

NETWORK RAIL 18

**Network Rail Agreement for
the design, modification, manufacture, overhaul,
refurbishment and servicing¹ of Rail Vehicles**

[Insert Contract Title]

**¹amend as appropriate to match clause 2 of the Contract
Agreement and the definition of Works**

Signed by: _____ for and on behalf of Network Rail
Signed by: _____ for and on behalf of the Supplier
Agreement/Contract
No.: [Insert]

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This Contract Agreement is made the [Insert] day of [Insert] 20[Insert]

between:

- (1) **NETWORK RAIL INFRASTRUCTURE LIMITED** a company registered in England under number 2904587 whose registered office is at Kings Place, 90 York Way, London N1 9AG; and
- (2) **[NAME OF SUPPLIER]**: a [company registered in under number whose registered] office is at [Insert].

Now it is hereby agreed as follows:

- 1 This Agreement comprises this Contract Agreement together with the following documents which shall be read and construed as part of this Agreement and in the case of any ambiguity or discrepancy shall have the following order of priority:
 - 1.1 Schedule of Post Tender Amendments;
 - 1.2 Appendix;
 - 1.3 Contract Specific Conditions and annexed form of guarantee (if applicable);
 - 1.3 Conditions;
 - 1.4 Technical Workslope;
 - 1.5 Contract Requirements HSQE;
 - 1.6 Preliminaries; and
 - 1.7 Pricing Documents.

Defined terms used in this Agreement have the meanings set out in the Conditions unless otherwise specified.

- 2 In consideration of the payments to be made by the Employer to the Supplier the Supplier hereby covenants with the Employer to design, modify, manufacture, overhaul, refurbish and service - amend as appropriate the Vehicles together with the supply of any associated Spares and Special Tools in conformity in all respects with the provisions of this Agreement.
- 3 The Employer and the Supplier hereby agree that the Contract Price shall be Insert pounds and Insert pence (£Insert) or such other sum as shall become payable in accordance with this Agreement in respect of the Vehicles and the Spares and Special Tools and the prices, rates and percentages included in the Pricing Document shall form the basis for any other payment due to the Supplier in accordance with the Agreement.
- 4 The Employer hereby covenants to pay to the Supplier in consideration of the completion of the Works and the delivery of the Vehicles the Contract Price at the times and in the manner prescribed by this Agreement.

In witness whereof the Employer and the Supplier have caused this Agreement to be executed as a Deed in duplicate on the date first stated above, as follows:

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THE COMMON SEAL of)
NETWORK RAIL INFRASTRUCTURE)
LIMITED was affixed to this DEED in the)
presence of:)

Authorised signatory

Authorised Signatory as approved by a resolution of the
board of Network Rail Infrastructure Limited on 16th May
2007

OR

SIGNED for and on behalf of)
NETWORK RAIL INFRASTRUCTURE)
LIMITED)
by:)

Authorised signatory

THE COMMON SEAL of)
.....)
was affixed to this DEED in the presence of:)
)

Director

Director/Company Secretary

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OR

SIGNED as a DEED for and on behalf of)

.....)

By)

)

Director

Director/Company Secretary

OR

SIGNED for and on behalf of)

.....)

By)

)

Director

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Schedule of Post Tender Amendments

The following comprise the post tender amendments expressly agreed between the Employer and the Supplier and form part of this Agreement:

None

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Appendix

(Note: Relevant clause numbers are shown in brackets)

1	<u>Definitions</u> (clause 1) Defects Liability Period Endemic/Epidemic Defects Protection Period Epidemic Defects percentage	Two years Five years 10%
2	<u>Parent company guarantee</u> (clause 9.2)	Required
3	<u>Insurance</u> Public liability insurance (clause 10.2.1) Employer's liability insurance (clause 10.2.2)	£5,000,000 (five million pounds) £5,000,000 (five million pounds)
4	<u>Professional indemnity insurance</u> (If required pursuant to clause 11.1)	£10,000,000 (ten million pounds) for any one claim or series of claims arising out of any one event and which may be subject to an annual aggregate limit.
5	<u>Dates for Completion</u> (clause 14) The Contractor shall commence the execution of the Works within [Insert] days of the Employer's Instruction so to do. The Periods for Completion of the Vehicles are as follows: Vehicle Ref? Vehicle Ref? Vehicle Ref? Vehicle Ref? Vehicle Ref? Vehicle Ref? Vehicle Ref? Vehicle Ref? Vehicle Ref? Vehicle Ref? Vehicle Ref? Vehicle Ref?	[Insert] [Insert] [Insert] [Insert] [Insert] [Insert] [Insert] [Insert] [Insert] [Insert] [Insert] [Insert]
6	<u>Liquidated damages</u> (clause 14) The rate of liquidated damages shall be:	

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Vehicle Ref?	£[Insert per day]
Vehicle Ref?	£[Insert per day]
Vehicle Ref?	£[Insert per day]
Vehicle Ref?	£[Insert per day]
Vehicle Ref?	£[Insert per day]
Vehicle Ref?	£[Insert per day]
Vehicle Ref?	£[Insert per day]
Vehicle Ref?	£[Insert per day]
Vehicle Ref?	£[Insert per day]
Vehicle Ref?	£[Insert per day]

7 Liquidated Damages (clause 14.4) The Contract Price

8 Addresses for Service (clause 20)

The addresses for service of the parties are as follows:

- (i) The Employer: the address stated in the Contract Agreement marked for the attention of: [Insert]

- (ii) The Contractor: the address stated in the Contract Agreement marked for the attention of: [Insert]

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Conditions

1 Definitions

Defined Terms

The following terms bear the meanings set out below:

“Acceptance” means acceptance of the Vehicles as evidenced by the issue of an Acceptance Certificate;

“Acceptance Certificate” means a certificate in the form set out in the Technical Worksopce issued in accordance with clause 5;

“Adjudicator” means a person nominated by the President or Vice-President for the time being of the Technology and Construction Bar Association to act as Adjudicator under this Agreement;

“Agreed Rail Industry Period” means each or any of Network Rail’s thirteen accounting periods in a year commencing on 1st April, as referred to in clause 8.2;

“Applicable Requirements” means applicable Codes, Law, regulation, rule, Railway Group Standards and Network Rail Standards.

