



AMTRAK NEXT GENERATION HIGH SPEED TRAINSETS

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.

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

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

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

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

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

“Applicable Laws” means all applicable federal, state and local laws, codes, ordinances, rules, regulations, judgments, decrees, directives, guidelines, policy requirements, orders or other governmental restrictions of any public authority having jurisdiction over the Work or Amtrak’s operations, each as may be amended and in each case including successor provisions.

“Authority” refers to the California High-Speed Rail Authority, which has its headquarters at 770 L Street, Suite 800, Sacramento, CA 95814.

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

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

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

“Capital Spare” means a spare part that although acknowledged to have a long life or a small chance of failure would cause shutdown of equipment for a prolonged period because of the long delivery of its replacement. The Capital Spares are listed in Schedule 7.

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

"Certificate of Conditional Acceptance" refers to the certificate to be furnished by Amtrak to Contractor pursuant to Article 8.3.

"Certificate of Fleet Acceptance" refers to the certificate to be furnished by Amtrak to Contractor pursuant to Article 8.4.

"Certificate of Order Acceptance" refers to the certificate to be furnished by Amtrak to Contractor pursuant to Article 8.4.

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

"Change in Law" means the application to any person of any Applicable Laws which did not apply to that person at the date hereof, or the change in application or interpretation after the date hereof of any Applicable Laws including, without limitation, a Mandatory Modification resulting from a Change in Law, but excluding any application or change:

which has been enacted or promulgated prior to the date hereof as coming into effect on a specified future date; or

with which compliance is required under the Specification; or

which such person should reasonably have known about at the date hereof.

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

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

- a. The Contract document signed by Amtrak and Contractor;
- b. The Contract attachments, exhibits and schedules as identified in the Contract, including without limitation the General Provisions and all attachments, exhibits and schedules thereto;
- c. Contract Modifications;
- d. The Performance Specification;
- e. The Technical Description; and
- f. Any plans, drawings, specifications, schedules, or other documents which may be produced pursuant to this Contract or derived there from.

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

“Contract Amount” means the total purchase price for the Work including all amounts in respect of Contract Modifications and escalations.

“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 issued unilaterally by the Contracting Official.

“Contract Program” means the program of design, manufacture, testing, certification, commissioning, achievement of approvals (safety and other) and delivery and acceptance based on the principles in the Management Plans and Schedule 5 to be produced by Contractor and agreed to by Amtrak.

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

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

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

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

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

“Delivery Schedule” as used herein means the mutually agreed upon schedule for the delivery of the Trainsets to Amtrak.

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

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

“Equipment” means any physical device that is part of the Trainset and is the object of maintenance actions. Equipment may also refer to the Trainset itself.

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

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

“Failure” means the termination of a component, equipment, or system’s ability to perform its normal functions.

“Fault” means, in relation to a Trainset, Vehicle, part, Amtrak Owned Spare, Special Tool, Mock-up or Simulator Equipment, that the relevant Trainset, Vehicle, part, Amtrak Owned Spare, Special Tool, Mock-up or Simulator Equipment does not comply with the Specification, or is not Fit for Purpose, whether in consequence of faulty design, faulty materials, poor workmanship, negligence or for any other reason attributable to Contractor or any of their respective subcontractors or suppliers or any of their respective employees or agents.

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

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

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

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

“Fit for Purpose” means:

- In respect of each Trainset, that:
 - all Relevant Approvals (other than the Safety Certificate and the Safety Management System) in respect of that Trainset have been obtained and remain in force;

such Trainset:

- (A) meets the Specification;
- (B) is in a condition which enables Amtrak to operate such Trainset in passenger revenue earning service in accordance with the Contract; and such Trainset is and shall remain fit for the purposes specified in paragraph (a)(ii) above throughout its Trainset Design Life;
 - In relation to each Amtrak Owned Spare or Capital Spare that such Amtrak Owned Spare or Capital Spare when incorporated into a Trainset, does not prevent such Trainset from being Fit for Purpose as defined in paragraph (a) above; and
 - In relation to each Special Tool, that such Special Tool is fit for use by a maintainer of rolling stock to carry out the Services in accordance with the Manuals;

“Five-Year Warranty Period” for each of the Trainsets means the five (5) year period after issuance of a Certificate of Acceptance.

“Fleet Acceptance” means all of the conditions in Article 8.4.1 have been met and Amtrak has issued a Certificate of Fleet Acceptance.

“General Provisions” means these terms and conditions.

“Indemnified Parties” means Amtrak, the Authority, their officers, directors, employees, agents, servants, successors, assigns and subsidiaries.

“Management Plans” or **“Plans”** means the Project Management Plan, including the Safety and Security Plan and the Quality Plan; the Engineering Management Plan and the In-Service Management Plan submitted to Amtrak in response to the RFP as part of Contractor’s proposal.

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

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

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

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

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

“Performance Specification” or **“Specification”** refers to the Performance Specification, which is attached to the Contract at Schedule 1 Part A.

“Person” means refers to 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);

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

“Reliability” has the meaning ascribed to it in Section 3.2 of the Performance Specification.

“Request for Proposal” or **“RFP”** means the Request for Proposal for the Purchase of the Tier III Next Generation Trainsets and Other Related Goods and Services issued by Amtrak/Authority.

“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 Fleet Acceptance Date” means the date specified in the Contract Program on which Fleet Acceptance is scheduled to occur.

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

“Spares” means replaceable parts, components, assemblies, sub-assemblies identical to and interchangeable with the item it is intended to replace. For purposes of the Contract, the Spares include, but are not limited to, those items listed in Schedule 7.

“Special Tool” means each item of special equipment, tooling and other materials designed and built specifically for testing, maintenance, overhaul, servicing and repair of the Trainsets, Vehicles and Spares and software for use in ground-based systems for diagnosing and condition-monitoring of the Trainsets, Vehicles and Spares.

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

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

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

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

“Trainset” as used herein means a fixed formation of Vehicles that can only be reconfigured within a workshop environment. Trainsets shall be the primary deliverable of this Contract and shall be inclusive of all specified services, parts, special tooling, and equipment.

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

“Work” as used herein, means the provision of designs, engineering, manufacturing, assembly, testing, operations, maintenance services or other activities/services performed to provide the deliverables, including, but not limited to, the Trainsets and Special Tools, identified and required by the Contract.

2. INTERPRETATION OF DOCUMENTS

2.1 The Contract constitutes the entire agreement of the parties. Except as provided under the Changes section hereof, neither oral statements nor other writings may be used to supplement, modify, or otherwise affect the provisions of the Contract. Contractor acknowledges that it has not been induced to enter into the Contract by any representations or promises not specifically stated in the Contract. Unless otherwise specified herein, all previous or contemporaneous proposals, letters, promises, representations, documents, agreements, or understandings, whether written or oral, relating to the subject matter of the Contract are hereby declared to be null and void and are superseded by the terms and conditions of the Contract. The terms and conditions of the Contract supersede any and all terms and conditions submitted by Contractor prior to, concurrently with, or pursuant to the Contract. Any additional or different terms proposed by Contractor are expressly rejected unless specifically accepted in writing by the Contracting Official. No other terms and conditions, or changes or modifications to the Contract shall be binding upon Amtrak unless agreed to in writing in accordance with the Changes section herein.

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

- (i) Contract Modifications;
- (ii) Contract document signed by Amtrak and Contractor;
- (iii) Supplementary General Provisions;

- (iv) General Provisions, excluding the Schedules attached thereto;
 - (v) Performance Specification set forth at Schedule 1(a);
 - (vi) Technical Description set forth at Schedule 1(b) or as otherwise produced as a result of the Performance Specification; and
 - (vii) All other Schedules attached to these General Provisions
 - (viii) Design documentation, including drawings and/or construction or manufacturing drawings produced as a result of the Performance Specification, or otherwise, in the following order of precedence:
 - (a) Notes on drawings,
 - Large scale details,
 - Figured dimensions, and
 - Scaled dimensions.
- 2.3 If any uncertainty remains after reference to the above hierarchy, 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 such 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 Trainsets specified herein shall embody all of the latest tested and proven developments and improvements available to the Contractor during the course of design and manufacture of the Trainsets and shall be of the best engineered design for the service intended. Unless stresses, deflections, or properties of structural sections are specifically required herein, the Contractor shall use its best judgment and experience in determining the stresses imposed by the type of operation, and he 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 Trainsets meeting all specified performance levels compatible with

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

- 3.2 If requested by Amtrak, Contractor shall submit updated and conformed Management Plans ("Plans") and any of the other plans identified in the Schedules attached herein, within thirty (30) days of the NTP. Review, revisions, and resubmission shall continue until the Plans are accepted by Amtrak. Thereafter, the Plans shall be updated, as required, at the discretion of the Amtrak COTR.
- 3.3 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.
- 3.4 The Contractor shall submit for Amtrak's approval, pursuant to Article 34 a list of Subcontractor(s) or supplier(s) selected to provide any Safety Critical systems, subsystems or components, systems, or parts of the Trainsets or to perform any aspect of the Work over an aggregate value of \$1,000,000.
- 3.5 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, and completely test, ready for installation by the Contractor, the component or apparatus to be furnished by said Subcontractor.
- 3.6 The Contractor shall require that the Subcontractors of all materials, apparatus, components, assemblies and parts, shall cooperate, to the fullest extent during design and manufacture of the Trainsets, to ensure proper use and installation of their products. The Subcontractors shall give prompt notice to the Contractor and Amtrak if the use or installation of their equipment by the Contractor is not satisfactory to them. No agreement with respect to the above shall be made without immediate conference at which Amtrak, Contractor and the Subcontractor are each represented, and the resolution is approved by the Contracting Official. Copies of purchase orders (which may have prices and delivery terms deleted) and revisions to purchase orders for all major items of equipment shall be promptly submitted to Amtrak upon request.

