willful misconduct of Amtrak; or the failure of Amtrak to maintain the Trainsets in accordance with the agreed upon Maintenance Plan; and, in each case, not otherwise due to or contributed to by a Fault; or
- (d) an event of loss not due to or contributed to by a Fault.

“Allowable Uses” has that meaning ascribed to it in Article 31, Section 31.3.

“Amtrak” refers to the National Railroad Passenger Corporation, which has its headquarters at 60 Massachusetts Avenue, NE, Washington, DC 20002, and any permitted assignee of Amtrak’s rights under the Contract.

“Amtrak-Owned Spare” means the Capital Spares and other spares purchased by Amtrak under the Contract.

“Applicable Laws” means all applicable federal, state and local laws, codes, ordinances, rules, regulations, judgments, decrees, directives, guidelines, policy requirements, orders or other governmental restrictions of any public authority having jurisdiction over the Work or Amtrak’s operations, each as may be amended and in each case including successor provisions. For the avoidance of doubt, “Applicable Laws” includes any applicable Rules of Particular Applicability issued by the FRA and the Foreign Corrupt Practices Act.

“Base Order” refers to the Equipment, including the twenty-eight (28) Trainsets ordered by Amtrak under the Contract. The Base Order shall be identified in the Equipment and Supplies Contract Document signed by Amtrak and Contractor.

“Bill of Material” means the list of the raw materials, sub-assemblies, intermediate assemblies, sub-components, parts and the quantities of each needed to manufacture the Trainsets.

“Bridge Letter of Credit” means a letter of credit issued to Amtrak (and non-transferable) by the New York Branch of one of Contractor’s banks substantially in the form of Schedule 16C – Bridge Letter of Credit Form hereto. The Bridge Letter of Credit shall be issued and may be drawn against by Amtrak solely as set forth in Article 6, Section 6.6 of this Contract, shall be irrevocable and further shall be governed by the International Standby Practices (ISP98) (International Chamber of Commerce, Publication No. 590).

“Business Day” means a weekday in the United States that is not an Amtrak holiday.

“Capital Spare” means a spare part that although acknowledged to have a long life or a small chance of failure would cause shutdown of equipment for a prolonged period because of the long delivery of its replacement. The Capital Spares are listed in Schedule 14C – Capital Spares with Pricing.

“Certificate of Acceptance” refers to the certificate to be furnished by Amtrak to Contractor pursuant to Article 8, Section 8.3.

“Certificate of Conditional Acceptance” refers to the certificate to be furnished by Amtrak to Contractor pursuant to Article 8, Section 8.3.

“Certificate of Final Fleet Acceptance” refers to the certificate to be furnished by Amtrak to Contractor pursuant to Article 8, Section 8.4.

“Change” means any change or variation authorized by Amtrak pursuant to a Contract Modification issued by the Contracting Official or his representative.

“Change Order” means a unilateral written order by the Contracting Official directing the Contractor to make a change that Article 15, Changes, authorizes the Contracting Official to order without the Contractor’s consent.

“Change in Law” means the application to any person of any Applicable Laws which did not apply to that person at the date hereof, or the change in application or interpretation after the date hereof of any Applicable Laws including, without limitation, a Mandatory Modification resulting from a Change in Law, but excluding any application or change which has been enacted or promulgated prior to the date hereof as coming into effect on a specified future date; or with which compliance is required under the Contract; or which such person should reasonably have known about at the date hereof.

“Confirmation” means a confirmation by a Confirming Bank of a Letter of Credit (i) which is nominated in the Letter of Credit to act as Confirming Bank, (ii) which issues to Amtrak a confirmation of the Letter of Credit for either the full term thereof (up to 53 months) or for at least one year intervals with an automatic extension of that confirmation unless at least ninety (90) days prior to the then current expiration date of the confirmation, Amtrak

receives written notice from the Confirming Bank that it will not extend the confirmation, (iii) provides that Amtrak may draw on the Confirming Bank if a notice of nonextension of the confirmation of the Letter of Credit is received by Amtrak, and the Letter of Credit and/or Confirmation, as applicable, has not been amended to extend the then current expiration dates of the Letter of Credit and its Confirmation by at least another year or until the outside expiration date of fifty three (53) months after Amtrak's NTP is issued, or replaced with another Confirmed Letter of Credit and/or Confirmation which meets the requirement of this Contract thirty (30) days prior to the then expiration date of the Letter of Credit or the Confirmation, as well as for other Draw Events, and (iv) is otherwise reasonably satisfactory to Amtrak.

"Confirmed" or **"Confirmed Letter of Credit"** means a Letter of Credit that has been made subject to a Confirmation.

"Confirming Bank" means JPMorgan Chase Bank, N.A. or another U.S. bank or U.S. branch of a foreign bank of similar size and stature designated by and acceptable to Amtrak.

"Conflict of Interest" means that because of activities or relationships with other persons or entities, (1) a person or entity is unable to render impartial assistance or advice to Amtrak, (2) the person's or entity's objectivity in performing the Work under this Contract is or might be otherwise impaired, or (3) the person or entity has, or attempts to create, an unfair competitive advantage.

"Contract" means the entire agreement between Amtrak and Contractor and supersedes all previous negotiations, representations, understandings and agreements, either written or oral, including the bidding documents, with respect to the subject matter hereof. The terms "Contract Documents" or the "Contract" refers collectively to the following:

- (a) The Equipment and Supplies Contract document signed by Amtrak and Contractor;
- (b) The Contract attachments, exhibits and schedules as identified in the Contract, including without limitation the General Provisions and all attachments, exhibits and schedules thereto
- (c) Contract Modifications; and
- (d) Any plans, Drawings, specifications, schedules, or other documents which may be produced pursuant to this Contract or derived there from.

The terms "Contract," "Agreement" and "Contract Documents" are used interchangeably herein.

"Contract Amount" means the total purchase price for the Work including all amounts in respect of Contract Modifications, escalations and option orders or quantities.

“Contract Modification” a document executed after the Contract is awarded, to clarify, revise, add to, or delete from the Work. A Contract Modification is: (a) a written amendment to the Contract signed by both parties; and (b) a Change Order.

“Contract Time” means the period of time allotted in the Contract for completion of the Work or a portion thereof, as applicable.

“Contracting Official” or **“CO”** means the individual authorized in writing by Amtrak to enter into, administer and make changes to the Contract and to make related determinations and findings on behalf of Amtrak. This includes a duly appointed successor or an authorized representative of the Contracting Official acting within the limits of his or her authority.

“Contracting Official’s Representative” or **“COR”** means the individual delegated the authority to act on behalf of the Contracting Official.

“Contracting Official’s Technical Representative” or **“COTR”** means the individual authorized in writing by Amtrak to carry out the initiating, planning, executing, monitoring/controlling and closing of the Work. The COTR manages the project team and is accountable for accomplishing the stated project objectives relative to cost, schedule, scope and quality. For purposes of this Contract, the COTR is the Amtrak Project Director.

“Contractor” means the individual, entity, or authorized representative of same, identified as such in the Contract.

“Contractor Party” means Contractor or any of its Subcontractors, suppliers, or any of their respective employees, agents or authorized representatives.

“Day” or **“day”** as used in the Contract means a United States calendar day unless otherwise noted.

“Delivery Documentation” means, in respect of each Trainset, details of any Changes applied to that Trainset, repairs made during production, modification status, all critical components by part number/serial number, Service Bulletin embodiment status, Faults identified during testing and actions taken in respect of those Faults, differences from any previously accepted Trainset and originals, when necessary, of all certificates issued in relation to a Trainset in all cases prior to acceptance or conditional acceptance of that Trainset.

“Delivery Schedule” as used herein means the mutually agreed upon schedule for the delivery of the Trainsets to Amtrak by Contractor as specified in Schedule 5—Contract Time Plan.

“Design Review Process” means the design review process specified in Schedule 2—Design Review Process.

“Direct Delay” means delay caused by the Fault of the Trainset.

“Draw Event” means, with respect to a Letter of Credit, one or more of the following: (i) the Contract has been terminated by Amtrak for default pursuant to Section 16.1; (ii) Contractor is subject to a bankruptcy or insolvency event; (iii) Contractor has not paid indemnity obligations owed to Amtrak arising out of third party claims for bodily injury or death, or damage to or loss (including loss of use) of any property, or any infringement, violation or misappropriation of third party intellectual property rights, which aggregate at least One Million Dollars (\$1,000,000); (iv) Contractor has not maintained insurance as required by Article 59; (v) Contractor has failed to make payment of undisputed amounts aggregating at least One Million Dollars (\$1,000,000) to its Subcontractors and Amtrak has made demand on Contractor to do so, and Contractor has failed to do so within thirty (30) days thereafter; or (vi) the Letter of Credit or its Confirmation will expire within thirty (30) days or less and the conditions for cancellation or release of the Letter of Credit as stated in Section 6.6 have not been met.

“Drawings” means, as applicable, two (2) dimensional or three (3) dimensional models, modules or drawings.

“Driving Simulator” means replica of the control compartment described in Schedules 1A, Next Generation Amtrak Trainsets Performance Specification and 1B, Technical Description.

“Equipment” means any physical device that is part of the Trainset and/or is the object of maintenance actions. Equipment may also refer to one or more of the Trainsets, the Train Scanner or the Driving Simulator.

“Equipment and Supplies Contract” means the document signed by Amtrak and Contractor setting forth, among other things, Contractor’s compensation, the Equipment and supplies to be furnished by Contractor and the period of performance.

“Escrow Agreement” means the Escrow Agreement in Schedule 20, Form of Escrow Agreement (or such other form as the parties agree upon) among Amtrak, Contractor and PNC Bank or another escrow agent acceptable to Amtrak to hold proceeds of draws on Letters of Credit because their Confirmation will expire in thirty (30) days or less.

“Excess Costs” are the difference between the Contract price for the terminated Supplies and/or Work and the total costs incurred by Amtrak to procure replacement Supplies and/or Work.

“Facility” or **“Facilities”** as used herein means the facilities for service, inspection, periodic maintenance and/or repair.

“Fault” means that, in relation to a Trainset, Vehicle, Spare, part, Amtrak-Owned Spare, Special Tool, Supplies, mock-up, Train Scanner, or Driving Simulator that the relevant Trainset, Vehicle, Spare, part, Amtrak-Owned Spare, Special Tool, Supplies, mock-up, Train Scanner, or Simulator does not comply with the Contract, or is not Fit for Purpose, whether in consequence of faulty design, faulty materials, poor workmanship, negligence

or for any other reason attributable to Contractor or any of its respective Subcontractors, which by definition includes suppliers, or any of their respective employees or agents.

“Fault Free” means, in relation to a Trainset, the operation of such Trainset without the occurrence of a Fault which causes a Service Failure.

“Federal Railroad Administration” or **“FRA”** means an agency within the U.S. Department of Transportation.

“Fleet” means all Trainsets ordered under the Contract, including all options for additional Trainsets exercised.

“Final Fleet Acceptance” means the Fleet has met all conditions prerequisite for issuance of a Certificate of Final Fleet Acceptance.

“Final Payment” refers to the final installment of the Contract Amount payable in connection with the Work.

“Financing Parties” means Lender or, after Substantial Completion of the Contract, any Person that advances funds or provides financing (other than as capital contributions) to Amtrak for all or a part of the costs and expenses associated with the Trainsets, including (a) Lender, banks, financial institutions and capital market participants and (b) any trustee or agent acting on behalf of any Person referred to in the preceding clause (a).

“Fit for Purpose” means:

- (a) In respect of each Trainset, that:
 - (i) all relevant approvals in respect of that Trainset have been obtained and remain in force;
 - (ii) such Trainset:
 - (A) meets the requirements of the Contract, and
 - (B) is in a condition which enables Amtrak to operate such Trainset in passenger revenue earning service in accordance with the Contract; and such Trainset is and shall remain fit for the purposes specified in paragraph (a)(ii) above throughout its service life;
- (b) In relation to each Amtrak-Owned Spare or Capital Spare that such Amtrak-Owned Spare or Capital Spare when incorporated into a Trainset, does not prevent such Trainset from being Fit for Purpose as defined in paragraph (A) above; and
- (c) In relation to each Special Tool that such Special Tool is fit for use by a maintainer of rolling stock to carry out the maintenance and/or services in accordance with the Manuals.

“General Provisions” means these terms and conditions.

“Guarantor” means Alstom Holdings, a wholly owned subsidiary of Alstom S.A. that will execute, deliver and be liable on the Parent Guaranty, or the respective successor.

“Indemnified Parties” means Amtrak, its officers, directors, employees, agents, servants, successors, assigns subsidiaries, subcontractors, representatives, attorneys, and consultants, and any Financing Parties.

“Lender” means the UNITED STATES OF AMERICA, represented by the SECRETARY OF TRANSPORTATION acting through the Executive Director of the NATIONAL SURFACE TRANSPORTATION AND INNOVATIVE FINANCE BUREAU also referred to as the Build America Bureau.

“Letter of Credit” means a letter of credit issued to Amtrak in the form of Schedule 16A or 16B—Letter of Credit by the U.S. branch of Contractor’s banks and Confirmed by a Confirming Bank (but not including a Bridge Letter of Credit). The Letter of Credit shall meet the requirements as set forth in Article 6 of this Contract and further shall be (i) irrevocable, during the applicable term, and (ii) governed by the International Standby Practices (ISP98) (International Chamber of Commerce, Publication No. 590).

“Management Plans” or **“Plans”** means the Project Management Plan, including the Safety and Security Plan and the Quality Plan; the Engineering Management Plan and the In-Service Management Plan.

“Mandatory Modification” means a Modification which is required to be made under any Applicable Laws.

“Mean Distance Between Service Interruption” or **“MDBSI”** means, for purposes of the Trainset Contract, the average Distance between Non-Allowable Service Interruptions for the Fleet. The MDBSI calculation for Final Fleet Acceptance shall be calculated using the following methodology: Over a calendar month the total mileage run by the Trainsets in the fleet will be divided by the number of Non-Allowable Service Interruptions defined in Section 12.2.

“Modification” means any variation, modification or addition to the Trainsets or Equipment.

“Non-Allowable Service Interruption” means Service Interruptions other than Allowable Service Interruptions.

“Northeast Corridor” or **“NEC”** means the intercity operations of Amtrak from Washington, D.C. to Boston, Massachusetts.

“Notice to Proceed” or **“NTP”** means a notice provided to Contractor that it may begin performance of the Contract or a Contract Modification.

“Option Order” refers to an option that may be exercised by Amtrak in its sole discretion for purchasing additional Trainsets and/or additional rail cars under the terms of the Contract.

“Parent Guaranty” means a guaranty of payment and performance (and not of collection) issued by Guarantor in the form of Schedule 17—Parent Corporate Guaranty, guarantying the Work under this Contract, including Contractor’s present and future performance, obligations and liabilities under this Contract.

“Performance Specification” or **“Specification”** refers to the Performance Specification, which is attached to the Contract as Schedule 1 Part A—Next Generation Amtrak Trainsets Performance Specification.

“Person” means a person (including Contractor and Amtrak) and shall be construed as including references to an individual, firm, company, corporation, unincorporated association or body of persons or any government authority (including any of its agencies).

“Project Schedule” means the mutually-agreed upon project schedule for production of the Trainsets and the provision of other deliverables.

“Proposed Change Request” or **“PCR”** has that meaning ascribed to it in Schedule 3—Change Request Process.

“Prototype Trainset” means one of the first two Trainsets Contractor is required to design and manufacture for Amtrak.

“Quality Plan” means the quality plan produced by Contractor based on the principles specified in Schedule 11—Quality Plan and approved and agreed to by Amtrak in accordance with the Contract.

“Reliability Demonstration Commencement Date” means the date that the first eight (8) Trainsets are placed into Revenue Service.

“Reliability Demonstration for Final Fleet Acceptance” has that meaning ascribed to it in Article 8, Section 8.4.

“Relevant Approval” means a consent, approval or authorization granted or required to be granted (as the context may require) by a government authority in relation to the Trainsets in order to permit the operation of such Trainsets with or without passengers.

“Revenue Service” means the time when a Trainset is available to the general public and there is a reasonable expectation of carrying passengers that either directly pay fares, are subsidized by public policy, or provide payment through some contractual arrangement. Vehicles operated in fare free service are considered in Revenue Service.

“Safety Critical” means a component, system, or task that, if not available, defective, not functioning, not functioning correctly, not performed, or not performed correctly, increases

the risk of damage to passenger Equipment or injury to a passenger, crewmember, or other Person.

“Safety Plan” means the safety plan produced by Contractor based on the principles specified in the Management Plans and approved by and agreed to by Amtrak in accordance with the Contract.

“Scheduled Final Fleet Acceptance Date” means the date specified in Schedule 5—Contract Time Plan on which Final Fleet Acceptance is scheduled to occur.

“Service Bulletin” means any documentation produced by Contractor that sets out details of any design changes to the Trainsets and details how such changes impact the Trainsets; what, if any, modifications are necessary; and any other relevant information.

“Service Interruption” means, for purposes of the Trainset Contract, a failure or defect that results in:

- (a) a Trainset being Unfit for Revenue Service;
- (b) termination en route of a Trainset in Revenue Service; or
- (c) a delay of 5 (five) minutes or more of the arrival of a Trainset at the termination station.

A Service Interruption shall only be recorded once until such time that the Trainset returns to a main depot or is at a location at which the Contractor can reasonably be expected to remedy the defect giving rise to that Service Interruption.

When a retrofit is deployed according to a schedule approved by Amtrak, Service Interruptions associated to the failures of systems not yet modified because Amtrak has not made a Trainset available for the retrofit according to an agreed schedule will not be taken into account.

“Spares” means spare parts, Supplies, Equipment, and components that are fit, form and functionally equivalent to the original design and consumables or expendables.

“Special Tool” means each item of special equipment, tooling and other materials designed and built specifically for testing, maintenance, overhaul, servicing and repair of the Trainsets, Vehicles and Spares and software for use in ground-based systems for diagnosing and condition-monitoring of the Trainsets, Vehicles and Spares. Special Tools include those listed on Schedule 14D, Special Tools with Pricing.

“Specifications” means any specification referenced in this Contract, including any Schedule to it, or any Subcontract, including without limitation the Performance Specifications and the Technical Specifications under Schedule 1, Part A, Next Generation Amtrak Trainsets Performance Specification and Part B, Technical Description.

“Specification Change Request” or **“SCR”** has that meaning ascribed to it in Schedule 3, Change Request Process.

“Subcontractor” means any party that takes portions of the Contract from Contractor or another subcontractor to provide a service and/or Supplies, parts or material necessary for the performance of the Contract.

“Substantial Completion” means, solely for the purposes of defining Financing Parties, that Amtrak has issued a Certificate of Acceptance or a Certificate of Conditional Acceptance for all twenty-eight (28) Trainsets under the Contract.

“Supplies” means the Spares, including, but not limited to, the Amtrak-Owned Spares, Capital Spares and Special Tools, supplies, Equipment, including the Trainsets, materials, articles, or other items furnished by or to be furnished by Contractor under the Contract.

“Surety Bond” means a surety bond issued to Amtrak as obligee by a surety or sureties acceptable to Amtrak in the form of Schedule 18, Form of Surety Bond, and satisfying the requirements for it set forth in Article 6.

“Technical Description” means that document attached as Schedule 1, Part B, Technical Description.

“Technical Support and Spares Supply Agreement” or **“TSSSA”** means the agreement entered into between Amtrak and Contractor for the provision of technical support and spares.

“Temporary Permit to Enter” means a permit issued by Amtrak to permit Contractor to enter Amtrak’s property and perform work or services.