“Codes” means the British Standard Codes of Practice, regulations and guidance notes issued by the Health and Safety Executive (as amended or replaced from time to time) and any other regulations, codes or notes issued by relevant authorities and bodies;

“Contract Price” means the sum stated in the Contract Agreement as such sum may be adjusted from time to time in accordance with this Agreement;

“Contract Requirements HSQE” means the document described as such and referred to in the Contract Agreement;

“Defect” means any fault in any Vehicle for which Provisional Acceptance has occurred that arises as a consequence of a failure by the Supplier to comply with its obligations under this Agreement, together with the consequences of that fault;

“Defects Liability Period” means for each Vehicle the period stated in the Appendix from Acceptance of that Vehicle;

“Delivery” means the receipt of the Vehicles by the Employer from the Supplier (and Delivered shall be construed accordingly);

“Design Life” means the period stated in the Technical Worksopce;

“Documents” means all plans, drawings, specifications, schedules, reports, records calculations, correspondence and other documents (including any computer software developed by the Supplier to generate them and any design contained in them) prepared or provided by the Supplier in connection with this Agreement;

“Employer” means the first party named in the Contract Agreement and its permitted assignees;

“Employer’s Facilities” means those facilities identified in the Preliminaries which shall be provided to the Supplier by the Employer;

“Employer’s Instructions” means any written instructions issued to the Supplier

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by or on behalf of the Employer;

“Employer’s Representative” means the person notified by the Employer to the Supplier as having authority to issue Employer’s Instructions and otherwise to act on the Employer’s behalf under this Agreement to the extent so notified;

“Employer’s Requirements” means the employer’s requirements referred to in the Technical Workslope;

“Endemic Defect” means a Defect in a Major Component (as detailed in the Technical Specification) during its expected Design Life, irrespective of whether it has then become apparent in any Vehicle which the Employer’s Representative and the Supplier’s Representative, each acting reasonably, believe will thereafter become an Epidemic Defect;

“Endemic/Epidemic Defects Protection Period” means the period commencing on the date of Provisional Acceptance relating to the first Vehicle to be delivered under this Agreement and ending so many years after the date of Acceptance of the last Vehicle to be Delivered as stated in the Appendix;

“Epidemic Defects” means at any time, any Defect which affects more than the percentage of the Vehicles stated in the Appendix;

“Excepted Risks” means loss or damage to the extent that it is due to:

- (i) the use by the Employer, its agents, servants or other contractors (not being employed by the Supplier) of any part of the Works;
- (ii) any fault, defect, error or omission in the design of the Works (other than a design provided by the Supplier pursuant to its obligations under this Agreement);
- (iii) war, invasion, act of foreign enemies or hostilities (whether war be declared or not);
- (iv) civil war, rebellion, revolution, insurrection or military or usurped power;
- (v) ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; and
- (vi) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.

“Fault Free Running Period” means the period specified in the Technical Workslope where the operation of the Vehicles is not interrupted by reason of a Defect;

“Insolvent” means that the Supplier:

- (i) enters into an arrangement, compromise or composition in satisfaction of its debts (excluding a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction); or
- (ii) without a declaration of insolvency, passes a resolution or makes a determination that it be wound up; or

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- (iii) has a winding up order or bankruptcy order made against it; or
- (iv) has appointed to it an administrator, administrative receiver, receiver or manager; or
- (v) is the subject of any analogous arrangement, event or proceedings in any other jurisdiction.

“Intellectual Property” means all intellectual and industrial property and all rights therein in any part of the world including, without limiting the generality of the foregoing, any patent, patent application, trade mark, trade mark application, registered design, registered design application, trade name, trade secret, business name, discovery, invention, process, formula, know-how, specification, improvement, technique, copyright, unregistered design right, technical information or drawing including rights in computer software, database rights, topography rights;

“Law” means any Act of Parliament or subordinate legislation within the meaning of Section 2(1) or the Interpretation Acts 1978 or any exercise of the Royal Prerogative and any enforceable Community right within the meaning of the European Communities Act 1972;

“Local Distribution Depot” means a depot managed and operated by Network Rail’s National Delivery Service specified in the Preliminaries;

“Maintenance and Operating Instructions” means the documents specified in the Technical Workslope to be prepared by the Supplier for the purposes of performing all maintenance on the Vehicles over the Design Life of each Vehicle and describing the operation and cleaning of the Vehicles;

“Operator” means any party or sub-contractor employed by the Employer to maintain and/or operate the Vehicles;

“Periods for Completion” means the periods for completion of each of the Vehicles as stated in the Appendix or such periods as may be extended under clause 14.3;

“Preliminaries” means the preliminaries referred to in the Contract Agreement;

“Pricing Document” means the pricing document referred to in the Contract Agreement;

“Provisional Acceptance” means provisional acceptance of each of the Vehicles as evidenced by the issue of a Provisional Acceptance Certificate;

“Provisional Acceptance Certificate” means a certificate in the form set out in the Technical Workslope issued in accordance with clause 5;

“Spares” means the spares detailed in the Technical Workslope;

“Special Tools” means all special tools and test equipment required for the maintenance of the Vehicles detailed in the Technical Workslope;

“Sub-Contractor” means any sub-contractor of the Supplier including any sub-contractors of any such sub-contractors;

“Supplier” means the second party named in the Contract Agreement and its

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permitted assignees;

“**Technical Works**” means the technical works referred to in the Contract Agreement;

“**Vehicles**” means the rail vehicles as described in the Technical Works;

“**Works**” means the works and services to be performed by the Supplier in respect of any and all of the Vehicles, Spares and Special Tools to be designed, modified, manufactured, overhauled, refurbished and serviced - amend as appropriate to match clause 2 of the Contract Agreement in accordance with this Agreement.