3.7 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.

3.8 Contractor shall provide not later than ninety (90) days after delivery of the first Trainset, two (2) models in dimensions of 1:48 provided with showcase and base.

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 When the word "reviewed" is used in the Contract, review and approval by the Contracting Official or his authorized representative shall be required. Prior to requesting review by Amtrak, Contractor shall notify Amtrak in writing, providing Amtrak with sufficient advance notice, of the time when such review may be undertaken. Contractor shall provide Amtrak with any and all related information and documentation, including information and documentation that may be requested by Amtrak, sufficiently in advance to enable Amtrak or its authorized representative to perform a meaningful review.

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

4.4 Unless as otherwise set forth in the Specification, in the case of decisions with respect to the Trainsets, Amtrak shall have at least thirty (30) days or if Amtrak receives multiple requests from Contractor as described in Article 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. If Amtrak fails to respond within the applicable period for approval of a particular document or decision, Contractor shall notify Amtrak of such failure in writing and upon fifteen (15) business days of receipt of Contractor's notice such approval shall be deemed to be granted or

approved. 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. 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. 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.

**5. CONTRACTING OFFICIAL'S REPRESENTATIVE (COR) and
CONTRACTING OFFICIALS TECHNICAL REPRESENTATIVE (COTR)**

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

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

5.3 Contractor shall designate one of its employees as its Contractor Project Manager, who shall be assigned by Contractor to supervise Contractor's work hereunder and shall serve as Amtrak's point of contact for the resolution of problems. Amtrak shall designate an Amtrak Project Manager to coordinate issues concerning Contractor's performance of the Work. The Amtrak Project Manager 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 Manager, 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. BONDS AND START OF WORK

6.1 Within ten (10) days after Notice of Award (NOA) is issued, Contractor must submit the Contract bonds required pursuant to Articles 6.2, 6.3 and 6.4 hereof, in a form acceptable to Amtrak. Within fifteen (15) days from receipt of such acceptable bonds and all required acceptable insurance or as soon as practicable, Amtrak shall issue a NTP. The date of a NTP with respect to any phase of the Work shall be considered by Amtrak as the date that Work commences and shall provide the basis for the calculation of timely completion of the Work in connection with such Trainset, except that, in the event Contractor fails to timely submit the required bonds, and all required insurance, the 15th day after the execution of the Contract by Amtrak shall be used as the basis for calculating timely completion of the Work in connection with the applicable Trainsets.

6.2 Contractor shall furnish and maintain during the term of the Contract and until issuance of a Certificate of Fleet Acceptance, a properly executed Performance Bond (in a form acceptable to Amtrak) with surety(ies) acceptable to Amtrak, registered in the U.S. Department of Treasury's Circular TD 570 and 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. The penal sum for the Performance Bond required is as follows:

Design/Manufacture/Delivery of the Trainsets: one hundred percent (100%) of the milestone or progress payments up to fifty percent (50%) of the unescalated Contract Amount for all the Trainsets that are ordered.

6.3 Contractor shall furnish and maintain during the term of the Contract and until issuance of a Certificate of Fleet Acceptance, a properly executed Payment Bond (in a form acceptable to Amtrak) with surety(ies) acceptable to Amtrak, registered in the U.S. Department of Treasury's Circular TD 570 and 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. The penal sum for the Payment Bond required is as follows:

Design/Manufacture/Delivery of the Trainsets: one hundred percent (100%) of the milestone or progress payments up to fifty percent (50%) of the unescalated Contract Amount for all the Trainsets that are ordered.

6.4 At least thirty (30) days prior to the date of delivery of the last Trainset deliverable under the Contract including any Contract Modifications, Contractor shall furnish a properly executed maintenance bond with surety(ies) acceptable to Amtrak, registered in the U.S. Department of Treasury's Circular TD 570 and 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 in the amount of ten percent (10%) of the Contract Amount for the Trainsets, to secure Contractor's faithful performance of its warranty obligations on this Contract. Contractor shall maintain in effect

such warranty (guarantee) bond for the period of the Five-Year Warranty Period (as defined in Article 13.3 hereof) is in effect with respect to any part of the Trainsets.

- 6.5 In the event that Amtrak gives notice to Contractor of its intention not to order the Trainsets that it has the right to order, then, within sixty (60) days of such notice, the penal sum of the Performance and Payment Bonds required by Article 6.2 shall be reduced by sixty percent (60%) of the un-escalated amount (the "Reduction Amount") specified in the Contract as the price of the relevant Trainsets, and the Contractor shall refund to Amtrak a portion of the premium paid for the Performance Bond required by Article 6.2 hereof equal to the unearned premium determined in accordance with surety industry practice.

7. CONTRACT DELIVERABLES AND REQUIREMENTS

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

7.1 The Trainsets

The Contractor shall design, manufacture, test, certify, commission, sell the Trainsets, and provide warranty support in accordance with the Performance Specification, the Contract Program, the Quality Plan, the Safety Plan, the Agreed Testing Program, all Applicable Laws and in accordance with the Contract.

7.2 Trainsets Exhibits and Mock-Ups

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

7.2.2 Contractor shall deliver the mock-ups and Trainset exhibits as specified by Amtrak to a location in the United States designated by Amtrak, at the cost of the Contractor.

7.2.3 Title to the mock-ups and Trainset exhibits and mock-ups shall pass to Amtrak on delivery to and acceptance by Amtrak in accordance with the Contract.

7.2.4 Contractor shall make the mock-ups available to Amtrak at a location designated by Amtrak for ninety (90) days from the date set out in the Contract Program on which the mock-ups will be made available. The Contractor shall at its own cost update the mock-ups during this period when necessary to reflect changes made as part of the design process and the Contractor shall keep a detailed log and photographic record

(each of which shall be available to Amtrak at any and all times) of all changes which are made to the mock-ups.

7.2.5 After the ninety (90) day period referred to in Article 7.2.4, the Contractor shall deliver the mock-ups to Amtrak, or its nominated training organization, at a location specified by Amtrak, at the cost of the Contractor, or otherwise deal with the mock-ups as agreed between Amtrak and the Contractor. Risk of loss for the mock-ups shall pass to Amtrak on delivery to and acceptance by Amtrak in accordance with this Article 7.2.5.

7.3 Technical Description

7.3.1 If after submission of Contractor's Technical Description, Contractor identifies any improvements and/or modifications in relation to the design, testing and manufacturing process of the Trainsets 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.

7.4 Storage

Contractor shall be responsible for providing, at its own cost, for the storage of each of the Trainsets, the Special Tools and Amtrak Owned Spares at all times until the Final Acceptance or Conditional Acceptance, as the case may be, of such Trainsets or, in the case of the Special Tools, until acceptance of such Special Tools in accordance with the Contract or, in the case of Amtrak Owned Spares, until acceptance of such Amtrak Owned Spares under the Contract

7.5 Capital Spares

The Contractor shall supply to Amtrak the Capital Spares listed in Schedule 7 together with all associated Spares Delivery Certificates at the Capital Spares price specified in Schedule 14 all in accordance with the Specification, the Contract Program, the Quality Plan, the Safety Plan, the Agreed Testing Program, all applicable laws, regulations, and standards and shall ensure that all Amtrak Owned Special Tools are Fit for Purpose and meet the requirements of the Contract.

