

Exhibit A-1

**NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)
INTERCITY TRAINSET CONTRACT**

GENERAL PROVISIONS

CONTRACT NO: _____

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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.

“Additional Insured Parties” has that meaning ascribed to it in Article 59, Section 59.1.

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

“Agreed Testing Program” means the testing program and Test Plan described in the Specification to be produced by the Contractor and approved by and agreed to by Amtrak.

“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 1 Massachusetts Avenue, NW, Washington, DC 20001, and any permitted assignee of Amtrak’s rights under the Contract.

“Amtrak Collateral” means all present and future Supplies, including the Trainsets, Spare Vehicles, other Equipment, Special Tools, Spares, Amtrak Owned Spares, Mockups, , Contractor IP Rights, software, applications and programs, Technical Documents, machinery, inventory, tools, tooling, materials, components and any Work in process to be furnished by Contractor under the Contract or otherwise related to the design, engineering, manufacture, testing or equipping of the Equipment; all general intangibles and contract rights of Contractor in respect of subcontracts and supply contracts with Subcontractors to supply parts, equipment, materials, or services to perform the Contract or to manufacture, assemble, test, and deliver the Equipment and other Supplies; and all products, supporting obligations and proceeds, including insurance proceeds, of any of the foregoing.

“Amtrak Depot” or “Depot” means an Amtrak facility where maintenance is performed, and Material is provided under the terms of the TSSSA. The **“Level 1 Amtrak Depots”** and **“Level 2 Amtrak Depots”** are as listed in the Technical Support, Spares, Supplies Agreement (TSSSA) Statement of Work.

“Amtrak OIG” has that meaning ascribed to it in Article 43, Section 43.1.

“Amtrak-Owned Spare” means the trucks and any other spares purchased by Amtrak under the Contract. For purposes of this definition, the Amtrak-Owned Spares do not include the Spare Vehicles purchased by Amtrak under the Contract.

“Amtrak Project Director” has that meaning ascribed to it in Article 5, Section 5.3.

“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 Government Authority, 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.

“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 Equipment.

“Breach Notice” has that meaning ascribed to it in Article 31, Section 31.5.

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

“Certificate of Final 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.

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

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

“Change in Control” means, with respect to Contractor, a transaction or series of transactions where the Persons who (i) directly or indirectly hold fifty percent (50%) or more of the equity ownership of Contractor prior to such transactions or series of transactions cease to directly or indirectly hold fifty percent (50%) or more of the equity ownership of Contractor as a result of such transaction or series of transactions or (ii) directly or indirectly have the power to control the management

and policies of Contractor prior to such transaction or series of transactions, Contractor as a result of such transaction or series of transactions.

“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.

“Claim” has that meaning ascribed to it in Article 35, Section 35.1.

“Comprehensive Spare Parts List” has that meaning ascribed to it in Article 14, Section 14.1.

“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.

“Consumable Spare Parts List” has that meaning ascribed to it in Article 14, Section 14.3.

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

The terms “Contract,” “Trainset 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; or (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 out 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.

“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.

“Contractor Project Manager” has that meaning ascribed to it in Article 5, Section 5.3.

“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 and Spare Vehicle, details of any Changes applied to that Trainset or Spare Vehicle, repairs made during production, modification status, all critical components by part number/serial number, Service Bulletin embodiment status, Failures identified during testing and actions taken in respect of those Failures, differences from any previously accepted Trainset or Spare Vehicle and originals, when necessary, of all certificates issued in relation to a Trainset or Spare Vehicle 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, Spare Vehicles and other Equipment to Amtrak by Contractor.

“Design Procurement Documents” has that meaning ascribed to it in Article 31, Section 31.3.

“Dispute” has that meaning ascribed to it in Article 35, Section 35.1.

“Documentation” except as applicable to commercially available software, includes all user manuals, Systems manuals, training materials, guides, logic diagrams, programmer’s notes, flow-charts, algorithms, development tools and development platforms and other materials necessary for Amtrak’s understanding and use of the Software for the Allowable Uses in the form prepared by the Contractor, subcontractor, Supplier or Manufacturer in the regular course of its business, or, to the extent that the Specification requires a different form, then in the form required by the Specification.

“Dollar” or **“\$”** means a dollar of the United States (US).

“Draw Event” means, with respect to a Letter of Credit, one or more of the following: (i) a Termination Event has occurred and is continuing; (ii) the occurrence of one of the Release Conditions of Section 31.5.1(b) with respect to the Contractor or the Contractor’s Guarantor; (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; (iv) Contractor fails to provide or maintain the insurance required under Article 59 or Article 60; (v) Contractor has failed to make payment of undisputed amounts 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 will expire within thirty (30) days or less and the conditions for cancellation or release of the Letter of Credit as stated in Section 6.12 have not been met.

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

“Equipment” means any physical device that is part of the Trainset or Spare Vehicle and/or is the object of maintenance actions. Among other things, Equipment also refers to one or more of the Trainsets, including the Prototype, one or more of the Spare Vehicles and the Amtrak-Owned Spares.

“Equipment Design Documents” has that meaning ascribed to it in Article 31, Section 31.3.

“Escrow Materials” has the meaning ascribed to in Article 31, Section 31.5.

“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.

“Extended Cure Period” has that meaning ascribed to it in Article 31, Section 31.5.

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

“Failure” means that any Equipment, including, but not limited to a Trainset, Spare Vehicle, car, system, or component, or other supplies, instructions, Technical Support, software, or any service supplied by Contractor or Contractor Party under the Trainset Contract or the TSSSA did not comply with the requirements or specifications of the Trainset Contract or TSSSA, violated any applicable law, did not perform as designed or its intended purpose or the use to which it was put, or if a service, was improperly delayed or omitted, in all such cases, whether in consequence of faulty design, faulty materials, poor workmanship, improper handling, security, storage or installation, negligence, willful misconduct or strict liability, or other errors or omissions or for any other reason attributable to the Contractor.

“Failure – Type I” shall mean a Failure or Unscheduled Maintenance that results in one or more of the following: a.) a Trainset delay of thirty (30) minutes or more to the scheduled departure or arrival of a Trainset at any scheduled station; b.) a Trainset being unfit for Revenue Service; c.) a Trainset being cancelled en-route; d.) the relocation of passengers from a car in the Trainset; e.) more than fifty percent (50%) food service loss, or f.) any passenger impact items, including but not limited to, HVAC, toilets or doors, that affect ten percent (10%) or more of the Trainset revenue seating capacity.

“Failure – Type II” shall mean a Failure or Unscheduled Maintenance that results in a Trainset delay of less than thirty (30) minutes to the scheduled departure or arrival at any scheduled station

“Failure – Type III” shall mean a Failure that results in an actual repair time that exceeds one-half (0.5) labor hour and does not meet the criteria of a Type I or Type II Failure. Type III Failures constitute Unscheduled Maintenance and can typically be repaired without causing delay to the scheduled departure or arrival of a Trainset or requiring the movement of the Trainset to a repair track or facility.

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

"Fleet" means all Trainsets and Spare Vehicles ordered under the Contract, including all options for additional Trainsets or Spare Vehicles 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 retainage or final installment of the Contract Amount payable in connection with the Work.

"Financing Parties" means Lender or any Person that advances funds or provides financing to Amtrak for all or a part of the costs and expenses associated with the Supplies, including without limitation (a) Lenders, banks, financial institutions and capital market participants; (b) governmental agencies and (c) 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 and/or Spare Vehicle, that:
 - (i) all relevant approvals in respect of that Trainset and/or Spare Vehicle have been obtained and remain in force;
 - (ii) such Trainset and/or Spare Vehicle:
 - (A) meets the requirements of the Contract, and
 - (B) is in a condition which enables Amtrak to operate such Trainset and/or Spare Vehicle in Revenue Service in accordance with the Contract; and such Trainset and/or Spare Vehicle is and shall remain fit for the purposes specified in paragraph (a)(ii)(A) above throughout its service life;
- (b) In relation to each Amtrak-Owned Spare that such Amtrak-Owned Spare when incorporated into a Trainset, does not prevent such Trainset from being Fit for Purpose as defined in paragraph (a)(ii)(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.

"Force Majeure Event" has that meaning ascribed to it in Article 41.

"Foreign Corrupt Practices Act" means the United States Foreign Corrupt Practices Act of 1977.

"General Provisions" means these terms and conditions.

“Government Authority” means (a) any international, foreign, federal, state, county or municipal government, or political subdivision thereof, (b) any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body or (c) any court or administrative tribunal of competent jurisdiction.

“Guarantor” means Siemens Corporation, the company that will execute, deliver and be liable on the Parent Guaranty, or the respective successor, in accordance with Article 6, Section 6.13.

“Indemnified Party Claim” has that meaning ascribed to it in Article 32.1.

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

“Indemnified Party Claims” has that meaning ascribed to it in Article 32, Section 32.1.

“Intellectual Property” has that meaning ascribed to it in Article 31, Section 31.3.

“IP Rights” has that meaning ascribed to it in Article 31, Section 31.1.

“Key Personnel” has that meaning ascribed to it in Article 18, Section 18.1.

“Lender” means any entity that lends Amtrak funding for the Contract.

“Letter of Credit” means an irrevocable standby letter of credit to Amtrak in the form of provided by Amtrak or otherwise acceptable to Amtrak issued with only such modifications to such form as are approved by Amtrak in its sole discretion. The Letter of Credit shall be issued by one or more Qualified Issuers and—if requested by Amtrak, will be issued in SWIFT format through Amtrak’s designated advising bank.

“Major Component” shall mean those components designated by Contractor and agreed to by Amtrak as being significant for purposes of Article 13, Section 13.7.

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

“Material” shall mean spare parts, supplies, equipment, components, material for Minor Debris Damage and Consumable Material for use on the Trainsets and/or Spare Vehicles supplied by the Contractor, excluding special tools, test equipment or fixtures.

“Maximum Base Order” shall have the meaning ascribed to it in Notes for Pricing & Delivery portion of the Supplies Contract. For the avoidance of doubt, the Maximum Base Order is exclusive of any Option Orders that may be exercised by Amtrak.

“Minimum Base Order” refers to the those Supplies listed in the Supplies Contract at paragraph 1.A. The Minimum Base Order is exclusive of any Short Term Deferral Units.

“Minor Debris Damage” shall mean damage to a unit of Equipment as a result of striking debris along the railway. This damage is mild in that repairs can be made relatively quickly with simple tools. Materials, including, but not limited to: ladders, grab irons, angle cocks, track receivers, light assemblies, windows, hoses, cables, and other exterior components are susceptible to Minor Debris Damage.

“Measurement Period” has that meaning ascribed to it in Article 8, Section 8.4.1.

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

“OEM” has that meaning ascribed to it in Article 14, Section 14.3.

“Option Order” refers to one or more of the options that may be exercised by Amtrak in its sole discretion for purchasing additional Equipment under the terms of the Contract.

“Other Documents” has that meaning ascribed to it in Article 31, Section 31.3.

“Parent Guaranty” means a guaranty of payment and performance (and not of collection) issued by Guarantor guarantying the Work under this Contract, including Contractor’s present and future performance, obligations and liabilities under this Contract, in form and substance acceptable to Amtrak in its sole discretion.

“Payment Schedule” as used herein means the mutually agreed upon milestone payment schedule.

“Performance and Payment Bond” has that meaning ascribed to it in Article 6.

“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 Executive” has that meaning ascribed to it in Article 18, Section 18.1.

“Project Manager” has that meaning ascribed to it in Article 18, Section 18.1.

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

“Project Management Plans” or **“Plans”** means the Project Management Plan described in Section 3.3 of the Specification.

“Prototype” has that meaning ascribed to it in Scope of Work for Dual-Mode Trainset with On-Board Energy Storage System.

“Qualified Issuer” means either: 1) an issuing bank that issues the Letter of Credit that meets the following criteria: (i) it is a U.S. bank or a U.S. branch of a foreign bank, (ii) it has and maintains assets of at least \$50 billion USD, and (iii) it or its holding company's long term debt is rated no lower than A by Standard & Poor's Rating Services or no lower than A2 by Moody's Investor Service, or 2) a surety(ies) acceptable to Amtrak, registered in the U.S. Department of Treasury's Circular TD 570, licensed to do business in all states in which the Work is performed, and carrying a financial rating from A.M. Best Company of A- VIII or better.

“Release Condition” has that meaning ascribed to it in Article 35, Section 35.1.

“Release Notice” has that meaning ascribed to it in Article 31, Section 31.5.

“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.

“Reliability Target” has that meaning ascribed to it in Article 8.

“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 Equipment in order to permit the operation of such Equipment with or without passengers.

“Revenue Service” means the time when a Trainset is Spare Vehicle 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”, as applied to a function, a system, or any portion thereof, means the correct performance of which is essential to safety of personnel or equipment, or both; or the incorrect performance of which could cause a hazardous condition, or allow a hazardous condition which was intended to be prevented by the function or system to exist.

“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 Contractor’s Amtrak-approved Project Schedule on which Final Fleet Acceptance is scheduled to occur.

“Scheduled Trip” means a scheduled train trip from start to finish.

“Security” has that meaning ascribed to it in Article 6.

“Service Bulletin” means any documentation produced by Contractor that sets out details of any design changes to the Equipment and details how such changes impact the Equipment; 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.

“Short Term Deferral Unit” shall have the meaning ascribed to it in the Supplies Contract at paragraph 1.B. For the avoidance of doubt, Short term deferral units are not considered Option Orders under the Contract.

“Software” means any and all computer application programs which are incorporated as part of any system, subsystem, assembly, subassembly or components thereof, or any interface system control between or among the systems, subsystems, assemblies, subassemblies, or components thereof, in the Equipment, or which are used in connection with a system (which use involves microprocessors, controllers, drivers, or other electronic data processing elements) or which are used in connection with any related diagnostic or testing equipment, together with all related Documentation, including without limitation, the object code, source code and pseudo-code versions of such assemblies, subassemblies, programs, firmware containing such programs, know-how protocols, listings, instruction sets, indices and other intellectual property necessary for the Amtrak’s use of the Software for the Allowable Uses in the form prepared by the Contractor, Subcontractor, Supplier or Manufacturer in the regular course of its business, or to the extent that the Specification requires a different form, then in the form required by the Specification.

“Source Code” means the programming statements and instructions a programmer writes, but which statements and instructions (“code”) are not directly executable by the computer that will execute the instructions provided by the programmers until converted into executable or machine language.

“Spare Parts List” has that meaning ascribed to it in Article 14, Section 14.2.

“Spares” means spare parts, Supplies, Equipment, and components that are fit, form and functionally equal to or better to the original design and consumables or expendables made of new materials and free of defects.

“Spare Vehicle” means a Vehicle purchased under the Contract as a spare. Spare Vehicles shall become a part of a Trainset or a component thereof when placed in a Trainset consist whether as a complete Vehicle or if a component is utilized as a Spare.