2 Supplier’s Obligations

Quality and Standards

2.1 The Supplier shall carry out and complete the Works:

2.1.1 with the reasonable skill, care and diligence to be expected of a supplier holding itself out as having the competence, expertise and resources necessary for the proper performance of the Works;

2.2.2 to the quality and standards required by the Technical Works or, where no quality or standard is so specified, to a good quality;

2.2.3 so as to comply with the Applicable Requirements;

2.2.4 without compromising the safety of anyone on or about or using the Employer’s property and/or railway infrastructure and in compliance with the Contract Requirements HSQE; and

2.2.5 to comply with the Preliminaries.

Compliance with Instructions

2.2 The Supplier shall perform the Works in accordance with the Employer’s Instructions. If there is a change in the Applicable Requirements affecting the Works, the Vehicles, Spares or Special Tools after the date of this Agreement which necessitates a variation to the Works, the Vehicles, Spares or Special Tools, such variation shall be treated as if it were an Employer’s Instruction to which the provisions of clause 7 shall apply.

Remedy for failure to comply with Instructions

2.3 Without prejudice to clause 15, if the Supplier fails to perform the Works in accordance with this Agreement, then the Employer shall be entitled, in addition to any other remedy available to it, by notice to the Supplier to require the Supplier, at no additional cost to the Employer, to remedy such breach within the time stipulated in such notice, and if the Supplier fails to comply with such notice within the period specified by the Employer’s Representative, the Employer may at its sole discretion employ another person to remedy such breach and the Employer may recover the additional costs incurred by it in so doing from the Supplier (provided that, in an emergency affecting safety, this provision shall apply without the requirement to give prior notice).

Route/Network Acceptance

2.4 To the extent identified in the Technical Works the Supplier shall demonstrate to the Employer’s reasonable satisfaction compliance of the Vehicles with the Applicable Requirements and shall undertake all activities necessary to validate the safe operating performance of the Vehicles in order to obtain the relevant authorisation to operate on the network (details

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of which are identified in the Technical Workscope), if required.

- | | | |
|--|-----|--|
| Maintenance and Operation Instructions | 2.5 | To the extent identified in the Technical Workscope the Supplier shall supply to the Employer, no later than the date of issue of the Provisional Acceptance Certificate in respect of the first Vehicle to be Delivered, the relevant number of electronic and paper copies of each of the Maintenance Instruction and Operating Instructions. |
| Training | 2.6 | To the extent identified in the Technical Workscope the Supplier shall organise and provide training courses for the Employer's and Operator's employees at times and locations in Great Britain to be agreed between the Supplier's Representative and the Employer's Representative. |
| Special Tools and Spares | 2.7 | To the extent identified in the Technical Workscope the Supplier shall supply and the Employer shall purchase those Special Tools and Spares that the Employer confirms that it requires and the Employer shall pay for such Special Tools and Spares at the prices specified in the Pricing Document. Special Tools and/or Spares supplied under this clause 2.7 shall be delivered carriage paid to the Local Distribution Depot and payment for such tools shall be made in accordance with clause 8. |
| Changes to Spares | 2.8 | If at any time within the Design Life of a Vehicle, any Spare is redesigned the Supplier shall so notify the Employer giving the reasons for, and details of, the redesign and details of any necessary consequential modifications to other parts, components, assemblies and sub-assemblies incorporated in or fixed to any Vehicle. |

3 Design of the Works

- | | | |
|--------------------------------|-----|--|
| Inaccuracies in Specifications | 3.1 | The Supplier acknowledges that it has checked the documents forming part of this Agreement prior to entering into it and has informed the Employer of any inaccuracies, discrepancies or ambiguities in them of which it is aware. If the Supplier shall find any inaccuracy, discrepancy or ambiguity contained in or between any of the documents forming part of this Agreement, it shall immediately notify the Employer, who shall, on receipt of such notice, issue an Employer's Instruction as to how such inaccuracy, discrepancy or ambiguity shall be resolved. The Supplier shall not be entitled to an extension of time or to any additional payment in respect of compliance with such instruction to the extent that such inaccuracy, discrepancy or ambiguity could reasonably have been found or foreseen at the date of this Agreement by a supplier exercising the skill, care and diligence reasonably to be expected of a supplier experienced in projects of a similar nature to the Works. |
| Detailed Design Information | 3.2 | At such times as not to delay or disrupt the progress of the Works and Delivery, the Supplier, without further charge, shall provide the Employer (unless it shall have been previously so provided) with four reproducible copies (including in electronic format) true-to-scale of such of the Documents as is reasonably necessary to explain, amplify, show or describe the Works or to enable the Supplier to execute and complete the Works or to comply with any Employer's Instruction. The Supplier shall check and co-ordinate any such Documents submitted by it prior to submission of the same. The Supplier shall not commence implementation in accordance with such |

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Documents until the Employer's Representative has consented thereto, and shall not be entitled to be paid for work or services executed other than in accordance with the Documents to which the Employer's Representative has consented.

Responsibility for Detailed Design

3.3 Neither the granting of any consent by the Employer nor any comment nor marking by or on behalf of the Employer on or in respect of any of the Documents submitted by the Supplier shall relieve the Supplier of any liability which it would otherwise have in relation thereto. If the Supplier considers that any comment on the Documents submitted under clause 3.2 amounts to an Employer's Instruction to which clause 7.3 applies, it shall so notify the Employer within 7 days of receipt of the same.

Supplier's design warranties

3.4 Insofar as the design of the Works is comprised in the Documents (including any further design which the Supplier is to carry out as a result of an Employer's Instruction), the Supplier warrants and undertakes to the Employer that:

3.4.1 it has exercised and will continue to exercise in the design of the Works all the skill, care and diligence to be expected of a professionally qualified and competent engineer or other appropriate consultant taking into account the size, scope, nature, type and complexity of the Works;

3.4.2 subject to clause 3.4.1, the Works will, when completed, comply with any performance specification or requirement included or referred to in the Technical Worksopce and Employer's Requirements; and

3.4.3 except where this Agreement expressly provides for the use of used or reconditioned materials and goods, the Works comprise or will comprise only materials and goods which are of new and satisfactory quality and which are fit for their intended purpose.