7.6 Special Tools

The Contractor shall supply to Amtrak the Special Tools specified in Schedule 7 and all associated Special Tools Delivery Documentation in accordance with the Specification, the Contract Program, the Quality Plan, the Safety Plan, the Agreed Testing Program, 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 additional Special Tools and Delivery Documentation that meet the requirements of this Article 7.6. The prices Contractor charges Amtrak for such Special Tools shall be the lowest prices Contractor has charged others for comparable items.

7.7 Bill of Material

7.7.1 Amtrak shall be furnished an indexed Bill of Material in electronic form. This Bill of Material shall include drawing numbers, "generic" description of the material, quantity, type of material, weight of item, and other information required by Amtrak for ordering replacement material. It shall include provision for entry of Amtrak part numbers by Amtrak. The index shall be grouped by major material classification and CC System.

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

7.8 Serial Numbers

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

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

7.9 Training

7.9.1 Contractor shall, at its own expense, organize and provide to Amtrak a program of training courses (in accordance with Schedule 13 including appropriate training of employees of Amtrak to administer such program) which will enable Amtrak to train its employees to operate the

Equipment and to undertake its responsibilities under this Agreement and the TSSSA. Such courses shall be provided at a location specified by Amtrak and will include the provision of such training materials and equipment as are reasonably necessary to permit the Amtrak's training instructors to undertake further training of Amtrak's employees.

7.9.2 Contractor shall provide Amtrak with proper written training materials in both hard copy and in an electronic format specified by the 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.

7.9.3 At Amtrak's request, the Contractor shall provide such additional training as the Contractor 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); or
a Change in Law,

such training shall be provided at Contractor's expense.

8. INSPECTION, DELIVERY AND ACCEPTANCE

8.1 Delivery

8.1.2 Delivery of Trainsets shall be FOB Destination, during normal working hours 8:00 AM to 4:00 PM (New York Time), to Penn Coach Yard, Philadelphia, Pennsylvania, United States or some other location designated by Amtrak.

Deliveries shall only be made on Business Days.

8.2 Inspection

8.2.1 Contractor shall develop and submit for approval by Amtrak in its sole discretion a comprehensive inspection plan covering the manufacturing and testing of the Trainsets. Contractor shall be responsible for conducting all inspections in accordance with the approved inspection plan. Detailed inspection requirements are specified in the Contract.

8.2.2 Contractor shall inspect and physically or functionally test all items to be delivered under the terms of the Contract. Inspection shall occur at appropriate points in the manufacturing sequence to ensure compliance with drawings, process and test specifications, quality procedures and standards. Appropriate inspection points are detailed in Contract.

8.2.3 Contractor shall extend to Amtrak and to the COTR full cooperation and provide, at Contractor's expense, facilities necessary to permit the convenient inspection of all materials, work and equipment as detailed in the Contract.

- 8.2.4 Authorized representatives of Amtrak, the Authority and the Federal Railroad Administration (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 Performance Specification for the Trainsets during the progress of the production, assembly and factory testing of the Trainsets. Amtrak may make inspection of selected items, with or without Contractor's representative, which shall in no way waive or modify Contractor's responsibility to make proper inspections as set forth in the Contract. If any Trainset should be completed contrary to the requirements of the Contract, it must, if required by the COTR, be uncovered or disassembled for Amtrak's observation and reassembled or covered at Contractor's expense.
- 8.2.5 Amtrak, the Authority and the FRA, shall be allowed to participate in all tests and inspections. Contractor shall give Amtrak a minimum of thirty (30) days (sixty (60) days for international travel) notice before each inspection and test 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 representatives at inspections or tests shall not in any way supplant Contractor's responsibility for making proper inspections or meeting the requirements of the Contract. The COTR shall have the right to reject all materials and workmanship which do not conform to the Contract. When three (3) or more rejections occur for the same item or component, Contractor shall prepare a written report detailing the problem(s) discovered during inspection and the efforts taken to remedy the problem(s). No further inspection shall take place until Contractor notifies the COTR that the problems have all been cured.
- 8.2.6 If Amtrak has reason to believe that defective work has been performed or permitted by Contractor, or that defective materials were used, Amtrak may examine any partially or fully completed work. If Amtrak makes such an examination, Contractor shall at its own expense furnish the appliances and labor required by Amtrak to make such investigation and inspection. Any defective or nonconforming work so disclosed shall be promptly corrected by Contractor at Contractor's expense.
- 8.2.7 Except as otherwise provided herein, costs incurred by Amtrak in performing or participating in inspections under this Contract shall be borne by Amtrak. However, Contractor shall reimburse Amtrak for Amtrak's costs incurred as a result of any re-inspection resulting from a failed inspection or Contractor's failure to meet a scheduled inspection or where a scheduled inspection was postponed and rescheduled upon less than three (3) days notice to Amtrak.

- 8.2.8 Contractor shall plan and implement a Quality Assurance program, which meets the requirements of Schedule 11. Such quality assurance plan 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 Prior to shipping any Trainset, Contractor shall present such Trainset to Amtrak for final pre-shipping inspection under the conditions described in the Contract. After the final pre-shipping inspection 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. In no event, shall Contractor ship Trainsets without a fully executed final pre-shipping report.
- 8.2.10 Any damage to the Trainsets 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 Subcontractor in whose plant the damage occurs, and with no extension of the Contract Time or increase in the Contract Amount.
- 8.2.11 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. Amtrak shall not be obliged to accept any Trainset which contains components or parts

which do not fulfill the functional requirements and the specifications for such components and parts.

8.3 Trainset Acceptance

8.3.1 Amtrak shall endeavor to conduct the required receiving and commissioning tests within thirty (30) days after delivery of the Trainset to the appropriate facility where such inspections and testing are to occur. During the testing of each Trainset, after delivery to the appropriate facility where receiving and commissioning testing is to occur, and up to the point of final acceptance of the Trainsets, Contractor shall make such adjustments and optimization of the mechanical, electrical, electronic and other technical equipment of the Trainset in general as Amtrak may find necessary or appropriate in order to obtain optimal functioning and reliability of the Trainsets as contemplated by the Contract. Reasonable adjustments and optimization shall be made at no additional charge to Amtrak.

8.3.2 Should such inspections and tests indicate that a Trainset conforms to the requirements of the Contract, has been received in sound and serviceable condition at a location specified by Amtrak, has successfully performed under the tests specified in the Contract, and the Contracting Official has determined the Trainset has met all of the requirements of the Contract and is fit for passenger service, the Contracting Official shall issue a Certificate of Conditional Acceptance or a Certificate of Acceptance; provided that, as a condition to the issuance of such Certificate, Contractor shall have delivered all documents or other materials necessary to achieve the passage of title to the applicable Trainset free of all Adverse Rights in accordance with Article 8.3.2 hereof. Upon issuance of a Certificate of Conditional Acceptance or a Certificate of Acceptance for a Trainset, title and risk of loss shall pass to Amtrak.

8.3.3 Amtrak may issue a Certificate of Conditional Acceptance, rather than a Certificate of Acceptance, to Contractor for a Trainset when the applicable Trainset meets all the conditions to acceptance identified and otherwise herein but is defective or deficient in some minor respects. The defects and/or deficiencies which caused the Contracting Official to issue a Certificate of Conditional Acceptance shall be listed on the Certificate of Conditional Acceptance and shall indicate that the Trainset shall be accepted on the condition that all necessary repairs or corrective actions to remedy the defects and/or deficiencies shall be affected as soon as practicable, but in no event more than sixty (60) days, unless otherwise agreed to by Amtrak. Should Amtrak conditionally accept a Trainset, it may withhold from the relevant payment an amount as determined by the Contracting Official, which shall be no more than twice the estimated amount necessary to correct the defects and/or deficiencies, provided that no such withhold

shall be required if Contractor provides Amtrak with a letter of credit satisfactory to Amtrak in the applicable amount. Contractor shall not perform any such corrective Work on Amtrak's premises without Amtrak's express permission and direction.

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

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

8.4 Fleet Acceptance

8.4.1 On or before the Scheduled 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; and provide all necessary support and documentation in relation to the Trainsets to enable Amtrak to run all the Trainsets without restriction; and demonstrate to Amtrak that after acceptance of the last Trainset the Fleet has achieved the Reliability metrics specified in Section 6.1 of the Performance Specification.

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

8.5 Rate of Acceptance

In any thirty (30) day period, the Contractor shall not tender for Acceptance or Conditional Acceptance any more than one (1) Trainset unless otherwise agreed to by Amtrak.

8.6 Special Tools

8.6.1 The Contractor shall deliver and tender for acceptance all of the Special Tools at the Penn Coach Yard, Philadelphia, PA (or any alternative location agreed in advance by the parties) upon the dates specified in Schedule 15.