Special Tools means all specialized tools, gauges, meters, diagnostic equipment (including laptop computer software), etc. that will be necessary to operate, maintain, overhaul, inspect, test, troubleshoot and repair all configurations of the Trainsets and Spare Vehicles throughout its design life. Special tools do not include those tools that are commercially available “off the shelf”.

“Specification” means any specification referenced in this document, including any schedule, exhibit or attachment to it, or any Contract or Subcontract, including without limitation the latest version of Amtrak Specification No. 1108: Amtrak Mechanical Department Rolling Stock Equipment Specification for Specification for Long Distance Diesel-Electric Passenger Trainsets with Alternative Power Options, as amended, and the technical specifications referenced therein.

“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.

“Subcontractor Intellectual Property” has that meaning ascribed to it in Article 31, Section 31.3.

“Supplies” means the Equipment, including without limitation the Trainsets, Spare Vehicles, Spares, including, but not limited to, the Amtrak-Owned Spares, Special Tools, supplies, Materials, articles, documents, and other items furnished by or to be furnished by Contractor under the Contract.

“Supplies Contract” means the 53 page document signed by Amtrak and Contractor setting forth, among other things, Contractor’s compensation, the Equipment and other Supplies to be furnished by Contractor and the period of performance.

“Technical Proposal” means the technical proposal submitted by Contractor to Amtrak in response to the RFP, as amended.

“Technical Specification” refers to the latest version of Amtrak Specification No. 1108: Amtrak Mechanical Department Rolling Stock Equipment Specification for Intercity Trainsets, as amended.

“Technical Support, Spares, and 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.

“Termination Event” has the meaning ascribed to it in Article 16, Section 16.1.

“Termination Expenses” has the meaning ascribed to it in Article 17.

“Test Plan” has the meaning ascribed to it in Article 9, Section 9.1.

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

“Total Order” refers to the sum of Equipment ordered by Amtrak under the Contract including any Option Orders.

“Trainset” shall mean any group of cab cars, coaches, business class, or food service cars, including the Spare Vehicles, and propulsion supplied to Amtrak from the Contractor under the terms of the Trainset Contract and reconfigurable at any point by Amtrak.

“Trainset Contract” means the entire agreement between Amtrak and the Contractor, for the manufacture and supply of new Trainsets, Spare Vehicles and other related Supplies. The terms “Trainset Contract”, “Contract,” “Agreement” and “Contract Documents” are used interchangeably herein.

“Trainset Held For Material (THFM)” has that meaning ascribed to it in the TSSSA Statement of Work.

“Vehicle History Book” has that meaning ascribed to it in the Specification.

“Trustee” has that meaning ascribed to it in Article 31, Section 31.5.

“Unfit for Revenue Service” means the presence of one or more Failures preventing use of a Trainset in Revenue Service.

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

“Viruses” has the meaning ascribed to it in Article 13, Section 13.22.

“Warranty Period” means for any Trainset and Spare Vehicle and/or a component or subcomponent thereof, the Amtrak-Owned Spares, Spares, parts and accessories, the Special Tools and all other Supplies and Work, the applicable warranty period set forth in Section 13.3.

“Work” as used herein, means the provision of the deliverables and Supplies, including, but not limited to, the Trainsets, Spare Vehicles, Spares, including the Amtrak-Owned Spares, and Special Tools, identified and required by the Contract and the designs, engineering, manufacturing, assembly, testing, operations, maintenance services and 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

- 2.1 The Contract constitutes the entire agreement of the parties. Except as provided under the Changes article 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. As used herein, all references to a given agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made. Any term defined or provision incorporated herein by reference to another document, instrument or agreement shall continue to have the meaning or effect ascribed thereto whether or not such other document, instrument or agreement is in effect.
- 2.2 Any inconsistencies in Contract provisions or Contract shall be resolved by giving precedence in the following order:
- (a) Contract Modifications;
 - (b) Supplies Contract;
 - (c) Supplementary General Provisions;
 - (d) General Provisions;
 - (e) Technical Specification; and
 - (f) Design documentation, including Drawings and/or construction or manufacturing Drawings produced as a result of the Technical Specification, or otherwise, in the following order of precedence:

- (i) Notes on Drawings,
- (ii) Large scale details,
- (iii) Figured dimensions, and
- (iv) Scaled dimensions.

(g) Exhibit AA to the Supplies Contract giving precedence to the documents therein based on chronological order.

2.3 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.

2.4 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.

2.5 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.

2.6 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.

- 2.7 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.
- 2.8 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.
- 2.9 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.
- 2.10 The Equipment 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 Equipment 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

- 3.1 The Contractor shall use a systematic management approach to provide completed Equipment meeting all specified performance levels

compatible with all elements of the railway system over which the Equipment 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 Equipment provided by the Contractor or its Subcontractors.

- 3.2 From NTP continuously through Amtrak's acceptance of the last unit of Equipment as provided herein, Contractor shall provide office facilities for Amtrak representatives at no additional cost to Amtrak. Contractor shall provide office facilities as described herein at the Equipment construction plants, including the final assembly site and the Trainset car body fabrication site (if a separate facility), as well as similar facilities at any Equipment qualification testing sites for the duration of the tests. These office facilities shall enable convenient inspection of materials, work and equipment under this Contract. The office facilities shall be a secure, heated, cooled, and adequately lighted private office for a minimum of three (3) people, with access to toilets and a private conference area, and shall be furnished with desks, chairs and lockable locker facilities. Desks and file cabinets shall be lockable, and all keys submitted to Amtrak. Three (3) dedicated telephones with an outside line, high speed internet connection, access to a photocopy machine capable of high quality copies shall be provided either within Amtrak's office or nearby (adjacent) area. Reserved parking places shall also be provided for all Amtrak representatives assigned to the Contractor's facility.
- 3.3 Copies of all drawings, manufacturing procedures, test procedures, test reports, test equipment calibration certificates, welder certifications, diagrams, schedules, changes, deviations, revisions and data shall be furnished to Amtrak at the same time these are made available to the Contractor's QA department and in advance of any work being performed. Data shall be sufficient to verify design, construction, assembly, installation, workmanship, clearance, tolerance and functioning of the Equipment.
- 3.4 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.
- 3.5 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 Equipment or to perform any aspect of the Work over an aggregate value of \$1,000,000.

- 3.6 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.
- 3.7 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 Equipment, 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 and revisions to purchase orders for all major items of Supplies shall be promptly submitted to Amtrak upon request.
- 3.8 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.
- 3.9 RESERVED.

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. Amtrak responses shall be in accordance with the Specification and/or Exhibit 1, Project Management.

- 4.3 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.
- 4.4 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.
- 4.5 Unless otherwise set forth in the Contract, in the case of decisions with respect to the Equipment, Amtrak shall have at least thirty (30) Business 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) Business Days unless Contractor has specified a greater time period or some other time period is agreed to by the parties.
- 4.6 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 based on an untimely decision by the Contracting Official.

- 4.7 For the avoidance of doubt, the times for decisions from Amtrak in this Article and the Specification only applies to decisions with respect to the Trainsets. 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 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 Equipment 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 Equipment design as a whole shall meet all requirements of the Contract.

- 5.3 Contractor shall designate one of its employees as its 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 ("Contractor Project Manager"). Amtrak shall designate one of its employees as its project director to coordinate issues concerning Contractor's performance of the Work ("Amtrak Project Director"). 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) the Security, (ii) a Parent Guaranty, if applicable, in a form specified by Amtrak, together with an opinion of counsel if required by Section 6.16, and (iii) a certificate of insurance evidencing the insurance coverage required by Articles 59 and 60, 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 if required by Section 6.16, and certificates from Contractor's insurers or insurance brokers showing insurance required by Articles 59 and 60 is in place, Amtrak shall issue a NTP. The date of an 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 Equipment 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 fifteenth (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 Equipment and related Supplies.

Performance and Payment Security

- 6.2 Contractor shall furnish and cause to be maintained Security during the term of the Contract until the conditions of cancellation for the Security set forth in Section 6.10 below have been met. If Amtrak exercises an option under the Contract, unless otherwise agreed to by Amtrak, Contractor shall furnish and cause to be maintained separate Security for the value of each Option Order. The Security for the Option Order shall be subject to the terms and conditions of this of this Article 6.

For purposes of this Contract, Security means:

- a. Performance and Payment Bonds in the form of AIA Form 312, 2010 edition or a form otherwise acceptable to Amtrak that meets the requirements set forth herein; or

- b. a Letter of Credit as that term is defined herein.

6.3 Performance and Payment Bonds as Security

The Performance and Payment Bonds must be issued by a Qualified Issuer. The Bonds must reference the Contract Number and shall include a requirement that the surety agree that (1) no change, extension of time, alteration, addition, omission, or other modification of the terms of the Contract or the work to be performed shall in any way affect its obligation on the bond, and (2) the surety waives notice of any such change, extension of time, alteration, addition, omission or other modification. All bonds are subject to review by Amtrak and must have properly executed power of attorney attached and seals affixed. Bonds must be properly countersigned where state law so requires. If at any time the issuer of such Performance and Payment Bonds no longer meets the requirements of a Qualified Issuer, Contractor shall provide to Amtrak replacement Performance and Payment Bonds meeting the requirements herein within thirty (30) days of such occurrence.

6.4 Letter of Credit as Security

Letters of Credit shall have an initial expiration date of the later of (i) the date agreed to by Amtrak as the scheduled date of Acceptance of the second Trainset or (ii) one (1) year from date of issuance, but in any event, such Letter of Credit shall contain 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.

- 6.4.1 Amtrak may give notice to Contractor that it must replace the Letter of Credit with Security issued by a Qualified Issuer if at any time (i) in the opinion of Amtrak, the issuer of the Letter of Credit ceases to be a Qualified Issuer, (ii) the issuer of the Letter of Credit sends notice that it will not be extending the Letter of Credit, (iii) the Letter of Credit will expire within sixty days (60) days or less, or (iv) the issuer wrongfully dishonors a draw made on its Letter of Credit by Amtrak. Contractor shall thereupon have thirty (30) days from the date of such notice to obtain a suitable replacement Security that meets the requirements of this Article 6 and is issued by a Qualified Issuer, in which event Amtrak shall authorize the cancellation of the original Letter of Credit. In any event, Contractor shall provide to Amtrak a replacement Letter of Credit meeting the

requirements herein within [thirty (30)] days of any issuer of a Letter of Credit no longer meets the requirements of a Qualified Issuer. If Contractor fails to obtain a suitable replacement Security issued by a Qualified Issuer within any such thirty (30) day period, Amtrak may draw upon the Letter of Credit for the full amount thereof, and hold the proceeds in a segregated account as cash collateral securing Contractor's obligations under this Contract. Such cash collateral shall be held until a suitable replacement Security issued by a Qualified Issuer in the amount required by this Contract is delivered to Amtrak or until the cash collateral is used to pay, perform or otherwise satisfy Matured Contractor Obligations. Upon receipt of a suitable replacement Letter of Credit in the proper amount, Amtrak shall release or cause the release of the cash collateral being held by it to or at the direction of Contractor. If at any time cash collateral is held by Amtrak as a result of a drawing on the Letter of Credit because the issuer ceases to be a Qualified Issuer or because the issuer sends a notice that the Letter of Credit will not be extended, the amount of such cash collateral shall be increased or reduced and the amount of the reduction released to Contractor in the same manner and in the same amounts as would be the case for an increase or reduction of the amount of a Letter of Credit were it still being held by Amtrak instead of cash collateral. If the issuer wrongfully dishonors a draw on its Letter of Credit and Contractor fails to procure and deliver to Amtrak a suitable replacement Security within the time specified above, then Contractor shall be in default of this Contract. Among other remedies, Amtrak may withhold milestone or other payments from Contractor until an amount of cash collateral equivalent to the amount required of Contractor for a Letter of Credit is withheld by Amtrak or until a suitable replacement Security is issued by a Qualified Issuer to Amtrak

- 6.5 Within ten (10) days of Contract Award, Contractor shall submit a Security instrument for ten percent (10%) of the Contract Amount.
- 6.6 As a condition of Amtrak's approval and payment of the Contract milestones or any other payment made to Contractor, Security must be submitted or amended to increase the value before or with the milestone or other payment invoice, such that the total amount of Security will equal or exceed the sum of i) all payments previously made to Contractor and ii) the invoice submitted, before and as a condition of the subsequent milestone or other payment.

- 6.7 The amount of the Security shall be decreased from time to time by amendment to the Security as follows:

After the second (2nd) Trainset is delivered to and a Certificate of Final Acceptance or Conditional Acceptance has been issued by Amtrak with respect to it and the prior first (1st) Trainset, Contractor shall be entitled to request at the end of each calendar quarter a reduction in the amount of the Security by:

- i) a percentage equal to one divided by the total Order Quantity multiplied by the total number of Trainsets thereafter delivered by Contractor to Amtrak that received a Certificate of Final Acceptance or a Certificate of Conditional Acceptance during that calendar quarter,
- ii) minus (a) twice the amount that Amtrak is entitled to withhold for uncorrected defects or incomplete Work for any Equipment under the Contract that is subject to a Certificate of Conditional Acceptance, and (b) any unpaid liquidated damages or other unpaid claims for damages or amounts due and owing by Contractor to Amtrak.

- 6.8 Amtrak may draw upon a Letter of Credit in accordance with the terms of the Letter of Credit for any Draw Event.

- 6.9 In no event shall the Security be reduced below ten percent (10%) of the Contract Amount, except upon Amtrak's receipt of a separate Security for ten percent (10%) of the Contract Amount to serve as a warranty bond. In either case, the all Security, including the Security severing as a warranty bond, shall be subject to and reduced as provided in Section 6.10 below.

- 6.10 On the later of (a) thirty-six (36) months after issuance of a Certificate of Final 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 and outstanding FMIs have been satisfactorily completed, Contractor shall be entitled to request Amtrak to authorize cancellation of the Security. Amtrak shall authorize a cancellation or, pursuant to the next sentence, a reduction of the Security upon review of such request if all the preceding conditions for cancellation of the Security have been met. If Amtrak refuses to authorize a cancellation of the Security to which the Contractor believes it is entitled because of pending claims or disputes, (i) Amtrak shall authorize reduction of the amount of the Security 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 Security to which it claims it is entitled.

6.11 Amtrak or a Financing Party may give written notice to Contractor that Amtrak's rights under the Security 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 Security and any related rights granted to Amtrak by this Article 6.