The warranties and undertakings contained in clause 3.4 are without prejudice to any warranties implied by common law or statute.

Sub-Supplier's design

3.5 Any reference to the design which the Supplier has prepared or shall prepare or issue for the Works includes a reference to any design which the Supplier has caused or shall cause to be prepared or issued by others, whether before or after the date of this Agreement.

4 Rights of Access and Audit

Access and Audit

The Employer's Representative shall at all times during working hours have access on reasonable notice to the premises of the Supplier, its Sub-Contractors or suppliers in order to inspect any work, carry out any quality surveillance, tests, inspections or controls, ascertain whether the Supplier's obligations under this Agreement are being complied with and otherwise for any purpose in connection with the Agreement. The Employer's Representative shall not visit the premises of any Sub-Contractor or supplier unless accompanied by the Supplier's Representative (and the Supplier shall procure that the Supplier's Representative shall, on reasonable notice by the Employer's Representative, make himself

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available for such visits).

5 Acceptance

Provisional
Acceptance

5.1 Upon offer for acceptance at the Local Distribution Depot of any Vehicle the Employer's Representative shall, provided the Vehicle complies with this Agreement, accept it on behalf of the Employer and immediately thereafter the Employer's Representative shall countersign and issue a provisional acceptance certificate for that Vehicle in the form set out in the Preliminaries (a "Provisional Acceptance Certificate")

5.2 The Employer's Representative shall not be obliged to accept any Vehicle if a Defect which would adversely affect the Supplier's ability to comply with the Technical Workslope has become apparent in another Vehicle which has been delivered, until such time as the Employer's Representative is satisfied that the same Defect is not present in the Vehicle to be accepted, or has been remedied and the Employer shall not use such Vehicle other than for any purpose agreed between the Supplier's Representative and the Employer's Representative until issue of the Provisional Acceptance Certificate in respect of it.

Trial Running
Acceptance

5.3 Not Used

5.4 Without undue delay following the issue of the Provisional Acceptance Certificate in respect of each Vehicle the Employer shall operate or shall procure the operation of such Vehicle in service and upon completion of the Fault Free Running Period of such operation shall issue an acceptance certificate in the form set out in the Preliminaries (an "Acceptance Certificate")

5.5 For the avoidance of doubt, the Employer shall not be precluded by acceptance of any Vehicle from rejecting any other Vehicle which does not satisfy the provision of clause 5.1 or clause 5.4.

Failure to
issue
Certificates

5.6 If by reason of any failure by the Employer's Representative to issue a Provisional Acceptance Certificate or an Acceptance Certificate in respect of any Vehicle or a Provisional Acceptance Certificate or an Acceptance Certificate is not issued in breach of this clause 5 then for the purposes of determining the Supplier's entitlement to payment under clause 8 of this Agreement such certificates shall be deemed to have been issued on the date on which the relevant certificate should have been issued but for such failure or breach.

6 Risk and Title

6.1 Until the issue of a Provisional Acceptance Certificate in respect of any particular Vehicle or the delivery of the Spares and Special Tools (as the case may be) the Supplier shall bear all risk of loss or of damage to such Vehicle or Spares or Special Tools or materials or parts which are, or are to be, incorporated into or fixed to such Vehicles

6.2 Immediately following the issuance of a Provisional Acceptance Certificate in respect of a new Vehicle title to and property in such Vehicle shall pass to the Employer on Delivery. Such Vehicles shall at all times thereafter as

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against the Supplier remain the property of the Employer. In the case of Spares or Special Tools title and property shall pass on delivery thereof. In the case of an existing Employer owned Vehicle, title to and property in such Vehicles shall remain with the Employer at all times.

7 Employer's Instructions

Employer's Representative

7.1 The Employer's Representative shall have full authority to act on behalf of the Employer for all purposes under this Agreement and shall be authorised to issue Employer's Instructions and notices to the Supplier under this Agreement on behalf of the Employer, unless otherwise expressly notified to the Supplier by the Employer from time to time.

Additional payment for instructions

7.2 If any Employer's Instruction issued under this Agreement:

7.2.1 shall require the Supplier to undertake work not provided for in, or to be reasonably inferred from, this Agreement; or

7.2.2 shall impose any additional obligation or restriction or shall require the omission of any work or of any obligation or restriction,

and provided that such instruction has not arisen from, and compliance with it does not reveal, any negligence, omission or default of the Supplier, its employees, the Sub-Contractors or other persons engaged by it in relation to this Agreement, the Contract Price shall be adjusted and the provisions of clause 7.3 shall apply. Otherwise, the Supplier shall not be entitled to any addition to the Contract Price nor to claim, whether as damages or otherwise, any additional payment in respect of compliance by the Supplier with any such instruction.

Calculation of additional payment

7.3 The Employer's Representative shall, after consultation with the Supplier and within a reasonable time after the issue of such instruction, ascertain a fair and reasonable adjustment to the Contract Price based on prices or rates included in the Pricing Document in respect of compliance by the Supplier with such instruction and a fair and reasonable extension of time may be granted under clause 14.3.

8 Payment

Contact Price

8.1 In consideration of the proper performance of the Works associated with each Vehicle and Delivery, the Employer shall pay to the Supplier the part of the Contract Price calculated as follows:

Supplier's Applications

8.1.1 the milestone price in respect of the Vehicles, Spares or Special Tools as identified in the Pricing Document;

8.1.2 the amount of any additions to the milestone price for the relevant Vehicle, Spares or Special Tools in accordance with this Agreement;

8.2 After completion of each milestone identified in the Pricing Document, but not more than once per Agreed Rail Industry Period, the Supplier shall present to the Employer's Representative an application stating the total amount due to the Supplier calculated in accordance with the provisions of clause 8.1 and with such supporting documents as may be reasonably

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required by the Employer's Representative.