8.6.2 Amtrak shall not be obliged to accept any of the Special Tools for acceptance, nor to issue a Special Tools Acceptance Certificate unless:

(i) Amtrak has received the Special Tools Delivery Documentation;

(ii) the Special Tools conform with the Specification; and

(iii) the Special Tools comply with all Applicable Laws.

(iv) Where each condition specified in Article 8.6.2 (i)-(iii) has been fulfilled, acceptance of the Special Tools shall occur and, subject to receipt of payment of the Special Tools Price, title in the Special Tools shall transfer to Amtrak, and Amtrak shall issue a Special Tools Acceptance Certificate which shall be signed 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 TSSSA Supplier Event of 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 has become apparent in another Trainset which has been, or is to be, delivered, until such time as Amtrak is satisfied that the same Failure is not present in the Trainset to be accepted, or has been remedied or Contractor has proposed a suitable plan to remedy such Failure.

9. TESTING

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

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

9.1.2 Notwithstanding the preceding provision, Amtrak shall not charge the Contractor a fee for the use of Amtrak-owned facilities, tracks or utilities located on the Northeast Corridor, or for the use of Amtrak personnel, the first time a particular inspection or test is performed on a particular Trainset. Amtrak shall have the right to charge Contractor for, and Contractor shall pay, all such expenses in connection with any re-inspection or retesting of a particular Trainset required as a result of a Trainset not having successfully passed the applicable test.

Acceptance of the Fleet or any Trainset thereof by Amtrak shall not occur until after all tests, and retests if applicable, are successfully completed in accordance with the requirements stated in the Contract.

- 9.2 If the Contract, or any subcontracts, Applicable Laws of any public authority having jurisdiction over Amtrak operations, require the Trainsets 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, Amtrak determines that any Trainset requires additional inspection, testing, or approval (in addition to inspections and tests provided under the Specification or herein), Contractor shall, upon written authorization from Amtrak, order such additional inspection, testing or approval and Contractor shall give notice as provided hereunder. These additional inspections or tests shall be conducted at the initial expense of Amtrak, and Amtrak shall grant a non-compensable extension of time equal to any delay caused by such tests. Notwithstanding the preceding sentence, if such additional test or inspection reveals a defect or failure of the Trainsets to comply with the requirements of the Contract; or with any applicable laws, ordinances, rules, regulations or orders, 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 test 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.

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

10. PAYMENT

- 10.1 Amtrak shall make milestone payments to Contractor pursuant to an approved payment schedule upon Contractor's successful completion of certain tasks (milestones) during the Contract. Contractor shall not be entitled to any progress payment until its respective milestone is achieved. 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 Milestone 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 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 Acceptance or Certificate of Conditional Acceptance, as applicable. Payment for accepted or conditionally accepted Trainset shall be made in accordance with Article 10.5.
- 10.3 Except for any other express provisions to the contrary contained in the Contract, Amtrak shall pay all undisputed invoices within thirty (30) days of receipt of an invoice meeting the criteria set forth herein.
- 10.4 Final Payment shall not become due until a Certificate of Fleet Acceptance has been issued by Amtrak 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, 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; (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; (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 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 the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorney's fees. Final Payment is subject to adjustment for liquidated and/or performance damages and/or disputed payments or Claims.

- 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. Amtrak shall pay all invoices in accordance with an Amtrak-approved payment schedule.
- 10.6 The acceptance of Final Payment shall constitute a waiver by Contractor of all Claims except for those made by Contractor prior to the date of Final Payment.

11. CONTRACTOR'S PROJECT SCHEDULE

Contractor shall provide the calendarized Critical Path Method (CPM) schedule (the "Project Schedule") showing critical dates for start and completion of various portions of the Work, including delivery of major components and lengths of time required to complete each portion of the Work in Microsoft Project 2007.

12. LIQUIDATED DAMAGES

- 12.1 If the conditions prerequisite to issuance of a Certificate of Acceptance or Certificate of Conditional Acceptance have not been met by Contractor with respect to any or all of the Trainsets by the time (the "Delivery Schedule") specified in the Contract for such conditions to have been met, or any extension of such time granted pursuant to the terms of the Contract, Contractor shall, in place of actual damages for such delay, pay to Amtrak as fixed, agreed, and liquidated damages, the following amounts:
- a. \$100,000 per day, per Trainset, for up to 90 days of delay;
 - b. \$200,000 per day, per Trainset, for between 91 – 180 days of delay; and

c. \$250,000 per day, per Trainset, for beyond 180 days of delay.

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 and, if none, or if the remaining monies to become due are less than the delay damages, Contractor agrees to pay to Amtrak each amount that has become due as delay damages, and has not been retained by Amtrak, within thirty (30) days after the date on which such amount became due.

12.2 In the event that Contractor's performance is delayed to such an extent that, by the terms of Article 12.1, aggregate liquidated damages calculated in accordance with Article 12.1 would equal or exceed ten percent (10%) of the total contract value, 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 Article 12.1, and such amount shall be in addition to amounts payable pursuant to Article 16 hereof; provided, however, that Amtrak shall not have the right to recover, under Article 16, monetary damages for delay for which Amtrak was also compensated under this Article 12.

12.3 Time is of the essence in this Contract. The parties have agreed 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 item of Trainsets is delayed beyond the applicable 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. Amtrak acknowledges that by entering into this liquidated damages provision it shall forego portions of the consequential damages it might be entitled to recover arising from the events described in this paragraph. 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, it being understood that Amtrak shall not have the right to recover monetary damages solely for such delay in excess of those contemplated by Article 16.

12.4 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 each Trainset, Special Tool and all parts (including spare parts) and equipment accessories furnished under the Contract shall be new, the best of its kind or quality, free from defects in design, material and workmanship and suitable for the purpose intended, and shall be constructed and shall operate in conformance with all requirements of the Contract. If required by Amtrak, Contractor shall furnish evidence satisfactory to Amtrak as to the kind and quality of materials and equipment.
- 13.2 Contractor also covenants and warrants that all electric, electronic and mechanical systems incorporated in the Trainsets 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 Acceptance and the given Trainset is put into Amtrak or Authority revenue service. Subject to Article 13.4 hereof, the length of the Warranty Period for a component of a Trainset shall be as follows:

<u>Component</u>	<u>Length of Warranty Period</u>
Car Body Structure	20 years
Truck Frames	10 years
All other components, parts and accessories (other than spare parts and consumable or expendable items of material within the purview of Article 13.4 hereof).	5 years

- 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 During the Warranty Period whenever the failure rate exceeds that of the totals in Article 13.7, a failure analysis to determine the cause and frequency of defects covered by this warranty shall be performed by the Contractor and submitted to Amtrak for review. Type and process of said failure analysis and conclusions shall be reviewed and approved by Amtrak prior to determining suitable corrective action. 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 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. 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. If it is agreed that 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 Warranty Period for the Trainsets, the cumulative defects or failures of any kind in identical components or systems within the Trainsets serving substantially similar functions exceed the applicable percentage for such component or system shown in the table below, Contractor shall submit to Amtrak for approval within thirty (30) days a "Modification Program" with respect to all such components or systems in all Trainsets. The Modification Program shall ensure that all such components or systems on a fleet wise basis are no longer defective or at risk of defect or failure, and are otherwise cured, at no additional cost to Amtrak. The COTR shall give Contractor in writing within five (5) business days a notification of such defects or failures as they are identified.

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%

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

- 13.8 Contractor shall maintain a sufficient quantity of spare components to enable it to provide for warranty parts replacement within twenty-four (24) hours of notification by Amtrak of a defective part. Any accepted Trainset which during the warranty period (including any extensions) that Amtrak has found to be unavailable for service beyond the twenty-four (24) hour period after notification due to the unavailability of spare components shall be treated as a delayed delivery and subject to the conditions of Liquidated Damages for Delay.
- 13.9 After one (1) or more of the Trainsets have been accepted, if, 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 defects 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) calendar 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.

13.10 Except as otherwise provided in Articles 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 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 service, whichever provides the longest Warranty Period for the applicable item.

13.11 In the event during the Warranty Period that repairs and/or modifications on all or any Trainset, made necessary by defective design, material or workmanship, 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 material or inability to provide the proper repair, as determined by Amtrak. In the event a fleet-wide retrofit is required during the Warranty Period due to defects in design, material or workmanship, 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 to expire in two (2) years thereafter.