6.12 Security Interest in Amtrak Collateral

6.12.1 To secure all of Contractor's present and future performance, obligations, liabilities and indebtedness to Amtrak under or in respect of this Contract, and in particular Contractor's obligation to deliver the Equipment and related Supplies, Contractor hereby grants to Amtrak and its Financing Parties a security interest in all its present and future rights, title and interest in and to the Amtrak Collateral. In the event of default by Contractor under the Contract, nonperformance or nonpayment of any obligation of Contractor when due or termination of the Contract, Amtrak shall have all the rights and remedies of a secured creditor under Article 9 of the Uniform Commercial Code in each state where the Amtrak Collateral may be located or have as its situs. Such rights include the right to require segregation of, inspection and repossession or use or sale in place by Amtrak of the tangible Amtrak Collateral so that Amtrak can obtain it for use in continuing the Work with another contractor or sell it and realize on its value. Amtrak shall also have the right and remedy of enforcing its security interest in intangible Amtrak Collateral such as contract rights, by notifying and contracting directly with any and all Subcontractors to continue their work and furnishing supplies for the benefit of Amtrak.

6.12.2 Contractor represents that it has not, and covenants that it will not, grant to any other person or entity any interest including any security interest, in the Amtrak Collateral and will keep it free and clear of any other liens, claims or encumbrances. If there are any existing security interests, liens or claims filed against or otherwise granted by Contractor in or on any Amtrak Collateral, Contractor shall satisfy or otherwise obtain from the party holding such security interest, a disclaimer and

release of their claim, lien or security interest in or on Amtrak Collateral as a condition of receiving any milestone or other payment from Amtrak. Contractor shall not lease, sell or otherwise dispose of Amtrak Collateral except in the ordinary course of its business.

Notwithstanding the foregoing, if Contractor provides a Performance Bond as Security and the Performance Bond is claimed upon, Contractor may assign to the surety those items of the Amtrak Collateral that are needed to allow the surety to perform its obligations under the Performance Bond.

- 6.12.3 Contractor shall provide Amtrak monthly and upon request with a listing of the location and items of tangible Amtrak Collateral in its possession or control or in the hands of Subcontractors. Contractor must promptly notify Amtrak by written or electronic communication of any change in location of the Amtrak Collateral, specifying the new location. Contractor hereby grants to Amtrak the right to inspect the Amtrak Collateral at all reasonable times and upon reasonable notice. Contractor must: (a) maintain the Amtrak Collateral in good condition; (b) pay when due or discharge all judgments or charges of any kind payable in respect of or levied or assessed thereon; (c) keep current all rent, assessments, taxes, insurance premiums, maintenance fees, and mortgage payments due, if any, on premises where the Amtrak Collateral is located; and (d) maintain hazard insurance on the tangible Amtrak Collateral, with an insurance company and in an amounts required by Articles 59 and 60 of this Contract.
- 6.12.4 Contractor must notify Amtrak by written or electronic communication not less than thirty (30) days before taking any of the following actions and obtain Amtrak's written consent for each of them, which consent may only be conditioned on insuring uninterrupted performance of this Contract by Contractor with sufficient working capital, assets, qualified workforce and other capabilities: (a) changing or reorganizing the type of organization or form under which it does business; (b) moving, changing its place of business or adding a place of business; (c) changing its jurisdiction of organization; (d) selling or transferring any substantial part of its business or

assets; (e) permitting or becoming subject to a Change in Control; or (f) changing its name.

6.12.5 Contractor consents, without further notice, to Amtrak's filing or recording of any documents necessary to perfect, continue, amend or terminate its security interest. Upon request of Amtrak, Contractor must sign or otherwise authenticate all documents that Amtrak deems necessary at any time to allow Amtrak to acquire, perfect, continue, amend, enforce or realize on its security interest in the Amtrak Collateral. Contractor will pay the filing and recording costs of any documents relating to Amtrak's security interest.

6.12.6 Amtrak or a Financing Party may give written notice to Contractor that Amtrak's rights as a secured party under this Article 6 will be exercised by a Financing Party. In that event the Financing Party exercising Amtrak's rights with respect to the security interests granted by this Article 6 shall be entitled to take all actions and succeed to all rights of Amtrak with respect to such security interests in the Amtrak Collateral and related rights granted to Amtrak by this Article 6 or otherwise available to it under Article 9 of the Uniform Commercial Code or other Applicable Law.

6.13 Parent Guaranty

6.13.1 If Contractor is a subsidiary of another entity, then Amtrak's obligations under the Contract shall be contingent upon Amtrak's receipt of a satisfactory Parent Guaranty executed by the ultimate parent entity of Contractor or a related entity acceptable to Amtrak in its sole discretion guarantying payment and performance of Contractor's obligations and liabilities under this Contract.

6.13.2 If Guarantor is incorporated or organized in a jurisdiction outside the United States of America, 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.

- 6.13.3 Contractor shall provide to Amtrak a copy of its most recent annual audited financial statements and those of the Guarantor prior to Amtrak's issuance of a NTP and also within one hundred twenty (120) days after the end of each of the Guarantor's fiscal years thereafter until three years after Amtrak's issuance of a Certificate of Final Fleet Acceptance. The year-end financial statements of Contractor and Guarantor shall be prepared in accordance with US Generally Accepted Accounting Principles or other similar accounting principles. If Guarantor restructures or divests itself of assets causing a substantial reduction in its net worth, it shall provide Amtrak written notice thirty (30) days prior to the public announcement of any restructuring, unless Guarantor's notification to Amtrak would violate financial securities laws or regulations then in place, in which case such notification shall not be required. In that event, or in response to publicly disclosed or privately provided financial information regarding Guarantor, Amtrak may by written notice to Contractor require a meeting with senior officials of Contractor to discuss Guarantor's financial situation and what assurances Amtrak has of the Guarantor's ability to honor the Parent Guaranty and other obligations including the Contractor's ability to complete delivery of the Equipment and other Supplies under the terms of this Contract. If Amtrak is or remains insecure about Guarantor's financial condition or Contractor's ability to complete the Contract in accordance with its terms, Amtrak may by further written notice to Contractor, require Contractor to transfer title to Amtrak (but not risk of loss) to all present Equipment and Supplies in process notwithstanding their state of completion or that they remain in the possession of Contractor. Upon Amtrak's written notice given under the prior sentence, title to all Equipment and Supplies in process of Contractor relating to this Contract for which Amtrak has been invoiced and such invoices have been paid as required by this Contract, shall automatically be deemed to have transferred to Amtrak at the time of such notice.

6.13.4 The Parent Guaranty may be enforced by either Amtrak or a Financing Party, provided that the enforcement of the Parent Guaranty by any such Financing Party shall only be permitted for Contractor defaults and damages and amounts owed by Contractor to Amtrak under this Contract, and not for defaults by Amtrak under any of its funding agreements or otherwise outside of the scope of this Contract. In the event that Amtrak transfers the Contract, the obligations of the Guarantor pursuant to the Parent Guaranty shall not exceed Contractor's unsatisfied obligations under the Contract.

6.14 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 Contract 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 Technical Specification, Contractor shall provide those items listed in Sections 7.1 through 7.8 below.

7.1 The Trainsets and Spare Vehicles

The Contractor shall design, manufacture, test, certify, commission, and sell the Trainsets and Spare Vehicles, and provide warranty support in accordance with the Contract, including the Technical Specification, the Agreed Testing Program, and all Applicable Laws.

7.2 Technical Proposal

7.2.1 If after submission of Contractor's Technical Proposal, as amended, Contractor identifies any improvements and/or modifications in relation to the design, testing and manufacturing process of the Equipment or other similar rolling stock, it will notify Amtrak and discuss in good faith whether and how such improvements could be incorporated into the design, manufacturing, testing and operation of the Trainsets.

- 7.2.2 The Contractor shall build the mock-ups and develop the Trainset exhibits in accordance with the Technical Specification by no later than the date in the Contract or by some other date as may be specified by Amtrak.

7.3 Storage

Contractor shall be responsible for providing, at its own cost, for the storage of each unit of Equipment, including, but not limited to, the Trainsets, Spare Vehicles the Special Tools and Amtrak-Owned Spares at all times until the issuance of a Certificate of Final Acceptance or Conditional Acceptance, as the case may be, of such unit of Equipment, including but not limited to the Trainsets and Spare Vehicles, 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.

7.4 Amtrak-Owned Spares

- 7.4.1 Contractor shall supply to Amtrak the trucks and any additional spares that may be ordered by Amtrak all in accordance with the Specification and shall ensure that all Amtrak-Owned Spares are Fit for Purpose and meet the requirements of the Contract.

7.5 Special Tools

The Contractor shall supply to Amtrak all Special Tools required to maintain the Trainsets and Spare Vehicles, and all associated Special Tools Delivery Documentation in accordance with the Specification, and all Applicable Laws, and shall ensure that all Special Tools and associated Special Tools Delivery Documentation are Fit for Purpose and meet the requirements of the Contract. Upon Amtrak's request and payment, Contractor shall supply to Amtrak any additional Special Tools ordered by Amtrak and delivery documentation that meet the requirements of this Section 7.6. The prices Contractor charges Amtrak for such Special Tools shall be the lowest prices Contractor has charged others for comparable items under similar terms and conditions.

7.6 Bill of Material

- 7.6.1 In accordance with Section 22.3.1 of the Specification, within thirty (30) days of the completion of the last Trainset,

Contractor shall furnish to Amtrak an indexed Bill of Material. This Bill of Material shall be in standard 8.5 in. by 11 in. size and on USB drive and 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.

- 7.6.2 The electronic copy of the Bill of Material shall be supplied in a format compatible with Amtrak's then current parts and inventory system.

7.7 **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 the Equipment. As set forth in the Specification, this record shall be included in the 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.

7.8 **Training**

Contractor shall, at its own expense, organize and provide to Amtrak a program of training courses in accordance with the Specification, 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 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

8.1.1 The Equipment shall be delivered in accordance with the Delivery Schedule including the timing and sequence indicated therein. For example, if the Delivery Schedule provides that a Spare Vehicle is to be delivered prior to a Trainset, Contractor shall deliver the applicable Spare Vehicle prior to the Trainset. Contractor may not deliver Equipment out of sequence unless otherwise agreed to in writing by Amtrak. If Contractor anticipates performing tests at the Transportation Technology Center, Inc. (TTCI) facility at Pueblo, CO, Amtrak shall provide reasonable assistance to Contractor to ensure that the Association of American Railroads facilitates Contractor's request. Until all testing of the first Trainset has been successfully completed, no additional Trainsets shall be shipped. All remaining Trainsets shall be delivered in accordance with Section 8.5.

8.1.2 Delivery of the Equipment shall be FOB Destination, during normal working hours 8:00 AM to 4:00 PM (New York Time),

to one or more of the Amtrak Depots or some other location designated by Amtrak. Unless otherwise agreed to by Amtrak, Contractor shall deliver each Trainset as a complete unit.

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 Equipment. 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 may be detailed in the 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 Equipment. 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 unit of Equipment 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, the FRA and other parties that may be designated by Amtrak 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 or constitute approval or acceptance of such inspections or tests. 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 the Specification and Amtrak's approval. 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 Unless otherwise agreed to by Amtrak, prior to shipping any unit of Equipment, Contractor shall ensure that all approved field modification instructions (FMIs) have been completed.
- 8.2.10 Prior to shipping any unit of Equipment, Contractor shall comply with the pre-shipping requirements in the Specification or the other direction of Amtrak. After the final pre-shipping inspection described therein is completed, if there are defects that Amtrak requires be cured prior to shipment, an initial pre-shipping report shall be prepared by Contractor on a form created by Contractor and approved by Amtrak without delay, and be signed by both Contractor and Amtrak. If there are no defects that Amtrak requires be cured prior to shipment, a final pre-shipping report shall be prepared by Contractor on a form created by Contractor and approved by Amtrak and be signed by both Contractor and Amtrak. (To the extent applicable, upon the curing of all defects specified in the initial pre-shipping report as required to be cured prior to shipment, a final pre-shipping report shall be prepared by Contractor to be signed by both Contractor and Amtrak). Upon execution of a final pre-shipping report by Amtrak, the applicable Trainset may be shipped; provided, however, that the final pre-shipping report shall contain the findings in connection with the final pre-shipping inspection, and a post-shipping deadline shall be designated in the report for the curing of defects, if any, not required to be cured prior to shipment. Notwithstanding any execution of an initial or final pre-shipping report, Amtrak shall not be obligated to accept any Trainset which contains components or parts which do not fulfill the functional requirements and the specifications for such components and parts or which have otherwise failed or are defective. In no event shall Contractor ship Equipment without a fully executed final pre-shipping report.
- 8.2.11 Any damage to the Equipment and any parts and components thereof which become damaged from any cause whatsoever, during the progress of production or shipping or otherwise before risk of loss has passed to Amtrak, shall be made good at the expense of Contractor or the Subcontractor in whose

plant the damage occurs, and with no extension of the Contract Time or increase in the Contract Amount.

- 8.2.12 As soon as practicable, upon 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. 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 or which have otherwise failed or are defective.

8.3 **Equipment Acceptance**

- 8.3.1 Should arrival inspections and tests indicate that a unit of Equipment 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, in the case of a Trainset, the COTR has determined the Trainset has met all of the requirements of the Contract and is Fit for Revenue Service, the Contracting Official shall issue a Certificate of Conditional Acceptance or a Certificate of Final 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 6.14, upon issuance of a Certificate of Conditional Acceptance or a Certificate of Final Acceptance for a unit of Equipment, title and risk of loss shall pass to Amtrak, or an entity designated by Amtrak. For the avoidance of doubt, in the case of a Trainset, Amtrak shall only issue a Certificate of Acceptance or a Certificate of Conditional Acceptance for a complete Trainset. Amtrak shall not issue such Certificates for a portion of or incomplete Trainset.

- 8.3.2 During the testing of each unit of Equipment, after delivery to the appropriate facility where receiving and commissioning testing is to occur, and up to the point of final acceptance of the Equipment, Contractor shall make such adjustments and optimization of the mechanical, electrical, electronic and other technical equipment of the Equipment in general as Amtrak may find necessary or appropriate in order to obtain optimal functioning and reliability of the Equipment 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 Final Acceptance, to Contractor for a unit of Equipment when the applicable unit of Equipment meets all the conditions to acceptance identified and otherwise herein but is defective or deficient in some respects, but Amtrak determines the unit of Equipment 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 unit of Equipment 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 unit of Equipment, 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 the railroad's or 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 Notwithstanding the last sentence of Section 8.3.1 above, should arrival, inspection and tests indicate that the Trainset containing the Prototype Vehicle as defined in the Scope of Work for Dual-Mode Trainsets with On-Board Energy Storage Systems, Exhibit D-1, conforms to the requirements of the Contract Documents, has been received in sound and serviceable condition at the location specified by Amtrak, has successfully performed under the tests specified in Exhibit D-1 and the Prototype Test Plan, the COTR has determined that the Prototype Vehicle is fit for testing, and Contractor has met the conditions listed in the paragraph below, Amtrak shall issue a Certificate of Provisional Conditional Acceptance for the Prototype Vehicle. Except as expressly noted herein, the Certificate of Provisional Conditional Acceptance described in this Section 8.3.4 shall be governed by Article 8 of these General Provisions.