“Three-Year Warranty Period” for each of the Trainsets means the three (3) year period after issuance of a Certificate of Acceptance or Certificate of Conditional Acceptance.

“Train Scanner” means a diagnostic system for detecting defects and problems with Trainsets, as more fully described in Schedule 1, Part A, Next Generation Amtrak Trainsets Performance Specification and Part B, Technical Description.

“Trainset” means the fixed formation of Vehicles manufactured in accordance with the Performance Specification. The term “Trainsets” includes the Prototype Trainsets.

“Trainset History Book” has that meaning ascribed to it in Schedule 11, Quality Plan.

“Unfit for Revenue Service” means the presence of one or more safety-related failures preventing use of Trainsets in Revenue Service (the exhaustive list of these safety-related failures will be confirmed by RAMS studies realized during project execution) set forth below:

- (a) Presence of one or more failures forbidding service according to FRA regulations (such as but not limited to Safety Critical items called for in 49 CFR 238.503(l) (“Identification of safety-critical items”));
- (b) Presence of one or more major comfort failures:
 - (i) HVAC (complete loss of heating/cooling including fresh air fan) in one Passenger Vehicle or more;
 - (ii) Food service equipment in either First Class Galley or Cafe Vehicle preventing service; or
 - (iii) Two (2) or more toilets not working;

A Trainset shall be assessed for Revenue Service once a day at the time it is scheduled to leave the maintenance depot, according to the applicable operating plan.

If a train is declared Unfit for Revenue Service based on the criteria listed above, but the Trainset is used for Revenue Service, then the Trainset shall not be considered Unfit for Revenue Service. No additional Service Interruption should be counted against this Trainset on this day for conditions that were present on the Trainset before it was used by Amtrak for Revenue Service.

“**Vehicle**” means a passenger equipment of any type and includes a car, trailer car, locomotive, power car, or similar vehicle.

“**Work**” as used herein, means the provision of the deliverables and Supplies, including, but not limited to, the Trainsets, Amtrak-Owned Spares, Capital Spares and Special Tools, identified and required by the Contract and the designs, engineering, manufacturing, assembly, testing, operations, maintenance services or other activities/services performed pursuant to the Contract. Work includes the work performed and materials acquired for the Contract under a limited notice to proceed or similar request by Amtrak.

2. INTERPRETATION OF DOCUMENTS

21 The Contract constitutes the entire agreement of the parties. Except as provided under the Changes section hereof, neither oral statements nor other writings may be used to supplement, modify, or otherwise affect the provisions of the Contract. Contractor acknowledges that it has not been induced to enter into the Contract by any representations or promises not specifically stated in the Contract. Unless otherwise specified herein, all previous or contemporaneous proposals, letters, promises, representations, documents, agreements, or understandings, whether written or oral, relating to the subject matter of the Contract are hereby declared to be null and void and are superseded by the terms and conditions of the Contract. The terms and conditions of the Contract supersede any and all terms and conditions

submitted by Contractor prior to, concurrently with, or pursuant to the Contract. Any additional or different terms proposed by Contractor are expressly rejected unless specifically accepted in writing by the Contracting Official. No other terms and conditions, or changes or modifications to the Contract shall be binding upon Amtrak unless agreed to in writing in accordance with the Changes section herein.

22 Any inconsistencies in Contract provisions or Contract shall be resolved by giving precedence in the following order:

- (a) Contract Modifications;
- (b) Equipment and Supplies Contract;
- (c) Supplementary General Provisions;
- (d) General Provisions, excluding the Schedules attached thereto;
- (e) Performance Specification set forth at Schedule 1, Part A;

(b)(4)

- (g) All other Schedules attached to these General Provisions; and
- (h) Design documentation, including Drawings and/or construction or manufacturing Drawings produced as a result of the Performance Specification, or otherwise, in the following order of precedence:
 - (i) Notes on Drawings,
 - (ii) Large scale details,
 - (iii) Figured dimensions, and
 - (iv) Scaled dimensions.

23 If any uncertainty remains after reference to the hierarchy set forth in Section 2.2, the Contractor shall then confer with and be governed by the interpretation(s) of the Contracting Official or his authorized representative.

24 The captions in these General Provisions are for the convenience of the parties in identification of the several provisions and shall not constitute a part of the Contract nor be considered interpretative hereof.

25 Drawings and Specifications are complementary. Anything shown in the Drawings and not mentioned in the Specifications, or mentioned in the Specifications and not shown in the Drawings, shall have the same effect as if shown or mentioned in both. The Contractor is responsible for assuring that the Drawings and Specifications conform to the terms of the Contract. A typical or representative detail indicated on or reasonably inferable from the Contract or

from normal custom and practice shall constitute the standard for workmanship and material throughout corresponding parts of the Work. Where necessary, and where reasonably inferable from the Contract, the Contractor shall adapt, or have adapted, such representative detail for application to corresponding parts of the Work. Repetitive features shown in outline on the Drawings shall be in reasonable accordance with corresponding features completely shown.

- 26 It shall be the Contractor's responsibility to study the Contract and to report, at once in writing to the COTR, any errors, inconsistencies or omissions therein. Should the Contractor believe that the correction of the alleged errors, inconsistencies or omissions shall be the cause of additional expenditures or impact the schedule for performance of the Work, or portion thereof, the Contractor shall so advise Amtrak as part of the written notification. Any Work performed by the Contractor prior to receiving a written response from Amtrak with respect to any alleged error, inconsistency or omission shall be at the Contractor's own risk and expense.

The Contractor is under an obligation to control and check all project materials. Errors or omissions in the Specification, Drawings or other supplementary specifications supplied by Amtrak shall in no way affect Contractor's warranties that the Trainsets fulfill the provisions of this Contract in all respects.

- 27 Where standard specifications issued by a recognized industry association or regulatory body are referenced, the reference shall be interpreted as incorporating the standard specifications in total unless otherwise noted in the Contract.

- 28 The Contractor shall coordinate its designs and Drawings, and review them for accuracy, completeness, and compliance with Contract requirements and shall indicate its approval thereon as evidence of such coordination and review prior to submission to the COTR. Drawings submitted to the COTR without evidence of the Contractor's approval may be returned for resubmission. Acceptance by the COTR shall not relieve the Contractor from responsibility for any errors or omissions in such Drawings, nor from responsibility for complying with the requirements of this Contract, except with respect to variations expressly approved in accordance with the Contract.

- 29 If Drawings show variations from the requirements contained in the Contract, Contractor shall describe such variations citing the specific contract requirement(s) in writing, separate from the Drawings, at the time of submission. If the Contracting Official approves any such variation(s), he shall issue an appropriate Contract Modification or Change Order. If the variation is minor and does not involve a change in the time required for performance, or the cost of performing the Work, the Contracting Official shall note this fact on the Contract Modification and issue a corresponding no-cost or no-time extension Change Order.

210 The Trainsets specified herein shall embody all of the latest tested and proven developments and improvements available to the Contractor during the course of design and manufacture of the Trainsets and shall be of the best engineered design for the service intended. Unless stresses, deflections, or properties of structural sections are specifically required herein, the Contractor shall use its best judgment and experience in determining the stresses imposed by the type of operation, and it shall provide for these stresses with an adequate margin of safety. In no case may design stresses exceed those generally considered reasonable and prudent in the industry.

3. APPROACH AND SUPERVISION OF WORK

31 The Contractor shall use a systematic management approach to provide completed Trainsets meeting all specified performance levels compatible with all elements of the railway system over which the Trainsets shall operate, for the service life of the Trainsets (thirty (30) years) as defined in the Contract. The Contractor shall apply this management approach throughout the design, development, production, and delivery phases of the Contract and to all aspects of the Work or material or components of the Trainsets provided by the Contractor or its Subcontractors. Contractor shall rely on information provided by Amtrak and shall have no obligation to perform an independent investigation of Amtrak's operating environment. If modifications of the Trainsets are required due to changes in the operating environment, such modifications shall be performed in accordance with Article 15, Changes.

32 Contractor shall submit the Management Plans ("Plans") and any of the other plans identified in the Schedules attached herein, within sixty (60) days of the NTP. Review, revisions, and resubmission shall continue until the Plans are accepted by Amtrak and such acceptance shall not be unreasonably withheld. Thereafter, the Plans shall be updated, as required, at the discretion of the COTR.

33 The Contractor shall supervise and direct the Work, using its best skill and attention. It shall be solely responsible for all means, methods, techniques, sequences and procedures and for coordinating all portions of the Work prescribed by the Contract.

34 The Contractor shall submit for Amtrak's approval, pursuant to Article 33, a list of Subcontractor(s) or supplier(s) selected to provide any Safety Critical systems, subsystems, components, or parts of the Trainsets or to perform any aspect of the Work over an aggregate value of \$1,000,000.

35 The Contractor shall require that each Subcontractor of materials, apparatus, components, assemblies or parts, except as otherwise provided herein, shall provide all labor, tools and materials necessary to make, assemble, completely test, and ready for installation by the Contractor, the component or apparatus to be furnished by said Subcontractor.

36 The Contractor shall require that the Subcontractors of all materials, apparatus, components, assemblies and parts, cooperate, to the fullest extent during design and manufacture of the Trainsets, to ensure proper use and installation of their products. The Subcontractors shall give prompt notice to the Contractor and Amtrak if the use or installation of their Equipment by the Contractor is not satisfactory to them. No agreement with respect to the above shall be made without immediate conference at which Amtrak, Contractor and the Subcontractor are each represented, and the resolution is approved by the Contracting Official. Copies of purchase orders (which may have prices and delivery terms deleted) and revisions to purchase orders for all major items of Equipment shall be promptly submitted to Amtrak upon request.

37 The Contractor shall take measurements and verify all conditions and shall carefully compare such measurements and conditions and other information known to the Contractor with the Contract before commencing activities. Errors, inconsistencies or omissions discovered shall be reported, in writing, to the Contracting Official at once. The Contractor shall satisfy itself as to the accuracy of all measurements and conditions. Any errors due to the Contractor's failure to so verify and to so take measurements shall be promptly rectified by the Contractor without any additional cost to Amtrak. No Change Order, whether for an adjustment in the Contract Amount or Contract Time, shall be allowed based on any such error described in this Article.

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4. APPROVED/REVIEWED

4.1 When the words "approved," "satisfactory," "proper" or "as directed" are in the Contract, approval by the Contracting Official or his authorized representative shall be required.

4.2 Contractor shall submit all documentation and Drawings for either Amtrak "review" or Amtrak "approval". All submittals are for Amtrak review, unless the Contract provides for Amtrak approval. Designs submittals shall be provided by Contractor in accordance with Schedule 2—Design Review Process.

In response to a submittal for Amtrak review, Amtrak's response will fall into one of the following categories:

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Prior to requesting review by Amtrak, Contractor shall notify Amtrak in writing, providing Amtrak with sufficient advance notice, of the time when such review may be undertaken. Contractor shall provide Amtrak with any and all related information and documentation, including information and documentation that may be requested by Amtrak, sufficiently in advance to enable Amtrak or its authorized representative to perform a meaningful review.

4.3 If Contractor submits four (4) or more requests for reviews and/or decisions, within the same or a similar timeframe or with the same or similar due dates, Contractor shall prioritize those items and advise Amtrak in writing which reviews or decisions should be addressed first. Amtrak shall advise Contractor of the time required for completion of its review and the parties shall mutually agree upon a date for the completion of Amtrak's review of those items or the rendering of Amtrak's decision.

4.4 Unless otherwise set forth in the Contract, in the case of decisions with respect to the Trainsets, Amtrak shall have at least thirty (30) days or if Amtrak receives multiple requests from Contractor as described in Section 4.3 above, a mutually agreeable greater amount of time from the date on which Contractor completes its submission to Amtrak of all information and documents required in connection with making the requisite decision, to notify the Contractor of its decision. Notwithstanding the foregoing, in the case of decisions with respect to training documentation, manuals and parts catalogs, Amtrak shall have at least sixty (60) days unless Contractor has specified a greater time period or some other time period is agreed to by the parties. If Amtrak fails to respond within the applicable period for approval of a particular document or decision, Contractor shall notify Amtrak of such failure in writing. Such writing shall provide Amtrak with an additional fifteen (15) days to respond.

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if Amtrak fails to respond within such fifteen (15) day period, then upon the expiration of the fifteenth (15th) day, Amtrak's approval shall be deemed to be granted or approved.

4.5 If a decision by the Contracting Official or COTR is required by a certain time in order to avoid a delay in the Work, the Contractor shall notify the Contracting Official in writing at the time the request for decision is submitted. Such notice shall (1) set forth the requested due date for the decision; (2) provide the

expected impact to the schedule if such decision is not received by the requested due date; and (3) transmit any information or documentation not previously provided to Amtrak that may be reasonably required for Amtrak to render a decision. Such notice shall be given sufficiently in advance to enable the Contracting Official or Amtrak to make an appropriately considered decision, and in no case later than the date on which Contractor first requests a decision from Amtrak. Failure to give such notice shall be deemed a waiver by the Contractor of its right to make a Claim (as defined in Article 35) based on an untimely decision by the Contracting Official.

4.6 For the avoidance of doubt, the times for decisions from Amtrak in Section 4.4 only applies to decisions with respect to the Trainsets and does not apply to SCRs and PCRs under the Change Request Process of Schedule 3. It does not apply to decisions with respect to any other aspect of the Contract.

5. CONTRACTING OFFICIAL'S REPRESENTATIVE (COR) AND CONTRACTING OFFICIAL'S TECHNICAL REPRESENTATIVE (COTR)

5.1 The Contracting Official may designate Amtrak personnel or agents to act as the Contracting Official's Representative (COR) or technical representative (COTR). Such designation shall be set forth in the Contract or by separate letter signed by the Contracting Official, and shall contain specific instructions as to the extent to which the representative may take action for the Contracting Official.

5.2 For purposes of this Contract, the Amtrak designated COTR is the Amtrak Project Director. Unless otherwise provided in writing by the Contracting Official, the COTR's authority shall be to review and interpret Drawings and Contract technical submissions, review schedules, conduct design reviews, review invoices and progress payments, accept the Trainsets and the related accessories and all other interface functions of a technical or commercial nature between the Contractor and Amtrak. All orders and directives issued by the COTR shall be in writing. Acceptance of Drawings by the COTR shall not relieve the Contractor of any contractual obligation. Acceptance of Drawings does not signify that the COTR is conducting an equal engineering effort in parallel with the Contractor to assure that the entire Trainsets design as a whole shall meet all requirements of the Contract.

5.3 Contractor shall designate one of its employees as its Contractor Project Manager, who shall be assigned by Contractor to supervise Contractor's Work hereunder and shall serve as Amtrak's point of contact for the resolution of problems. Amtrak shall designate an Amtrak Project Director to coordinate issues concerning Contractor's performance of the Work. The Amtrak Project Director shall serve as Contractor's point of contact for the resolution of problems related to the management of the relationship under the Contract. Contractor may not, without the consent of the Amtrak Project Director, replace its Project Manager unless the replacement is a result of the individual: (a)

voluntarily resigning from employment with Contractor; (b) being dismissed by Contractor for misconduct or unsatisfactory performance; or (c) being unable to perform duties due to death or disability.

6. PERFORMANCE ASSURANCES REQUIRED FOR START OF WORK

Start of Work/Conditions on Issuance of NTP

- 6.1 Within ten (10) days after the Notice of Award (NOA) is issued and noticed to Contractor, Contractor must submit to Amtrak and thereafter cause to be maintained for the duration specified in this Article 6: (i) a Parent Guaranty, in the form of Schedule 17, together with an opinion of counsel required by Section 6.16, and (ii) a certificate of insurance evidencing the insurance coverage required by Article 59, in each case with only such modifications to the scheduled form or requirements stated in this Contract as have been approved by Amtrak in writing. Within fifteen (15) days (or as soon as practicable thereafter) after Amtrak's receipt and acceptance of the Parent Guaranty accompanied by the opinion of counsel required by Section 6.16, and certificates from Contractor's insurers or insurance brokers showing insurance required by Article 59 is in place, Amtrak shall issue a NTP. The date of a NTP with respect to any phase of the Work shall be considered by Amtrak as the date that Work commences and shall provide the basis for the calculation of timely completion of the Work in connection with the Trainsets and related Supplies, except that, in the event Contractor fails to timely submit the Parent Guaranty with accompanying opinion, and/or proof of required insurance, the 15th day after the execution of the Contract by Amtrak shall be used as the basis for calculating timely completion of the Work in connection with the Trainsets and related Supplies.

Letters of Credit

- 6.2 Contractor shall furnish and cause to be issued and maintained as provided in this Article 6, three (3) Letters of Credit in the form of Schedules 16A and 16B or otherwise acceptable to Amtrak that will equal in an aggregate thirty percent (30%) of the Contract Amount. Each Letter of Credit must be Confirmed and shall have either (i) an initial expiration date no earlier than fifty-three (53) months after the date Amtrak issues the NTP or (ii) have an initial expiration date of at least one (1) year from date of issuance but contain (a) an automatic extension clause that requires at least ninety (90) days advance written notice to Amtrak by the issuer of a non-extension if the then current expiration date is not to be extended for another year, and (b) an outside expiration date of fifty three (53) months after Amtrak's NTP is issued. Amtrak shall be responsible for payment of the fees charged by the Confirming Bank for the Confirmation. If a Letter of Credit or Confirmation will expire within ninety (90) days or less of its then current expiration date and the conditions for cancellation of the Letter of Credit have not been met under this Article 6 by that time, Contractor shall have until thirty (30) days prior to the then current expiration date of the Letter

of Credit or the Confirmation either to (i) cause the issuer of the Letter of Credit and Confirming Bank to amend the Letter of Credit to extend the then-current expiration dates of the Letter of Credit and its Confirmation by another year, or (ii) replace the Letter of Credit and/or Confirmation, as applicable, with another Confirmed Letter of Credit and/or Confirmation which meets the requirements of this Contract, including the requirements set forth in the second sentence above for its expiration date. Each Letter of Credit shall be Confirmed and may be drawn upon in accordance with its terms upon the occurrence of a Draw Event. If a Confirmation of a Letter of Credit will terminate or expire within ninety (90) days or less, Amtrak will, if requested by Contractor, provide Contractor within 21 days of the request, with the name or names of up to three Confirming Banks acceptable to Amtrak. It will be Contractor's responsibility to direct its Letter of Credit issuing bank to work with one of the Confirming Banks designated by Amtrak so that the Confirming Bank issues a Confirmation for at least another year that meets the requirements of this Contract and that is issued to Amtrak before thirty (30) days prior to the then current expiration date of the existing Confirmation.

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65 As a condition of Amtrak's approval and payment of the Contract milestones or any other payment made to Contractor up to thirty (30%) of the Contract Amount, each Confirmed Letter of Credit must be submitted or increased before or with the milestone or other payment invoice to which it is called for under Section 6.3.

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the Bridge Letter of Credit shall automatically expire eighteen (18) months after it is issued.

67 Amtrak may draw upon a Letter of Credit in accordance with the terms of the Letter of Credit for any Draw Event. If a Draw Event relates only to impending expiration of a particular Letter of Credit or its Confirmation, Amtrak shall only draw on that Letter of Credit and/or Confirmation unless the draw on that Letter of Credit is wrongfully dishonored, in which event Amtrak may draw on any Letter of Credit for the amount dishonored. In all other cases, Amtrak may draw on one or more of the Letters of Credit in such amounts and proportions as it, in its discretion, determines, up to the amount it claims are owed to it for claims it has asserted arising out of Draw Events.