13.12 If separate or additional warranties covering material and/or equipment included in the a Trainset or the Fleet are furnished by any of its Subcontractors, Contractor shall provide these warranties to Amtrak in addition to the warranties set forth herein, provided that Amtrak shall not be obliged to look to anyone other than the Contractor for fulfillment of all warranty requirements under this Contract. The existence of any separate or additional warranties which run to the Contractor from any of its Subcontractors covering an item of material and/or equipment 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 during the Warranty Period. 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 Five-Year Warranty Period (or any extension thereof) maintain field engineers at the designated Amtrak sites 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.
- 13.14 During the Warranty Period, Contractor shall keep a log of all faults and defects found in each Trainset, 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, its successors and assigns, the remedies provided are cumulative and not exclusive.
- 13.16 Corrective Action During the Warranty Period:
- Amtrak shall give the Contractor written notices of observed defects or failures. Unless otherwise directed in said notices, Contractor shall commence effort to correct the work at the time specified by Amtrak but in no event later than two (2) working days following notification by Amtrak of the defect or failure. Contractor shall diligently pursue such corrective work to completion. To prevent delays and disruption to Amtrak's operations, Amtrak shall have the right, when practical and feasible in its opinion, after receiving written comments from Contractor, to continue use of any such Trainset, goods, supplies and subsystems deemed defective or unsatisfactory, until such equipment 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 from immediately commencing corrective work, provided all such corrective work is performed in accordance with the Operator and Maintenance Manuals furnished by the Contractor as specified in the Specification. Contractor shall reimburse Amtrak for costs of labor, fringe benefits 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 shall not be construed to invalidate Contractor's warranties and other provisions contained in the section. The corrective work done by Amtrak shall be subject to Contractor's approval.

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

The Contractor shall submit a list of all parts and quantities being proposed to support warranty compliance efforts during this period. The list shall be submitted to the Amtrak Project Manager no later than delivery of the first Trainset. At the end of the warranty period, Contractor shall permit Amtrak to purchase, at a reasonable cost, any quantity up to all of Contractor's warranty spare parts and material.

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

13.18 During the general 5-year 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 Replacement parts and repairs provided pursuant to corrective work hereunder shall be subject to prior approval of Amtrak and shall be tendered and performed in the same manner and extent as items originally delivered. Corrective work shall be performed at up to four (4) Amtrak maintenance sites. Any warranty work shall be accomplished with a minimum of disruption to Amtrak operations and its maintenance and service facilities. Amtrak shall provide the maintenance and service facilities free of charge and provide full access to Contractor whenever corrective work is being performed. Amtrak shall make every reasonable effort to make such facilities and trainsets available to Contractor, consistent with Amtrak's operational requirements. Contractor shall bear the cost of corrective work including necessary disassembly transportation, re-assembly, repair of, and replacement of the defective goods, supplies, subsystems, parts, equipment and work.

13.20 In the event the Contractor is unable or fails within the time prescribed to commence and diligently pursue and complete the corrective work, Amtrak is by this provision authorized by Contractor, at the option of Amtrak and upon written notice to the Contractor to contract with a mutually agreed third party or to use its own forces for the performance of the warranty work. The costs of such work may be deducted from monies due, or to become due Contractor. If no monies are then owed the Contractor, Amtrak shall invoice Contractor for such costs, and the Contractor shall pay the invoice within thirty (30) calendar days of its receipt. Contractor hereby agrees to reimburse Amtrak for all costs and expenses in connection with such corrective work.

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.

13.22 Additional Warranties Relating to Computer Hardware, Software, Etc.

A. Virus Warranty. Contractor represents and warrants that it shall use commercially reasonable efforts to ensure that no viruses or similar items ("viruses") are coded or introduced into any Amtrak software or computer system used by Amtrak. Contractor agrees that in the event that a virus is found to have been introduced, Contractor shall take all reasonable action at its own expense to eliminate the virus and reduce the effects of the virus on Amtrak's operations. Contractor further agrees to cooperate with Amtrak to mitigate and restore any loss of data or operational efficiency.

B. Disabling Code Warranty. Contractor represents and warrants that it shall not insert any time-bombs, drop-dead or disabling devices, back doors or similar items or invoke any code which could have the effect of disabling or otherwise shutting down any portion of Amtrak's computer software or system.

14. SPARE PARTS

14.1 Contractor shall submit, as part of its preliminary design proposal, a preliminary spare parts list. Additionally, at least ninety (90) days prior to delivery of the first Trainset it shall submit a complete and comprehensive list of recommended spare parts ("Comprehensive Spare Parts List") for each Trainset car type. In preparing this list, Contractor shall assume that the Trainsets shall be maintained at up to four (4) separate Amtrak maintenance locations, and that a selected number of recommended spares shall be placed in inventory by Amtrak at each location at an adequate rate to keep the Trainsets in service. 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 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, and shall be part of the per-unit cost to Amtrak. 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 Contractor ("OEM"). There shall be no restriction to prevent direct procurement from the OEM of parts by Amtrak.
- 14.4 Contractor warrants that, for the useful life of the Trainsets, it shall supply to Amtrak upon Amtrak's request spare parts for the Trainsets or equivalent replacement parts for spare parts no longer in stock, which parts must be capable of being incorporated in the Trainsets without material changes.
- 14.5 Spare parts or replacement parts must be new and conform to the Specification and/or requirements applicable to the Trainsets. Contractor shall take immediate action to submit a written order confirmation to Amtrak, stating the time of delivery and price, when Contractor has received Amtrak's orders for spare parts and/or replacement parts. Amtrak's orders for spare parts and/or replacement parts shall be executed and delivered as soon as possible and in no event later than thirty (30) days after the placing of the order, except in the case of spare parts and/or replacement parts that are identified in the Spare Parts List. For those items which Contractor has indicated a lead time on the Spare Parts List of more than thirty (30) days, Contractor shall maintain a nine (9) month supply of such spare parts.
- 14.6 Spare parts or replacement parts shall be supplied to Amtrak at prices which are no higher than the rates Contractor offers its best customer but in no case more than comparable market prices. The prices contained in the final spare parts list shall be fixed for a period of no less than one 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 to any one or more of the following:
- (a) Drawings, designs, or specifications, when the Trainset(s) to be furnished are/is to be specifically manufactured for Amtrak in accordance with the drawings, designs, or specifications;
 - (b) Method of shipment or packing; or
 - (c) Place of delivery.
- 15.2 A change for purposes of this Article 15 shall not include a directive or other order issued to conform the Trainsets to the Performance Specification or other Contract requirements. If Amtrak introduces a change of the type described in this Article 15.2, Amtrak shall do so in accordance with the applicable provisions of Schedule 3.
- 15.3 If any such change causes an increase or decrease in the cost of, or the time required for completion of any part of the Trainsets, Contractor shall submit a Change Order Pricing Proposal in accordance with this Article 15 and Schedule 3 and the Contracting Official shall make an equitable adjustment in the Contract Amount, the Contract Time, or both, and shall modify the Contract.
- 15.4 Contractor must immediately proceed with the Contract as changed, unless otherwise directed by the Contracting Official, and further must within thirty (30) days from the date of receipt of the written order (i) assert in writing its right to an adjustment under this Article and (ii) notify Amtrak of any impact such change shall have. A failure by Contractor to timely assert its right to an adjustment or to timely notify Amtrak of such impact shall be deemed a waiver of Contractor's right to an adjustment with respect to the change or such other Work, and of its or its subsidiary's right to an adjustment under such separate contract.
- 15.5 If Contractor makes a proposal for a Change Order, Contractor, in connection with such proposal, shall furnish a price breakdown, itemized as required by the Contracting Official. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, subcontract, and overhead costs, as well as profit. Any amount claimed for subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, a justification therefore shall also be furnished.

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

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.

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 obligations under the Contract, including but not limited to: (1) failure to deliver Trainsets within the time specified herein; (2) failure to make progress, so as to endanger timely performance under the Contract; (3) failure to meet any delivery schedule milestone; (4) failure of Trainsets to conform with all requirements of this Contract; (5) failure, without cause, to make prompt payment to Subcontractors or to make prompt payment for equipment, materials and/or labor; (6) noncompliance with the Laws or the proper instruction of Amtrak; (7) failure to comply with Amtrak's rules or breach of or failure to comply with any other provision of the Contract. Amtrak, at its option and in its sole discretion, may excuse any such default (a) for the reasons set forth below or (b) if the default is cured within ten (10) days of Contractor's receipt of a written notice of default from Amtrak. Amtrak shall not be required to provide written notice of default if Contractor fails to deliver the Trainsets within the time specified herein. In the event that Contractor's default is not excused or cured to the satisfaction of Amtrak, Amtrak may terminate the Contract in whole or in part and reprocure the Trainsets from another source, in which event Contractor shall be liable for (1) repayment to Amtrak of any payments made by Amtrak and (2) any Excess Costs to Amtrak relating to the reprocurement. In the event that the Contract is terminated only in part, the remaining part shall remain in full force and effect.