In addition to meeting the conditions listed above, prior to issuance of a Certificate of Provisional Conditional Acceptance, Contractor shall have delivered all documents or other materials necessary to achieve the passage of title to the applicable Prototype Vehicle free of all Adverse Rights in accordance with Article 19 herein. Subject to Section 6.14 of these General Provisions, upon issuance of a Certificate of Provisional Conditional Acceptance for the Prototype Vehicle, title and risk of loss shall pass to Amtrak, or an entity designated by Amtrak.

The Certificate of Provisional Conditional Acceptance shall note any defects and/or deficiencies that must be rectified, state that Amtrak is accepting the Prototype Vehicle for testing purposes only and that Amtrak's acceptance of the Prototype Vehicle for testing is not an acceptance of Contractor's technology or a decision to proceed with a battery powered

solution. The Certificate of Provisional Conditional Acceptance shall indicate that all repairs or corrective actions to remedy the defects and/or deficiencies shall be affected as soon as practicable, but in no event later than sixty (60) days, unless otherwise agreed to by Amtrak.

If during the testing of the Prototype Vehicle, the Prototype Vehicle causes damage to the Trainset, Contractor shall be responsible for such damage and shall rectify any such damage prior to issuance of a Certificate of Final Acceptance.

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

8.4 **Reliability Demonstration for Final Fleet Acceptance**

- 8.4.1 As a condition precedent to Final Fleet Acceptance, Contractor shall have delivered all Equipment to Amtrak, Amtrak shall have issued a Certificate of Final Acceptance for each Trainset, and Spare Vehicle, and in any continuous one hundred and eighty-three (183) day period (the "Measurement Period") the Reliability Target number of Allowable Failures of each of the three (3) Failure Types must not exceed the numbers in the columns in the table below entitled Failure – Type I, Failure – Type II and Failure – Type III (the "Reliability Demonstration for Final Fleet Acceptance"). The first Measurement Period shall begin after a Certificate of Conditional Acceptance has been issued for the first Trainset ordered by Amtrak, but, for the avoidance of doubt, all Trainsets must be operating in Revenue Service for the full Measurement Period in which Contractor seeks Final Fleet Acceptance.

Reliability Target – Allowable Failures within a Measurement Period			
	Failure – Type I	Failure – Type II	Failure – Type III
Failures per Trainset	3	6	9

- 8.4.2 If after five (5) Measurement Periods, the Fleet is unable to meet the Reliability Target (i.e. the Trainsets exceed the Allowable Failures within a Measurement Period) set forth above, upon the request of Contractor, Amtrak in its sole discretion may adjust the Allowable Failures in the table above.
- 8.4.3 The parties agree that any Failure may only be allocated to one of the three (3) types of Failures as follows:
- (1) Failure Type I;
 - (2) Failure Type II; or
 - (3) Failure Type III.
- 8.4.4 If a Failure meets the criteria for multiple failure types, the more severe failure shall take precedence. Failure Type I is the most severe; Type II is the second most severe and Type III is the least severe.
- 8.4.5 On or before the Scheduled Final Fleet Acceptance Date, the Contractor shall do the following: carry out all action necessary to obtain acceptance of the whole Fleet; deliver or deposit (as the case may be) all Delivery Documentation to be provided in accordance with the Contract; provide evidence that all design review submissions have been closed, and provide all necessary support and documentation in relation to the Equipment to enable Amtrak to run all the Equipment without restriction; and demonstrate to Amtrak that after issuance of a Certificate of Final Acceptance for the last Trainset the Fleet has met the Reliability Demonstration for Final Fleet Acceptance.

8.4.6 Upon Final Fleet Acceptance, Amtrak shall issue a Certificate of Final Fleet Acceptance to the Contractor.

8.5 Rate of Acceptance

In any fifteen (15) day period, the Contractor shall not tender for acceptance or conditional acceptance any more than one (1) Trainset unless otherwise agreed to by Amtrak in writing.

8.6 Special Tools

8.6.1 The Contractor shall deliver and tender for acceptance the Special Tools to the locations identified in the Technical Specification (or any alternative location specified by Amtrak) 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.

8.6.3 The Contractor shall ensure that sufficient numbers of Amtrak's staff are trained to operate the Special Tools by the time the Special Tools are delivered pursuant to the Contract. If the TSSSA is terminated due to a Contractor default, the Contractor shall arrange at its own cost for the training required to enable the replacement supplier's staff to operate the Special Tools.

8.7 Failures

Amtrak shall not be obliged to accept any Trainset for acceptance or conditional acceptance if a failure, defect or nonconformity 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, defect or nonconformity is not present in the Trainset to be accepted, or has been

remedied or Contractor has proposed a suitable plan acceptable to Amtrak to remedy such failure. Notwithstanding anything to the contrary contained herein, or contained under any other Article, the delivery, acceptance, or conditional acceptance of any Trainset shall not constitute a waiver by Amtrak of its rights thereafter to identify and seek any remedies available under this Contract for any failure, nonconformity or defect in that or any other Trainset.

9. TESTING

9.1 As set forth in the Specification, within one hundred twenty (120) days of award of the Contract, Contractor shall provide a test plan to Amtrak (the "Test Plan"). The Test Plan, described in Section 19 of the Specification, 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 Equipment shall be borne by Contractor. If due to prior successful testing, Contractor asserts that certain tests are not required and can prove the same to Amtrak's and/or the FRA's satisfaction, Contractor may request in writing that it not be obligated to perform the tests. Amtrak, in its sole discretion, shall consider Contractor's request. If Amtrak grants Contractor's request, Amtrak may issue a Change Order, which shall, among other things, reduce the Contract Amount for each such test not performed.

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 unit of Equipment. 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 unit of Equipment required as a result of a unit of Equipment 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 Equipment or 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 other Equipment 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, nonconformity or failure of the Trainsets or other Equipment 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.
- 9.4 Contractor and Amtrak jointly shall select suitable track of proper length and alignment to permit implementation of the qualification track tests required. These tests shall be conducted by, and at the expense of, Contractor; provided that the first time a particular inspection or test is performed on a particular Trainset, Amtrak shall not charge 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, in connection with such inspection or test. 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 the Trainset not having successfully passed the applicable test. All working and moving parts, and all operating devices and controls of each Trainset and its apparatus, shall be tested and put in proper operating condition by Contractor and approved by Amtrak before a Trainset shall be accepted by Amtrak. Contractor shall perform all of the adjustments specified herein.

- 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.
- 9.6 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. ORDERING AND PAYMENT

- 10.1 Amtrak shall make milestone payments to Contractor pursuant to the 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 case of a conditional acceptance milestone, no milestone payment shall be due until the earliest date such milestone was to have been achieved, as set forth in the Payment Schedule. Any milestone based on acceptance or conditional acceptance of a Trainset shall be deemed achieved on the last day of the month in which a Certificate of Final Acceptance or Certificate of Conditional Acceptance, as applicable, for such Trainset is issued.
- 10.2 Any invoice based upon the acceptance or conditional acceptance of a Trainset shall indicate the Trainset number on the invoice, and have attached a copy of the signed Certificate of Final Acceptance or Certificate of Conditional Acceptance, as applicable. Payment for accepted or conditionally accepted Trainset shall be made in accordance with Section 10.5.
- 10.3 Except for any other express provisions to the contrary contained in the Contract, Amtrak shall pay all undisputed invoices within ninety (90) days of receipt of an invoice meeting the criteria set forth herein.

Contractor may request earlier payment at a discount to be agreed by Amtrak at the time of invoice submission. Notwithstanding the foregoing, in light of any Financing Party's requirements, reasonable adjustments to the payment procedures may be requested by Amtrak, which Contractor shall reasonably consider.

- 10.4 Final Payment shall not become due until a Certificate of Final Fleet Acceptance has been issued by Amtrak, all warranty Work and outstanding FMIs have been completed to Amtrak's satisfaction, and all associated contract deliverables have been delivered and/or submitted to Amtrak and the Contractor or its Subcontractor, if applicable, submits to Amtrak: (a) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Amtrak might in any way be liable have been paid or otherwise satisfied; (b) consent of surety, if any, to final payment; (c) if required by Amtrak, other data establishing payment or satisfaction of all such obligations, such as receipts, terminations, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by Amtrak; (d) all guarantees and warranties, license agreements, fabrication Drawings, and all other documentation or items required pursuant to the Contract; (e) proof of all governmental approvals related to operation of the Trainset that must be effectuated by Contractor; (f) a certificate evidencing that insurance required by the Contract to remain in force after final payment is currently in effect and shall not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to Amtrak and the Financing Parties; (g) a written statement that Contractor knows of no reason that the insurance shall not be renewable to cover the period required by the Contract; (h) a properly executed voucher and (i) any additional documents required to effectuate the transfer of title to Amtrak, or an entity designated by Amtrak, or ensure compliance with the Contract. If any of Contractor's Subcontractors refuse to furnish a release or waiver required by Amtrak, Contractor may furnish a bond satisfactory to Amtrak to indemnify it against any such lien. If any such lien remains unsatisfied after all payments are made, Contractor shall refund to Amtrak all moneys that Amtrak may be compelled to pay in discharging such lien, including all costs and reasonable attorney's fees. Final Payment is subject to adjustment to account for damages and disputed payments or Claims, including liquidated damages assessed pursuant to Article 12.
- 10.5 Contractor shall invoice Amtrak by submitting an original invoice, along with supporting documentation, to the individual at the address set forth in the Contract. In accordance with the Payment Schedule, Amtrak shall pay Contractor ninety-five percent (95%) of all undisputed invoiced

amounts. Amtrak shall pay all invoices in accordance with the Payment Schedule.

- 10.6 At least one hundred and twenty (120) days prior to completion of the last scheduled milestone, the parties shall meet to discuss the transition period, which shall be the period from the transition meeting until Contract expiration. During this transition, the Contractor shall provide Amtrak with all required documentation, evidence of work completion, updates to manuals, training curriculums and a schedule of future upgrades to the equipment and software. At this meeting, the Contractor shall provide its plan for required warranty support and operational transition.
- 10.7 The acceptance of Final Payment shall constitute a waiver by Contractor of all Claims except for those that have been submitted to the dispute resolution procedures of Section 35.4.

11. PROJECT MANAGEMENT

Contractor shall manage the project in accordance with Exhibit 1 and comply with all terms therein.

12. LIQUIDATED DAMAGES

- 12.1 The parties have agreed that Amtrak shall be damaged if the conditions prerequisite to issuance of a Certificate of Final Acceptance or Certificate of Conditional Acceptance have not been met by Contractor with respect to any or all of the Trainsets by the applicable time set forth in the Delivery Schedule 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 an amount of [REDACTED]

[REDACTED]

[REDACTED] thirty-six (36) months after the earlier of issuance of a Certificate of Final Acceptance or Certificate of Conditional Acceptance for each Trainset, Contractor shall pay Amtrak as fixed, agreed and liquidated damages, for each Trainset, during each Measurement Period

after Contractor exceeds the Reliability Target numbers of Allowable Failures set forth in Section 8.4.1 the following amounts:

(a) [REDACTED]

[REDACTED]

[REDACTED]

If a Failure meets the criteria for multiple failure types, the Failure type that results in the greatest liquidated damage (the more severe failure) shall take precedence.

12.3 Amtrak shall use all reasonable efforts to move any Trainset that requires warranty work to a maintenance facility within one (1) day of having actual knowledge thereof. 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 on any Trainset shall be deemed "Out-of-Service" time. The time during which field modification work is being performed shall not be deemed "Out-of-Service" time if notification of the need for the work and confirmation of material availability is provided to Amtrak no less than three (3) days in advance of the scheduled start of such work and Amtrak can remove the Trainset from service without impact to service needs for operations. Notwithstanding the foregoing, in the event a Trainset is removed from service for field modification work to be performed and, upon removal, material to perform the work is not available, the time for which material is not available shall be deemed "Out-of-Service" time.

12.4 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.

- 12.5 Liquidated damages payable pursuant to this Article 12 may be retained by Amtrak from, and may be offset by Amtrak against, monies due or to become due to Contractor or, at its option, Amtrak may invoice Contractor for Liquidated damages payable pursuant to this Article 12 as they become due, in which case Contractor shall pay such invoices within thirty (30) days. In any event, the aggregate amount of liquidated damage payable to Amtrak pursuant to Sections 12.1 and 12.2 shall not exceed fifteen percent (15%) of the Contract Amount.
- 12.6 In the event that Contractor's performance is delayed to such an extent that, by the terms of Section 12.1, aggregate liquidated damages calculated in accordance with Section 12.1 would equal or exceed five percent (5%) of the Contract Amount, or Contractor shall be unable to deliver the first two (2) Trainsets ordered under the Contract within three-hundred sixty-five (365) days of the applicable date set forth in the Delivery Schedule, then Amtrak shall have the right to terminate this Contract for default, in whole or in part, under Article 16. If the Contract is terminated for default pursuant to this provision, Contractor shall be liable for fixed, agreed, and liquidated damages calculated as provided in Section 12.1, and such amount shall be in addition to amounts payable pursuant to Article 16; provided, however, that Amtrak shall not have the right to recover, under Article 16, monetary damages for delay for which Amtrak was compensated under this Article 12.
- 12.7 The parties agree that Amtrak shall be damaged in the event that the satisfaction of the conditions prerequisite to issuance of a Certificate of Conditional Acceptance with respect to any Trainset is delayed beyond the applicable delivery date set forth in the Delivery Schedule. The parties further agree that (i) the damages that would result from such delay would include, but not be limited to, loss of revenues resulting from the loss of both current and potential ridership, increased project and personnel costs, and additional costs resulting from the use of replacement equipment, and (ii) the extent of such damages would be uncertain in amount and very difficult to ascertain. Accordingly, the parties have agreed to establish the liquidated damages set forth in this Article 12 and agree that these damages do not constitute a penalty but rather a reasonable prediction of portions of damages Amtrak would incur as a result of a delay in the delivery of the Trainsets. The remedy provided for by this Article 12 is cumulative with and in addition to all other rights Amtrak has hereunder and all other remedies to which Amtrak is entitled at law or in equity in respect of facts, circumstances, events or occurrences other than delays described in this Article 12.

- 12.8 Amtrak may deduct from subsequent payments due Contractor under any contract with Contractor or from any sums retained, all or such part of these sums as may be required to pay the aforesaid damages, with Contractor being responsible for any deficiency.