- Employer's Notice of Payment
- 8.3 On or before the expiry of seven days from the date of submission of the Supplier's application under clause 8.2, the Employer's Representative shall issue a notice stating the amount due to the Supplier from the Employer which shall be calculated in accordance with the provisions of clause 8.1 less any amount which may become due to the Employer or recoverable by the Employer from the Supplier, whether by deduction from the milestone prices under the provisions of this Agreement or otherwise.
- Payment by the Employer - VAT Invoice
- 8.4 The Supplier shall issue a VAT invoice in the amount stated in the Employer's Representative's notice under clause 8.3 and which includes the correct contract and purchase order number and is addressed to "Network Rail, Accounts Payable, P.O. Box 4145, Manchester M60 7WZ". The Employer shall issue payment to the Supplier of the amount properly due to the Supplier together with VAT thereon on or before the final date for payment which shall be the expiry twenty eight days from the date of receipt of the Supplier's VAT invoice. If the Supplier's invoice does not comply with the requirements of this clause 8.4 the Employer shall be under no obligation to pay the same.
- Set-off
- 8.5 Without prejudice to the Employer's other rights and remedies, the Employer may deduct from any sums due to the Supplier under this Agreement an amount equivalent to any sum due from the Supplier to the Employer (whether such sums are due to the Employer under this Agreement or under any other agreement between the Supplier and the Employer) and may also deduct any sum of money that is recoverable from or payable by the Supplier under this Agreement from any sum then due or which at any time thereafter may become due under any other agreement between the Supplier and the Employer. The Employer shall give to the Supplier notice of any such deduction or set-off and such notice shall specify:
- 8.5.1 the amount proposed to be withheld and the ground for withholding payment; or
- 8.5.2 if there is more than one ground, each ground and the amount attributable to it.
- Such notice shall be given not later than five days before the final date for payment of each certificate or invoice under clause 8.4.
- Interest on late payment
- 8.6 If the Employer fails to pay the Supplier any sum properly payable under this Agreement on or before the final date for payment of it, the Employer shall pay the Supplier simple interest on that sum from the relevant final date for payment until the actual date of payment calculated at a rate of 4% per annum above the Bank of England Base Rate. It is agreed that this provision constitutes a substantial remedy for the purposes of Section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.

9 Guarantees

- Warranties
- 9.1 The Supplier shall ensure that the benefit of any warranty or guarantee in

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- and guarantees
- Parent Company Guarantee and Advance Payment Bonds
- Failure to provide guarantee and bond
- respect of goods, materials, equipment or plant supplied or procured by it in carrying out the Works shall extend to the Employer. The Supplier shall not invalidate such warranties and/or guarantees by its actions.
- 9.2 The Supplier shall obtain and provide to the Employer, forthwith upon entry into this Agreement, a parent company guarantee in the form appended to the Contract Specific Conditions from the Supplier's ultimate holding company. For these purposes "ultimate holding company" shall mean the parent company of the group of companies of which the Supplier is a member (as each of those terms is defined in Section 170 Taxation of Chargeable Gains Act 1992). Further where and on the occasions indicated in the Contract Specific Conditions the Supplier shall procure an Advance Payment Bond in the form appended to the Contract Specific Conditions in favour of the Employer.
- 9.3 The Supplier's compliance with the provisions of clause 9.2 shall be a condition precedent to any obligation on the part of the Employer to make any payment that might otherwise be due under this Agreement, and the Supplier acknowledges that it has no entitlement either to receive payment or to exercise any rights in respect of non-payment arising under this Agreement unless and until the Supplier has provided any parent company guarantee and bond so required.

10 Indemnities and Insurance

- Third Party liability - Indemnity
- Supplier's Insurances
- 10.1 The Supplier shall indemnify the Employer and keep the Employer indemnified against each and every liability which the Employer may incur to any person whatsoever and against all damage, expense, loss, cost, claim or proceedings suffered or incurred by the Employer to the extent that the same relates to personal injury or death of any person whomsoever or loss or injury or damage to any property real or personal (other than the Vehicles to the extent insured by the Supplier under clause 10.3) arising out of or in the course of or caused by the carrying out of the Works or Delivery or delivery of the Spares and Special Tools, except to the extent that the same is due to any act or neglect of the Employer or the Employer's Representative.
- 10.2 Without prejudice to the Supplier's obligation to indemnify the Employer under clause 10.1, the Supplier shall:
- 10.2.1 maintain such insurances as are necessary to cover its liability in respect of personal injury or death arising out of or in the course of or caused by the carrying out of the Works or Delivery or delivery of the Spares and Special Tools (other than injury or death to persons referred to in clause 10.2.2) and in respect of injury or damage to property, real or personal (other than the Vehicles to the extent insured by the Supplier under clause 10.3), arising out of or in the course of or by reason of the carrying out of the Works or Delivery or delivery of the Spares and Special Tools. The insurance cover shall be for the sum specified in the Appendix for any one occurrence or series of occurrences arising out of one event;
- 10.2.2 maintain and cause any Sub-Contractors to maintain insurance in respect of claims for personal injury to or the death of any person

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under a contract of service or apprenticeship with the Supplier or such Sub-Contractor as the case may be arising out of or in the course of such person's employment. Such insurance shall comply with the Employer's Liability (Compulsory Insurance) Act 1969 and any statutory orders made thereunder or any amendment or re-enactment thereof and shall be for sum specified in the Appendix for any occurrence or series of occurrences arising out of any one event;

10.2.3 The insurance policy referred to in clause 10.2.1 shall indemnify the Employer in the like manner to the Supplier but only to the extent that the Supplier may be liable to indemnify the Employer under the terms of this Agreement.

10.2.4 Both the Employer and the Supplier undertake to notify the other in writing of any claims which they receive in respect of any injury, loss or damage under this Agreement. Any such notification by the Supplier shall be sufficient if given to the Employer's Representative without delay.