68 If a Letter of Credit is transferred to Lender, Lender shall have all the rights of Amtrak with respect to it and under this Article 6, including the right to authorize amendments reducing or cancelling the Letter of Credit and the right to draw on the Letter of Credit for Draw Events. Lender shall not have the right to draw on the Letter of Credit for defaults between it and Amtrak on their underlying obligations, but only for Draw Events arising under this Contract.

Surety Bond

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If and at the time when Letters of Credit are to be cancelled, the Surety Bond must be increased by the sum of 30% of the Contract Amount plus any further

payments requested by Contractor so that the amount of the Surety Bond equals or exceeds the amount of all payments made or requested by Contractor under the Contract at that point in time, up to fifty percent (50%) of the Contract Amount.

After the Letters of Credit are cancelled, Contractor shall ensure that the amount of the Surety Bond equals or exceeds the amount of all payments made or requested by Contractor under this Contract up to fifty percent (50%) of the Contract Amount. Amtrak shall not be required to make further payments to, or honor further payment requests by, Contractor until this requirement is met.

- 6.11 The amount of the Surety Bond shall be decreased from time to time by amendment to the Surety Bond as follows:

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- 6.11.2 In no event shall the Surety Bond be reduced below ten percent (10%) of the Contract Amount, except as provided in Section 6.12 below.

- 6.12 On the later of (a) thirty-six (36) months after issuance of a Certificate of Acceptance of the last Trainset ordered and delivered or (b) the issuance of a Certificate of Final Fleet Acceptance, and provided that all warranty Work has been satisfactorily completed, Contractor shall be entitled to request Amtrak to authorize cancellation of the Surety Bond. Amtrak shall authorize a cancellation or, pursuant to the next sentence, a reduction of the Surety Bond upon review of such request if all the preceding conditions for cancellation of the Surety Bond have been met. If Amtrak refuses to authorize a cancellation of the Surety Bond to which the Contractor believes it is entitled because of pending claims or disputes, (i) Amtrak shall authorize reduction of the amount of the Surety Bond that Amtrak does not dispute can be reduced, and (ii) Contractor may

reserve its rights or proceed to dispute resolution procedures to obtain the further reduction or cancellation of the Surety Bond to which it claims it is entitled.

6.13 Amtrak or a Financing Party may give written notice to Contractor that Amtrak's rights under the Surety Bond and/or this Article 6 will be exercised by a Financing Party, and Amtrak will notify Contractor promptly after it learns the identity of such Financing Party. In that event, the Financing Party shall be entitled to take all actions and succeed to all rights of Amtrak with respect to such Surety Bond and any related rights granted to Amtrak by this Article 6, provided that the enforcement of the Surety Bond by any such Financing Party shall only be permitted for Contractor defaults, compensation and damages that Amtrak has a right to claim under this Contract, and not for obligations which are related to any Amtrak defaults under any of its funding agreements or otherwise outside of the control of Contractor.

6.14 Except in the event of Contractor's insolvency or bankruptcy, prior to filing a claim on the Surety Bond, Amtrak agrees to (i) give at least thirty (30) days advance written notice to Contractor and the sureties on the Surety Bond of the nature and amount of any claim it intends to file under the Surety Bond, and (ii) give Contractor thirty (30) days from the date of such written notice to satisfy, resolve, or cure the events giving rise to the claim before filing with sureties.

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6.15 Amtrak's obligations under the Contract shall be contingent upon Amtrak's receipt of a satisfactory Parent Guaranty guarantying payment and performance of Contractor's obligations and liabilities under this Contract.

6.16 The Parent Guaranty delivered to Contractor shall be accompanied by an opinion addressed to Amtrak from counsel acceptable to Amtrak who are authorized to practice law in the Guarantor's jurisdiction, to the effect that the Parent Guaranty has been duly authorized, executed and delivered, is within the corporate power and authority of the Guarantor, requires no permits, filings, payments, consents or authorizations from any governmental authority or private party for its execution and delivery which have not been obtained by Contractor and/or Guarantor, complies with Applicable Laws, is legal, valid, binding, and a judgment or arbitration award properly obtained in the United States against Guarantor on the Parent Guaranty will be recognized and enforceable in the jurisdiction of the Guarantor without a de novo hearing on the merits of the judgment obtained.

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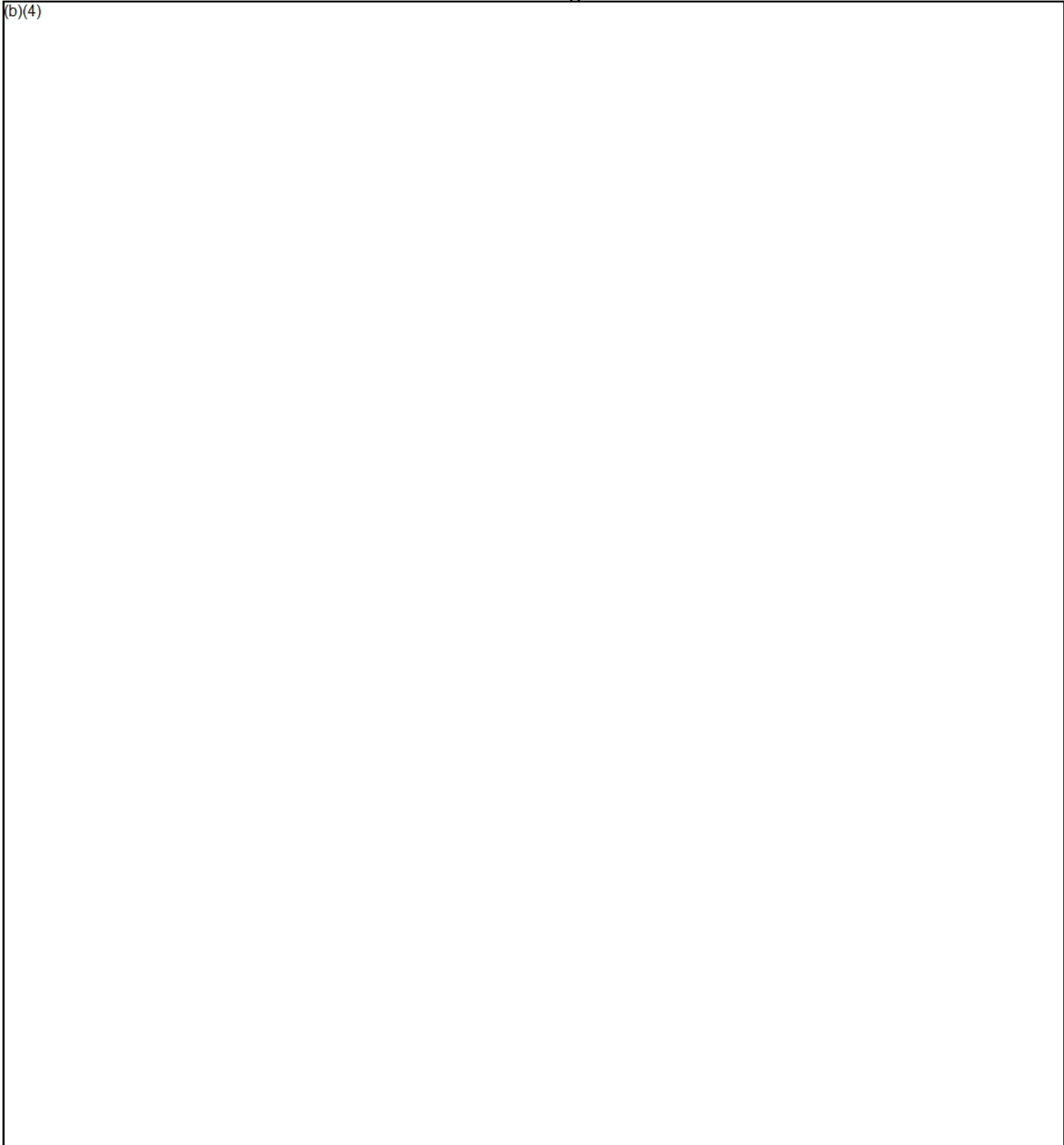
6.19 Following receipt of payment by Contractor for Equipment and Supplies as required by this Contract for which Amtrak has been invoiced and that have been manufactured and allocated to this Project but have not been delivered to Amtrak (including the Equipment and/or Supplies referenced in Section 10.2), Contractor shall use its commercially reasonable efforts, using its existing information technology systems to segregate such Equipment and

Supplies from its other inventory and designate Amtrak as the sole beneficiary of such Equipment and Supplies.

7. CONTRACT DELIVERABLES AND REQUIREMENTS

In addition to the requirements and deliverables specified elsewhere in the Contract, including the Performance Specification, Contractor shall provide those items listed in Sections 7.1 through 7.9 below.

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7.

Contractor shall be responsible for providing, at its own cost, for the storage of each of the Trainsets, the Special Tools and Amtrak-Owned Spares at all times until the issuance of a Certificate of Acceptance or Conditional Acceptance, as the case may be, of such Trainsets or, in the case of the Special Tools, until acceptance of such Special Tools in accordance with the Contract or, in the case of Amtrak-Owned Spares, until acceptance of such Amtrak-Owned Spares under the Contract. After Acceptance of the Amtrak-Owned Spares, they shall be stored in accordance with the TSSSA.

7.5 Amtrak-Owned Spares

7.5.1 Contractor shall supply to Amtrak the (b)(4) listed in Schedule 14C together with all associated acceptance certificates at the Capital Spares price specified in Schedule 14C, all in accordance with the Specification, the Contract Time Plan, the Quality Plan, the Safety Plan, the Agreed Testing Program, all Applicable Laws, regulations, and standards and shall ensure that all Amtrak-Owned Spares are Fit for Purpose and meet the requirements of the Contract.

7.5.2 Upon reasonable request from Contractor and under terms and conditions specified by Amtrak, Amtrak shall permit Contractor to utilize the Amtrak-Owned Spares to meet Contractor's obligations under the TSSSA. Notwithstanding the foregoing, Contractor understands that Amtrak's use of the Amtrak-Owned Spares shall take precedence over any request from Contractor to use the same.

7.5.3 Upon termination of the TSSSA, any such Amtrak-Owned Spares, except consumable spares, utilized by Contractor to meet its obligations under the TSSSA, shall be returned to Amtrak in the same or similar condition as when originally purchased by Amtrak and delivered to a location designated by Amtrak.

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7.6 **Special Tools**

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7.7 **Bill of Material**

- 7.7.1 Within ninety (90) days of the delivery of the first Trainset, Contractor shall furnish to Amtrak an indexed Bill of Material in electronic form. This Bill of Material shall include Drawing numbers, “generic” description of the material, quantity, type of material, weight of item, and other information required by Amtrak for ordering replacement material. It shall include provision for entry of Amtrak part numbers by Amtrak. The Bill of Material shall be grouped by major material classification and CC System.
- 7.7.2 An electronic copy of the Bill of Material shall be supplied in a format compatible with Amtrak’s then current parts and inventory system.

7.8 **Serial Numbers**

Serial numbers will be applied to all components having a value of \$1,500 or greater, plus all Safety Critical items, printed circuit boards, contactors, relays, and similar apparatus; valves; and other components as recommended by the Contractor and/or Amtrak. The Contractor shall submit to Amtrak for approval within three hundred sixty-five (365) days after NTP, a list of those items to which serial numbers will be applied. The Contractor shall furnish Amtrak with a record of all serial numbers for all apparatus bearing serial numbers as installed on individual Vehicles. This record shall be included in a Trainset History Book for each Trainset. The record shall be submitted both in “hard copy” and in an approved electronic format. All items bearing serial numbers shall be physically marked with two-dimensional bar coded tags or labels to

facilitate inventory management, parts tracking, maintenance planning and warranty administration. Bar codes shall provide the following information:

- Manufacturer;
- Manufacturer's part number and Drawing number;
- Date of manufacture;
- Weight (items 50 pounds and greater);
- Serial number.

7.9 Training

Contractor shall, at its own expense, organize and provide to Amtrak a program of training courses in accordance with Schedule 13, Training Requirements, including appropriate training of employees of Amtrak to administer such program, which will enable Amtrak to train its employees to operate the Equipment and to undertake its responsibilities under this Agreement and the TSSSA. Such courses shall be provided at a location specified by Amtrak and will include the provision of such training materials and equipment as are reasonably necessary to permit the Amtrak's training instructors to undertake further training of Amtrak's employees.

Contractor shall provide Amtrak with proper written training materials in both hard copy and in an electronic format specified by Amtrak. Amtrak shall be entitled, free of charge, to duplicate as many copies of such training materials as it reasonably requires for the purposes of training its employees.

At Amtrak's request, Contractor shall provide such additional training as Amtrak may require (at Amtrak's cost), save that if such additional training is required as a result of any Modifications requested by Contractor (other than a Mandatory Modification) such training shall be provided at Contractor's expense.

8. INSPECTION, DELIVERY AND ACCEPTANCE

8.1 Delivery

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- 8.1.2 Delivery of Trainsets shall be FOB Destination, during normal working hours 8:00 AM to 4:00 PM (New York Time), to Penn Coach Yard, Race Street, Philadelphia, Pennsylvania, 19104, United States or some other location designated by Amtrak.
- 8.1.3 Deliveries shall only be made on Business Days.

8.2 Inspection

- 8.2.1 Contractor shall develop and submit for approval by Amtrak in its sole discretion a comprehensive inspection plan covering the manufacturing and testing of the Trainsets. Contractor shall be responsible for conducting all inspections in accordance with the approved inspection plan. Detailed inspection requirements are specified in the Contract.
- 8.2.2 Contractor shall inspect and physically or functionally test all items to be delivered under the terms of the Contract. Inspection shall occur at appropriate points in the manufacturing sequence to ensure compliance with Drawings, process and test specifications, quality procedures and standards. Appropriate inspection points are detailed in Contract.
- 8.2.3 Contractor shall extend to Amtrak and to the COTR full cooperation and provide, at Contractor's expense, facilities necessary to permit the convenient inspection of all materials, Work and Equipment as detailed in the Contract.
- 8.2.4 Authorized representatives of Amtrak, and the FRA shall have access, at all reasonable times and as prearranged with Contractor, to those parts of the plants of Contractor and Subcontractors in which any portion of the Work is performed for the purpose of inspecting materials and workmanship, and of conformity to the Contract during the progress of the production, assembly and factory testing of the Trainsets. Amtrak or the FRA may make inspection of selected items, with or without Contractor's representative, which shall in no way waive or modify Contractor's responsibility to make proper inspections as set forth in the Contract. If any Trainset should be completed contrary to the requirements of the Contract, it must, if required by the COTR, be uncovered or disassembled for Amtrak's observation and reassembled or covered at Contractor's expense.
- 8.2.5 Amtrak and the FRA shall be allowed to participate in all tests and inspections. Contractor shall give Amtrak a minimum of thirty (30)

days (sixty (60) days for international travel) notice before each inspection and tests identified in the approved plan, as detailed in the Contract and ensure that Amtrak or its designated representatives are provided access to any test or inspection site. The presence of Amtrak's or the FRA's representatives at inspections or tests shall not in any way supplant Contractor's responsibility for making proper inspections or meeting the requirements of the Contract. The COTR shall have the right to reject all materials and workmanship which do not conform to the Contract. When three (3) or more rejections occur for the same item or component, Contractor shall prepare a written report detailing the problem(s) discovered during inspection and the efforts taken to remedy the problem(s). No further inspection shall take place until Contractor notifies the COTR that the problems have all been cured.

8.2.6 If Amtrak has reason to believe that defective work has been performed or permitted by Contractor, or that defective materials were used, Amtrak may examine any partially or fully completed work. If Amtrak makes such an examination, Contractor shall at its own expense furnish the appliances and labor required by Amtrak to make such investigation and inspection. Any defective or nonconforming work so disclosed shall be promptly corrected by Contractor at Contractor's expense.

8.2.7 Except as otherwise provided herein, costs incurred by Amtrak in performing or participating in inspections under this Contract shall be borne by Amtrak. However, Contractor shall reimburse Amtrak for Amtrak's costs incurred as a result of any re-inspection resulting from a failed inspection or Contractor's failure to meet a scheduled inspection or where a scheduled inspection was postponed and rescheduled upon less than three (3) days' notice to Amtrak.

8.2.8 Contractor shall plan and implement a quality assurance program, which meets the requirements of Schedule 11, Quality Plan. Such quality assurance program shall be maintained throughout the execution of the Contract to assure delivery of a quality product to Amtrak under the terms of the Contract. Contractor's quality assurance obligations are described in the Contract.

8.2.9 Pre-Shipping and Final Pre-Shipping Inspection

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- 8.2.11 Within twenty-four (24) hours of delivery of a Trainset to the appropriate facility where receiving and commissioning tests shall occur, Amtrak shall conduct an arrival inspection for the purpose of review of any shipping damage that may have occurred en route. After the arrival inspection, an arrival inspection report shall be prepared by Amtrak without delay, to be signed by both Contractor and Amtrak. The arrival inspection report shall contain the findings of the arrival inspection and Contractor shall remediate at its cost any damage or other defects reflected on the inspection report. Upon Amtrak's issuance of an arrival inspection report for a Trainset (b)(4) risk of loss shall transfer to Amtrak. Risk of loss in any Trainset shall revert to Contractor in the event Contractor takes possession, or otherwise exercises custody or control of any Trainset to perform Work under this Contract or the TSSSA, and shall not revert back to Amtrak until the Trainset returns to the appropriate Amtrak facility and Amtrak has issued a new arrival inspection report. Amtrak shall not be obliged to accept any Trainset which contains components or parts which do not fulfill the functional requirements and the specifications for such components and parts.

8.3 Trainset Acceptance

- 8.3.1 Amtrak shall witness the receiving and commissioning tests performed by Contractor within the timeframes specified in Schedule 5, Contract Time Plan, and Schedule 9, Testing and Qualification. Should arrival inspections and tests indicate that a Trainset conforms to the requirements of the Contract, has been received in sound and serviceable condition at a location specified by Amtrak, has successfully performed under the tests specified in the Contract, and the COTR has determined the Trainset has met all of the requirements of the Contract and is fit for passenger service, the COTR shall issue a Certificate of Conditional Acceptance or a Certificate of Acceptance; provided that, as a condition to the issuance of such Certificate, Contractor shall have delivered all documents or other materials necessary to achieve the passage of title to the applicable Trainset free of all Adverse Rights in accordance with Article 19 hereof. Subject to Section 6.17, upon issuance of a Certificate of Conditional Acceptance or a Certificate of Acceptance for a Trainset, title shall pass to Amtrak, or an entity designated by Amtrak.
- 8.3.2 During the testing of each Trainset, after delivery to the appropriate facility where receiving and commissioning testing is to occur, and up to the point of final acceptance of the Trainsets, Contractor shall make such adjustments and optimization of the mechanical, electrical, electronic and other technical equipment of the Trainset in

general as Amtrak may find necessary or appropriate in order to obtain optimal functioning and reliability of the Trainsets as contemplated by the Contract. Reasonable adjustments and optimization shall be made at no additional charge to Amtrak.

8.3.3 Amtrak may issue a Certificate of Conditional Acceptance, rather than a Certificate of Acceptance, to Contractor for a Trainset when the applicable Trainset meets all the conditions to acceptance identified and otherwise herein but is defective or deficient in some respects, but Amtrak determines the Trainset is suitable for Revenue Service. The defects and/or deficiencies which caused the Contracting Official to issue a Certificate of Conditional Acceptance shall be listed on the Certificate of Conditional Acceptance and shall indicate that the Trainset shall be accepted on the condition that all necessary repairs or corrective actions to remedy the defects and/or deficiencies shall be affected as soon as practicable, but in no event more than sixty (60) days, unless otherwise agreed to by Amtrak. Should Amtrak conditionally accept a Trainset, it may withhold from the relevant payment an amount as determined by the Contracting Official, which shall be no more than twice the estimated amount necessary to correct the defects and/or deficiencies, provided that no such withholding shall be required if Contractor provides Amtrak with a letter of credit in the applicable amount and satisfactory to Amtrak. Such letter of credit shall be assignable to the Financing Parties. Contractor shall not perform any such corrective Work on Amtrak's premises without Amtrak's express permission and direction.