13. WARRANTY

- 13.1 Contractor covenants and warrants to Amtrak that the Supplies, including without limitation, each Trainset, Spare Vehicle, Special Tool, Spare, including, but not limited to, the Amtrak-Owned Spares, and all parts (including spare parts), Mockups and equipment accessories and the Technical Documentation furnished under the Contract shall be new, the best of its kind or quality, free from Failures, defects in design, material and workmanship and Fit for Purpose, and shall be constructed and shall operate in conformance with the requirements and Specifications 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”, 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 and specifications of the Contract.
- 13.2 Contractor also covenants and warrants that all electric, electronic and mechanical systems (including software) incorporated in the Supplies, including, but not limited to, the Trainsets, Spare Vehicles, Special Tools, Spares, including, but not limited to, the Amtrak-Owned Spares, and all parts (including spare parts), Mockups and equipment accessories and other Supplies and items furnished under the Contract shall be covered by the warranty of Section 13.1 and also shall be integrated so that they operate without any electric, electronic, magnetic, mechanical, chemical or other interference between them. This applies whether the systems concerned are supplied by Contractor or its Subcontractors at any tier.
- 13.3 The warranties specified under this Article shall commence for a given Trainset upon the issuance of a Certificate of Final Acceptance or a Certificate of Conditional Acceptance for such Trainset. Subject to Section 13.4 hereof, the length of the Warranty Period for a component of a Trainset, including, but not limited to, the Amtrak-Owned Spares and Spares, shall be as follows:

<u>Component</u>	<u>Warranty Period</u>
------------------	------------------------

Car Body Structure	20 years
Truck Frames	20 years
Engines and Transformers	5 years
All Supplies, Work and other components, including, but not limited to the Amtrak-Owned Spares, Spares, parts and accessories (other than consumable or expendable items or materials within the purview of Section 13.4 hereof).	3 years

Contractor shall warrant the Special Tools, and other Work or Supplies other than Trainsets and Spare Vehicles for a period of three (3) years from the date they are delivered free of defects in design, material and workmanship and accepted in good working order by Amtrak.

Ninety (90) days prior to the delivery of the first Trainset, Contractor shall submit to Amtrak for its approval a field or warranty service plan that details how Contractor intends to implement the warranty program, including the mode of submittal, review, approval of warranty claims; administrative and document control of the flow of warranty-related defectives parts from Amtrak to Contractor and return of repair parts to Amtrak; and availability of such parts and components which Contractor and its Subcontractors will need to support warranty claims.

- 13.4 Consumable or expendable items of material, as identified by part number and description by Contractor and agreed to by Amtrak, in writing, prior to final 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.
- 13.5 If, at any time prior to the last occurring Warranty Period for the Equipment, the failure rate exceeds that of the totals in Section 13.7, a failure analysis to determine the cause and frequency of defects covered by this warranty shall be performed by the Contractor at its sole cost and expense and submitted to Amtrak for review and comment, irrespective of whether the Warranty Period for any Trainset has expired. Type and

process of said failure analysis and conclusions shall be reviewed and approved by Amtrak prior to determining suitable corrective action on all Equipment. Such analysis shall be performed and reported to Amtrak within thirty (30) days from the date Contractor becomes aware of each failure.

- 13.6 Upon occurrence of a breach of warranty, Contractor shall promptly provide a written report on the scope of any repair or replacement warranty work necessary and plan an optimum manner of accomplishing such work (taking into account "Out-of-Service" time, skill levels, space restraints, cost and other relevant factors), which must be agreed to and approved by Amtrak. Amtrak shall have the right of first refusal to perform any warranty related work. If Amtrak agrees to perform or contract with a third party to perform repair or replacement warranty work, Contractor shall be responsible for ensuring the correction of each breach of warranty and shall reimburse Amtrak for costs, (including overhead and profit) and expenses incurred in connection with such work. Such warranty work shall be performed in accordance with maintenance instructions provided by Contractor. If Amtrak does not agree to perform the warranty work, Contractor shall take action to remedy the breach, such action shall be undertaken promptly and at Contractor's own cost and expense and without cost or expense to Amtrak. If Contractor fails promptly to remedy the breach, Amtrak may take such actions as it deems appropriate to remedy the breach and Contractor agrees to reimburse Amtrak for all costs and expenses, (including profit and overhead) incurred thereby.
- 13.7 If, at any time prior to the expiration of the last occurring Warranty Period for the Equipment, Amtrak reasonably believes, or Contractor has reasonably determined, that the cumulative defects or failures of any kind in identical components or systems within the Equipment serving substantially similar functions exceed the applicable percentage of such components or systems shown in the table below or in the case of prime movers, transformers, Safety Critical of Major Components or Failures in such components reaches or exceeds five percent (5%), Contractor shall prepare at its sole cost and expense and submit to Amtrak for approval within thirty (30) days a "Fleet Modification Program" with respect to all such components or systems in all Equipment, irrespective of whether the Warranty Period for any unit of Equipment has expired. (Note: Within fifteen (15) days of shipment of the first unit of Equipment or some other time agreed to by Amtrak, Contractor shall provide to Amtrak for its approval, a list of Major Components.)

If the Total Number of Components or Systems in the Fleet is	then the Applicable Failure Threshold Percentage Triggering Component Redesign is
18 or less	20%
19 - 35	15%
36 - 500	10%
501 - 3,500	7.5%
3,501 or over	5%

The Modification Program shall ensure that all such components or systems on a fleet wide basis are no longer defective or at risk of defect or failure, and are otherwise cured, at no additional cost to Amtrak. The Fleet Modification Program Plan shall include the Contractor's schedule for delivering the required materials, standard hours for installation and installation schedule. Contractor shall provide all required material, instructions and technical support at its sole cost and expense along with reimbursement for Amtrak labor and at an agreed upon quantity of hours per event required to carry out the Fleet Modification Program. If Amtrak agrees to perform the labor, Amtrak shall provide its then current labor costs and overhead rate, adjusted annually, for the given Fleet Modification Program period. Such Fleet Modification Program Plan shall have as its goal to bring the fleet to optimal operating condition in as short a timeframe as possible with the least amount of financial and other impact to Amtrak.

If Amtrak notifies Contractor in writing that it does not approve of the Fleet Modification Program Plan, Contractor shall revise the proposed Fleet Modification Program Plan at its sole cost and expense until approved by Amtrak, whose approval shall not be unreasonably withheld. Upon approval, the Fleet Modification Program shall be implemented at Contractor's sole cost and expense promptly in accordance with a mutually agreed upon schedule.

If the material for a Trainset's scheduled Fleet Modification Program is not available on the agreed-upon date per the Fleet Modification Program Plan, the Trainset shall then be considered in THFM status and Contractor shall pay to Amtrak the Performance Guarantee amounts for THFM set forth in the TSSSA.

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 at its sole cost and expense for the temporary use by Amtrak within twenty-four (24) hours of notification by Amtrak so as to avoid downtime of the affected Trainset while repairs or modifications are being done.

- 13.8 Contractor shall maintain a sufficient quantity of Spares and other spare components to enable it to provide for warranty parts replacement within the timeframes set forth in the TSSSA, which except as otherwise provided in the TSSSA, at the Level 1 Amtrak Depots is within two (2) hours of notification by Amtrak of a defective part or the need for a warranty repair, and at the Level 2 Amtrak Depots it is within twenty-four (24) hours of notification by Amtrak of a defective part or the need for a warranty repair. If Contractor fails to provide Spares within these timeframes, the applicable Trainset shall be considered a THFM, and in accordance with the TSSSA, Contractor shall pay to Amtrak \$133 for each hour of delay. If during the Warranty Period (including any extensions) for any accepted Trainset, Amtrak determines that such Trainset is unavailable for service beyond the twenty-four (24) hour period after notification due to the unavailability of Spares or spare components, such Trainset shall be treated as a delayed delivery and subject to the conditions of Liquidated Damages for delay.
- 13.9 If after one (1) or more of the Trainsets have been accepted during the Warranty Period, one (1) or more Trainsets are inoperable or unfit for safe and efficient operation in regular service during any thirty (30) day period due to a Failure or a defect in design, materials or workmanship whether or not of the same type or kind, as determined by the COTR, the COTR may require the Contractor, within thirty (30) days after receipt of written notice from the COTR, to submit a Contractor's proposal for a "Remanufacturing Program" or "Campaign" to accomplish the necessary repairs, replacements or modifications at no additional cost to Amtrak with the least disruption to or interference with scheduled Revenue Service. Such Remanufacturing Program or Campaign shall consist of, but not be limited to, at least one of the following:

- (a) Arrangement by Contractor to have the necessary repairs, replacements or modifications performed by Amtrak; or
 - (b) Arrangement by Contractor for the use of suitable facilities, on Amtrak property (if agreement can be reached on their availability) or in the vicinity thereof, to be manned by the Contractor's personnel to perform the necessary repairs, replacements or modifications; or
 - (c) Arrangement by Contractor to have the necessary repairs, replacements or modifications performed by qualified mutually agreed upon third parties located in the vicinity of Amtrak property, or if the parties cannot promptly mutually agree, by a qualified third party selected by Amtrak.
- 13.10 Except as otherwise provided in Sections 13.7 or 13.11 hereof, all materials, parts, and equipment which are repaired or which replace items which were found to have had defects in design, material or workmanship shall be warranted for the remainder of the applicable Warranty Period or for one year from the completion of testing and acceptance by Amtrak of the Trainset in which the repaired or replaced part is installed, or for one year from the date on which the applicable Trainset is returned to Revenue Service, whichever provides the longest Warranty Period for the applicable item.
- 13.11 In the event during the applicable Warranty Period that repairs and/or modifications on all or any Trainset, made necessary by defective design, material or workmanship or they are not otherwise as warranted, are not permanent or completed due to lack of material or inability to provide the proper repair, the Warranty Period for all parts and materials on such Trainset shall be extended by the amount of time the applicable Trainset is not in operation in regular service due to lack of Contractor parts, material or inability to provide the proper repair, as determined by Amtrak. In the event a fleet-wide retrofit is required during the applicable Warranty Period due to defects in design, material or workmanship or parts, material or Equipment were not otherwise as warranted, then if the original Warranty Period for the relevant item is due to expire within three (3) years of the retrofit, the balance of such Warranty Period shall be extended two (2) years from the time then remaining on the warranty.
- 13.12 If separate or additional warranties covering material and/or equipment included in any Trainset or the Fleet are furnished by any of its Subcontractors, Contractor shall assign, transfer or otherwise 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 included in a Trainset or the Fleet 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. Amtrak shall not be required to rely on another party for fulfillment of warranty provisions.

- 13.13 The Contractor shall, for a period commencing on delivery of the first Trainset and terminating upon the expiration of the final Three-Year Warranty Period (or any extension thereof) maintain field engineers at the designated Amtrak sites in the same manner, quantity, and availability as prescribed under the TSSSA (whether or not in effect) to correct faults and defects that may be encountered. These field service personnel shall be supervised and guided by a Field Service Supervisor who shall provide guidance of such warranty related activities. The Contractor's representatives shall be qualified field engineers, knowledgeable in the repair and maintenance of the Supplies covered under this Contract and when on-site shall be located at a portable field office at Amtrak. All utilities and all other supports necessary to maintain the portable office facility shall be provided by the Contractor.
- 13.14 Contractor shall keep a log of all faults and defects found in each unit of Equipment, and of any adjustments and changes made in order to remedy such faults and defects. The Contractor shall submit to Amtrak a report of warranty work performed during preceding week. The Contractor shall track defects and submit a monthly report including all failures and defective items with running totals on a monthly and cumulative basis.
- 13.15 The warranties hereunder shall run to Amtrak, any Financing Party and each of their successors and assigns. The remedies provided for breach of warranties are cumulative and not exclusive.
- 13.16 Corrective Action:
- Amtrak shall give the Contractor written notices of observed defects or failures; provided, failure by Amtrak to provide any such notice shall not waive Amtrak's rights hereunder. 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 pursuant to the requirements hereunder. 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, Spare Vehicles, and subsystems or components thereof, deemed defective or unsatisfactory, until such Supplies 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 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 obligations contained herein.

The Contractor shall submit a list of all parts and quantities being proposed that are appropriate and reasonably necessary to support warranty compliance efforts during the continuance of any Warranty Period. The list shall be submitted to the Amtrak COTR no later than delivery of the first Trainset for approval. The list shall be submitted to the Amtrak Project Director no later than delivery of the first Trainset approval. All of the items approved shall be stocked by Contractor and made available for use within thirty (30) days after approval of them. Contractor shall stock and make available additional items, spares and replacement parts which Amtrak determines are reasonably necessary or desirable for warranty service. Contractor shall acquire and stock such items, Spares and parts as soon as is practicable, and in accord with the terms governing the acquisition and stocking of Spares and parts under the TSSSA. At the end of the Three-Year Warranty Period for the final Trainset, Contractor shall make available to Amtrak at no cost all remaining inventories of Spares and other parts acquired to provide warranty service.

The warranty provisions described in Article 13 above shall be applicable to each spare part replaced by Contactor for parts used pursuant to Section 13.6 above.

- 13.18 During the first three (3) years of the Warranty Period, the Contractor shall maintain, a field office with qualified representatives to be available for the corrective work under the warranty. The Contractor's representatives shall be qualified field engineers, knowledgeable in the repair and maintenance of equipment covered under this Contract and shall be located at a portable field office at Amtrak. All utilities and all other supports necessary to maintain the portable office facility shall be provided by the Contractor. The field engineers shall be available on twenty-four (24) hours advance notice until the expiration of the Warranty Period for all equipment covered under this Contract and the completion of all warranty work on equipment covered under this Contract. The field engineers shall follow up on all warranty claims and shall assist Amtrak in the resolution of any maintenance problems. Should any warranty claim be contested by Contractor, a joint inspection shall be made by Contractor and Amtrak, with a written report made by Contractor to Amtrak concerning the Contractor's proposal to resolve the claim. Amtrak shall review the proposal and if found acceptable, Contractor shall proceed in correcting the defective work. If Amtrak does not accept the proposal, the Contractor shall proceed in accordance with Amtrak's instructions and the matter shall be treated as a contract dispute in accordance with Article 35, Claims and Disputes.
- 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 the Level 1 Amtrak Depots and Level 2 Amtrak Depots referenced in the TSSSA. 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 Equipment 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 Supplies, including, but not limited to Trainsets, Spare Vehicles, and, subsystems, and work.
- 13.20 In the event the Contractor is unable or fails to immediately commence and diligently pursue and complete any 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 third party or to use its own forces for the performance of the warranty work. The costs of such work (including labor and overhead) may be deducted from monies due, or to become due Contractor. If no monies are then owed the Contractor, Amtrak shall invoice Contractor for such costs, and the Contractor shall pay the invoice within thirty (30) days of its receipt. Contractor hereby agrees to reimburse Amtrak for all costs and expenses in connection with such corrective work.