Supplier's
Insurance of
the Vehicles

10.3 Without prejudice to the Supplier's obligations under this Agreement, the Supplier shall insure in the joint names of the Supplier and the Employer any Employer owned Vehicles from the time the Supplier takes custody of the Vehicle until the Supplier has been issued with a Provisional Acceptance Certificate together with materials plant and equipment for incorporation therein and the Spares and Special Tools (save for those Spare and Special Tools which have been delivered) to the full replacement cost plus an additional 10% to cover any additional costs that may arise incidental to the rectification of any loss or damage including professional fees. This insurance shall cover the Employer and the Supplier against all loss or damage from whatsoever cause arising other than the Excepted Risks. Any amounts not insured or not recovered from insurers whether as excesses carried under the policy or otherwise shall be borne by the Supplier.

Evidence of
Insurance

10.4 As and when it is reasonably required to do so by the Employer, the Supplier shall produce and shall cause any Sub-Contractors to produce for inspection by the Employer documentary evidence that the insurances required by clause 10.2 are properly maintained.

Breach by
Supplier

10.5 Should the Supplier or any Sub-Contractor be in breach of any of their respective obligations under this clause 10, the Employer may itself insure against any risk in respect of which the default shall have occurred and may deduct a sum or sums equivalent to the amount paid or payable in respect of the premiums from any monies due or become due to the Supplier under this Agreement, or, if none are due, may recover the amount paid from the Supplier as a debt.

11 Professional Indemnity Insurance

Supplier to
insure

11.1 Insofar as the design of any part of the Works is carried out by the Supplier, the Supplier shall maintain professional indemnity insurance covering amongst other things, all its liability hereunder in respect of Defects or insufficiency in design, upon customary and usual terms and conditions

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prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom (in an amount not less than the sum specified in the Appendix for a period beginning with the date of this Agreement and ending 12 years after Acceptance of the last Vehicle to be Delivered), provided always that such insurance is available at commercially reasonable rates. Any increased or additional premium required by insurers by reason of the Supplier's claims record or other matters particular to the Supplier shall be considered to be within commercially reasonable rates.

If insurance ceases to be available	11.2	The Supplier shall immediately inform the Employer if such insurance ceases to be available at commercially reasonable rates in order that the Employer and the Supplier can discuss means of best protecting the respective positions of the Employer and the Supplier in the absence of such insurance.
Terms of policy	11.3	The said terms and conditions shall not include any term or condition that excludes the Third Parties (Rights Against Insurers) Act 1930.
Termination	11.4	The obligations in respect of professional indemnity insurance under this clause 11 shall continue notwithstanding termination of the Contract for any reason whatsoever, including (without limitation) breach by the Employer.
Production of evidence	11.5	The provisions of clauses 10.5 and 10.6 shall apply to the Supplier's professional indemnity insurance required by this clause 11.

12 Copyright, Intellectual Property, Confidentiality and Photographs

Copyright licence	12.1	The legal and beneficial ownership of all Intellectual Property which the Supplier has supplied to the Employer in accordance with this Agreement and which the Supplier has created and/or developed for the purposes of performing its obligations under this Agreement shall belong to the Supplier. The Supplier here grants to the Employer an irrevocable, royalty-free, non-exclusive licence to use all rights, titles and interest in any such Intellectual Property for any purposes whatsoever in connection with Network Rail's permitted business provided that the Supplier shall have no liability for any use of the Intellectual Property other than for the purposes for which it was originally intended. The Employer may assign the said licence and/or grant sub-licences out of the licence.
Sub-Contractors	12.2	The Supplier shall use reasonable endeavours to procure that the Sub-Contractors shall grant a licence to the Employer in terms identical to clause 12.1.
Confidentiality	12.3	All information obtained by the Supplier in the course or conduct of this Agreement shall be held confidential and shall not be divulged by the Supplier to any third party save to the extent necessary to effect the execution of the Works and then only on the basis that the recipient of such information shall be bound by similar confidentiality obligations to those undertaken by the Supplier. The Supplier shall not issue any press release or other public document containing or make any public statement containing or otherwise disclose to any other person who is not a party to this Agreement information that relates to or is connected with or arises out

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of this Agreement or the matters contained in it without the prior written approval of the Employer as to its content and the manner and extent of its publication.

Photographs 12.4 The Supplier shall not at any time take any photograph of the Vehicles or any part of them, and shall take all reasonable steps to ensure that no such photographs shall at any time be taken or published or otherwise circulated by any person employed by it, unless the Supplier has obtained the prior written consent of the Employer.

13 Assignment and Sub-Contracting

Assignment by parties 13.1 The Employer shall be entitled to assign, charge or transfer this Agreement or any of its rights under it. The Supplier shall not assign, charge or transfer this Agreement or any of its rights under it without the prior written consent of the Employer.

Sub-Contracting by Supplier 13.2 The Supplier shall not sub-contract any part of the Works (including without limitation, the supply of goods and materials) or their design without the prior written consent of the Employer's Representative, which consent shall not be unreasonably withheld.

Sub-letting does not relieve Supplier 13.3 No sub-letting by the Supplier and no consent of the Employer and nothing contained in this Agreement requiring the Supplier to sub-let any work to or obtain any materials and/or goods from any person or persons named therein shall in any way relieve the Supplier from its responsibility for the due execution and completion of the Works, Delivery or delivery of the Spares and Special Tools in accordance with this Agreement.

14 Commencement and delays in the execution of the Works

Time for Delivery and Acceptance 14.1 The Supplier shall commence the execution of the Works within the period for commencement stated in the Technical Workslope from receipt of the Employer's Representative's instruction so to do. The Supplier shall thereafter proceed with the Works regularly and diligently so that the Vehicles shall be delivered by the Supplier by the expiry of the relevant Periods for Completion (as extended from time to time in accordance with this clause 14.3) into the possession of the Employer at the Local Distribution Depot or such other depot as may be agreed between the Employer and the Supplier in order to achieve the Provisional Acceptance and transfer of title to each Vehicle in accordance with this Agreement.