8.3.3.1 If Amtrak grants Contractor permission to perform work on the railroad or Amtrak's premises, Contractor shall execute Amtrak's then current Temporary Permit to Enter prior to performing any work on the Railroad or Amtrak's premises. Amtrak shall set a date upon which the defects and/or deficiencies must be corrected. Unless otherwise agreed to by Amtrak, such date shall not allow for more than sixty (60) days to correct the defects and/or deficiencies. Should Contractor fail to remedy the defects and/or deficiencies within this timeframe, Amtrak may elect to remedy such defects and/or deficiencies in whatever manner it sees fit including hiring another contractor at Contractor's expense including any incidental costs related to the hiring of such third party.

8.3.4 After all defects and deficiencies have been remedied to Amtrak's satisfaction, the Contracting Official shall issue a Certificate of Acceptance.

8.4 Reliability Demonstration for Final Fleet Acceptance and Final Fleet Acceptance

(b)(4)

8.5 Rate of Acceptance

In any ten(10) day period, the Contractor shall not tender for acceptance or conditional acceptance any more than one (1) Trainset unless otherwise agreed to by Amtrak.

8.6 Special Tools

8.6.1 The Contractor shall deliver and tender for acceptance all of the Special Tools at the Penn Coach Yard, Philadelphia, PA (or any alternative location agreed in advance by the parties) upon the dates specified by Amtrak.

8.6.2 Amtrak shall not be obliged to accept any of the Special Tools for acceptance unless:

- (i) Amtrak has received the Special Tools delivery documentation;
- (ii) the Special Tools conform with the Contract; and
- (iii) the Special Tools comply with all Applicable Laws.

Where each condition specified in Section 8.6.2 (i)-(iii) has been fulfilled, acceptance of the Special Tools shall occur and, subject to receipt of payment for the Special Tools, title in the Special Tools shall transfer to Amtrak, or an entity designated by Amtrak.

(b)(4)

8.7 Failures

Amtrak shall not be obliged to accept any Trainset for acceptance or conditional acceptance if a failure has become apparent in another Trainset which has been, or is to be, delivered, until such time as Amtrak is satisfied that the same failure is not present in the Trainset to be accepted, or has been remedied or Contractor has proposed a suitable plan to remedy such failure.

9. TESTING

9.1 As set forth in the Contract, Contractor shall provide a test plan to Amtrak (the "Test Plan"). The Test Plan, set forth at Schedule 9, is a deliverable under the Contract, and must be approved by Amtrak.

9.1.1 Unless otherwise provided herein, all costs and expenses associated with testing and inspecting the Trainsets shall be borne by Contractor.

9.1.2 Notwithstanding the preceding provision, Amtrak shall not charge the Contractor a fee for the use of Amtrak-owned facilities, tracks or utilities located on the Northeast Corridor, or for the use of Amtrak personnel, the first time a particular inspection or test is performed on a particular Trainset. Amtrak shall have the right to charge Contractor for, and Contractor shall pay, all such expenses in connection with any re-inspection or retesting of a particular Trainset required as a result of a Trainset not having successfully passed the applicable test. Acceptance of the Fleet or any Trainset thereof by Amtrak shall not occur until after all tests, and retests if applicable, are successfully completed in accordance with the requirements stated in the Contract.

9.2 If the Contract, or any subcontracts, Applicable Laws of any public authority having jurisdiction over Amtrak operations, require the Trainsets or other Supplies to be inspected, tested or approved, Contractor shall give the COTR thirty (30) days (sixty (60) days for international travel) notice of its readiness

and of the date arranged for any such testing so Amtrak may observe such inspection, testing or approval. Contractor shall perform and bear all costs of performing such inspections, tests and approvals unless otherwise provided in the Contract. If after Contractor begins delivery of the Trainsets or Supplies, Amtrak determines that any such item requires additional inspection, testing, or approval (in addition to inspections and tests provided under the Contract), Contractor shall, upon written authorization from Amtrak, order such additional inspection, testing or approval and Contractor shall give notice as provided hereunder. These additional inspections or tests shall be conducted at the initial expense of Amtrak, and Amtrak shall grant a non-compensable extension of time equal to any delay caused by such tests. Notwithstanding the preceding sentence, if such additional test or inspection reveals a defect or failure of the Trainsets or Supplies to comply with the requirements of the Contract; or with any Applicable Laws, ordinances, rules, regulations or orders or if the original test or any retest or additional testing is improperly conducted by a Contractor Party, Contractor shall bear all costs of correction and retesting thereof, and no extension of the Contract Time shall be granted. Required certificates of inspection, testing or approval shall be secured by Contractor and promptly delivered to Amtrak. Neither the observations nor representations of Amtrak in its administration of the Contract, nor Amtrak's inspections, tests or approvals shall relieve Contractor from its obligations to perform the Work in accordance with the Contract.

- 9.3 Except as otherwise provided herein or agreed to by the Parties; tests shall be performed at plants of Contractor or its Subcontractors. Contractor shall have a valid Amtrak Temporary Permit to Enter prior to performing any work on the Railroad or Amtrak's premises.

(b)(4)

- 9.5 Should a Trainset be disassembled in any way for shipment, an operational test shall be conducted by Contractor upon reassembling at the delivery point on a

track provided by Amtrak at the expense of Contractor. Any such test shall be witnessed by Amtrak.

After receipt of a Trainset at the designated delivery point and before being put into passenger service, the Trainset shall be inspected by Amtrak and any part, device or apparatus requiring adjustment, repair or replacement shall be called to the attention of Contractor, in writing, who shall promptly make adjustment, repair or replacement at its own expense. All costs and expenses incurred in performing these tests shall be borne solely by Contractor.

10. PAYMENT

101 Amtrak shall make milestone payments to Contractor pursuant to an approved payment schedule upon Contractor's successful completion of certain tasks (milestones) during the Contract. Contractor shall not be entitled to any progress payment until its respective milestone is achieved and Contractor is in compliance with the performance assurance requirements of Article 6. In the

(b)(4)

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103 Except for any other express provisions to the contrary contained in the Contract, Amtrak shall pay all undisputed invoices within thirty (30) days of receipt of an invoice meeting the criteria set forth herein. Notwithstanding the foregoing, in light of FRA's requirements under the Railroad Rehabilitation & Improvement Financing ("RRIF") program, reasonable adjustments to the payment procedures may be requested by Amtrak.

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(b)(4)

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11. CONTRACTOR’S PROJECT SCHEDULE

Within thirty (30) days of NTP or such later time as may be agreed to by the parties or as set forth in Schedule 5, Contract Time Plan, Contractor shall provide the calendarized Critical Path Method (CPM) schedule (the “Project Schedule”) showing critical dates for start and completion of various portions of the Work, including delivery of major components and lengths of time required to complete each portion of the Work in Microsoft Project 2010 or some other version designated by Amtrak. Contractor shall update the Project Schedule as directed by Amtrak

12. LIQUIDATED DAMAGES

121 The parties have agreed that Amtrak shall be damaged if the conditions prerequisite to issuance of a Certificate of Acceptance or Certificate of Conditional Acceptance have not been met by Contractor with respect to any or all of the Trainsets by the time (the "Delivery Schedule") specified in the Contract for such conditions to have been met, or any extension of such time granted pursuant to the terms of the Contract and (i) that such damages would include, but not be limited to, loss of revenues arising from the loss of both current and potential ridership and (ii) the extent of such damages would be uncertain in amount and difficult to ascertain. Accordingly, the parties have agreed that Contractor shall, in place of actual damages for such delay, pay to Amtrak as fixed, agreed, and liquidated damages the following amounts:

(b)(4)

122 In addition to the liquidated damages for delay described above, for a period of thirty-six (36) months for each Trainset, Contractor shall pay Amtrak as fixed, agreed and liquidated damages, for each Trainset, the following amounts:

(b)(4)

(b)(4)

123 Amtrak shall use all reasonable efforts to move any Trainset that requires warranty work to a maintenance facility within one (1) day. Any additional time required to move such Trainset to a maintenance facility shall not be deemed as "Out-of-Service" time. However, it is agreed that any time required to make such warranty repair or field modification work on any Trainset shall be deemed "Out-of-Service" time. During the period in which a Trainset is in a maintenance facility for warranty work, Amtrak and/or the Federal Railroad Administration shall be allotted one (1) day of unavailability for any scheduled maintenance inspections and such time shall not be deemed "Out-of-Service" time.

124 Amtrak reserves the right to determine the suitability of any Trainset for return to Revenue Service based upon the past performance of such Trainset and the demonstration of the adequate and satisfactory repair of such Trainset.

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(b)(4)

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(b)(4)

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13. WARRANTY

13.1 Contractor covenants and warrants to Amtrak that each Trainset, Special Tool, and Spare, including, but not limited to, the Capital Spares and Amtrak-Owned Spares, and all parts (including spare parts), Simulators, Train Scanners and equipment accessories, manuals, and training documentation furnished under the Contract shall be new, the best of its kind or quality, and for the time periods expressed in Section 13.3 below shall be free from defects in design, material and workmanship and Fit for Purpose, and shall be constructed and shall operate in conformance with the requirements of the Contract. If required by Amtrak, Contractor shall furnish evidence satisfactory to Amtrak as to the kind and quality of materials and equipment. The terms "breach," "defect," "fault," "failure," or "failure or defect in workmanship, materials or design" and like terms as used in this Article 13 shall mean, with respect to any Work, Supplies or other items furnished by Contractor or any Subcontractor, that they are not as warranted under this Article 13, which includes a warranty that items must comply with the requirements of the Contract. Contractor shall not be responsible for damage caused by equipment or materials not supplied by a Contractor Party, normal wear and tear, or by improper operation of the Trainsets by Amtrak.

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(b)(4)

(b)(4)

acceptance of the first Trainset, such as brake pads, light bulbs, air filters, windshield wiper blades, etc., are warranted for the normal use of the item unless it is determined by Amtrak that the failure of the expendable or consumable item of material was caused by defective manufacture or design rather than normal wear and tear expected for such items.

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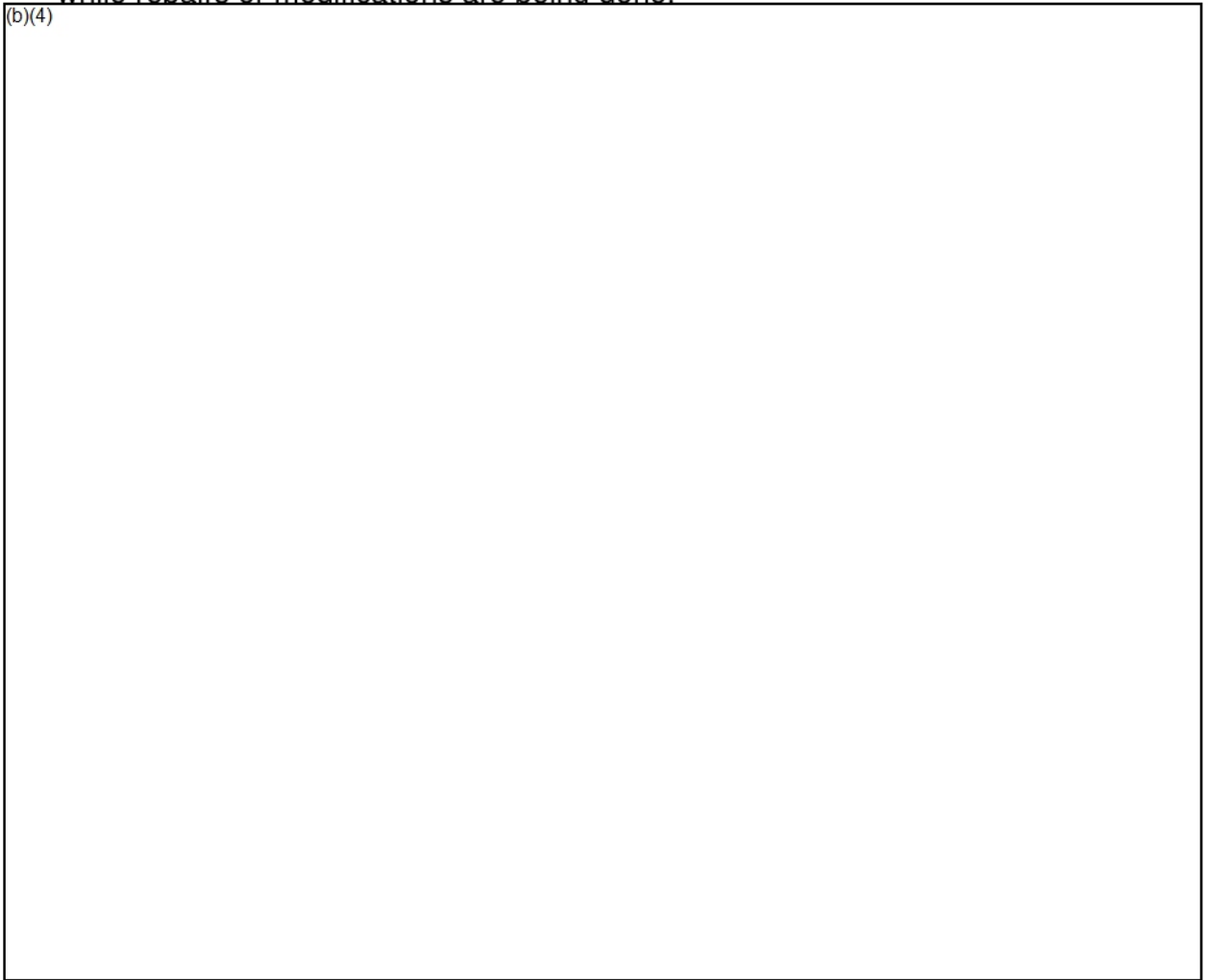
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(b)(4)



In the event that such defects or failures require the removal of major components or assemblies for the purpose of repairs or modifications, and such removals render any Trainset inoperable or unfit for safe and efficient operation in passenger service, Contractor shall furnish an adequate number of spare components or assemblies for the temporary use by Amtrak within twenty (24) hours of notification by Amtrak so as to avoid downtime of the affected Trainset while repairs or modifications are being done.

(b)(4)



(b)(4)

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(b)(4)

13.12 If separate or additional warranties covering material and/or Equipment are furnished by any of its Subcontractors, Contractor shall provide these warranties to Amtrak in addition to the warranties set forth herein, provided that Amtrak shall not be obliged to look to anyone other than the Contractor for fulfillment of all warranty requirements under this Contract. The existence of any separate or additional warranties which run to the Contractor from any of its Subcontractors covering an item of material and/or Equipment shall not relieve the Contractor of its obligation to repair or replace any of the material and/or Equipment due to defects in design, manufacture or workmanship or if they are not otherwise as warranted during the applicable warranty period as set forth in Section 13.3. Amtrak shall not be required to rely on another party for fulfillment of warranty provisions.

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Amtrak shall give the Contractor written notices of observed defects or failures. Unless otherwise directed in said notices, Contractor shall commence effort to correct the work at the time specified by Amtrak but in no event later than two (2) working days following notification by Amtrak of the defect or failure. Contractor shall diligently pursue such corrective work to completion. To prevent delays and disruption to Amtrak's operations, Amtrak shall have the right, when practical and feasible in its opinion, after receiving written comments from Contractor, to continue use of any such Supplies, including, but not limited to, the Trainsets and subsystems, deemed defective or unsatisfactory, until such Supplies, including, but not limited to, the Trainsets can be taken out of service pursuant to the corrective work hereby undertaken by Contractor.

- 13.17 In the event a defect or failure, in the opinion of Amtrak, constitutes an emergency which could jeopardize or impair the operations and schedules of Revenue Service, then in that event Amtrak shall provide the Contractor both verbal and written notice thereof and the Contractor shall commence corrective work within twenty-four (24) hours of any working day after receipt of Amtrak's incident report/warranty claim. Nothing herein shall be construed as preventing Amtrak's forces or its subcontractors from immediately commencing corrective work, provided all such corrective work is performed in accordance with the Operator and Maintenance Manuals furnished by the Contractor as specified in the Contract. Contractor shall reimburse Amtrak for costs of such corrective work, including labor, fringe benefits, overtime and overhead at the prevailing rates when the work is performed. Amtrak shall advise Contractor of the current rates. Any corrective work by Amtrak's forces or its subcontractors shall not be construed to invalidate Contractor's warranties and other provisions contained in the section. If Contractor has field engineers on site where the corrective work is to be performed, the corrective work done by Amtrak shall be subject to Contractor's field engineer's approval, which approval shall not be unreasonably withheld or delayed.

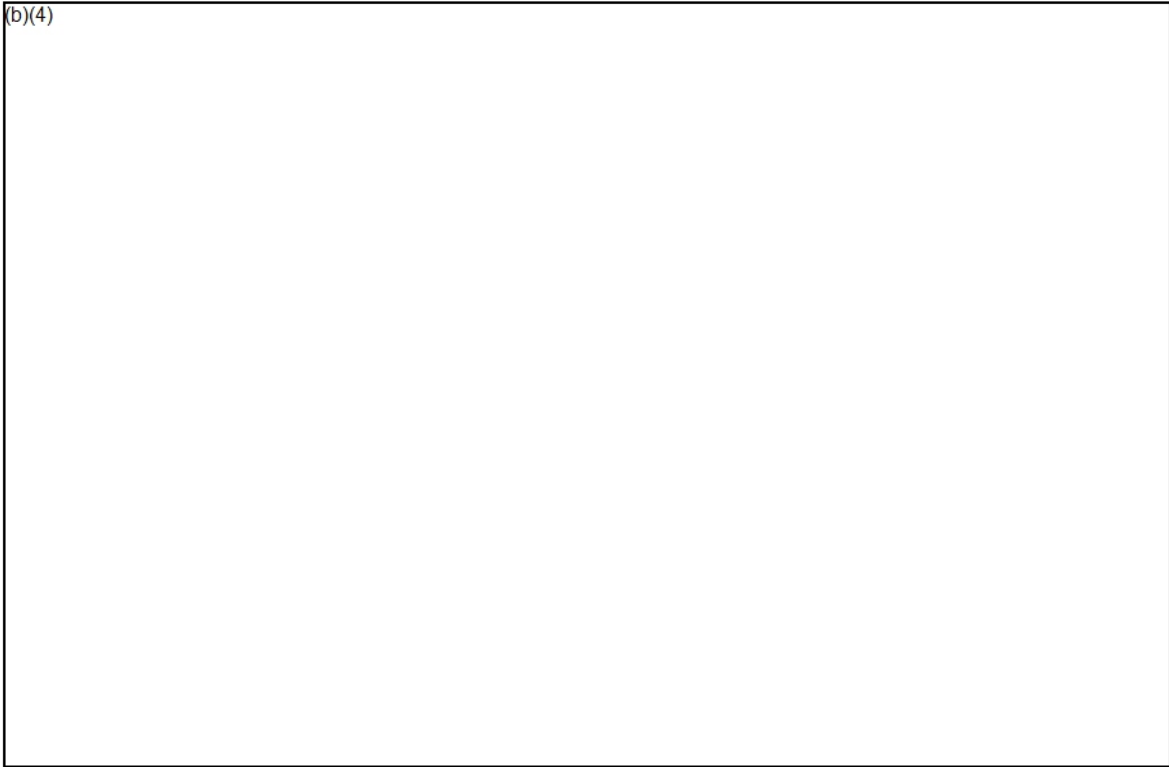
Under such emergency conditions, Contractor, with approval of Amtrak, may utilize spare parts from Amtrak's spare part inventory, provided Contractor agrees to replace each and every spare part so used under terms within the time period to be prescribed by Amtrak.