13.21 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. Notwithstanding anything to the contrary contained herein, if Contractor has received notice of a defect, nonconformity or failure that occurred within the applicable Warranty Period, from Amtrak within thirty (30) days after the end of such Warranty Period, Contractor shall continue to perform its obligations in this Contract with respect to such defect, nonconformity or failure after the end of such Warranty Period.

13.22 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. 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, Spare Vehicles, Special Tools, Equipment 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. No time-bombs, drop-dead or disabling devices, back doors or similar items are coded or introduced into any Amtrak software or computer system used by Amtrak or any Trainsets, Spare Vehicles, Special Tools, Equipment 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, Spare Vehicles, Special Tools, Train Scanner, Simulators, Equipment or other Supplies or items furnished under the Contract.

C. Function/Compatibility/Escrow Warranty. All software, programming and computer hardware, systems and modules and related Technical Documents that Contractor or any Subcontractor furnishes to Amtrak are (i) Fit for Purpose, (ii) capable of performing the functions for which they are intended fully and correctly, (iii) 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, (iv) capable of being copied and used by Amtrak for Allowable Uses, and (v) where not delivered outright to Amtrak, being placed into escrow, including current versions, updates and fixes of them, as provided for by Article 31.

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 Equipment type. In preparing this list, Contractor shall assume that the Equipment 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. Contractor covenants that, for the useful life of the Equipment, it shall supply to Amtrak upon Amtrak's request spare parts for the Equipment or equivalent replacement parts for spare parts no longer in stock, which parts must be capable of being incorporated in the Equipment without material changes. Spare parts must be new and conform to the specification and/or requirements applicable to the Equipment. 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. Spare parts or replacement parts shall be supplied to Amtrak at a reasonable cost not to exceed the lowest price that Contractor charges other purchasers or, in the event the spare parts and materials are unique to the Equipment and this Contract, at their cost to Contractor plus a reasonable mark-up not to exceed three percent (3%), excluding any cost associated with or attributable to non-reoccurring engineering cost or any other cost associated with any asserted obsolescence of a Spare or replacement part; provided, however, that the prices contained in the final spare parts list shall be fixed for a period of one 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 including, but not limited to, Amtrak's right to pivot to 3rd Rail/Diesel and adjust pricing associated with the same
- 15.2 A change for purposes of this Article 15 shall not include a directive or other order issued to conform the Equipment to the Specification or other Contract requirements.

- 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 Equipment, Contractor shall submit a proposal in accordance with this Article 15 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, impact to schedule, resources, any new risks or impact to existing known risks with applicable mitigation plans. 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. All such changes must be recorded in the Program Change Control Log along with applicable analysis documents and final disposition of changes and necessary approvals.
- 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.
- 15.6 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.
- 15.7 When submitting any Claim exceeding One Hundred Thousand Dollars (\$100,000), Contractor shall provide the following certification:
- "I certify that the Claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for

which the contractor believes Amtrak is liable; and that I am duly authorized to certify the Claim on behalf of the Contractor.”

- a) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.
- b) The aggregate amount of both increased and decreased costs shall be used in determining when the Dollar thresholds requiring certification are met.
- c) The certification may be executed by any person authorized to bind the contractor with respect to the claim.

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 without limitation (each, a “Termination Event”):

- (a) failure to make progress or meet any delivery schedule milestone;
- (b) failure of Equipment to conform with the 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) the occurrence of one of the Release Conditions of Section 31.5.1(b) with respect to the Contractor or the Contractor’s Guarantor;
- (g) If Contractor’s performance is delayed to such an extent that aggregate liquidated damages would equal or exceed five percent (5%) of the Contract Amount, or Contractor shall be unable to deliver the first two (2) Trainsets within three-hundred sixty-five (365) days of the applicable date set forth in the Delivery Schedule, as set forth 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;
- (k) the Contractor Guarantor, if any, breaches any provision of or disavows the Contractor Parent Guaranty or Contractor fails to provide or maintain in full force and effect the Letter of Credit, Parent Guaranty or Performance and Payment Bonds as required by Article 6;
- (l) Contactor's assigns, transfers or pledges the Contract or any right or interest therein except as expressly permitted in Article 39;
- (m) Contactor fails to provide or maintain the insurance required under Article 59 or Article 60;
- (n) Contractor fails to deliver or execute on a Modification Plan or recovery plan; or
- (o) The occurrence of any other event or circumstance expressly provided for hereunder as constituting a default by the Contractor.

For the avoidance of doubt, the parties agree that items (a) – (o) above are material and that items (a) – (o) do not represent an exhaustive list of material defaults.

Except as set out below, Amtrak will give the Contractor written notice of the default and the opportunity to cure the default within ten (10) 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 Equipment within the time specified herein or if the Termination Event is of the type described in Section 16.1(f). 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 reprocure the Supplies, including, but not limited to, the Equipment, 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 re-procurement. In the event that the Contract is terminated only in part, the remaining part shall remain in full force and effect. If the Termination Event is of the type described in Section 16.1(f), without further notice or demand of any kind (all of which are hereby waived), Amtrak shall not be obligated to purchase the Supplies hereunder and Amtrak may otherwise exercise any of the other remedies provided for herein with respect to all or a portion of this Contract as Amtrak in its sole discretion shall elect, to the extent permitted by applicable law then in effect.

- 16.2 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 Amtrak 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.
- 16.3 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 (unless such notice is waived as provided herein), 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 or otherwise transfer 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(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.

16.4 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 or expiration of the Contract.

16.5 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.

16.6 The rights and remedies of Amtrak in this Article are in addition to and shall be without prejudice to any other rights and remedies which Amtrak may have against Contractor at law or in equity or otherwise provided under this Contract and no termination of this Contract shall constitute a waiver, release or estoppel by Amtrak of any right, action or cause of action it may have against Contractor.

17. TERMINATION FOR CONVENIENCE

17.1 Upon one hundred and eighty (180) 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 (unless such notice is waived as provided herein), 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.

17.4 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-rata 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
- (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 incurred in connection with achieving the milestones for which such milestone payment amounts were made.

The Termination Expenses shall not exceed the Contract Amount, 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 Equipment.
- 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

- 18.5 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.
- 18.6 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.
- 18.7 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), title retention and all other rights of third parties of every kind and description including, without limitation, any creditors of Contractor, whether or not filed, recorded or otherwise perfected or effective under applicable law (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 Total 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 Equipment 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

- 22.1 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.

- 22.2 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.
- 22.3 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.
- 22.4 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.
- 22.5 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 Article 22. 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.

- 22.6 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.
- 22.7 This Confidentiality section shall survive the termination or expiration of the Contract.

23. MONTHLY PROGRESS REPORTS

Contractor acknowledges and agrees that 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) days after the end of each month.

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

- (a) Executive Summary & Narrative
- (b) Project Schedule / FAI Schedule
- (c) Schedule Status Update (notification of any slippage or risk of potential slippage)
- (d) Engineering/Design Progress
- (e) Project Look Ahead (activities for the next three months)
- (f) Change Order Log
- (g) Financial Summary
- (h) Areas of Concerns/Problems
- (i) CDRL Status Update
- (j) Drawing Approval Status List
- (k) Project Team and/or Organization or Responsibility Changes (as they occur)

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 the written 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.

29.2 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 without limitation the fault or negligence of Contractor or a Force Majeure Event, 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.

- 29.3 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 a Force Majeure Event, or (b) for which an equitable adjustment is provided for or excluded under any other provision of this Contract.
- 29.4 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 (or its Subcontractors') efforts relating to the Work, and (b) Amtrak's use and exploitation (as defined below) of any portion thereof, including without limitation its use of any deliverables or Supplies. In addition, Contractor shall defend and indemnify Amtrak from, and hold Amtrak 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, misappropriation or violation of any IP Rights arising in connection with the Work, any deliverables or Supplies, or Amtrak's use and exploitation (as defined below) of any portion thereof, including without limitation its use of any deliverables or Supplies; provided that Amtrak provides Contractor with reasonable notice of the same. As used in this Article 31, "exploitation" of the Work shall include without limitation all "Allowable Uses" as defined in Section 31.3. "IP Rights" means any and all of the following rights and interests worldwide: (a) any and all patent applications and patents and unpatented inventions or technology; (b) any and all proprietary knowledge, know-how, data and trade secrets; (c) any and all copyrights, whether registered or unregistered, and applications to register the same; (d) any and all rights in software, data, databases or related documentation; (e) any and all engineering data and information; and (f) any and all other proprietary rights or intellectual property rights.

- 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, or any IP Rights, 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 for Contractor to grant the license set forth below and to permit Amtrak in accordance with the Allowable Uses 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, including without limitation its use of any deliverables or Supplies.
- 31.3 A. Contractor hereby grants to Amtrak an irrevocable, perpetual, fully paid-up right and license (with the right to grant sublicenses, except as set forth below in Section 31.3.D) under the Intellectual Property for any and all Allowable Uses, which includes without limitation the right to make and use any and all products, methods and services, and to use, copy, have copied, modify, have modified, incorporate in other products, prepare derivative works from, have derivative works prepared from, and distribute any and all copyrightable works, in each case in connection with and limited to Allowable Uses. As used herein, "Intellectual Property" shall mean all rights and interests held or otherwise controlled by Contractor (including without limitation those rights obtained by Contractor from third parties pursuant to Section 31.2) worldwide in and to the following, to the extent used in the Work or incorporated or embodied in any deliverables or Supplies, or otherwise required for Amtrak's use or exploitation (as defined above) of any portion thereof, including without limitation its use of any deliverables or Supplies: (a) any and all patent applications and patents and unpatented inventions or technology; (b) any and all proprietary knowledge, know-how, data and trade secrets; (c) any and all copyrights, whether registered or unregistered, and applications to register the same; (d) any and all rights in software, data, databases or related documentation; (e) any and all engineering data and information; and (f) any and all other proprietary rights or intellectual property rights. "Intellectual Property" includes without limitation, and without regard for proprietary markings, any and all drawings, designs, specifications, documentation, 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") or otherwise delivered to Amtrak in connection with the Work (the "Other

Documents"). This license shall survive the expiration or termination of this Agreement and may be transferred by Amtrak.

- B. In addition, Contractor shall cause each and every Subcontractor to grant to Amtrak an irrevocable, perpetual, fully paid-up right and license (with the right to grant sublicenses, except as set forth below in Section 31.3.D) under the Subcontractor Intellectual Property for any and all Allowable Uses, which includes without limitation the right to make and use any and all products, methods or services, and to use, copy, have copied, modify, have modified, incorporate in other products, prepare derivative works from, have derivative works prepared from, and distribute any and all copyrightable works, in each case in connection with and limited to Allowable Uses. As used herein, "Subcontractor Intellectual Property" shall mean all rights and interests held or otherwise controlled by a Subcontractor worldwide in and to the following, to the extent used in the Work or incorporated or embodied in any deliverables or Supplies, or otherwise required for Amtrak's use or exploitation (as defined above) of any portion thereof, including without limitation its use of any deliverables or Supplies: (a) any and all patent applications and patents and unpatented inventions or technology; (b) any and all proprietary knowledge, know-how, data and trade secrets; (c) any and all copyrights, whether registered or unregistered, and applications to register the same; (d) any and all rights in software, data, databases or related documentation; (e) any and all engineering data and information; and (f) any and all other proprietary rights or intellectual property rights. "Subcontractor Intellectual Property" includes without limitation the Equipment Design Documents, the Design Procurement Documents and Other Documents. These licenses shall survive the expiration or termination of this Agreement and the expiration or termination of any agreements between Contractor and the Subcontractor and may be transferred by Amtrak.
- C. "Allowable Uses" shall be limited to (a) the use, maintenance or repair (including wreck repairs) of the Supplies, or (b) work performed by or on behalf of Amtrak to complete the Work due to a Contractor default (or, in the case of Subcontractor Intellectual Property, after termination for cause of the relevant Subcontractor) or (c) other Amtrak equipment acquisitions or other Amtrak business reasons (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 cause its Subcontractors to grant "Allowable Uses") to Amtrak.

- 31.4 Without limiting any right or remedy of Amtrak, if Amtrak or any of its affiliates is enjoined from or likely to be enjoined from using all or any portion of the Work, any deliverables or Supplies, or Amtrak's use and exploitation (as defined below) of any portion thereof, as to which Contractor is required to indemnify Amtrak against infringement, misappropriation or other violation, Contractor shall, at Amtrak's request and at Contractor's expense, either (i) procure promptly for Amtrak the right to continue using the foregoing, or (ii) promptly replace all or any portion of the foregoing with a non-infringing product or part of equivalent functionality and performance 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 foregoing in a manner satisfactory to Amtrak so as to render use of the foregoing non-infringing and not in conflict with the injunction, and having equivalent functionality and performance.
- 31.5 To secure Amtrak's rights hereunder Contractor shall place copies of its then current system design, Source Code and Object Code, listings and related Documentation including, without limitation, annotated notes (the "Escrow Materials") for the Contractor's software and Subcontractor's noncommercially available software with an independent escrow agent reasonably selected by Amtrak, subject to the terms and conditions of the independent escrow agent's standard agreement (the "Escrow Agreement") and in accordance with the provisions of this Article 31.
- 31.5.1 **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, 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 Escrow Agreement. At the same time that Amtrak delivers the Breach Notice, it may also deliver notice to the escrow agent under the 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 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) 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) 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 Escrow Agreement, and the escrow agent under the 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 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 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 Clause 4.1 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) 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 milestone payments for the Work for ninety (90) days following written receipt of notice of breach from Contractor.

31.5.2 Use of Escrow Materials. Contractor hereby grants Amtrak an irrevocable, perpetual, fully paid-up right license (with the right to grant sublicenses) 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, which includes without limitation the right to make and use any and all products, methods and services, and to use, copy, have copied, modify, have modified, incorporate in other products, prepare derivative works from, have derivative works prepared from, and distribute any and all copyrightable works, in each case in connection with and limited to Allowable Uses.

31.5.3 Establishment of Escrow. Within one (1) year of conditional acceptance of the first Trainset, Contractor shall cause the Escrow Materials to be placed into escrow. The first ten (10) years of the escrow period, shall be maintained at the sole expense of Contractor under this Contract. After ten (10) years, Contractor shall continue to maintain the escrow, including the payment thereof, under the TSSSA. After the TSSSA terminates, Amtrak shall be responsible for payment of the escrow agent’s fees. 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. Contractor shall designate a mutually 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.

31.5.4 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 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 Escrow Agreement for release of the Escrow Materials, cause a copy of such Escrow Materials to be made available to Amtrak.

32. INDEMNIFICATION

32.1 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 "Indemnified Party 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: (a) breach of warranty, (b) 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, including, but not limited to, 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, (c) occasioned by or in any manner connected with Contractor's failure to perform the Work in compliance with any applicable laws, ordinances, rules, regulations or orders, or (d) or as a result of Contractor's failure to perform its obligations in compliance with the Contract.