16.2 If Amtrak terminates this Contract, in whole or in part, whether for convenience or for default, Contractor shall not be entitled to receive any further payment for the terminated Services. 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 he may deem expedient, including the acquisition, under the terms and in the manner the Contracting Official considers appropriate, 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, in whole or in part, whether for default or convenience, Contractor shall, if directed by the Contracting Official, take action including but not limited to:

(a) Stop the terminated Work on the date and to the extent specified in the notice of termination, without creating a hazardous condition;

(b) Place no further subcontracts for materials, equipment, services, facilities or other items, except as may be necessary for completion of such portion of the Work that is not terminated;

- (c) Unless directed otherwise by Amtrak, terminate all subcontracts to the extent that they relate to the performance of terminated Work;
- (d) Furnish Amtrak with a release of all claims against Amtrak, including all claims by Subcontractors, and including a release of all Claims related to Work completed in accordance with the Contract, to the extent Amtrak has made payment in respect thereof in accordance with Article 44.
- (e) Take such other reasonable action as Contractor may deem necessary, or as Amtrak may direct, for the protection of property which is in the possession of Contractor and in which Amtrak has or may acquire an interest;
- (f) Cooperate fully with Amtrak to enable Amtrak to effectively and efficiently continue and complete the Work;
- (g) Assign to Amtrak, 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 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 Article 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 Article 65.2, this Article shall survive the termination 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 any other rights and remedies provided by law or in equity or otherwise provided under this Contract.

17. TERMINATION FOR CONVENIENCE

- 17.1 Amtrak shall have the right, upon fifteen (15) days written notice to Contractor, 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 Article 17.3 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 Contractor's compliance with Article 16.3 as applicable, Amtrak shall pay Contractor the Termination Expenses which shall be, if appropriate and reasonable, an amount equal to:
 - (a) All amounts due pursuant to the payment schedule, and not previously paid to Contractor, for Work authorized and completed in accordance with the Contract prior to the date of termination (plus related retention amounts); provided that if Work in respect of a progress payment has been performed but such payment is not yet due under the payment schedule at the time of termination, the amount due for purposes of this Article shall be deemed to include an amount equal to the reasonably estimated amount of that progress payment, reduced by pro-ratio to reflect the extent to which the Work to be compensated by that progress payment remains unperformed or was performed other than in accordance with the Contract; plus
 - (b) Contractor's reasonable expenses incurred during a reasonable period of demobilization, plus ten percent (10%); plus
 - (c) Contractor's reasonable expenses incurred in fulfilling its obligations hereunder in respect of termination; less
 - (d) The positive difference between (i) milestone payment amounts paid by Amtrak to Contractor and (ii) Contractor's actual costs plus a fifteen

percent (15%) mark-up, incurred in connection with achieving the milestones for which such milestone payment amounts were made.

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

18. CONTRACTOR KEY PERSONNEL

- 18.1 Contractor shall designate, prior to the commencement of the Work, "Key Personnel" who shall include: an individual to whom all Amtrak communications concerning this Contract may be addressed (the "Project Executive" or other title); and "Project Manager" (or other title), who shall report to the Project Executive, and shall be in charge of Contractor's Work related to the Trainsets.
- 18.2 Amtrak shall have the right to approve the assignment and replacement by Contractor of all Key Personnel. Before assigning an individual to any of the positions designated herein, whether as an initial assignment or a subsequent assignment, Contractor shall notify Amtrak of the proposed assignment, shall introduce the individual to appropriate Amtrak representatives, and shall provide Amtrak with a resume of any other information about the individual reasonably requested by Amtrak. If, after being notified thereof, Amtrak in good faith objects to the proposed assignment within fifteen (15) days, then Contractor agrees to discuss such objections with Amtrak and attempt to resolve such concerns on a mutually agreeable basis. If the parties have not been able to resolve Amtrak's concerns within five (5) days, Contractor shall not assign the individual to that position and shall propose to Amtrak the assignment of another individual of suitable ability, experience and qualifications.
- 18.3 Amtrak shall have the right to require Contractor to replace employees 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.

19. CONTRACTOR'S REPRESENTATIONS

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

20. CERTAIN CONDITIONS ON AMTRAK'S OBLIGATIONS

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

- (a) to the same effect as the representation contained in Article 19; and

(b) that the Bills of Sale and acknowledgment of receipt delivered to Amtrak pursuant to this Contract are valid and effective to, and accordingly do, confirm in Amtrak the absolute ownership of the Trainsets free from all Adverse Rights.

21. SEVERABILITY

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

22. CONFIDENTIALITY

- 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 section. Contractor acknowledges that a breach of its obligations hereunder cannot be compensated adequately by an award of damages or other pecuniary remedy, and that Amtrak shall also be entitled in the event of any such breach to the remedies of injunction, specific performance or other equitable relief.
- 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

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

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

- (a) Executive Summary & Narrative
- (b) Project Schedule / FAI Schedule
- (c) Schedule Status Update (notification of any 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), 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 seven 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 second seven day period. If Contractor within such second seven 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 64 Amtrak's rights under this Article are in addition to any other rights it may have with respect to defective Work, including those rights of termination as specified elsewhere in the General Provisions.

28. NON-PERFORMANCE BY AMTRAK

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

29. SUSPENSION OF THE WORK

- 29.1 After the Work has been started, Contractor shall not suspend the Work without permission of the Contracting Official or his designated representative. When under suspension, the Work shall be put in proper and satisfactory condition, and properly protected as directed by the Contracting Official or his designated representative. In all cases of suspension, the Work shall not again be resumed until permitted by order of the Contracting Official or his designated representative.
- 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 Contractor's 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, but there shall be no adjustment of the Contract Amount in connection with such suspension except as explicitly provided in this Article. In the event that operations on a part of the Work are suspended by Amtrak pursuant to this Article for more than thirty (30) days, in the case of

suspension of the Work, the Contract Amount for such part of the Work may be adjusted for any increase in the cost of performance of the Work (excluding profit) necessarily caused by such suspension (it being understood that the economic adjustment formulae in the Contract shall compensate Contractor for increased costs attributable to inflation). However, no adjustment of the Contract Time or Contract Amount shall be made for any suspension: (a) to the extent that performance would have been suspended, delayed or interrupted by any other cause, including the fault or negligence of Contractor or (b) for which equitable adjustment is provided for or excluded under any other provision of the Contract. Amtrak's rights under this Article shall be in addition to any other right under the Contract to suspend the Work.

- 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 (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 efforts relating to the Work, and (b) Amtrak's use and exploitation (as defined below) of any portion thereof. In addition, Contractor shall defend and indemnify 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 of any patent or misappropriation of any other proprietary rights 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 Article 31.3.
- 31.2 With respect to the Work, Contractor shall not use or permit the use of or furnish for use by Amtrak or another party any appliance, article, device, or method of construction, design or manufacturing, unless Contractor has obtained all necessary consents or authorizations for such use or uses. Any action by Contractor to obtain such consents or authorizations shall include without limitation all rights necessary to permit Amtrak in accordance with the Allowable Uses to use or permit the use of or furnish for use by another party such appliance, article, device, or method of construction, design or manufacturing to the extent necessary in connection with Amtrak's use or exploitation of the Work.
- 31.3 A. Contractor hereby grants to Amtrak an irrevocable, fully paid-up right and license under the Intellectual Property 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 worldwide in and to (a) any and all patent applications and patents; (b) any and all proprietary knowledge, data and trade secrets; (c) any and all engineering data and information; and (d) any and all drawings, designs, specifications, notes and other works, prepared, developed or acquired in performance of the design services component of the Work (collectively, the "Equipment Design Documents") or in the performance of the Design/Build Services (collectively, the "Design Procurement Documents").
- B. In addition, Contractor shall cause each and every Subcontractor to grant to Amtrak an irrevocable, fully paid-up right and license under the Subcontractor Intellectual Property, 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 (a) any and all patent applications and patents; (b) any and all proprietary knowledge, data and trade secrets; (c) any and all engineering data and information; and (d) the Equipment Design Documents or the Design Procurement Documents.

C. "Allowable Uses" shall be limited to (a) the use, maintenance or repair (including wreck repairs) of the Trainsets or (b) work performed by or on behalf of Amtrak to complete the Work after the termination of the Contract for default (or, in the case of Subcontractor Intellectual Property, after termination for cause of the relevant Subcontractor) or (c) other Amtrak equipment acquisitions in the event Contractor or its affiliates ceases to be in the business of manufacturing and selling the Trainsets (or, in the case of Subcontractor Intellectual Property, the applicable Subcontractor ceases to be in the business of selling the equipment to which the applicable Subcontractor Intellectual Property relates). The Contractor use its best efforts to oblige the subcontractors to grant "Allowable Uses" as mentioned under (b) and (c) to Amtrak.