The Contractor shall submit a list of all parts and quantities being proposed to support warranty compliance efforts during this period. The list shall be submitted to the Amtrak Project Director no later than delivery of the first Trainset.

At the end of the warranty period, Contractor shall permit Amtrak to purchase, at a reasonable cost, any quantity up to all of Contractor's warranty spare parts and material.

The warranty provisions described in Article 13 above shall be applicable to each spare part replaced by Contactor for parts used pursuant to Section 13.16 above.

13.18



13.19

Spares and repairs provided pursuant to corrective work hereunder shall be subject to prior approval of Amtrak and shall be tendered and performed in the same manner and extent as items originally delivered. Corrective work shall be performed at up to four (4) Amtrak maintenance sites. Any warranty work shall be accomplished with a minimum of disruption to Amtrak operations and its maintenance and service facilities. Amtrak shall provide the maintenance and service facilities free of charge and provide full access to Contractor whenever corrective work is being performed. Amtrak shall make every reasonable effort to make such facilities and Trainsets available to Contractor, consistent with Amtrak's operational requirements. Contractor shall bear the cost of corrective work including necessary disassembly transportation, re-assembly, repair of, and replacement of the defective goods, Supplies, including, but not limited to Trainsets and, subsystems, and work.

13.20

In the event the Contractor is unable or fails within the time prescribed to commence and diligently pursue and complete the corrective work, Amtrak is by this provision authorized by Contractor, at the option of Amtrak and upon written notice to the Contractor to contract with a mutually agreed third party or to use its own forces for the performance of the warranty work. The costs of such work may be deducted from monies due, or to become due Contractor. If no monies are then owed the Contactor, Amtrak shall invoice Contractor for

such costs, and the Contractor shall pay the invoice within thirty (30) calendar days of its receipt. Contractor hereby agrees to reimburse Amtrak for all costs and expenses in connection with such corrective work.

1321 It is understood and agreed that time is of the essence in respect to all corrective work to be undertaken pursuant to the warranty herein contained.

1322 Additional Warranties and Agreements Relating to Computer Hardware, software, etc. The warranties below in this Section 13.22 do not limit the warranties otherwise set forth in Section 13 as they may apply to any software or computer systems. Contractor represents, warrants and agrees:

- A. Virus Warranty. Contractor represents and warrants that it shall use commercially reasonable efforts to ensure that no viruses, Trojan horses, back-doors, malware or similar items (“viruses”) are coded or introduced into any Amtrak software or computer system used by Amtrak or any Trainsets, Special Tools, Train Scanner, Simulators or other Supplies or items furnished under the Contract. Contractor agrees that in the event that a virus is found to have been introduced, Contractor shall take all reasonable action at its own expense to eliminate the virus and reduce the effects of the virus on Amtrak’s operations. Contractor further agrees to cooperate with Amtrak to mitigate and restore any loss of data or operational efficiency.
- B. Disabling Code Warranty. Contractor represents and warrants that it shall not insert any time-bombs, drop-dead or disabling devices, back doors or similar items into any Amtrak software or computer system used by Amtrak or any Trainsets, Special Tools, Train Scanner, Simulators or other Supplies or items furnished under the Contract, and that Contractor shall not install or invoke any code which could have the effect of disabling or otherwise shutting down any portion of Amtrak’s software or computer systems or any Trainsets, Special Tools, Train Scanner, Simulators or other Supplies or items furnished under the Contract.
- C. Function/Compatibility. All software, programming and computer hardware, systems and modules and related technical documents and manuals that Contractor or any Subcontractor furnishes to Amtrak are (i) capable of performing the functions for which they are intended fully and correctly, and (ii) if software, written in a programming language that is commercially available in the United States and for which compilers, interpreters and other software tools are commercially available in the United States.

14. SPARE PARTS

- 14.1 Contractor shall submit, as part of its preliminary design proposal, a preliminary spare parts list. Additionally, at least ninety (90) days prior to delivery of the first Trainset it shall submit a complete and comprehensive list of recommended spare parts ("Comprehensive Spare Parts List") for each Trainset car type. In preparing this list, Contractor shall assume that the Trainsets shall be maintained at up to four (4) separate Amtrak maintenance locations. The listing shall include the price of each item with indication of which items are biodegradable, and the estimated shelf life of each item.
- 14.2 The Comprehensive Spare Parts List shall also list the spare parts and items which Contractor plans to inventory, or those of its Subcontractors, and whether such parts are readily available to Amtrak for immediate procurement when needed. Contractor shall also prepare a list that identifies spare parts and/or replacement parts that cannot be procured within a thirty (30) day period from the date of the applicable order (the "Spare Parts List"). Spare parts shall be listed showing the original manufacturer's name, lead time and part number as well as Amtrak part number. Subassemblies shall be broken down into their individual components so that the components can be ordered separately. Where parts are supplied by a company with several departments, the number from the original manufacturing department shall be included in the parts lists. All electronic components shall be available from recognized electronic distributor sources in the United States.
- 14.3 Contractor shall also prepare a list of spare parts intended to be supplied with each Trainset as on board consumables ("Consumable Spare Parts List"). Parts listed on the Consumable Spare Parts List shall be listed separately. Hardware, including fasteners, listed in the spare parts list shall be specified by grade, type of thread style, length, diameter, and finish. Amtrak reserves the right to review and approve, or reject, any spare part or numbers of spares from each of these lists. Parts subject to high wear or replacement shall be available from the Original Equipment Manufacturer ("OEM"). There shall be no restriction to prevent direct procurement from the OEM of parts by Amtrak.
- 14.4 Contractor warrants that, for the useful life of the Trainsets, it shall supply to Amtrak upon Amtrak's request spare parts for the Trainsets or equivalent replacement parts for spare parts no longer in stock, which parts must be capable of being incorporated in the Trainsets without material changes.
- 14.5 Spare parts must be new and conform to the specification and/or requirements applicable to the Trainsets. Contractor shall take immediate action to submit a written order confirmation to Amtrak, stating the time of delivery and price, when Contractor has received Amtrak's orders for spare parts and/or replacement parts. Amtrak's orders for spare parts and/or replacement parts shall be executed and delivered as soon as possible and in no event later than thirty (30) days after the placing of the order, except in the case of spare parts and/or

replacement parts that are identified in the Spare Parts List. For those items which Contractor has indicated a lead time on the Spare Parts List of more than thirty (30) days, Contractor shall maintain a nine (9) month supply of such spare parts.

14.6 Spare parts shall be supplied to Amtrak at prices which are no higher than the rates Contractor offers its best customers but in no case more than comparable market prices. The prices contained in the final Spare Parts List shall be fixed for a period of no less than one (1) year from the date Amtrak receives the final list.

15. CHANGES

15.1 The Contracting Official may, at any time, without notice to the sureties, if any, by written order, direct any change within the general scope of this Contract.

15.2 A change for purposes of this Article 15 shall not include a directive or other order issued to conform the Trainsets to the Performance Specification or other Contract requirements. If Amtrak introduces a directive of the type described in this Section 15.2, Amtrak shall do so in accordance with the applicable provisions of Schedule 3.

15.3 If any such change causes an increase or decrease in the cost of, or the time required for completion of any part of the Trainsets, Contractor shall submit a proposal in accordance with this Article 15 and Schedule 3 and the Contracting Official shall make an equitable adjustment in the Contract Amount, the Contract Time, or both, and shall modify the Contract.

15.4 Contractor must immediately proceed with the Contract as changed, unless otherwise directed by the Contracting Official, and further must within thirty (30) days from the date of receipt of the written order (i) assert in writing its right to an adjustment under this Article and (ii) notify Amtrak of any impact such change shall have. A failure by Contractor to timely assert its right to an adjustment or to timely notify Amtrak of such impact shall be deemed a waiver of Contractor's right to an adjustment with respect to the change or such other Work, and of its or its subsidiary's right to an adjustment under such separate contract.

15.5 If Contractor makes a Proposed Change Request, Contractor, in connection with such request, shall furnish a price breakdown, itemized as required by the Contracting Official. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, subcontract, and overhead costs, as well as profit. Any amount claimed for subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, a justification therefore shall also be furnished.

If Contractor's proposal for a change in the Contract Amount includes the cost of property made obsolete or redundant by the change, the Contracting Official shall have the right to prescribe the manner of the disposition of the property.

156 Failure to agree to any adjustment shall be a dispute as defined under Article 35, Claims and Disputes. However, nothing in such Article shall excuse the Contractor from proceeding with the Contract as changed.

16. TERMINATION FOR DEFAULT

16.1 Amtrak may, by written notice to Contractor, terminate for default this Contract in whole or in part if Contractor fails to perform or comply with any of its material obligations under the Contract, including:

- (a) failure to make progress or meet any delivery schedule milestone, so as to materially endanger timely performance under the Contract;
- (b) failure of Trainsets to conform with the material requirements of this Contract;
- (c) failure, without cause, to make undisputed prompt payment to Subcontractors or to make undisputed prompt payment for equipment, materials and/or labor;
- (d) noncompliance with the Applicable Laws;
- (e) failure to comply with Amtrak's rules and proper instructions;
- (f) a bankruptcy event occurs with respect to the Contractor or the Contractor's Guarantor;
- (g) Contractor's liability for liquidated damages satisfies the conditions in Section 12.6;
- (h) Contractor is prevented from executing the Work or Amtrak is prevented from using the Work as a consequence of any infringement of letters patent, registered design, copyright, trade mark, trade name and the Contractor is unable, within ninety (90) days (or such longer period as the Parties may mutually agree) after notice thereof, to procure the removal at its own expense of the cause of the infringement;
- (i) any representation or warranty made by the Contractor or the Contractor Guarantor shall prove to be false or misleading in any material respect as of the time made;
- (j) any violation of anticorruption provisions of the Contract, including but not limited to Articles 54, 55, and 56, or any violation of applicable

anticorruption laws, including but not limited to the Foreign Corrupt Practices Act; in each case, in connection with this Contract; or

- (k) the Contractor Guarantor, if any, breaches any provision of the Contractor Parent Guaranty or Contractor fails to maintain the Letter of Credit, Parent Guaranty or Surety Bond as required by Article 6.

For the avoidance of doubt, the parties agree that items (a) – (k) above are material.

Except as set out below, Amtrak will give the Contractor written notice of the default and the opportunity to cure the default within thirty (30) days (or such greater timeframe that Amtrak may specify) of Contractor's receipt of the written notice of default from Amtrak. Amtrak shall not be required to allow such cure period if Contractor's default is a violation of Applicable Law or impacts safety. Additionally, Amtrak shall not be required to provide written notice of default if Contractor fails to deliver the Trainsets within the time specified herein. In the event that Contractor's material default is not excused or cured to the satisfaction of Amtrak, Amtrak may terminate the Contract in whole or in part and reprocur the Supplies, including, but not limited to, the Trainsets, from another source, in which event Contractor shall be liable for (1) repayment to Amtrak of any payments made by Amtrak and (2) any Excess Costs to Amtrak relating to the reprocurement. In the event that the Contract is terminated only in part, the remaining part shall remain in full force and effect.

162 If Amtrak terminates this Contract in accordance with this provision, Contractor shall not be entitled to receive any further payment for the terminated Work. Further, Amtrak may take possession of all of the materials, equipment and tools on the site(s) and may continue the Work by whatever method Contractor may deem expedient, including the acquisition, under the terms and in the manner the Contracting Official considers appropriate, of Supplies or services similar to those terminated. Provided that the termination was for default, Contractor shall be liable to Amtrak for any excess costs for those Supplies or services.

163 Upon termination of this Contract for default, in whole or in part, Contractor shall, if directed by the Contracting Official, take action including but not limited to:

- (a) Stop the terminated Work on the date and to the extent specified in the notice of termination, without creating a hazardous condition;
- (b) Place no further subcontracts for materials, equipment, services, facilities or other items, except as may be necessary for completion of such portion of the Work that is not terminated;

- (c) Unless directed otherwise by Amtrak, terminate all subcontracts to the extent that they relate to the performance of terminated Work;
- (d) Furnish Amtrak with a release of all claims against Amtrak, including all claims by Subcontractors, and including a release of all Claims related to Work completed in accordance with the Contract, to the extent Amtrak has made payment in respect thereof in accordance with Article 44.
- (e) Take such other reasonable action as Contractor may deem necessary, or as Amtrak may direct, for the protection of property which is in the possession of Contractor and in which Amtrak has or may acquire an interest;
- (f) Cooperate fully with Amtrak to enable Amtrak to effectively and efficiently continue and complete the Work;
- (g) Assign to Amtrak, or an entity designated by Amtrak, in the manner, at the time, and to the extent directed by Amtrak, all of the right, title and interest of Contractor under the subcontracts;
- (h) To the extent reasonably required by Amtrak, settle all outstanding liabilities and all claims arising out of the termination without cause of subcontracts, with the approval of Amtrak;
- (i) Transfer title to Amtrak, or an entity designated by Amtrak, and deliver in the manner, at the time, and to the extent, if any, directed by Amtrak (1) the fabricated or un-fabricated parts, Work in progress, dies, jigs, fixtures, plans, Drawings, information, contract rights, completed Work, Supplies, and other material and other property produced as a part of, or acquired in connection with the performance of, the terminated Work, including without limitation all books, files and records relating to the Project, and (2) the completed or partially completed plans, Drawings, fabrication Drawings, information, and any other property which, if this Contract had been completed, would have been required to be furnished to Amtrak;
- (j) To the extent requested by Amtrak, use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Official, any property of the types referred to in Section 16.3(a) above, provided, however, that Contractor (1) shall not extend credit to any purchaser, and (2) may acquire any such property under the conditions prescribed and at a price or prices approved by the Contracting Official; and provided, further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by Amtrak to Contractor under this Contract or shall otherwise be credited to the price or cost of the Work covered

by the Contract or paid in such other manner as the Contracting Official may direct;

- (k) Complete, in accordance with the Contract, performance of such part of the Work as shall not have been terminated by the notice of termination; and
- (l) Execute any further documents reasonably required by the Contracting Official to confirm or effectuate the terms of this Article without compromising Contractor's right or remedies.

164 In the event Amtrak terminates this Contract for default pursuant hereto, Contractor shall bear all costs and expenses incurred in connection with this Article. In accordance with Section 65.2, this Article shall survive the termination of the Contract.

165 If, after termination, it is determined that Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Amtrak.

166 The rights and remedies of Amtrak in this Article are in addition to any other rights and remedies provided by law or in equity or otherwise provided under this Contract.

17. TERMINATION FOR CONVENIENCE

17.1 Upon thirty (30) days written notice to Contractor, Amtrak shall have the right to terminate the Contract in whole or in part for its convenience.

17.2 In the event of a termination for convenience, Contractor shall submit his "Termination Expenses" claim consistent with Section 17.4 below to the Contracting Official, in the form prescribed by the Contracting Official. Such claim shall be submitted promptly but in no event after Final Payment.

17.3 Upon termination of this Contract for convenience, in whole or in part, Contractor shall, if directed by the Contracting Official, take action including but not limited to:

- (a) Stop the terminated Work on the date and to the extent specified in the notice of termination, without creating a hazardous condition;
- (b) Place no further subcontracts for materials, equipment, services, facilities or other items, except as may be necessary for completion of such portion of the Work that is not terminated;
- (c) Unless directed otherwise by Amtrak, terminate all subcontracts to the extent that they relate to the performance of terminated Work;

- (d) Furnish Amtrak with a release of all claims against Amtrak, including all claims by Subcontractors, and including a release of all Claims related to Work completed in accordance with the Contract, to the extent Amtrak has made payment in respect thereof in accordance with Article 44.
- (e) Take such other reasonable action as Contractor may deem necessary, or as Amtrak may direct, for the protection of property which is in the possession of Contractor and in which Amtrak has or may acquire an interest;
- (f) Cooperate fully with Amtrak to enable Amtrak to effectively and efficiently continue and complete the Work;
- (g) Assign to Amtrak, or an entity designated by Amtrak, in the manner, at the time, and to the extent directed by Amtrak, all of the right, title and interest of Contractor under the subcontracts;
- (h) To the extent reasonably required by Amtrak, settle all outstanding liabilities and all claims arising out of the termination without cause of subcontracts, with the approval of Amtrak;
- (i) Transfer title to Amtrak or an entity designated by Amtrak, and deliver in the manner, at the time, and to the extent, if any, directed by Amtrak (1) the fabricated or un-fabricated parts, Work in progress, dies, jigs, fixtures, plans, Drawings, information, contract rights, completed Work, Supplies, and other material and other property produced as a part of, or acquired in connection with the performance of, the terminated Work, including without limitation all books, files and records relating to the Project, and (2) the completed or partially completed plans, Drawings, fabrication Drawings, information, and any other property which, if this Contract had been completed, would have been required to be furnished to Amtrak;
- (j) To the extent requested by Amtrak, use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Official, any property of the types referred to in Section 17.3(i) above, provided, however, that Contractor (1) shall not extend credit to any purchaser, and (2) may acquire any such property under the conditions prescribed and at a price or prices approved by the Contracting Official; and provided, further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by Amtrak to Contractor under this Contract or shall otherwise be credited to the price or cost of the Work covered by the Contract or paid in such other manner as the Contracting Official may direct;

- (k) Complete, in accordance with the Contract, performance of such part of the Work as shall not have been terminated by the notice of termination; and
- (l) Execute any further documents reasonably required by the Contracting Official to confirm or effectuate the terms of this Article without compromising Contractor's right or remedies.

174 Upon Contractor's compliance with Section 17.3 as applicable, Amtrak shall pay Contractor the Termination Expenses which shall be, if appropriate and reasonable, an amount equal to:

- (a) All amounts due pursuant to the payment schedule, and not previously paid to Contractor, for Work authorized and completed in accordance with the Contract prior to the date of termination (plus related retention amounts); provided that if Work in respect of a progress payment has been performed but such payment is not yet due under the payment schedule at the time of termination, the amount due for purposes of this Article shall be deemed to include an amount equal to the reasonably estimated amount of that progress payment, reduced by pro-ratio to reflect the extent to which the Work to be compensated by that progress payment remains unperformed or was performed other than in accordance with the Contract; plus
- (b) Contractor's reasonable expenses incurred during a reasonable period of demobilization, plus ten percent (10%); plus
- (c) Contractor's reasonable expenses incurred in fulfilling its obligations hereunder in respect of termination; less
- (d) The positive difference between (i) milestone payment amounts paid by Amtrak to Contractor and (ii) Contractor's actual costs plus a fifteen percent (15%) mark-up, incurred in connection with achieving the milestones for which such milestone payment amounts were made.

The Termination Expenses shall not exceed the total Contract Amount for the Base Order, as reduced by the amount of payments otherwise made and as further reduced by the Contract Amount of the Work not terminated. The Contract shall be amended accordingly, and Contractor shall be paid the agreed amount. Payment of the Termination Expenses shall constitute an accord and satisfaction of Contractor's rights in the event of a termination for convenience. Except for the right to be paid the Termination Expenses, Contractor shall have no right or claim to any monies or damages with respect to a termination for convenience and shall make no other claim in the event of such a termination.