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, agents or Subcontractors.

32.2 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 or expiration 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 Supplies 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. To verify payments to Subcontractors, Contractor shall provide any documentation reasonably requested by Amtrak.

34.5 The Contractor shall 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.

35.6 In accordance with Section 65.2, this Article shall survive the termination or expiration of the Contract.

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 ;
 - (e) Contractor's obligation to pay liquidated damages in accordance with the Contract; (including that portion thereof intended to cover loss of revenue);
 - (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.
- 36.3 In accordance with Section 65.2, this Article shall survive the termination or expiration of the Contract.
- 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.

- 37.2 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, transfer or pledge (whether by operation of law or otherwise) the Contract nor delegate its responsibility under the Contract without the prior written consent of the Contracting Official which may be withheld in Amtrak's sole discretion, 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 Equipment, (ii) to any Amtrak lessor of the Equipment, or (iii) to the Financing Parties. For purposes of this Section 39.1, a "Change in Control" shall be deemed to be an assignment.
- 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 at its sole cost and expense 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, Liquidated Damages. Amtrak may deduct from subsequent payments due Contractor under this or any contract with Contractor or from any sums retained thereunder, all or such part of these sums as may be required to pay the aforesaid damages, with Contractor being responsible for any deficiency.
- 40.4 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.
- 40.5 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 recommences, 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 or unavailability of parts or Spares 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.
- 41.7 Force Majeure Events shall also not include (a) a failure of the Equipment or Supplies, (b) sabotage by employees or any contractors, subcontractors or suppliers of the party claiming the Force Majeure Event, (c) increases in commodity, manufacturing or delivery costs or (d) changes in foreign currency exchange rates.

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) 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, Claims and Disputes.

44.3 Contractor represents that the prices specified in the Contract and any prices for options, including the FAR-UVC Treatment of HVAC Supply Air Stream do not or will not exceed the current and/or generally offered selling price for the same or substantially similar supplies/services to any other purchasers, taking into account quantity and geographical factors.

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 Contract Amount) are appropriate for this Contract:

Disadvantaged Business Enterprise	5 percent, and
Small Business Concerns	5 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 at least quarterly or if requested by Amtrak, on a more frequent 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 at least quarterly or if requested by Amtrak, on a more frequent basis

- 45.5 Contractor shall provide to Amtrak copies of all documentation reasonably requested by Amtrak to verify compliance with this Article including, but not limited to, verifying proof of utilization of and payment to the Subcontractors addressed in this provision.
- 45.6 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 Contactor'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.
- 47.3 Contractor shall include and enforce this Environmental Compliance Article in all subcontracts or lower tier purchasing agreements.

48. BUY AMERICA(N) REQUIREMENTS

- 48.1 Contractor shall comply with the FRA Buy America requirements at 49 U.S.C. § 22905 (a) (formerly found at 49 U.S.C. § 24405(a) and Amtrak's domestic buying requirements of 49 U.S.C. § 24305(f).
- 48.2 Contractor hereby certifies that the Supplies to be furnished pursuant to this Contract comply with these requirements. Contractor shall execute a certification forms indicating its compliance. Contractor understands that its, and its Subcontractor's, compliance with these requirements is subject to ongoing monitoring and audit.

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.

50.2 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.

50.3 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).

- 50.4 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 Export Control Classification Number(s) (“ECCN”) [or the ITAR U.S. Munitions List Classification(s)] is/are: _____.”

- 50.5 If the services under the Contract include the maintenance or servicing of a Product, Contractor shall be responsible for promptly informing Amtrak’s Contracting Official of any changes in the ECCN or MCL status of such Product until expiration or termination of the maintenance or serving period for that Product.
- 50.6 If Contractor is provided, or provided access to, any technology or technical data by or through Amtrak that is restricted under the export control laws or regulations, Contractor shall fully comply with any and all restrictions imposed by Amtrak at no additional cost.
- 50.7 Contractor is fully responsible for compliance with the provisions herein on behalf of itself and its employees, agents and contractors and those of its Subcontractors, at any tier level, and their respective employees, agents and contractors.

51. TRANSACTIONS INVOLVING EMPLOYEES OF AMTRAK

- 51.1 Without giving prior written notice to the Contracting Official, Contractor shall not: (a) employ any employee of Amtrak when Contractor knows or has reason to believe that such person after employment by Contractor, shall also continue to remain in the employ of Amtrak; or (b) utilize as a consultant or otherwise, for compensation, the services of any employee of Amtrak in connection with the performance of the Work under this Contract; or (c) procure any portion of the Work under this Contract, or any materials or services required in connection with the performance of this Contract, from any firm (excluding corporations whose stock is listed on a recognized stock exchange) which Contractor knows or has reason to believe is owned or controlled by employees of Amtrak or in which employees of Amtrak have a substantial interest.
- 51.2 Contractor shall furnish the Contracting Official with such further information as the Contracting Official may request concerning any proposed transactions of Contractor set forth above.

52. AMERICANS WITH DISABILITIES ACT

- 52.1 The Contractor shall comply with all the applicable requirements of the Americans with Disabilities Act of 1990 and regulations promulgated thereafter, including 49 CFR Parts 27, 37 & 38.

53. COVENANTS AGAINST CONTINGENT FEES

- 53.1 Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Contractor for the purpose of securing business. For breach or violation of this warranty, Amtrak shall have the right to terminate this Contract without liability or in its discretion to deduct from the Contract Amount, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

54. ETHICAL BUSINESS PRACTICES

- 54.1 Contractor agrees that it shall not give, promise, or offer to any Amtrak employee, agent or representative any cash, gift, entertainment, commission, or kickback, or anything of value.

- 54.2 Contractor agrees that it shall neither solicit nor accept any cash, gift, entertainment, commission, kickback or anything of value from a Subcontractor or any other person or entity.
- 54.3 Contractor agrees that it shall not (1) knowingly employ the services of any Amtrak employee or member of an employee's immediate family as a consultant, Subcontractor, or otherwise, in connection with the performance of Services under the Contract, or (2) purchase any material or services required to perform the Contract from any entity owned or controlled (including a substantial financial interest) by any Amtrak employee or member of an employee's immediate family.
- 54.4 Contractor represents and warrants that (i) it has not committed any violations of any applicable anticorruption laws in connection with the Contract; (ii) it is not aware of any violations of any applicable anti-corruption laws in connection with the Contract; (iii) it will not commit any violations of any applicable anti-corruption laws in connection with the Contract; and (iv) it has in place a compliance program reasonably designed to detect and prevent violations of any anti-corruption laws in connection with the Contract; and (v) the Contractor, its parent, and its affiliates are not subject to any deferred prosecution agreements with any U.S. or foreign government authority. For the avoidance of doubt, applicable anticorruption laws include, but are not limited to, the Foreign Corrupt Practices Act.
- 54.5 Contractor shall certify that it has performed due diligence reasonably calculated to identify anticorruption risk on any subcontractor or any consultants, representatives, or agents retained in connection with this Contract.
- 54.6 Contractor shall use commercially reasonable efforts to include the provisions of this Article in each subcontract or third-party agreement entered into under this Contract.

55. CONFLICT OF INTEREST

- 55.1 Contractor hereby affirmatively represents that it shall not have a Conflict of Interest in performing the Services for Amtrak pursuant to this Contract. Contractor agrees not to (a) engage in activities, or (b) initiate or maintain relationships with persons or entities where such activities or relationships create a conflict of interest. Contractor shall use its best efforts to identify and prevent potential Subcontractor conflicts of interest. Contractor shall inform Amtrak of any activity or relationship that Contractor has reason to believe may create a conflict of interest. Without limiting the generality of the foregoing, Contractor shall not, and

shall not knowingly permit any Subcontractor to, enter into any contract, subcontract, or other arrangement in excess of \$50,000 (other than for personal employment) related to this Contract or the Work if any of its officers or directors or any members of the immediate family or one of the foregoing has any material interest in the contract, subcontractor arrangement, unless the other party (or parties) to such contract or subcontractor arrangement is the lowest qualified bidder on a publicly advertised, sealed-bid basis and written records of the entire transaction are kept by the Contractor and made available to Amtrak and FRA upon request.

- 55.2 Contractor represents that it is not a party to any existing agreement which would prevent Contractor from entering into and performing this Contract.

56. GRATUITIES

- 56.1 Amtrak may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this Contract if it is found, after notice and hearing, by Amtrak, that gratuities (in the form of anything of value, including but not limited to cash, entertainment, gifts) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of Amtrak with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract, provided, that the existence of the facts upon which Amtrak makes such findings shall be in issue and may be reviewed in any competent court.
- 56.2 In the event of a breach under Article 56.1, in addition to its right to terminate, Amtrak shall be entitled (i) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of contract by the Contractor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by Amtrak) which shall not be less than three or more than ten times the cost incurred by the Contractor in providing any such gratuities to any such office or employee.
- 56.3 In accordance with Section 65.1 hereof, the rights and remedies of Amtrak provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

57. OFFICIALS NOT TO BENEFIT

- 57.1 No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this Contract, or to any benefit that may arise there-from; but this provision shall not be construed to extend to this Contract if made with a corporation for its general benefit.
- 57.2 The Contractor warrants that no director, officer, employee or agent of Amtrak is a director, officer, employee or agent of the Contractor, and that to the knowledge and belief of the Contractor, no director, officer, employee, or agent of Amtrak owns any stock or has a substantial interest in the Contractor.

58. NON-WAIVER

- 58.1 No waiver by Amtrak of any breach on the part of Contractor of any of Contractor's obligations herein contained shall constitute a waiver of any subsequent breach of the same or any other of such obligations, and no payment made hereunder shall be deemed to constitute an acceptance or approval of any defective or unsatisfactory material or workmanship, or a waiver of Amtrak's right to reject the same later. As provided in Section 65.1 hereof, the remedies of Amtrak under this Article are cumulative, and in addition to those provided by law.

59. INSURANCE

- 59.1 Subject to the provisions of Article 60, Contractor shall procure and maintain, at its own cost and expense, during the entire period of performance under the Contract, including the Three-Year Warranty Period for the final Trainset (or any extension thereof), the types of insurance specified below. All insurance shall be placed with insurance carriers reasonably acceptable to Amtrak and authorized to do business in the jurisdiction(s) where Work is to be performed. All insurance shall affirmatively include coverage for acts of terrorism. Amtrak shall have the right to review and approve all insurance certificates applicable to the Work. However, Amtrak's acceptance, acquiescence or failure to object to Contractor's submitted insurance certificates shall in no way relieve Contractor from responsibility for obtaining insurance policies complying with the terms of this Contract. Contractor shall furnish Amtrak with a certificate or certificates of insurance giving evidence of the required insurance prior to the issuance of a NTP or commencement of any portion of the Work pursuant to this Contract and upon renewal of any required insurance thereafter. In no event shall Work be performed until the required certificates of insurance have been furnished. If the insurance provided is not in compliance with the

requirements listed below, Amtrak shall have the right to stop Work until proper evidence of all required insurance is provided. Contractor shall have no right to an adjustment of the Contract Time or the Contract Amount based on Amtrak's exercise of such right, and any delay in the completion of any portion of the Work caused by Amtrak's exercise of such right to stop Work shall be an unexcused delay. All Subcontractors shall be required to maintain the required the Contractor or Contractor's insurance shall provide coverage for each Subcontractor working on its behalf for covered claims caused in whole or part by the Subcontractor. Contractor shall provide thirty (30) days prior written notice to Amtrak in the event coverage is changed or the policy is canceled or not renewed. Unless otherwise specifically provided to the contrary, all insurance coverages specified herein shall name Amtrak and the Financing Parties as additional insureds (collectively, "Additional Insured Parties") using ISO CG 20 10 04 13 and CG 20 37 04 13 or their equivalent, and shall provide that Additional Insured Parties are additional insureds with respect to covered "liability caused in whole or in part arising out of" the Work, shall be primary and noncontributory to any other insurance available to Additional Insured Parties and their respective employees and agents, and shall include waivers of subrogation rights against Additional Insured Parties and their respective employees and agents. Except as otherwise expressly provided herein, Contractor's insurance obligations under this Article shall not be construed to limit Amtrak's rights whether in warranty, contract or any other applicable legal theory which may arise under provisions of the Contract or at law or in equity.

- 59.2 Workers' Compensation Insurance. A policy complying with the requirements of the statutes of the jurisdictions in which the Work shall be performed, covering all employees of Contractor. Employers' Liability coverage with limits of liability of not less than \$1,000,000 for each accident or illness shall be included. Additional Insured Parties shall not be named as an additional insured under this policy but the policy shall include a waiver of subrogation against the Additional Insured Parties and their respective employees and agents.
- 59.3 Commercial General Liability Insurance. A policy issued on an occurrence basis to and covering liability arising out of the Work to be performed by Contractor under the terms of the Contract. Products/Completed Operations Liability, Independent Contractors Liability, Contractual Liability (with railroad exclusions deleted), and Personal Injury/ Advertising Liability coverages are to be included. The policy shall contain a cross liability endorsement allowing claims and suits between insureds, shall not have any exclusion for liability relating to railroad operations, and shall not require mediation or arbitration of

any disputes. Coverage under this policy shall have combined single limits for bodily injury (including disease or death) and property damage (including loss of use) of not less than \$325,000,000 per occurrence and \$650,000,000 in the aggregate.

59.4 Automobile Liability Insurance. A policy issued to and covering the liability of Contractor arising out of the use of all owned, non-owned, hired, rented or leased vehicles which bear, or are required to bear, license plates according to the laws of the jurisdiction in which they are to be operated. Coverage under this policy shall have combined single limits of liability of not less than \$2,000,000 per occurrence and in the annual aggregate.

59.5 Railroad Protective Liability Insurance. With respect to Contractor's design and testing work activities within fifty (50) feet vertically or horizontally of railroad tracks, Contractor shall procure and maintain Railroad Protective Liability Insurance, written on the AAR-AASHTO (ISO/RIMA) occurrence based form (a claims made form is not acceptable), in the name of Amtrak (National Railroad Passenger Corporation) and other railroads and commuter agencies operating over tracks that are used in design and testing work. The policy shall have limits of liability of not less than \$10,000,000 per occurrence and \$20,000,000 in the aggregate. If equivalent or broader wording is not contained in the policy form, the following endorsement must be included:

It is agreed that "Physical Damage to Property" means direct and accidental loss of or damage to all property owned by Amtrak and/or all property in the care, custody and control of Amtrak.

In addition, Endorsement CG 28 31 - Pollution Exclusion Amendment, must be included.