D. Amtrak shall have no right to sublicense the rights and licenses granted to Amtrak pursuant to this Article 31.3(or rights and licenses under Subcontractor Intellectual Property) to a competitor of Contractor (or, in the case of Subcontractor Intellectual Property, a competitor of the applicable Subcontractor except (i) in connection with the completion of the Work (provided that Amtrak shall have no right to so sublicense the Subcontractor Intellectual Property to complete the Work if the relevant Subcontractor has not been terminated for default), (ii) to obtain prompt repair of the Trainsets or the Facilities, or (iii) in connection with Amtrak's acquisition of other equipment in the event Contractor ceases to be in the business of manufacturing and selling the Trainsets (or, in the case of Subcontractor Intellectual Property, the applicable Subcontractor ceases to be in the business of selling the equipment to which the applicable Subcontractor Intellectual Property relates).

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

31.5 To secure Amtrak's rights hereunder 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, 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, which breach is proximately caused by Contractor’s acts or omissions, then Amtrak shall so notify Contractor in writing in accordance with the notice provisions set forth in the Contract (“Breach Notice”), specifying in reasonable detail the basis for Amtrak’s claim of breach. Amtrak shall serve a copy of the Breach Notice simultaneously upon the escrow agent under the 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 be by Contractor or has not been discharged or terminated within ninety (90) days; or (v) the rejection by Contractor or any trustee of Contractor of the License Agreement pursuant to 11 U.S.C. Clause 365. The terms of clause (a) of this 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.

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

31.6.3 Establishment of Escrow. The escrow shall be established and maintained by Contractor. The first ten (10) years of the escrow period, shall be maintained at the sole expense of Contractor. After ten (10) years, Contractor shall continue to maintain the escrow with responsibility of payment to be borne by Amtrak. The deposit made with the escrow agent shall be kept current so as to accurately reflect the then current version of the Escrow Materials and promptly updated by Contractor following each material Upgrade, modification or enhancement thereto. 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.

31.6.4 Extension of Obligations. The obligations of Contractor under this Clause 30 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 "Claims"), which any of the Indemnified Parties may hereafter incur, be responsible for or pay as a result of breach of warranty, injury or death of any person, or damage to or loss (including loss of use) of any property, including property of the parties hereto, arising out of or in any degree directly or indirectly caused by or resulting from supplies, material, deliverables, products or equipment supplied by, or from activities of, or work performed by Contractor, Contractor's officers, employees, agents, servants, Subcontractors, or any other person acting for or with the permission of Contractor under the Contract, or as a result of Contractor's failure to perform its obligations in compliance with the Contract.
- 32.2 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. Contractor shall also repair or replace any property of Amtrak which is damaged by its employees, agents or Subcontractors while performing work hereunder.
- 32.3 The indemnification obligations under this section shall not be limited by the existence of any insurance policy procured or maintained by Contractor or by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any Subcontractor and shall survive the termination of the Contract.

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

- 33.1 Within ten (10) days after execution of the Contract with respect to the Work Contractor shall furnish the Contracting Official, in writing, an accurate itemized labor and material cost schedule 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 Specifications (including those who are to furnish materials or equipment fabricated to a special design) and, where applicable, the name of the installing Subcontractor. The Contracting Official shall within thirty (30) days reply to Contractor, in writing, stating whether or not the Contracting Official, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Contracting Official to reply within such period shall constitute notice of no reasonable objection.

- 33.2 Contractor shall not contract with a proposed person or entity to which the Contracting Official has made reasonable and timely objection. Contractor shall not be required to contract with anyone to whom Contractor has made reasonable objection.
- 33.3 If the Contracting Official has a reasonable objection to a person or entity proposed by Contractor, Contractor shall propose another person or entity to which the Contracting Official or Contractor has no reasonable objection.
- 33.4 Contractor shall not change a Subcontractor, person or entity previously selected if the Contracting Official makes reasonable objection to such change.
- 33.5 Notwithstanding the foregoing, Contractor may not replace a Subcontractor or supplier if such replacement will reduce the domestic content of the Trainsets in any way.

34 SUBCONTRACTORS

- 34.1 All references to Subcontractors herein include Subcontractors at any tier. Nothing contained in the Contract or any contract with a Subcontractor at any tier shall create any contractual relationship between Amtrak and any Subcontractor, or any third-party beneficiary rights in any Subcontractor; provided, however, that Amtrak shall be named as a third party beneficiary of all contracts with a Subcontractor.
- 34.2 All work performed for Contractor by a Subcontractor shall be pursuant to an appropriate agreement between Contractor and the Subcontractor which shall contain provisions that:
 - (a) Preserve and protect the rights of Amtrak under the Contract with respect to the Work to be performed under the subcontract so that the subcontracting thereof shall not prejudice such rights;
 - (b) Require that such Work be performed in accordance with the requirements of the Contract;
 - (c) Require submission to Contractor of applications for payment under each subcontract to which Contractor is a party, in reasonable time to enable Contractor to apply for payment;

- (d) Require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to Contractor (via any Subcontractor where appropriate) in sufficient time so that Contractor may comply in the manner provided in the Contract for like Claims by Contractor upon Amtrak;
 - (e) Require that each Subcontractor be named as additional insured under the insurance policies required to be carried by Contractor pursuant to Article 59 and require that Amtrak be named as an additional insured under the policies carried by the Subcontractor, and that such policies contain a waiver of subrogation against Amtrak, to the extent that the corresponding policies carried by Contractor are required to name Amtrak as an additional insured or include such a waiver;
 - (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) require Contractor to include any provisions in an agreement with a Subcontractor, or (ii) require Contractor to bind a Subcontractor to any obligation or otherwise create any obligation, responsibility, or liability on the part of any Subcontractor, or (iii) confer 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.

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) 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 sixty (60) days after the Contractor knew or should have known of thirty (30) days after the first occurrence 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 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 sixty (60) days of receiving the written Claim and all 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 within thirty (30) days from the issuance of the decision of the Contracting Official pursuant to Article 35.2 the parties may attempt to resolve the Dispute through direct discussions between the Chief Operating Officer of Amtrak and the Chief Operating Officer of Contractor, or their respective designees, and such persons shall confer as often as they deem reasonably necessary to discuss the 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. If requested by Contractor, such discussions shall take place within sixty (60) days of such request.
- 35.4 Any Dispute or Claim arising under the Contract that is not settled by agreement of the parties pursuant to Article 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 Article 34.3.(B) through arbitration proceedings undertaken in accordance with Article 34.3.(A)

35.4 Pending any decision, appeal, or judgment in such proceedings or the settlement of any Dispute arising under the Contract, Contractor shall proceed diligently with the performance of the Contract in accordance with the decision of the Contracting Official.

36. CLAIMS FOR ADDITIONAL TIME

If Contractor wishes to make a Claim for an increase in the Contract Time, Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

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 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 hereto or of which Contractor knew or had 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 to act 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

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

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 All time limits stated in the Contract are of the essence. 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 he fails to complete the Work within said time, Contractor shall be liable for any and all losses, costs, or damages of any type which Amtrak may sustain or incur as a result, including reasonable attorneys' fees resulting there-from. Amtrak may deduct from subsequent payments due Contractor under this or any contract with Contractor or from any sums retained there-under, all or such part of these sums as may be required to pay the aforesaid damages, with Contractor being responsible for any deficiency.
- 40.4 All phases of the Work shall be completed within the number of days as stated in the NTP. A NTP shall be given in a reasonable time after execution of the Contract (assuming acceptable bonds, certificates of insurance, schedule of values, etc., have been received by Amtrak). 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 may be extended proportionately pursuant to the requirements of this Article 41.
- 41.2 No such failure shall be considered a breach or default under the Contract if Contractor 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 Article 41.1, whichever is earlier, or within such longer period as the Contracting Official shall grant, in writing, prior to the date of final settlement of the Contract, notify the Contracting Official, in writing, of the causes of the delay and diligently takes effective measures by all available means to re-start performance fully in accordance with the contract.