Grounds for extension of time 14.2 No extension of time shall be granted to the Supplier except in the case of:
14.2.1 any delay, impediment, prevention or default by the Employer; or
14.2.2 the occurrence of any of the Excepted Risks; or
14.2.3 any Instruction to which clause 7.3 applies; or
14.2.4 the exercise after the date of tender by the United Kingdom Government of any statutory power that directly affects the execution of the Works; or

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14.2.5 the use or threat of terrorism, as defined by the Terrorism Act 2000, and/or the activities of the relevant authorities in dealing with such threat; or

and then only to the extent that the Supplier shall prove that the Delivery is thereby delayed.

Provided always that no account shall be taken of any of the circumstances referred to in clause 14.2 save to the extent that the Supplier:

14.2.6 immediately upon it becoming reasonably apparent that the Works or Delivery is being or is likely to be so prevented, shall have submitted to the Employer's Representative a notice specifying the circumstance or circumstances;

14.2.7 as soon as practicable thereafter, shall have submitted full and detailed particulars of the expected effects of those circumstances and of the extension of time to which the Supplier may consider itself entitled; and

14.2.8 shall have kept such particulars up-to-date by submitting such further particulars which may be necessary or may be requested from time to time by the Employer's Representative,

Grant of Extensions of Time

14.3 So soon as may be practicable after receipt of all of the particulars referred to in clause 14.2, the Employer's Representative shall grant to the Supplier such extension of time to the Periods for Completion affected by such circumstances as he then estimates to be fair and reasonable, provided always that the Supplier shall not be entitled to any extension of time in respect of any delay attributable to any negligence, omission or default by the Supplier, its employees or sub-contractors (except in the case of the circumstances referred to in clause 14.2.2), or in any case where the Supplier has not used its best endeavours to prevent or reduce such delay.

Liquidated Damages

14.4 If the Supplier fails to deliver any Vehicle by the expiry of the relevant Period for Completion, the Supplier shall be liable to pay the Employer liquidated damages calculated at the rate stated in the Technical Workscope for the period from the expiry of the relevant Period for Completion to the date of Provisional Acceptance for the relevant Vehicle provided that the Supplier shall not be obliged to pay liquidated damages in excess of the amount stated in the Appendix. Where liquidated damages have been paid to the Employer and the Employer subsequently grants an extension of time in accordance with clause 14.3, the Employer shall be liable to repay to the Supplier any liquidated damages to which the Employer is no longer entitled.

15 Defect Rectification

Remedying of Defects

15.1 During the Defect Liability Period the Employer's Representative may instruct the Supplier to remedy any Defect. The Supplier shall forthwith comply with any instructions and at no cost to the Employer.

15.2 Where it is not reasonably practicable to return a Vehicle which is subject to a Defect to the Local Distribution Depot for rectification the Supplier shall as quickly as reasonably practicable take appropriate steps to rectify such

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Defect at the nearest suitable location.

- 15.3 In the event that a Vehicle becomes disabled as a result of a Defect which occurs during the Defect Liability Period in such a location as to affect or is likely to affect the operations of the Employer or the operations of railway services provided by third parties, then the Employer may, if it reasonably considers it appropriate, rectify the Defect and the Supplier shall pay on demand to the Employer the reasonable cost of rectification. The Supplier's obligations shall continue to apply despite any action taken by the Employer pursuant to this clause 15.3
- Certificate that Defects Remedied 15.4 After the expiry of the Defect Liability Period and when all Defects that the Supplier has been instructed to remedy under clause 15.1 have been remedied, the Employer's Representative shall issue a certificate to that effect.
- Defects not remedied 15.5 Where there are Defects that the Supplier has been instructed to remedy under clause 15.1 but which have not been remedied within a reasonable period, the Employer's Representative shall issue a statement identifying:
- 15.5.1 those Defects that it intends to engage others to rectify, together with a proper estimate of the cost of undertaking those rectification works; and
- 15.5.2 those Defects that it does not intend to rectify, together with particulars of the appropriate deduction it intends to make in the calculation of the amount due to the Supplier
- Epidemic and Endemic Defects 15.6 Without prejudice to the other provisions of this clause 15, if during the Endemic/Epidemic Protection Period the Employer notifies the Supplier that an Endemic Defect or an Epidemic Defect has occurred, the Supplier shall (within such period as may reasonably be specified in such notice and at the cost of the Supplier) rectify such Endemic Defect or Epidemic Defect, as the case may be (including, where necessary, the replacement of any relevant Spares) in relation to all the Vehicles affected and in respect of which Provisional Acceptance has occurred.
- 15.7 If an Endemic Defect or Epidemic Defect is present in any Spares then supplied to the Employer and is notified in writing by the Employer to the Supplier, the Supplier shall (within such period as may reasonably be specified in such notice and at the cost of the Supplier) remedy Endemic Defect or Epidemic Defect in such Spares or if necessary, replace such Spares.
- Other Rights 15.8 The provisions of clause 15 are without prejudice to any other rights or remedies the parties may possess.

16 Employer's Facilities and Free Issue materials

- Property in Facilities 16.1 All of the Employer's Facilities or other property issued, made available or supplied in connection with this Agreement by or on behalf of the Employer shall remain the property of the Employer and shall only be used by the Supplier for the purposes of this Agreement.