59.6 Professional Liability Insurance A policy issued to and covering the liability of Contractor for engineering and design errors and omissions in the performance of this Contract. Contractor shall maintain such coverage during the term of this Contract and for at least 3 years following completion and acceptance of the Project. This insurance shall have limits of liability of not less than \$10,000,000 per occurrence and in the annual aggregate. The deductible amount shall not exceed \$250,000. The Additional Insured Parties shall not be named as an additional insured under this policy.

If professional liability insurance coverage is written on a claims-made basis: (1) the policy retroactive date shall coincide with or precede

Contractor's start of contract services (including subsequent policies purchased as renewals or replacements); (2) the policy will allow for the reporting of circumstances or incidents that might give rise to future claims; (3) Contractor will use its best efforts to maintain similar insurance under the same terms and conditions for at least six years following completion of the services under the contract; and (4) if insurance is terminated for any reason, Contractor agrees to purchase an extended reporting provision of at least six years to report claims arising from the Contract.

- 59.7 Property Insurance. A policy or policies issued to the Contractor covering, Contractor's production facilities, Contractor equipment used in the manufacturing and testing the Equipment, and each unit of Equipment, including all work in process and all component parts not yet installed and spare parts, during the design, manufacture, conveyance (including all inland and ocean transport and loading and unloading through a Stock Throughput Policy or Cargo Policy), storage and testing of each Trainset until the issuance by Amtrak of a Certificate of Conditional Acceptance or Certificate of Final Acceptance ("Acceptance") as defined in Section 8.3 of this Contract. The coverage territory shall be worldwide and the insurance shall provide coverage on an all-risk basis, including the risks of earth movement, windstorm, storm surge and flood, and provide coverage for business interruption and extra expense for the Contractor and contingent business interruption and contingent extra expense, including all supplier and contractor relationships required to fulfill this Contract. Such coverages shall have limits on a per occurrence basis, adequate to cover the full replacement value of the production facilities, including test tracks and equipment with respect to property damage and limits of three hundred million Dollars (\$300,000,000) for business interruption and extra expense and contingent business interruption and contingent extra expense, with the exception that coverage for earth movement and flood shall have limits set at one hundred million Dollars (\$100,000,000). The proceeds from such insurance shall be used exclusively to restore damaged Contractor property and to reimburse the Contractor for business interruption and extra expense for an event impacting the fulfillment of the Contractor's obligations in this Contract. In no instance shall the Additional Insured Parties be responsible for loss or damage to Contractor's or Subcontractor's property or equipment including the Equipment prior to Acceptance. In addition, Contractor shall procure and maintain property insurance for the replacement value of Contractor tools and equipment brought onto Amtrak property. This insurance shall name the Additional Insured Parties as loss payees as their interest may appear.

- 59.8 Valuable Papers and Records Insurance. A policy covering loss or damage to valuable papers including blueprints, reports, surveys, designs or specifications in connection with this Contract, on an all risk basis, in an amount no less than 100% of the replacement cost of such property. This insurance shall name the Additional Insured Parties as loss payees as their interest may appear and contain a waiver of subrogation against the Additional Insured Parties.

60. GENERAL REQUIREMENTS - INSURANCE

- 60.1 All insurance coverage procured by Contractor shall be provided by insurance companies reasonably acceptable to Amtrak and the Financing Parties and having policyholder ratings no lower than "A-" and financial ratings not lower than "VIII" in the Best's Insurance Guide, latest edition in effect as of the date of the Contract, and subsequently in effect at the time of renewal of any policies required by the Contract.
- 60.2 If Contractor fails to maintain the insurance required by the Contract, without the written consent of Amtrak, then Contractor shall pay all costs incurred by Amtrak, including, but not limited to, reasonable attorneys' fees.

61. PROTECTION OF PERSONS AND PROPERTY

- 61.1 Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.
- 61.2 Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:
- (a) All employees involved in the Work and all other persons who may be affected thereby;
 - (b) All the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site or under the care or custody of Subcontractors; and
 - (c) Other property at the Work site(s) or adjacent thereto, including but not limited to trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

- 61.3 Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety rules and notifying owners and users of adjacent utilities.
- 61.4 Use or storage of explosive or other hazardous material shall not be permitted without the written approval of the Contracting Official. If use or storage of such materials is approved, Contractor shall exercise the utmost care in such use or storage and shall carry on such activities under the supervision of properly qualified personnel.
- 61.5 All damage or loss to any property referred to in this Article caused in whole or in part by Contractor, its Subcontractors, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable shall be remedied by Contractor.
- 61.6 Contractor shall designate a responsible member of his organization at the site(s) whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated in writing by Contractor to the COTR.
- 61.7 Contractor shall not load or permit any part of the Work to be loaded so as to endanger personnel and/or property.
- 61.8 When working in and around Amtrak property, all personnel employed by Contractor or its Subcontractors shall abide by the applicable safety policies and procedures for the respective property.
- 61.9 Contractor shall notify Amtrak to arrange for permission to enter upon Amtrak and railroad property. Twenty-one (21) days prior notice must be given to Amtrak for property access when Amtrak protection personnel are required. Prior to entering Amtrak's property, Contractor and its Subcontractors may be required to execute Amtrak's then current Permit to Enter.
- 61.10 Contractor, his employees and Subcontractors shall attend all required safety seminars as directed by Amtrak.
- 61.11 Contractor must comply with all Amtrak safety rules and operating rules.

62. GOVERNING LAW

- 62.1 The Contract shall be governed by and construed in accordance with the laws of the District of Columbia, excluding that portion of District of Columbia law relating to the application of laws of another jurisdiction. Subject to the Claims and Disputes section hereof, each party agrees that all legal proceedings in connection with any dispute arising under or relating to the Contract shall be brought in the United States District Court for the District of Columbia. Contractor hereby accepts the jurisdiction of the United States District Court for the District of Columbia and agrees to accept service of process as if it were personally served within the District of Columbia. In accordance with Section 65.2, this Article shall survive the termination or expiration of the Contract.

63. COMPLIANCE WITH LAW

- 63.1 All Work shall comply with all Applicable Laws that bear on the performance of the Work (including without limitation all building codes, zoning and other Laws that bear, or would bear but for any exemption from such Laws enjoyed by Amtrak, on the Work), except as otherwise expressly specified in the Contract or directed by the Contracting Official. If Contractor observes that any of the Contract terms are at variance therewith in any respect, he shall promptly notify the COTR in writing, and any necessary changes shall be made by appropriate Contract Modification, provided that no Contract Modification shall extend the Contract Time or increase the Contract Amount if it is based on a law enacted at the time of Contract execution. Contractor shall be deemed to have had notice of all laws enacted at the time of Contract execution, regardless if the effective date is after Contract execution. Contractor shall be deemed to have included in the Contract Amount the cost of making all Work comply with all laws enacted at the time of Contract execution.
- 63.2 In the event any governmental requirements are removed, relaxed or changed in any way after the execution of the Contract so as to make Contractor's performance less expensive or less difficult, Amtrak shall have the option to either require Contractor to perform pursuant to the more rigorous requirements, or to receive a reduction in the cost of the items of material or equipment affected for all savings by reason of such change.

64. WRITTEN NOTICE

Any written notice required of the parties under the provisions of the Contract shall be deemed to have been duly served upon receipt if

delivered in person to the individual or representative or officer of the relevant party for whom it was intended, or upon mailing if sent by registered or certified mail to the business address designated in the Contract.

65. RIGHTS AND REMEDIES

65.1 Each of Amtrak's rights and remedies hereunder shall be cumulative, in addition to, and not a limitation of, any duties, obligations, rights and/or remedies provided at law, in equity, or otherwise. Amtrak's failure to exercise any of its rights under the Contract shall not constitute a waiver of any past, present or future right or remedy. No action or failure to act by Amtrak or any of its representative(s), including the Contracting Official, shall constitute approval of, waiver of, or acquiescence to, a breach by Contractor unless specifically agreed in writing. Waiver by Amtrak of any breach by Contractor shall not constitute a waiver of any other breach of the same or any other provision of the Contract. Acceptance of any Supplies of services, or payment therefore, shall not operate as a waiver of any breach.

65.2 All representations, warranties, guarantees, licenses, indemnifications, agreements to hold Amtrak harmless, and other obligations created by the Contract which by their terms are intended to be fulfilled in whole or in part after termination or completion of the Work or which can, under the particular circumstances at issue, reasonably be fulfilled only after termination or completion of the Work, shall survive termination or expiration of the Contract. Contractor shall cause a parallel survival clause to be inserted in all subcontracts.

66. AMTRAK/CONTRACTOR RELATIONSHIP

66.1 The Contracting parties are not employer and employee, and nothing herein shall be construed as creating such relationship between Amtrak and Contractor. Contractor may adopt such arrangements as it may desire, subject to the provisions of the Contract, with regard to the details of the Work and Contractor's personnel or workers, provided however, that the Work shall be done by Contractor in such manner as shall be consistent with the achievement of the result contracted for within the time herein agreed upon.

66.2 It is further understood and agreed that, in no event shall Amtrak be required to make deductions from compensation or report earnings of employees of Contractor under any Social Security Act, or any other state or Federal statute, purporting to levy a tax on payrolls or the compensation of employees; and Contractor hereby agrees to indemnify

and save Amtrak harmless from any and all liability, cost, or expense under such law, growing out of performance under the Contract.

67. PRODUCT SAFETY NOTIFICATIONS

67.1 Contractor shall comply with the Occupational Safety and Health Administration's Hazard Communication Regulations 29 CFR 1910.1200 and 29 CFR 1926.59 by providing or making readily available at the worksite, material safety data sheets for all chemicals, compressed gases, products containing hazardous materials, and products that may release hazardous substances (welding rods, solder, insulation materials, transite panels, gaskets, stock metal, etc.) during routine application.

67.2 Contractor shall notify Amtrak immediately by telephone (followed by written confirmation within twenty-four hours) (facsimile acceptable) whenever Contractor becomes aware that any component of the Supplies may contain a defect in design or construction which could in any way (a) become harmful to persons or property, or (b) create or present a risk to the health or safety of the public or to the environment, either by itself or when used by Amtrak within the scope of its intended purpose.

68. LABOR DISPUTES

68.1 Whenever an actual or potential labor dispute delays or threatens to delay the timely performance of the Contract, Contractor shall notify Amtrak immediately and furnish all relevant information. Contractor shall include the substance of this provision in all subcontracts hereunder.

69. RESERVED

70. CREDIT CARD INFORMATION

70.1 If in performance of this Contract, Contractor will store, process, transmit, or have access to payment account data belonging to Amtrak or entrusted to Amtrak by its business partners, customers, vendors, contractors or employees, Contractor shall (1) comply with the Payment Card Industry's Data Security Standard ("PCI-DSS"), as set forth at <https://www.pcisecuritystandards.org/> and as may be updated from time to time by the PCI Security Standards Council, and (2) within thirty (30) days of each anniversary of this Contract, certify in writing (to Amtrak's Contracting Official) Contractor's compliance with PCI-DSS in all

aspects of Contractor's performance of this Contract or, alternatively, the basis for Contractor's exemption from PCI-DSS compliance.

70.2 If any software, Supplies, goods, or equipment (collectively "Goods") provided by Contractor pursuant to this Contract will store, process, transmit, or otherwise have access to credit card account numbers received from Amtrak or Amtrak's customers, such Goods shall comply with the Payment Card Industry's Payment Application - Data Security Standard ("PA-DSS"), as set forth at <https://www.pcisecuritystandards.org/> and as may be updated from time to time by the PCI Security Standards Council.

70.3 Contractor acknowledges that it is responsible for compliance with PCI-DSS and PA-DSS, as applicable to Contractor's performance of this Contract.

71. SEPARATE CONTRACTS

71.1 If appropriate, Contractor shall afford other Amtrak Contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall properly connect and coordinate its Work with theirs.

71.2 If any part of Contractor's Work is dependent in any way on the work of any other separate contractor, Contractor shall take all reasonable steps to become aware of any defects in the work of such other contractors that renders or would render such work unsuitable for proper execution of Contractor's Work. Contractor shall inspect the critical items of any such contractor's work before relying on or incorporating such work into Contractor's Work. If Contractor reasonably believes that another contractor's work is deficient or otherwise unsuitable for its intended purpose, Contractor shall notify Amtrak, in writing, immediately upon such discovery. Contractor shall waive his right to any claims regarding the unsuitability of such other contractor's work if Contractor fails to timely notify Amtrak of any defects in such other contractor's work that Contractor discovered or reasonably should have discovered.

71.3 Should Contractor or any Subcontractor cause damage to the Work or property of any separate Amtrak contractor, Contractor shall, upon due notice, make all reasonable efforts to settle with such other contractor(s). If such separate contractor(s) sues Amtrak or initiates an arbitration proceeding on account of any damage alleged to have been so sustained, Amtrak shall notify Contractor, who shall defend such proceedings at its expense, and if any judgment or award against Amtrak arises there-from, Contractor shall pay or satisfy it and shall reimburse

Amtrak for all attorneys' fees and court or arbitration costs which Amtrak incurred.

72. COMMENCEMENT OF STATUTORY LIMITATION PERIOD

Claims by Contractor shall not be brought after the earliest of (a) Final Payment; (b) one year after the date of final completion of the project; or (c) one year after the date of Contractor's last substantial Work.

73. CYBERSECURITY

72.1 Contractor shall follow the National Institute of Technology (NIST) Cybersecurity Framework (CSF) to maintain and enforce digital data protection, safety and physical security procedures with respect to the access, use, and possession of Amtrak's Confidential Information and Amtrak data, when providing supplies or services to Amtrak that are (a) at least equal to industry standards and in compliance with all applicable laws; and (b) which provide reasonably appropriate technical and organizational safeguards to protect Amtrak against the accidental or unlawful destruction, loss, alteration or unauthorized disclosure or access of such information, data or systems. Contractor shall take all reasonable measures to secure and defend its location and equipment against hackers and others who may seek, without authorization, to modify or access Contractor's systems, Amtrak's systems or the information or data found therein and shall immediately report to Amtrak any breaches of security or unauthorized access to Amtrak's Confidential Information or Amtrak data. Contractor shall use diligent efforts to remedy breaches in a timely manner and deliver to Amtrak a root cause assessment and future incident mitigation plan with regard to any breach of security.

72.2 If Contractor is providing services to develop and operate Amtrak company websites on Contractor's IT infrastructure, Contractor agrees to engage a third party vendor at least annually, at its own expense, and acceptable to Amtrak, to perform penetration testing and vulnerability scans with respect to Contractor's systems. Contractor shall use leading industry practices to perform penetration tests to probe for network and infrastructure weaknesses that could be exploited. Contractor shall provide Amtrak with a written report of any high and medium level security issues, as defined by NIST Common Vulnerability Scoring System (CVSS), revealed during regular testing and how and when these vulnerabilities will be mitigated.