- 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 Article 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 at any time after such fifteen (15) days. In the event of such early termination, if requested by Amtrak, Contractor shall transfer title and deliver to Amtrak in the manner directed by Amtrak, any completed or partially completed deliverables or other work products Contractor has produced or acquired specifically for performance of the Work under the Contract.
- 41.5 Contractor agrees that no time extension shall be granted for time lost due to normal seasonal weather conditions. In order to qualify for consideration for a time extension due to adverse weather conditions, Contractor must show that the weather conditions during a given quarterly period (summer, fall, winter, spring) were more severe than the most severe year of the previous five years for the project geographical area and, in addition, that these weather conditions critically impacted the final Project completion date by delaying the performance of Work. If abnormal weather losses within the meaning of the preceding sentence can be shown to have affected the Project Schedule, a non-compensable time extension shall be granted for that portion of the proven weather-related delays which exceeded the normal weather losses which should have been anticipated for the quarterly period in question, but no Claim for additional payment shall be filed by Contractor and no payment or allowance of any kind shall be made to Contractor as compensation for damages occasioned by way of any such abnormal weather.
- 41.6 Defaults or delays in performance of the Work by Contractor which are caused by acts or omissions of Subcontractors shall not relieve Contractor of its obligations, except to the extent that the relevant Subcontractor is itself subject to a force majeure condition covered hereunder and Contractor cannot reasonably circumvent the effect of the Subcontractors default or delay

in performance through the use of alternate sources, work-around plans or other means.

42. PRICING OF ADJUSTMENTS

When costs are a factor in any determination of a Contract price adjustment pursuant to Article 15, Changes, or any other provision of this Contract, such costs shall be in accordance with the contract cost principles and procedures of Part 31 of the Federal Acquisition Regulation (FAR), as amended by O.M.B. Circular A-87, in effect on the date of this Contract.

43. AUDIT AND INSPECTION

43.1 Contractor acknowledges and agrees that Amtrak, Amtrak's Office of Inspector General (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:

1. support for any proposal, change order, or request for equitable adjustment submitted to Amtrak by Contractor;
2. Contract compliance and performance, including any work or deliverables in progress;
3. compliance with applicable provisions of Amtrak's federal grant, regulations and statutes; and
4. support for all direct and indirect costs or prices charged to Amtrak.

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

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

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

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

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

44. PAYMENT PROVISIONS – GENERAL

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

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

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

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

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

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

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

45.4 Contractor shall implement a plan for the utilization of SBs and DBE subcontractors and shall provide Amtrak with information concerning such plan by completing the enclosed Subcontracting Plan for the Utilization of Small Business Concerns and Disadvantaged Business Enterprises and returning it to Amtrak with its bid/proposal. In addition, Contractor shall

complete NRPC 1483 (Amtrak Disadvantaged Business Enterprise Utilization Report for Vendors) and return it to Amtrak on a quarterly basis.

- 45.5 Amtrak has established a corporate goal that 25% of new hires should be Veterans. Contractor shall establish similar goals for itself and its subcontractors with respect to new hires attributable to this Contract. For purposes of this Article, a "Veteran" is as defined in 38 U.S.C. 101(2).

46. FAIR EMPLOYMENT PRACTICES/EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

- 46.5 Contractor shall include the provisions of subparts A through D hereof 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 REQUIREMENTS

- 48.1 This Agreement is subject to FRA's "Buy America" statute at 49 U.S.C. § 24405 (a) (see Code Section at: <http://www.fra.dot.gov/downloads/49USC24405a.pdf>) and applicable FRA guidance (see FRA Buy America Frequently Asked Questions at: <http://www.fra.dot.gov/Pages/ll.shtml>).

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 reexport 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 reexport 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 reexport 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 a ECCN or MLC numbers, 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") is/are [or the ITAR U.S. Munitions List Classification(s)]: _____."

- 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 costs.
- 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 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 offer to any Amtrak employee, agent or representative any cash, gift, entertainment, commission, or kickback for the purpose of securing favorable treatment with regard to award or performance of this Contract or any other contract.
- 54.2 Contractor agrees that it shall neither solicit nor accept any cash, gift, entertainment, commission, or kickback from a Subcontractor or any other person or entity for the purpose of securing favorable treatment with regard to award or performance of any subcontract or contract issued in connection with the Contract.
- 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.

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.
- 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 entertainment, gifts, or otherwise) 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 Article 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 Article 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 Warranty Period, the types of insurance specified below. All insurance shall be placed with insurance carriers acceptable to Amtrak and licensed to do business in the jurisdiction(s) where Work is to be performed. Amtrak shall have the right to review and approve all insurance policies. However, Amtrak's acceptance, acquiescence or failure to object to

Contractor's submitted insurance policies 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 certifications of insurance giving evidence of the required insurance prior to commencement of any portion of the Work pursuant to this Contract and on an annual basis thereafter. In addition, within six months of the execution of the Contract, Contractor shall provide Amtrak with copies of all sections of required policies, which sections pertain to coverage required by, or are otherwise relevant to, this Contract or the Work, together with a certification that the copies provided are accurate and complete. Further, Amtrak agrees to enter into a mutually agreeable confidentiality agreement with Contractor with respect to the copies of the required policies provided to Amtrak. 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. Contractor shall require all Subcontractors to carry the insurance specified herein, or Contractor may, at its option, provide the insurance for any or all Subcontractors, and if so, the evidence of insurance submitted shall so stipulate. All insurance shall provide for thirty (30) days prior written notice to be given 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 as an additional insured and shall include waivers of subrogation rights against Amtrak, its 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. Amtrak shall not be named as an additional insured under this policy.
- 59.3 Commercial General Liability Insurance. (Acquisition of Rolling Stock Exposure.) A policy issued to and covering liability imposed upon Contractor arising out of the Trainsets design, manufacturing, and testing, and all other Work to be performed and all obligations assumed 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. Amtrak is to be named as an additional insured with respect to operations to

be performed. The policy shall contain a cross liability endorsement. 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 \$100,000,000 per occurrence and \$200,000,000 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, and which are not covered under Contractor's Commercial General Liability Insurance. The policy shall name Amtrak as an additional insured with respect to operations to be performed in connection with the Contract, and shall contain a waiver of subrogation against Amtrak, its employees and agents. Coverage under this policy shall have combined single limits of liability of not less than \$1,000,000 per occurrence.
- 59.5 Railroad Protective Liability Insurance (Design and Testing Exposures). With respect to Contractor's or any Subcontractors' 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). The policy shall have limits of liability of not less than \$2,000,000 per occurrence and \$6,000,000 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 (for design work related to construction). A policy issued to and covering the liability of Contractor or Design Subcontractor for engineering and design errors and omissions in the performance of this Contract. Contractor or Design Subcontractor 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. Amtrak shall not be named as an additional insured under this policy.
- 59.7 Contractor's Equipment Insurance. A policy issued to and covering Contractor's interest in the equipment used in performance of the Agreement. The insurance shall provide coverage on an all-risk basis and shall have limits

adequate to cover the full replacement value of the equipment. Contractor may, at its option, elect to self-insure this exposure, but in no instance shall Amtrak be responsible for loss or damage to Contractor's equipment.

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 Amtrak as loss payee as its interest may appear, and contain a waiver of subrogation against Amtrak.

59.9 Claims Made Insurance. If any liability insurance specified above, other than Railroad Protective Liability insurance, is written on a claims-made basis, then in addition to the coverage requirements above, such policy shall provide that:

- (a) The retroactive date shall coincide with or precede Contractor's start of work (including renewal policies or replacement policies).
- (b) The policy shall allow for the reporting of circumstances or incidents that might give rise to future claims.

In addition, if any liability insurance specified above, other than Railroad Protective Liability insurance, is written on a claims-made basis, Contractor shall use its best efforts to maintain for at least six (6) years following completion and acceptance of the Project, the insurance covering liability resulting from the Work or the obligations assumed in the Contract, with endorsements naming Amtrak as an additional insured and continuing the waiver of subrogation against Amtrak. Further, if such insurance is canceled for any reason, Contractor shall purchase an extended reporting provision that shall continue for at least six (6) years after completion and acceptance of the Project to report claims arising from Work performed in connection with the Contract.

60. GENERAL REQUIREMENTS - INSURANCE

60.1 All insurance coverage procured by Contractor shall be provided by insurance companies approved by Amtrak 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 or bonds 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

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.

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.

63.3 Contractor shall defend, indemnify and hold harmless Amtrak, its directors, officers, agents, servants and employees from any loss, cost, damage or expense incurred by them arising from, 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.

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 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 he may desire, subject to the provisions of the Contract, with regard to the details of the Work and his 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. PARENT GUARANTY

69.1 If Contractor is a subsidiary of another entity, then Amtrak's obligations under the Contract shall be contingent upon the ultimate parent entity of Contractor executing a parent guaranty in a form provided by Amtrak. Such parent guaranty, if applicable, will be attached hereto and incorporated by reference herein.

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 his 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, 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 his 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.