18. CONTRACTOR KEY AND OTHER PERSONNEL

- 18.1 Contractor shall designate, prior to the commencement of the Work, “Key Personnel” who shall include: an individual to whom all Amtrak communications concerning this Contract may be addressed (the “Project Executive” or other title); and “Project Manager” (or other title), who shall report to the Project Executive, and shall be in charge of Contractor’s Work related to the Trainsets.
- 18.2 Amtrak shall have the right to approve the assignment and replacement by Contractor of all Key Personnel. Before assigning an individual to any of the positions designated herein, whether as an initial assignment or a subsequent assignment, Contractor shall notify Amtrak of the proposed assignment, shall introduce the individual to appropriate Amtrak representatives, and shall provide Amtrak with a resume of any other information about the individual reasonably requested by Amtrak. If, after being notified thereof, Amtrak in good faith objects to the proposed assignment within fifteen (15) days, then Contractor agrees to discuss such objections with Amtrak and attempt to resolve such concerns on a mutually agreeable basis. If the parties have not been able to resolve Amtrak’s concerns within five (5) days, Contractor shall not assign the individual to that position and shall propose to Amtrak the assignment of another individual of suitable ability, experience and qualifications.
- 18.3 Amtrak shall have the right to require Contractor to replace any employee, including those not designated as Key Personnel, who Amtrak judges to be incompetent, careless, unsuitable or otherwise objectionable, or whose continued use is deemed contrary to the best interests of Amtrak. Before a written request is issued, it shall be discussed by the Contracting Official or his representative and the Project Executive. Upon receipt of a written request from Amtrak, Contractor shall be required to proceed with the replacement unless it can demonstrate that Amtrak’s request is unreasonable. The replacement request shall include the desired replacement date and the reason for the request. Contractor shall effect the replacement in a manner that does not degrade quality of the Work.
- 18.4 In the event Contractor elects to remove any individual proposed as Contractor’s Key Personnel from the Project without the Contracting Official’s approval, Contractor shall pay to Amtrak the specified assessment for each individual removed during the time period indicated below.

First Year of Contract:	\$1,000,000
Second Year of Contract:	\$500,000
Third Year of Contract:	\$100,000
Remaining period of Contract:	\$50,000

185 The Contracting Official retains the right to approve any request by Contractor to remove Contractor's Key Personnel from the Project. Said approval shall not be unreasonably withheld. The assessments apply only if Contractor removes Contractor's Key Personnel without the Contracting Official's approval. The assessments do not apply if any of Contractor's Key Personnel leave the Project for reasons limited to retirement, resignation from Contractor's firm (but not including a situation where Contractor's Key Personnel takes another position with Contractor's firm, with any of its affiliated or subsidiary firms, its parent company or any firms affiliated with or subsidiaries of the parent company or any other entity which either owns or controls Contractor's firm, within one year of resignation), death, disability, personal hardship, or termination of the Key Personnel's employment by Contractor due to the Key Personnel's inability to meet performance requirements or for misconduct as defined in Contractor's Employee Handbook or Corporate policies and procedures.

186 Contractor shall comply with the applicable provisions of Amtrak Policy 7.39.2 (Contractor Background Check), a copy of which is incorporated herein by reference.

187 Amtrak and Contractor agree that, during the term of this Contract and for one year thereafter, neither party shall, either directly or indirectly, on the party's own behalf or on behalf of others, solicit or recruit any person to terminate such person's employment with the other party. This shall not restrict one party from hiring any employee of the other who responds to regular employment solicitation efforts, such as newspaper advertisements, employment agencies, open house or job fair events, or widely distributed announcements of job openings, or who makes a direct inquiry as to employment with Amtrak or Contractor.

19. CONTRACTOR'S REPRESENTATIONS

Contractor represents that at the time of transfer to Amtrak, or an entity designated by Amtrak, of title of each Trainset, Contractor shall be vested with requisite authority to pass, and covenants that it shall pass such title, free of all liens and encumbrances, security interests, contractual rights (for example, such as those under debt instruments or leases), and all other rights of third parties of every kind and description including, without limitation, any creditors

of Contractor (collectively, "Adverse Rights"). Contractor shall execute additional documents reasonably requested by Amtrak, or an entity designated Amtrak.

20. CERTAIN CONDITIONS ON AMTRAK'S OBLIGATIONS

At the date of acceptance of the last Trainset to be delivered hereunder as part of the Base Order, as applicable, the chief legal officer of Contractor (or other counsel acceptable to Amtrak in the exercise of its reasonable judgment) shall issue to Amtrak an opinion:

- (a) to the same effect as the representation contained in Article 19; and
- (b) that the Bills of Sale and acknowledgment of receipt delivered to Amtrak pursuant to this Contract are valid and effective to, and accordingly do, confirm in Amtrak the absolute ownership of the Trainsets free from all Adverse Rights.

21. SEVERABILITY

If any term or provision hereof is or becomes invalid or unenforceable, Contractor and Amtrak shall in good faith negotiate to replace the invalid or unenforceable term or provision with a term or provision which is valid and enforceable, and which comes as close as possible to expressing the intention of the invalid or unenforceable term or provision. The remaining valid portion of the Contract shall remain binding upon the parties.

22. CONFIDENTIALITY

221 Contractor agrees that all information furnished or disclosed by Contractor, its employees, agents or representatives to Amtrak in connection with the Contract (1) is furnished or disclosed as part of consideration of the Contract; (2) subject to federal law, shall not be treated as confidential or proprietary information of Contractor, its employees, agents or representatives unless otherwise agreed in writing by the Contracting Official; and (3) subject to third party copyright restrictions, may be used, copied or disclosed by Amtrak for any purpose. Contractor expressly waives all claims against Amtrak and releases Amtrak relating to the use, copying or disclosure of such information by Amtrak, its assigns, or intended beneficiaries.

222 No employee, agent, or representative of Amtrak, other than the Contracting Official, is authorized to accept any information which Contractor considers to be proprietary or confidential. Only the Contracting Official has authority to enter into an agreement, which shall be in writing, to provide for the confidential treatment of, or limit disclosure of, information furnished or disclosed to Amtrak by Contractor, its employees, agents or representatives.

- 223 Contractor agrees that it, its employees, Subcontractors, agents and/or representatives shall not disclose, without the prior written consent of the Contracting Official, any information relating to the Contract to any third party. In addition, they shall not make any news or press releases, articles, brochures, advertisements, speeches or other information releases relating to the Contract without the prior approval of the Contracting Official.
- 224 Contractor agrees that it, its employees, Subcontractors, agents and/or representatives will keep confidential any financial information, employee information, customer or marketing information, business plans, designs, Drawings, specifications, engineering data, technical information, policies, procedures, processes, analyses or proprietary information which either (1) is furnished by Amtrak; or (2) is, or will become as a result of the work furnished under the Contract, the property of Amtrak. Contractor further agrees not to disclose such items or any information contained therein to third parties and to use such items and information solely for the benefit of Amtrak in the performance of the Contract or other written orders from Amtrak. Upon completion or termination of the Contract, or as otherwise requested by Amtrak, Contractor shall immediately return all such items and information to Amtrak or make other disposition thereof as directed by Amtrak.
- 225 Contractor shall fully indemnify the Indemnified Parties against any and all actions, claims, liability, costs, damages, charges and expenses suffered or incurred in connection with or arising out of any breach by Contractor of any of the provisions of this section Contractor acknowledges that a breach of its obligations hereunder cannot be compensated adequately by an award of damages or other pecuniary remedy, and that Amtrak shall also be entitled in the event of any such breach to the remedies of injunction, specific performance or other equitable relief.
- 226 Contractor agrees that, in the event any confidential information of Amtrak is sought by subpoena or other process, Contractor will promptly give notice of such subpoena or process to Amtrak, pursuant to the notification provisions herein, before responding to such subpoena or process.
- 227 This Confidentiality section shall survive the termination or expiration of the Contract.

23. MONTHLY PROGRESS REPORTS

Timely and systematic reporting is vital to efficient and effective project management. Contractor shall submit to Amtrak written monthly progress reports which are the primary mechanism for providing detailed information about the progress of the project. These reports compile and combine all the information from the project functional areas and disciplines. Each report shall cover all significant activities occurring during the previous month and is due seven (7) calendar days after the end of each month.

The Monthly Progress Reports shall indicate month and calendar year and include as a minimum the following:

(b)(4)

24. RETURN OF DATA

Contractor, at any time upon the request of Amtrak, shall immediately return and surrender to Amtrak all copies of any materials, records, notices, memoranda, recordings, Drawings, specifications and mock ups and any other documents furnished by Amtrak to Contractor and Subcontractor.

25. ACCESS TO WORK

Amtrak, through its designated representative(s), and the Financing Parties shall at all times have access to the Work at the project site(s), or wherever the Work may be in preparation or progress, and Contractor shall provide proper facilities for such access.

26. AMTRAK'S RIGHT TO STOP THE WORK

If Contractor fails to correct Work which is not in accordance with the requirements of the Contract or persistently fails to carry out Work in accordance with the Contract, the Contracting Official, by written order signed personally or by his authorized representative, may order Contractor to stop the Work or any portion thereof, until the cause for such order has been eliminated; however, the right of the Contracting Official to stop the Work shall

not give rise to a duty on the part of Amtrak to exercise this right for the benefit of Contractor or any other person or entity. Contractor shall not be entitled to any extension of the Contract Time or increase in the Contract Amount in connection with any stopping of the Work or portion thereof pursuant to this Article.

27. AMTRAK’S RIGHT TO CARRY OUT THE WORK

If Contractor fails to carry out the Work in accordance with the Contract and fails, within a ten (10) day period after receipt of written notice from the Contracting Official to cure this default with diligence and promptness, the Contracting Official may give Contractor a second written notice to correct such deficiencies within a seven (7) day period. If Contractor within such seven (7) day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Contracting Official may, without prejudice to other remedies Amtrak may have, correct, or cause to be corrected, such deficiencies. In so doing, Amtrak or its designee shall utilize any of Contractor’s materials, plant and equipment necessary to correct the deficient Work. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due Contractor the cost of correcting such deficiencies, including compensation for the Contracting Official’s or Amtrak’s additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to Amtrak. In accordance with Article 65 Amtrak’s rights under this Article are in addition to any other rights it may have with respect to defective Work, including those rights of termination as specified elsewhere in the General Provisions.

28. NON-PERFORMANCE BY AMTRAK

Amtrak’s failure to perform any of its responsibilities set forth in the Contract shall not be deemed to be grounds for termination, suspension or slowdown of the Work by Contractor; provided, however, that Contractor’s nonperformance of its obligations to perform the Work shall be excused if and to the extent: (a) Contractor is unable to perform and its inability to perform is caused solely by Amtrak’s failure to perform its responsibilities, and (b) Contractor provides Amtrak with reasonable notice of nonperformance and uses all reasonable efforts to perform notwithstanding Amtrak’s failure to perform.

29. SUSPENSION OF THE WORK

29.1 After the Work has been started, Contractor shall not suspend the Work without permission of the Contracting Official or his designated representative. When under suspension, the Work shall be put in proper and satisfactory condition, and properly protected as directed by the Contracting Official or his designated representative. In all cases of suspension, the Work shall not again be

resumed until permitted by order of the Contracting Official or his designated representative.

292 In addition to any other rights afforded to Amtrak under this Contract to suspend the Work, Amtrak shall have the right at any stage of the Work, to suspend operations thereon, or upon any part thereof, either for a time named or indefinitely, by giving Contractor ten (10) days written notice. If Amtrak suspends the Work in whole for more than one hundred and eighty (180) days, Contractor may terminate the Contract without liability to Amtrak, provided that such right may be exercised (1) only upon sixty (60) days written notice to Amtrak by Contractor, given on or after the one hundred and twentieth (120th) day of the suspension, and expressing Contractors' intention to so terminate the Contract, and (2) only if within the sixty (60) day notice period, Amtrak does not end such suspension. If such rights of suspension are exercised by Amtrak, the Contracting Official shall grant to Contractor an extension of the Contract Time for the relevant part of the Work equal to the length of the actual delay to the critical path necessarily caused by such suspension and may grant additional time necessary to overcome such delay, but there shall be no adjustment of the Contract Amount in connection with such suspension except as explicitly provided in this Article. In the event that operations on a part of the Work are suspended by Amtrak pursuant to this Article for more than thirty (30) days, in the case of suspension of the Work, the Contract Amount for such part of the Work may be adjusted for any increase in the cost of performance of the Work (excluding profit) necessarily caused by such suspension (it being understood that the economic adjustment formulae in the Contract shall compensate Contractor for increased costs attributable to inflation). However, no adjustment of the Contract Time or Contract Amount shall be made for any suspension: (a) to the extent that performance would have been suspended, delayed or interrupted by any other cause, including the fault or negligence of Contractor or (b) for which equitable adjustment is provided for or excluded under any other provision of the Contract. Amtrak's rights under this Article shall be in addition to any other right under the Contract to suspend the Work.

293 Except as otherwise provided in this Article, if the performance of all or any part of the Work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Contracting Official in the administration of this Contract, an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the Contract modified in writing accordingly. However, no adjustment shall be made under this Article for any suspension, delay, or interruption: (a) to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of Contractor or (b) for which an equitable adjustment is provided for or excluded under any other provision of this Contract.

294 No Claim under this Article shall be allowed: (a) for any costs incurred more than twenty (20) days before Contractor shall have notified the Contracting Official in writing of the Claim and the basis thereof, and (b) unless the Claim, in an amount stated, is asserted in writing as soon as practicable after the commencement of such suspension, delay, or interruption, but not later than thirty (30) days from such commencement.

30. TAXES

30.1 Pursuant to 49 U.S.C. 24301(k), Amtrak is exempt from payment of state or local sales and use taxes on personal property. Based on this statutory exemption, Contractor may be exempt from payment of state or local sales and use taxes on material and property purchased for performance of this Contract. It is Contractor's responsibility to determine applicability of any exemption from taxation arising from his performance under this Contract and Contractor shall not be entitled to payment for any taxes for which any exemption was applicable.

30.2 Upon request of Contractor, Amtrak shall provide to Contractor applicable sales/use tax exemption certificates, for use by Contractor to purchase material for the performance of this Contract, exempt from state and local sales and use taxes.

31. INTELLECTUAL PROPERTY RIGHTS

31.1 Contractor shall pay any and all royalties and license fees required to be paid to third parties in connection with (a) Contractor's efforts relating to the Work, and (b) Amtrak's use and exploitation (as defined below) of any portion thereof. In addition, Contractor shall defend and indemnify the Indemnified Parties from, and hold them harmless from and against, any and all costs, expenses, losses and liabilities (including without limitation costs, expenses and attorneys' fees) arising out of or in connection with any and all demands, suits, claims and other similar proceedings brought by third parties alleging infringement or misappropriation of any Intellectual Property (as defined below) provided that Amtrak provides Contractor with reasonable notice of the same (but failure of Amtrak to do so shall not avoid or diminish Contractor's indemnity obligations under this Section 31.1 except to the extent of any actual prejudice shown by Contractor on account of late notice.). As used in this Article 31, "exploitation" of the Work shall include without limitation all "Allowable Uses" as defined in Section 31.3.C.

31.2 With respect to the Work, Contractor shall not use or permit the use of or furnish for use by Amtrak or another party any appliance, article, device, or method of construction, design or manufacturing, unless Contractor has obtained all necessary consents or authorizations for such use or uses. Any action by Contractor to obtain such consents or authorizations shall include without limitation all rights necessary to permit Amtrak in accordance with the Allowable

Uses as defined in Section 31.3.C to use or permit the use of or furnish for use by another party such appliance, article, device, or method of construction, design or manufacturing to the extent necessary in connection with Amtrak's use or exploitation of the Work.

- 31.3 A. Contractor hereby grants to Amtrak an irrevocable, perpetual, fully paid-up right and license under the Intellectual Property (including the right to copy, and specifically with respect to copyrightable materials includes the right to modify or make derivative works) for Allowable Uses. As used herein, "Intellectual Property" shall mean all rights and interests held or otherwise controlled by Contractor or its Affiliates worldwide in and to (a) any and all patent applications and patents; (b) any and all proprietary knowledge, data and trade secrets; (c) any and all engineering data and information; (d) any software and systems; (e) copyrights and works of authorship; and (f) any and all Drawings, designs, specifications, notes and other works, prepared, developed or acquired in performance of the design services component of the Work (collectively, the "Equipment Design Documents") or in the performance of the Design/Build Services (collectively, the "Design Procurement Documents").
- B. In addition, Contractor shall use commercially reasonable efforts to cause each and every Subcontractor to grant to Amtrak an irrevocable, perpetual, fully paid-up right and license under the Subcontractor Intellectual Property for Allowable Uses as defined in Section 31.3.C. As used herein, "Subcontractor Intellectual Property" shall mean all rights and interests held or otherwise controlled by a Subcontractor or its affiliates worldwide in and to (a) any and all patent applications and patents; (b) any and all proprietary knowledge, data and trade secrets; (c) any and all engineering data and information; (d) software and systems; (e) any copyrights or works of authorship; and (f) the Equipment Design Documents or the Design Procurement Documents.
- C. "Allowable Uses" shall be limited to (a) the use (including operation), maintenance or repair (including wreck repairs) of the Trainsets and other Work and Supplies; or (b) work performed by or on behalf of Amtrak, pursuant to a sublicense, which Amtrak has the right to grant under this Contract, to complete the Work after the termination of the Contract for default under Section (b)(4) (or, in the case of Subcontractor Intellectual Property, after termination for cause under a similar provision of the relevant Subcontractor); or (c) other Amtrak equipment acquisitions in the event Contractor and its affiliates cease to be in the business of manufacturing and selling the Trainsets (or, in the case of Subcontractor Intellectual Property, the applicable Subcontractor ceases to be in the business of selling the

equipment to which the applicable Subcontractor Intellectual Property relates). The Contractor shall use its commercially reasonable efforts to oblige the Subcontractors to grant "Allowable Uses" as mentioned under subsections (B) and (C) above to Amtrak and shall inform Amtrak of the details and issues of a particular Subcontractor's refusal to agree to Amtrak's right to license their Subcontractor Intellectual Property for Allowable Uses. After notification to Amtrak and if the Subcontractor will not grant the license or sublicense directly to Amtrak in a separate agreement with Amtrak, Contractor should determine whether the Subcontractor can be replaced with one that offers a similar product or service that will sublicense its Subcontractor Intellectual Property for all Allowable Uses to Amtrak. If Contractor determines that a substitute Subcontractor's product or service will not materially adversely affect the project or the progress or cost of the Work, Contractor shall replace the Subcontractor that does not agree to sublicense its Subcontractor Intellectual Property for all Allowable Uses.

In addition to the foregoing Allowable Uses and in the event of a termination for default hereunder, Contractor will permit its sureties to use Contractor's Intellectual Property, under a general indemnity agreement with such sureties for the sole and exclusive purpose of completing the Work and such license shall not result in any additional cost to Amtrak.

D. Amtrak shall have no right to sublicense the rights and licenses granted to Amtrak by Contractor pursuant to this Section 31.3— Intellectual Property to a competitor of Contractor except (i) in connection with Section 31.3C, or (ii) where Contractor ceases to be in the business of manufacturing and selling Trainsets or other Supplies.

31.4 Without limiting any right or remedy of Amtrak, if Amtrak or any of its affiliates is enjoined from using all or any portion of the Work as to which Contractor is to indemnify Amtrak against infringement or misappropriation, Contractor shall, at Amtrak's request and at Contractor's expense, either (i) procure promptly for Amtrak the right to continue using the Work, or (ii) promptly replace all or any portion of the Work with a non-infringing product or part which is satisfactory to Amtrak and the use of which does not violate the terms and conditions of such injunction, or (iii) promptly modify all or any portion of the Work in a manner satisfactory to Amtrak so as to render use of such Work non-infringing and not in conflict with the injunction.