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Availability of Facilities	16.2	The Employer shall make available to the Supplier the Employer's Facilities at the times and subject to the conditions set out in the Preliminaries and subject to any temporary disrepair or mechanical breakdown. The Supplier shall return the same to the Employer in the condition in which they were supplied (fair wear and tear excepted).
No liens	16.3	Neither the Supplier, any Sub-Contractor or any other person, shall have a lien on any of the Employer's Facilities or on any other property and the Supplier shall take all necessary steps to ensure that the title of the Employer and the exclusion of any such lien are brought to the notice of all Sub-Contractors and other persons dealing with the same.
Free Issue Materials	16.4	The Employer shall make available to the Supplier free of charge to the Supplier any goods and materials described in the Preliminaries. Upon completion of delivery such goods and materials shall stand at the risk of the Supplier. Immediately upon the same being made available to it, the Supplier shall carry out a detailed inspection of such goods and materials and shall use its reasonable endeavours to advise the Employer's Representative on or before the expiry of 24 hours and no later than 7 days or before being taken into operational use (whichever is the sooner) if any of such goods and materials are damaged or defective. The Employer shall then secure the repair, replacement and/or reissue of any such goods or materials. If the Supplier does not so notify the Employer's Representative, the Supplier shall not be entitled subsequently to claim that any such goods or materials are damaged or defective to the extent that the same could have been identified by detailed inspection within such period. The Supplier shall dispose of any packaging and/or waste arising.

17 Termination

Contract or breach/ insolvency	17.1	If the Supplier: <ul style="list-style-type: none">17.1.1 shall be in material breach of any of the provisions of this Agreement;17.1.2 is liable to compensate the Employer in respect of sums referred to in clauses 14.4 in an amount which is equal to or exceeds the aggregate total liability of the Supplier as stated; or17.1.3 becomes Insolvent; then the Employer may, in addition to any other power enabling it to terminate this Agreement, by notice terminate forthwith the employment of the Supplier under this Agreement.
Termination at will	17.2	The Employer may, in addition to any other power it may have, at any time by notice to the Supplier forthwith terminate the employment of the Supplier under this Agreement.

18 Consequences of Termination

Payment following breach/	18.1	If the Employer, in exercise of the powers contained in clause 17.1 shall terminate the Supplier's employment under this Agreement the following provisions shall take effect:
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- insolvency
- 18.1.1 the payment of any sum of money that may then be due or accruing from the Employer to the Supplier shall be suspended; and
 - 18.1.2 the Supplier shall pay to the Employer the Employer's reasonable losses and expenses due to termination, but the Supplier shall receive credit for any sum the payment of which is suspended under clause 18.1.1.

- Payment following termination at will
- 18.2 If the Employer, in the exercise of the powers contained in clause 17.2, shall terminate the Supplier's employment under this Agreement, the following provisions shall take effect:
 - 18.2.1 the Employer shall issue a notice under 8.3 stating the amount due to the Supplier which shall be calculated in accordance with the provisions of clause 18.2.2; and
 - 18.2.2 the amount payable on any termination pursuant to clause 17.2 shall be calculated as follows:
 - (i) the value of work executed up to the date of termination calculated in accordance with the provisions of the Pricing Document;
 - (ii) the amounts payable in respect of any preliminary items in so far as the work or service comprised therein has been carried out or performed and a proper proportion of any such items which have been partially carried out or performed;
 - (iii) the cost of materials or goods reasonably ordered for the Works which have been delivered to the Supplier or for which the Supplier is legally liable to accept delivery (such materials or goods becoming the property of the Employer upon such payment being made to the Supplier);
 - (iv) a sum being the amount of any expenditure reasonably incurred by the Supplier in the expectation of completing the whole of the Works insofar as such expenditure has not been recovered by any other payments referred to above; and
 - (v) the reasonable costs of removal of all the Supplier's plant, tools, equipment, goods and materials from the Site.

The Supplier shall not be entitled to payment of any other loss and/or damage arising from such termination including but not limited to loss of profit.

19 Third Party Rights

- No Third Party Rights
- Subject to clause 13.1 but otherwise notwithstanding anything to the contrary contained elsewhere in this Agreement, nothing in this Agreement is intended to confer on any person any right to enforce any term of this Agreement which that person would not have had but for the provisions of Contracts (Rights of Third

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Parties) Act 1999.

20 Notices

- Service
- The addresses for service of the parties shall be the relevant Addresses for Service set out in the Appendix. Any notice required to be given by a party shall be in writing and service shall be effected either:
- 20.1 personally, in which case service shall be deemed effective on delivery; or
 - 20.2 by prepaid recorded delivery post, in which case service shall be deemed effective two working days after the day after posting.

21 Dispute Resolution

- Adjudicator
- 21.1 Any dispute or difference arising under or in connection with this Agreement may be referred to adjudication by the Adjudicator in accordance with the following provisions:
- 21.1.1 the Scheme for Construction Contracts SI No. 649 of 1998 shall apply; and
 - 21.1.2 the Adjudicator's decision is binding until the dispute or difference is finally determined by the Courts as provided in clause 21.3.
- Adjudicator not liable
- 21.2 The Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith, and any employee or agent of the Adjudicator is similarly protected.
- Courts
- 21.3 Disputes and differences between the parties arising out of or in relation to this Agreement shall, subject to clause 21.1, be referred to the exclusive jurisdiction of the English Courts. This Agreement shall be governed by and construed in accordance with English Law.

22 Anti-Bribery Requirements

- 22.1 The Supplier shall comply with all applicable anti-bribery and anti-corruption legislation including, without limitation, the Bribery Act 2010 and any applicable European Union Directives. The Supplier shall also comply with Network Rail's codes and policies on business ethics, interests in transactions and corporate hospitality, and any updates thereof. Any breach of this clause shall be deemed a material breach under this Contract. (Note: These codes and policies are available on line at: <http://www.networkrail.co.uk/asp/12859.aspx>)
- 22.2 Throughout the term of this Contract the Supplier shall maintain and enforce its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with all applicable anti-bribery and anti-corruption legislation and European Union Directives. Adequate procedures shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of the Act).
- 22.3 The Supplier shall use all reasonable endeavours to ensure that all persons associated with the Supplier (as defined by section 8 of the Bribery Act

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2010) including any subcontractors and suppliers comply with clauses 22.1 and 22.2 above.

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Contract Specific Conditions

None

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Technical Worksopce

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Contract Requirements - HSQE

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Preliminaries

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Pricing Document