31.5 To secure Amtrak's rights hereunder, if Amtrak exercises the software escrow option no later than one (1) year after NTP, Contractor shall place copies of the "Escrow Materials" (as described below) for the Contractor's software and Subcontractor's non-commercially available software (based on Contractor's

commercially reasonable efforts to secure the agreement of Subcontractors) with an independent escrow agent, subject to the terms and conditions of the independent escrow agent's standard agreement (the "Software Escrow Agreement") and in accordance with the provisions of this Article 31. At least annually and completed at or before the first Trainset is delivered to Amtrak for Revenue Service, Contractor shall provide Amtrak with a list of all software programs by name, function and owner (if other than Contractor) of Contractor and its Subcontractors, including both commercially available and non-commercially available software and related programs that are incorporated into the Work or Supplies. Thereafter, Contractor shall supply updates of this list to Amtrak as they become known. If a Subcontractor refuses to agree to escrow its applicable Escrow Materials either with Contractor's escrow or in a separate escrow directly between the Subcontractor and Amtrak, Contractor shall identify to Amtrak the Subcontractor, the nature of its software, and the issues associated with its refusal escrow the source code. After notification to Amtrak, and if the Subcontractor will not enter into a separate source code escrow with Amtrak, Contractor should determine whether the Subcontractor can be replaced with one that offers a similar product or service that will escrow its software materials. If Contractor determines that the substitute Subcontractor's product or service will not materially adversely affect the project or the progress or the cost of the Work, Contractor shall replace the Subcontractor that does not agree to escrow its Escrow Materials.

As used in this Article 31, "Escrow Materials" shall mean the following: (i) the source code for all software and configuration files developed for or used in this Project (other than unmodified commercially available off-the-shelf software or files as described in clause (ii)) and related libraries, (ii) a list of all unmodified commercially available additional programs and items such as editors, compilers (and related libraries), assemblers, linkers, and interpreters, including the complete identification of each such materials including manufacturer/publisher, version, release, and all information required for its acquisition and use) used in connection with the Work, the Trainsets, Equipment, Special Tools, Train Scanner, Simulator or other Supplies; (iii) a copy of all non-commercially available additional programs and items such as editors, compilers, assemblers, linkers, and interpreters; (iv) procedures, makefiles, and intermediate language code in an industry standard electronic medium with human-readable electronic or printed documentation which are required in order to convert the source code into executable code or machine language for use by the central processing unit or units that execute instructions provided by the programmer. Such materials shall be capable of being functionally converted to operate, function and perform as intended or described, shall include the printed or electronic documentation of the code (including the media on which it is stored), shall be compatible with computers and software usage technology and industry practices in the United States and, to the extent it consists of human-readable language, shall be in the English

language, in printed form or industry standard electronic medium (e.g., CD or DVD).

31.6 **Release Conditions.** As used in the Contract, "Release Condition" shall mean the occurrence of any of the following events with respect to Contractor during the term of Amtrak's rights hereunder:

- (a) if Contractor materially breaches an express obligation with respect to the Contract, which breach is proximately caused by Contractor's acts or omissions, then Amtrak shall so notify Contractor in writing in accordance with the notice provisions set forth in the Contract ("Breach Notice"), specifying in reasonable detail the basis for Amtrak's claim of breach. Amtrak shall serve a copy of the Breach Notice simultaneously upon the escrow agent under the Software Escrow Agreement. At the same time that Amtrak delivers the Breach Notice, it may also deliver notice to the escrow agent under the Software Escrow Agreement, with a copy to Contractor, requesting a release of the Escrow Materials (a "Release Notice"). The Release Notice will commence the thirty (30) Business Day period under the Software Escrow Agreement, if such thirty (30) Business Day period is required, for Contractor to issue contrary instructions. Contractor shall (i) cure such breach during the thirty (30) Business Day period immediately following its receipt of the Breach Notice ("Cure Period"); or (ii) if such breach is of a nature such that it is not capable of being cured within such period, (A) provide Amtrak a plan for cure that will cure the breach within sixty (60) Business Days from the date of the Breach Notice (the "Extended Cure Period") and (B) commence acting on such plan during the initial Cure Period. If Contractor fails to meet its obligations under (i) and (ii) above or does not send written notice to Amtrak of a good faith dispute of the breach specified in the Breach Notice, then Contractor hereby agrees that it will not issue contrary instructions to the escrow agent under the Software Escrow Agreement, and the escrow agent under the Software Escrow Agreement will be authorized to release the Escrow Materials upon the tolling of the thirty (30) Business Day period during which Contractor was allowed to issue contrary instructions; provided however if the breach is of such a nature that it could not have been cured during the initial Cure Period and Contractor complied with its obligations under (ii) above, then Contractor may issue Contrary Instructions only to the extent it prohibits the escrow Agent under the Software Escrow Agreement from releasing the Escrow materials until the end of the Extended Cure Period.
- (b) the entry of an order for relief in a proceeding in bankruptcy (other than Chapter 11 of Title 11 of the U.S. Code, as the same may be amended) in which Contractor is the named debtor; (ii) Contractor's making of an assignment for the benefit of Contractor's creditors; (iii) the appointment

of a receiver for Contractor; (iv) the filing of (1) any bankruptcy proceeding against Contractor, other than Chapter 11 of Title 11 of the U.S. Code, (2) any proceeding for an assignment for the benefit of Contractor's creditors or (3) any proceeding for appointment of a receiver or custodian of the assets and property of Contractor, which proceeding shall be consented to or acquiesced to be by Contractor or has not been discharged or terminated within ninety (90) days; or (v) the rejection by Contractor or any trustee of Contractor of the License Agreement pursuant to 11 U.S.C. Clause 365. The terms of clause (a) of this Section 31.6 shall apply if following the filing of a proceeding under Chapter 11 of Title 11 of the U.S. Code, Contractor or its trustee materially breaches an express obligation under the Contract.

- (c) Contractor dissolves, liquidates or ceases to provide services or work similar to those provided for under the Contract for a substantial number of its customers for a period of at least thirty (30) Business Days.
- (d) the parties have entered into a good faith dispute and Contractor ceases providing services or work similar to those provided for under the Contract prior to the final conclusion of the dispute resolution process set forth in Article 35 "Claims and Disputes"; provided that no such release condition will be deemed to have occurred if (i) Contractor has obtained a court order allowing it to cease performance of the Contract or (ii) Amtrak has failed to pay undisputed invoices or make undisputed milestone payments for the Work for ninety (90) days following written receipt of notice of breach from Contractor.

31.7 **Use of Escrow Materials.** Contractor hereby grants Amtrak an irrevocable license to use or have used on its behalf the Escrow Materials upon their release to Amtrak only to perform and authorize the performance of the Allowable Uses.

31.8 **Establishment of Escrow.** The escrow shall be established and maintained by Contractor. The first ten (10) years of the escrow period, shall be maintained at the sole expense of Contractor. After ten (10) years, Contractor shall continue to maintain the escrow with responsibility of payment to be borne by Amtrak. The deposit made with the escrow agent shall be kept current so as to accurately reflect the then current version of the Escrow Materials and promptly updated by Contractor following each material Upgrade, modification or enhancement thereto. Amtrak shall designate a reasonably acceptable neutral third party that, at the expense and request of Amtrak made from time to time, may audit the materials deposited with the escrow agent for purposes of determining whether Contractor has fulfilled its deposit obligations. Contractor will promptly, at its expense, correct any deficiency disclosed by the audit. If the audit reveals material deficiencies, Contractor shall pay for costs of the audit.

31.9 **Extension of Obligations.** The obligations of Contractor under this Article 31 shall extend to any trustee in bankruptcy, receiver, administrator or liquidator appointed for Contractor, to Contractor as debtor-in-possession (“Trustee”), and to any other successor in interest to Contractor. Without limiting the generality of the foregoing, upon written request of Amtrak, Contractor shall not interfere with the rights of Amtrak as provided in the Contract or the Software Escrow Agreement to obtain the Escrow Materials from the Trustee or any other person or entity having possession thereof, and shall, if requested under the conditions specified in the Software Escrow Agreement for release of the Escrow Materials, cause a copy of such Escrow Materials to be made available to Amtrak.

32. INDEMNIFICATION

321 Contractor agrees to defend, indemnify and hold harmless the Indemnified Parties, from and against any claims, losses, liabilities (including without limitation environmental liabilities), penalties, fines, demands, causes of action, suits, costs and expenses incidental thereto, (including costs of defense and attorneys’ fees) (collectively “Claims”), arising in whole or in part from the fault, negligence or wrongful act of Contractor, which any of the Indemnified Parties may hereafter incur, be responsible for or pay as a result of breach of warranty, injury or death of any person, or damage to or loss (including loss of use) of any property, including property of the parties hereto, arising out of or in any degree directly or indirectly caused by or resulting from Supplies, material, deliverables, products or Equipment supplied by, or from activities of, or Work performed by Contractor, Contractor’s officers, employees, agents, servants, Subcontractors, or any other person acting for or with the permission of Contractor under the Contract, or as a result of Contractor’s failure to perform its obligations in compliance with the Contract.

322 In addition to the foregoing, Contractor agrees to defend, indemnify and hold harmless the Indemnified Parties, irrespective of any negligence or fault on the part of the Indemnified Parties, from and against any Claims which any of the Indemnified Parties may hereafter incur, be responsible for or pay as a result of injuries (including death) to any of Contractor’s employees. Contractor shall use commercially reasonable efforts to include a provision in its subcontract agreements that requires Subcontractors to defend, indemnify and hold harmless the Indemnified Parties, irrespective of any negligence or fault on the part of the Indemnified Parties, from and against any Claims which any of the Indemnified Parties may hereafter incur, be responsible for or pay as a result of injuries (including death) to any of Subcontractor’s employees. Contractor shall also repair or replace any property of Amtrak which is damaged by its employees, agents or Subcontractors while performing work hereunder.

323 The indemnification obligations under this section shall not be limited by the existence of any insurance policy procured or maintained by Contractor or any Subcontractor or by any limitation on the amount or type of damages,

compensation or benefits payable by or for Contractor or any Subcontractor and shall survive the termination of the Contract.

33. AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

33.1 Within one hundred and eighty (180) days after execution of the Contract with respect to the Work Contractor shall furnish the Contracting Official, in writing, an accurate list showing all proposed Subcontractors' names, addresses, telephone numbers and nature of work. In addition, Contractor shall furnish the names of all persons or entities proposed as contractors of the products identified in the Contract (including those who are to furnish materials or Equipment fabricated to a special design) and, where applicable, the name of the installing Subcontractor. The Contracting Official shall within thirty (30) days reply to Contractor, in writing, stating whether or not the Contracting Official, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Contracting Official to reply within such period shall constitute notice of no reasonable objection.

33.2 Contractor shall not contract with a proposed person or entity to which the Contracting Official has made reasonable and timely objection. Contractor shall not be required to contract with anyone to whom Contractor has made reasonable objection.

33.3 If the Contracting Official has a reasonable objection to a person or entity proposed by Contractor, Contractor shall propose another person or entity to which the Contracting Official or Contractor has no reasonable objection.

33.4 Contractor shall not change a Subcontractor, person or entity previously selected if the Contracting Official makes reasonable objection to such change.

33.5 Notwithstanding the foregoing, Contractor may not replace a Subcontractor or supplier if such replacement will reduce the domestic content of the Trainsets in any way.

34. SUBCONTRACTORS

34.1 All references to Subcontractors herein include Subcontractors at any tier. Nothing contained in the Contract or any contract with a Subcontractor at any tier shall create any contractual relationship between Amtrak and any Subcontractor, or any third-party beneficiary rights in any Subcontractor; provided, however, that Amtrak shall be named as a third party beneficiary of all contracts with a Subcontractor.

34.2 All work performed for Contractor by a Subcontractor shall be pursuant to an appropriate agreement between Contractor and the Subcontractor which shall contain provisions that:

- (a) Preserve and protect the rights of Amtrak under the Contract with respect to the Work to be performed under the subcontract so that the subcontracting thereof shall not prejudice such rights;
- (b) Require that such Work be performed in accordance with the requirements of the Contract;
- (c) Require submission to Contractor of applications for payment under each subcontract to which Contractor is a party, in reasonable time to enable Contractor to apply for payment;
- (d) Require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to Contractor (via any Subcontractor where appropriate) in sufficient time so that Contractor may comply in the manner provided in the Contract for like Claims by Contractor upon Amtrak;
- (e) Contractor's insurance as specified in Articles 59 and 60 of this Contract shall provide insurance coverage for each Subcontractor working on its behalf.
- (f) Preclude Contractor and Subcontractor from naming, impleading or otherwise including Amtrak as a party in any arbitration or lawsuit between Contractor and any Subcontractor, and preclude the Subcontractor from naming, impleading or otherwise including Amtrak in any arbitration or lawsuit arising as a result of any Work performed by or for Contractor under the Contract;
- (g) Provide that Contractor's rights under the subcontract shall be assignable to Amtrak at Amtrak's option;
- (h) Require the Subcontractor to continue diligently to prosecute the Work, notwithstanding any disputes, including without limitation, disputes between Contractor and Amtrak, or Contractor and any Subcontractor;
- (i) Provide that the subcontract is terminable on the same terms as the Contract, but that no termination shall be effective without Amtrak's consent, and the Work covered by the subcontract may be suspended on the same terms as the Work may be suspended pursuant to the Contract;
- (j) Include Amtrak as a named indemnitee under any indemnification obligations imposed on the Subcontractor; and
- (k) Obligate each Subcontractor specifically to consent to the provisions of this Article 34.

- 34.3 Whenever the Contract: (i) requires Contractor to include any provisions in an agreement with a Subcontractor, or (ii) requires Contractor to bind a Subcontractor to any obligation or otherwise create any obligation, responsibility, or liability on the part of any Subcontractor, or (iii) confers any rights or benefits on Amtrak with respect to a Subcontractor, the reference to “Subcontractors” shall be deemed to include Subcontractors of any tier, and Contractor shall require Subcontractors to include in all agreements with their suppliers: (a) provisions parallel to those required to be included in the agreement with the Subcontractor, (b) provisions necessary and sufficient to impose parallel obligations, responsibilities and liabilities on the Subcontractors, and (c) provisions necessary to confer such rights and benefits on Amtrak with respect to their suppliers.
- 34.4 Contractor shall promptly pay all Subcontractors, and shall require each Subcontractor to promptly pay its own Subcontractors.
- 34.5 The Contractor shall use commercially reasonable efforts to include all anticorruption provisions of the Contract in each subcontract and third-party agreement entered into under the Contract, including but not limited to representations and warranties of compliance with applicable anticorruption laws, including but not limited to the Foreign Corrupt Practices Act. Amtrak may require Contractor to terminate any Subcontractor in the event that the Subcontractor’s continued performance of the Work would cause Amtrak to (i) violate any Applicable Law; or (ii) lose Amtrak’s access to public funding for the Work, including from the Financing Parties.

35. CLAIMS AND DISPUTES

- 35.1 A “Claim” or “Dispute” is a demand or assertion by one of the parties seeking: (1) an adjustment or interpretation of Contract terms; (2) payment of money; (3) an extension of time; (4) rulings as to whether or not services or work under the Contract or one or more Change Orders is outside the general scope of the Contract or (5) other relief with respect to the terms of the Contract. Any Claim that Contractor may have against Amtrak arising out of the Contract must be presented in writing to the Contracting Official not later than thirty (30) days after the Contractor knew or should have known of the circumstance that gave rise to the Claim. The Claim shall contain a concise statement of the question or dispute and the relevant facts and data (including the applicable Contract provision) that support the Claim. Contractor shall furnish any reasonable additional information that Amtrak may require to enable it to evaluate and decide the Claim.
- 35.2 Any Claim or Dispute by Contractor shall first be submitted to the Contracting Official. The Contracting Official shall issue a decision on the Claim within thirty (30) days of receiving the written Claim and all reasonable supporting data and documentation. A decision from the Contracting Official shall be a condition precedent to pursuing relief under this Article.

- 35.3 For any Claim or Dispute arising under the Contract that is not settled by agreement of the parties, the parties may attempt to resolve the Dispute through direct discussions between the Chief Operating Officer of Amtrak and the senior officer of Contractor, or their respective designees, and such persons shall confer as often as they deem reasonably necessary to discuss the Claim or Dispute and negotiate in good faith toward resolution. The specific format for the discussions shall be left to the discretion of such representatives, but may include the preparation of agreed-upon statements of fact or written statements of position. Such discussions shall occur for a period not to exceed sixty (60) days from the date of the Contracting Official's decision. However, the parties may extend this period by mutual agreement in writing.
- 35.4 Any Dispute or Claim arising under the Contract that is not settled by agreement of the parties pursuant to Section 35.3. shall be resolved as follows:
- A. If the amount in dispute is less than One Million Dollars (\$1,000,000.00), then the Dispute or Claim shall be settled by arbitration administered by the Judicial Arbitration and Mediation Service ("JAMS") in accordance with its rules, and the procedures in this document. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitration shall be conducted at a location to be determined by the arbitrator(s) within the District of Columbia. The arbitration will be conducted before a panel of three arbitrators, two of whom may be designated by the parties (one arbitrator by each party) using the Arbitration Rosters maintained by the United States office of JAMS. If the parties are unable to agree on the composition of the arbitration panel, the parties shall request the two arbitrators designated by each of them to select the third. Any issue concerning the extent to which any dispute is subject to arbitration, or any dispute concerning the applicability, interpretation, or enforceability of these procedures, including any contention that all or part of these procedures are invalid or unenforceable, shall be governed by the Federal Arbitration Act.
 - B. If the amount in dispute is greater than One Million Dollars (\$1,000,000.00), then the Dispute or Claim shall be adjudicated by appropriate legal proceedings which may be brought only in the United States District Court for the District of Columbia. Notwithstanding the foregoing, the Parties may by mutual agreement, with each Party acting in its sole and absolute discretion, elect to resolve a Dispute or Claim subject to this Section 34.3.(B) through arbitration proceedings undertaken in accordance with Section 35.4 (A).
- 35.5 Pending any decision, appeal, or judgment in such proceedings or the settlement of any Dispute arising under the Contract, Contractor shall proceed

diligently with the performance of the Contract in accordance with the decision of the Contracting Official.

36. CONSEQUENTIAL DAMAGES AND LIMITATION OF LIABILITY

36.1 Amtrak and Contractor shall not be liable for punitive damages or special, indirect, consequential damages, whether arising out of breach of the Contract, tort (including negligence) or any other theory of liability, and each party releases the other from any such liability. The foregoing limitation on liability for punitive, special, indirect or consequential damages will not apply to or limit any right of recovery respecting the following:

- (a) losses (including defense costs) arising out of the Work and covered by the proceeds of insurance carried by or insuring Contractor;
- (b) losses (including defense costs) of amounts which would have been reimbursed but for Contractor's failure to carry insurance required to be carried under the Contract;
- (c) losses (including defense costs) of arising out of fraud, criminal conduct, intentional misconduct, recklessness, bad faith or gross negligence;
- (d) Contractor's indemnities under the Contract resulting from or relating to bodily injury or death of any person, damage to or loss (including loss of use) of any property, or any infringement, violation or misappropriation of third party Intellectual Property rights.
- (e) Contractor's obligation to pay liquidated damages in accordance with the Contract;
- (f) fines assessed against Amtrak by a government authority to the extent that such fines are due to a Contractor Party's violation of Applicable Law; and
- (g) losses arising out of releases of hazardous materials by Contractor or Amtrak.

36.2 With the exception of losses (including defense costs) covered by the proceeds of insurance carried by or insuring Contractor or any Subcontractor, Contractor's liability to Amtrak for damages resulting from or arising out of any causes of action (including but not limited to tort) relating to Contractor's performance of the Contract shall not exceed an aggregate amount equal to 100% of the Contract Amount.

37. REASONABLE DELAYS

37.1 Contractor acknowledges that Work to be accomplished under the Contract may be required to be performed on Amtrak's property simultaneously with

ongoing daily railroad operations. Such operations include, but are not limited to, the passage of trains, and the repair, construction, reconstruction, and maintenance of the railroad right-of-way and facilities. Contractor is advised that these conditions may cause delays and suspension of the Project Schedule. Contractor acknowledges that to the extent such delays and suspensions are reasonably foreseeable in light of current railroad operations as of the date hereof and any such delays and suspensions have been taken into account by Contractor and are included in all performance schedules and the Contract Amount and shall give rise to no Claims by Contractor even if they have an impact on the critical path. However, if a delay in the critical path of the Project Schedule occurs as a result of railroad operations that were not reasonably foreseeable in light of existing railroad operations heretofore or of which Contractor did not know or have reason to know as of the date of the Contract, then Contractor shall be allowed an extension of the Contract Time equal to the actual delay to the critical path necessarily caused in the completion of the Work and to an adjustment of the Contract Amount for any increase in the cost of performance of the Work (excluding profit) necessarily caused by such delay (it being understood that the economic adjustment formulae in the Contract shall compensate Contractor for increased costs attributable to inflation). However, no adjustment of the Contract Time or Contract Amount shall be made for any delay: (a) to the extent that performance would have been suspended, delayed or interrupted by any other cause, including the fault or negligence of Contractor or (b) for which equitable adjustment is provided for or excluded under any other provision of the Contract.

372 If a delay or suspension in the completion of the Work is caused by a delay in a regulatory approval identified to Amtrak in writing by Contractor as being necessary prior to the issuance of the applicable NTP, then Contractor shall be allowed an extension of the Contract Time equal to the length of the actual delay to the critical path necessarily caused by the delay in receipt of the regulatory approval; provided, however, that no such extension shall be allowed if the delay in receipt of regulatory approvals is attributable to the act or omission of Contractor or its Subcontractors.

38. ASSIGNMENT OF CLAIMS

Claims for moneys due or to become due Contractor from Amtrak under this Contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency upon the prior written consent of the Contracting Official, and may thereafter be further assigned and reassigned to any such institution upon the prior written consent of the Contracting Official. Any such assignment or reassignment shall cover all amounts payable under this Contract and not already paid, and shall not be made to more than one party except that any such assignment or reassignment

may be made to one party as agent or trustee for two or more parties participating in such financing.

39. SUCCESSORS AND ASSIGNS

39.1 Contractor shall not assign the Contract nor delegate his responsibility under the Contract without the written consent of the Contracting Official, nor shall Contractor assign any moneys due or to become due to him there-under, except as provided in Article 38. Amtrak may assign its rights and delegate its responsibilities, in whole or in part, under the Contract (including rights under required insurance policies and bonds) (i) to any entity succeeding to all or substantially all of Amtrak's interests in the assets associated with the Northeast Corridor or which otherwise is to be the operator of the Trainsets, (ii) to any Amtrak lessor of the Trainsets, or (iii) to the Financing Parties.

39.2 In connection with any assignment of the Contract for collateral purposes to Financing Parties pursuant to Section 39.1, Contractor shall provide to such Financing Parties a consent to assignment agreement in a form as may be reasonably required by such Financing Parties (it being agreed that such Financing Parties may reasonably require provision by competent counsel to Contractor of legal opinions addressing authorization, enforceability and other customary matters related to such consent or direct agreement), covering matters that are customary in project or equipment financings of the applicable type, which, among other things, shall authorize the Financing Parties, as secured parties, to exercise all rights of Amtrak under the Contract, and to subsequently assign such rights in connection therewith without the consent of Contractor and may also cover matters such as Financing Parties' security rights with respect to the Contract, direct notices to Financing Parties, step-in/step-out rights, access by Financing Parties' representative, deferral of Contractor's rights to terminate the Contract in certain circumstances and other matters applicable to such project or equipment financing. In this regard, Contractor shall cooperate with Amtrak in its efforts to obtain such financing, including by supplying information and documentation reasonably requested by the Financing Parties and taking such other actions as the Financing Parties may reasonably request.

40. TIME

40.1 The Contract Time is the period of time allotted in the Contract for completion of the Work or a portion thereof, as applicable.

40.2 The date of commencement of the Work or a portion thereof is the date established in a NTP for such Work or portion thereof.

40.3 The time of beginning, rate of progress, and time of completion are essential conditions of the Contract. If Contractor refuses or fails to prosecute the Work with such diligence as shall insure its completion within the time specified in the

Contract, or any extension thereof as herein provided, or if Contractor abandons the Work or if Contractor fails to complete the Work within said time, Contractor shall be liable for liquidated damages as set forth in Article 12. Amtrak may deduct from subsequent payments due Contractor under this or any contract with Contractor or from any sums retained there-under, all or such part of these sums as may be required to pay the aforesaid damages, with Contractor being responsible for any deficiency.

404 All phases of the Work shall be completed within the number of days as stated in the NTP. All NTPs shall be submitted to Contractor by facsimile and/or letter and Contractor shall signify the receipt of same by return facsimile or letter. The date of transmittal by Amtrak of a NTP shall constitute its effective date.

405 Should an impact of any nature whatsoever to the Project Schedule be identified by Contractor; Contractor shall immediately notify Amtrak in writing and provide recommendations for actions to be taken in order to mitigate the delay.

41. FORCE MAJEURE

41.1 For purposes of this Contract, a Force Majeure Event is any one of the following: act of God or the public enemy, act of a governmental authority acting in its sovereign capacity, fire, flood, epidemic, quarantine restriction, unusually severe weather, war, terrorism, riot, earthquake, strike or embargo. In the event that either party's failure to perform in accordance with any schedule or when otherwise required under the Contract arises solely out of a Force Majeure Event that is both out of the control of such party and without the fault or negligence of such party, the time for performance under the Contract will be extended proportionately up to a maximum of 30 days (or longer, in the Contracting Official's sole discretion), consistent with the requirements of this Article 41.

41.2 Within ten (10) days of (i) becoming aware or (ii) the date by which it should reasonably have become aware, of a delay resulting from a cause specified in Section 41.1, whichever is earlier, Contractor shall advise the Contracting Official in writing of a claimed Force Majeure Event. The Contracting Official will then determine whether the event constitutes a Force Majeure as defined in Section 41.1 and will so advise the Contractor in writing. Once performance of the delayed work re-commences, or at the end of the thirty (30) day period (or such longer period as the Contracting Official in his or her sole discretion choose to allow), the Contracting Official will advise the Contractor of the time extension granted due to the Force Majeure Event. Contractor shall make every reasonable effort to minimize the duration of the Force Majeure Event.

41.3 Apart from extension of time, no Claim for additional payment shall be filed by Contractor and no payment or allowance of any kind shall be made to

Contractor as compensation for damages occasioned by way of the causes specified in Section 41.1.

- 41.4 Contractor recognizes it is imperative that the Work proceed uninterrupted and shall endeavor to prevent, and shall diligently take all reasonable steps to re-start performance fully in accordance with the Contract, cure any work stoppage or strike of Contractor's employees caused by any labor disputes, including jurisdictional disputes arising out of the assignment of any of the Work. Contractor shall cause parallel provisions to be inserted in all subcontracts at any tier. If Contractor's failure to perform extends for more than fifteen (15) days from the start of the Force Majeure Event, Amtrak may, at its discretion, terminate the Contract without liability or cost at any time after such fifteen (15) days or some greater timeframe that may be specified by Amtrak. In the event of such early termination, if requested by Amtrak, Contractor shall transfer title as directed by Amtrak and deliver to Amtrak in the manner directed by Amtrak, any completed or partially completed deliverables or other work products Contractor has produced or acquired specifically for performance of the Work under the Contract.
- 41.5 Contractor agrees that no time extension shall be granted for time lost due to normal seasonal weather conditions. In order to qualify for consideration for a time extension due to adverse weather conditions, Contractor must show that the weather conditions during a given quarterly period (summer, fall, winter, spring) were more severe than the most severe year of the previous five years for the project geographical area and, in addition, that these weather conditions critically impacted the final project completion date by delaying the performance of Work. If abnormal weather losses within the meaning of the preceding sentence can be shown to have affected the Project Schedule, a non-compensable time extension shall be granted for that portion of the proven weather-related delays which exceeded the normal weather losses which should have been anticipated for the quarterly period in question, but no Claim for additional payment shall be filed by Contractor and no payment or allowance of any kind shall be made to Contractor as compensation for damages occasioned by way of any such abnormal weather.
- 41.6 Defaults or delays in performance of the Work by Contractor which are caused by acts or omissions of Subcontractors shall not relieve Contractor of its obligations, except to the extent that the relevant Subcontractor is itself subject to a Force Majeure Event covered hereunder and Contractor cannot reasonably circumvent the effect of the Subcontractors default or delay in performance through the use of alternate sources, work around plans or other means.

42. PRICING OF ADJUSTMENTS

When costs are a factor in any determination of a Contract price adjustment pursuant to Article 15, Changes, or any other provision of this Contract, such

costs shall be in accordance with the contract cost principles and procedures of Part 31 of the Federal Acquisition Regulation (FAR), as amended by O.M.B. Circular A-87, in effect on the date of this Contract.

43. AUDIT AND INSPECTION

43.1 Contractor acknowledges and agrees that Amtrak, Amtrak's Office of Inspector General ("Amtrak OIG") and FRA may inspect, copy and/or audit Contractor's data and records (in hard copy and/or electronic format) related in any way to the Contract, including without limitation, all data and records relating to:

- (a) support for any proposal, Change Order, or request for equitable adjustment submitted to Amtrak by Contractor;
- (b) Contract compliance and performance, including any work or deliverables in progress;
- (c) compliance with applicable provisions of Amtrak's federal grant, regulations and statutes; and
- (d) support for all direct and indirect costs or prices charged to Amtrak.

43.2 Contractor agrees to maintain all such data and records throughout the term of the Contract and until three (3) years after final payment under the Contract, and agrees to cooperate with all audit activities.

43.3 In connection with audit and inspection activities, Amtrak, Amtrak OIG and FRA shall be afforded, upon request, (1) access to Contractor's facilities and to Contract work or deliverables in progress, (2) the opportunity to interview Contractor's employees concerning any matter relating to the Contract, and (3) adequate and appropriate workspace.

43.4 Contractor agrees to reimburse Amtrak, within sixty (60) calendar days after receipt of a written request, the full amount of any undisputed audit findings or questioned costs, unless otherwise agreed by Amtrak in the course of post-audit negotiations with Contractor.

43.5 Contractor shall include the provisions of this clause in every subcontract or purchase order exceeding \$100,000, as well as a provision requiring all Subcontractors to include these provisions in any lower tier subcontracts or purchase orders exceeding \$100,000. Contractor shall be responsible for Subcontractor or lower tier Subcontractor's compliance with this clause.

43.6 Nothing in this Contract shall be construed to limit the rights, obligations, authority, or responsibilities of Amtrak OIG pursuant to the Inspector General Act of 1978, as amended, including the right to seek information by subpoena.

44. PAYMENT PROVISIONS – GENERAL

44.1 With respect to any amount to be paid to Amtrak by Contractor pursuant to the Contract, Amtrak may, at its option, set off that amount as a credit against the Contract Amount payable to Contractor for the Work.

44.2 Amtrak shall pay undisputed charges when such payments are due for the Work. Amtrak may withhold payment of particular charges that Amtrak disputes in good faith, and in that case Amtrak shall advise Contractor, in writing, of the nature of the dispute and, at Contractor’s request, the parties shall immediately commence resolution of the issue in accordance with Article 35.

45. SMALL BUSINESS CONCERNS AND DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION AND EMPLOYMENT OF VETERANS

45.1 Amtrak has determined that the following Small Business (SB) and Disadvantaged Business Enterprise (DBE) goals (expressed as a percentage of the estimated total contract value) are appropriate for this Contract:

Disadvantaged Business Enterprise	5 percent, and
Small Business Concerns	10 percent

45.2 For purposes of this Article, a “Small Business” is as defined in 13 CFR Part 121. A “Disadvantaged Business Enterprise” is as defined in 49 CFR Part 26. “Race-Neutral Measure” means an activity or program undertaken by an entity that benefits all small businesses equally, including DBEs.

45.3 In an effort to assist Amtrak in meeting these goals, Contractor agrees to use its best efforts to include the participation of SBs and DBEs in the performance of this Contract. Contractor shall attempt to meet Amtrak’s DBE utilization goal by using Race-Neutral Measures, as that term is defined herein, only. Contractor shall disclose information regarding its use of DBEs to Amtrak by completing NRPC 1483 (Amtrak Disadvantaged Business Enterprise Utilization Report for Vendors) and returning it to Amtrak on a quarterly basis.

45.4 Contractor shall implement a plan for the utilization of SBs and DBE Subcontractors and shall provide Amtrak with information concerning such plan by completing the enclosed Subcontracting Plan for the Utilization of Small Business Concerns and Disadvantaged Business Enterprises and returning it to Amtrak with its bid/proposal. In addition, Contractor shall complete NRPC 1483 (Amtrak Disadvantaged Business Enterprise Utilization Report for Vendors) and return it to Amtrak on a quarterly basis.

45.5 Amtrak has established a corporate goal that 25% of new hires should be Veterans. Contractor shall establish similar goals for itself and its

Subcontractors with respect to new hires attributable to this Contract. For purposes of this Article, a "Veteran" is as defined in 38 U.S.C. 101(2).

46. FAIR EMPLOYMENT PRACTICES/EQUAL EMPLOYMENT OPPORTUNITY

46.1 Contractor agrees to abide by Amtrak's policy and practice to ensure that all business organizations receive fair and equal consideration and treatment without regard to race, color, religion, sex, disability, veteran status or national origin of the owners or principals of the business organization. In addition, Contractor agrees that it shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, veteran status or national origin and that it shall comply in all respects with the Americans with Disabilities Act, 42 U.S.C. 12101 et seq.

46.2 Contractor shall take affirmative action to ensure that applicants and employees are treated fairly without regard to their race, color, religion, sex, disability, veteran status or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination section.

46.3 Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representative of Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

46.4 The Contract may be canceled, terminated, or suspended in whole or in part based on Contractor's failure to comply with this section.

46.5 Contractor shall include the provisions of Sections 46.1 through 46.4 in subcontracts involving services to be performed or Supplies to be furnished under the Contract, unless exempted by rules, regulations, or orders of the U.S. Secretary of Labor.

47. ENVIRONMENTAL COMPLIANCE

47.1 Contractor shall comply with all Applicable Laws concerning the environment and/or waste disposal.

47.2 Contractor shall dispose of any wastes, including hazardous wastes, generated by Contractor, its Subcontractors or agents (either purposefully or accidentally) in connection with its performance of the Contract in accordance with applicable federal, state, and local laws, regulations, ordinances, and orders,

at its sole expense, using its own EPA generator number. In no event shall Amtrak be identified as the generator of any such wastes. Amtrak reserves the right to require Contractor to provide to Amtrak a copy of the results of any tests conducted by or for Contractor on any such wastes and, at Amtrak's expense, to perform additional tests or examinations of any such wastes prior to disposal.

473 Contractor shall include and enforce this Environmental Compliance Article in all subcontracts or lower tier purchasing agreements.

48. BUY AMERICA REQUIREMENTS

48.1 Contractor agrees to comply with and to take all necessary action to enable Amtrak to comply with FRA's "RRIF Buy America" policy, which follows 49 U.S.C. § 24405 (a) (see Code Section at: <http://www.fra.dot.gov/downloads/49USC24405a.pdf>) and applicable FRA guidance (see FRA Buy America Frequently Asked Questions at: <https://www.fra.dot.gov/Page/P0391> and <https://www.fra.dot.gov/Page/P0694>). Among other things, unless an applicable waiver is granted by the FRA, this means that the steel, iron, and manufactured goods used in the project must be produced in the United States. The Contractor shall certify compliance.

49. CUSTOM DUTIES

49.1 Contractor agrees that, if any items or Supplies are shipped F.O.B. (Free on Board) destination or D.D.P. (Delivered Duty Paid), Contractor shall be the importer of record for all articles that enter into the United States in connection with the Contract. Contractor shall be liable for all duties, fees, and taxes attaching on importation of such articles, including anti-dumping and countervailing duties, if any.

49.2 Contractor agrees that, if the items or Supplies are shipped F.O.B. origin, C.I.F. (Cost, Insurance & Freight) or F.C.A. (Free Carrier), Amtrak shall specify the customs broker and shall be the importer of record for all articles that enter into the United States in connection with the Contract.

49.3 Amtrak shall not pay on behalf of Contractor, or reimburse Contractor for any anti-dumping or countervailing duties for which Contractor may be liable.

50. EXPORT CONTROLS

50.1 Contractor represents and warrants that it shall comply with (1) all United States export laws and regulations issued by any U.S. government authority, including without limitation the U.S. Export Administration Regulations, the International Traffic in Arms Regulations and any regulations administered by the Department of the Treasury's Office of Foreign Assets Control, that govern the export or re-export of any deliverable, technology or technical data provided hereunder, including software, hardware, equipment, documentation,

specifications, Drawings, and schematics (collectively, the “Products”) and any of the services, and (2) any applicable laws and regulations of countries other than the United States that govern the importation, use, export or re-export of Products and/or services. Contractor further represents and warrants that it shall (1) obtain appropriate export authorizations, consents or licenses that may apply to Contractor’s export or import of any Products or services, and (2) comply with any conditions that are contained in any export or import licenses pertaining to the Products or services. Contractor shall comply with any reporting requirements that may apply to the export or re-export of the Products and/or services and provide to Amtrak and the appropriate governmental authority any periodic reports containing such information as may be required under applicable law.

502 Each party will reasonably cooperate with the other in making the appropriate filings with any governmental authority and will, to the fullest extent permitted by law, provide any information, certificates or documents as are reasonably requested.

503 In performing services under this Contract, Contractor warrants and represents that it shall not employ or make use of any non-U.S. person who is a citizen of country that has been designated by the U.S. Government as a “terrorist supporting country” (see Country Group E at Supplement No. 1 to Export Administration Regulations Part 740).

504 With the exception of commodities, software or technologies that are controlled solely for “antiterrorism” reasons under the Export Administration Regulations (“EAR”), Contractor represents and warrants that the deliverables shall not contain any export controlled technology or technical data under the export control laws or regulations unless approved by Amtrak’s Contracting Official in writing. At least thirty (30) days prior to the earlier of the delivery, installation or provision of a deliverable containing any controlled technology or technical data, Contractor shall inform Amtrak’s Contracting Official in writing of the EAR Export Control Classification Number(s) (“ECCN”) or the International Traffic in Arms Regulations (“ITAR”) U.S. Munitions List Classification (“MLC”) numbers applicable to such deliverable. In addition, upon delivering or otherwise providing a deliverable with an ECCN or MLC number, Contractor shall place the following legend, or substantially similar one, as applicable on technical data and/or deliverable documentation:

“WARNING—INFORMATION SUBJECT TO EXPORT CONTROL LAWS. This document or software contains information subject to the Export Administration Regulations (“EAR”) [or the International Traffic in Arms Regulations (“ITAR”)]. This information may not be exported, released, or disclosed to foreign persons, whether within or outside the United States without first complying with the export license requirements of EAR [or ITAR]. Include this notice with any reproduced portion of this document. The EAR