

ANTICIPATED ACQUISITION BY HITACHI RAIL LIMITED OF THALES SA's GROUND TRANSPORTATION SYSTEMS BUSINESS

Final Undertakings given by Hitachi Rail Limited to the Competition and Markets Authority pursuant to section 82 of the Enterprise Act 2002

Background

- A. On 23 December 2022, the Competition and Markets Authority (**CMA**), in exercise of its duty under section 33(1) of the Enterprise Act 2002 (the **Act**), referred the anticipated acquisition by Hitachi Rail Limited (**Hitachi Rail**), a wholly-owned subsidiary of Hitachi Limited of the Ground Transportation Systems business (the **Target**) (the **Merger**) carried on by Thales SA (**Thales**) (Hitachi and Thales together, the **Parties**), for further investigation and report by a group of CMA panel members.
- B. On 3 August 2023, the CMA accepted interim undertakings (**Interim Undertakings**) from Hitachi Rail pursuant to section 80 of the Act for the purpose of preventing pre-emptive action in accordance with that section. On 8 August 2023, the CMA issued written directions under the Interim Undertakings for the appointment of a monitoring trustee (the **Monitoring Trustee**) in order to monitor and ensure Hitachi Rail's compliance with the Interim Undertakings.
- C. The CMA published a final report pursuant to section 38 of the Act, titled 'Anticipated acquisition by Hitachi Rail, Ltd of Thales SA's Ground transportation Systems Business' (dated 4 October 2023) (the **Report**) which concluded, among other things, that:
- (a) the Merger may be expected to result in a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects arising from overlaps between the Parties in the supply of digital mainline signalling systems and related services in Great Britain;
 - (b) the CMA should take action to remedy the SLC and any adverse effects resulting from it; and
 - (c) Hitachi Rail should divest its mainline signalling business in France, Germany and the UK (including staff, technology, and a production and

R&D site) as described in the Report and in Annex 1 (the **Divestment Business**) (the **Primary Divestiture Remedy**).

- D. The implementation of the Primary Divestiture Remedy will be subject to the following safeguards:
- (a) Hitachi Rail will be subject to regular reporting requirements in accordance with paragraphs 5 and 13;
 - (b) the Monitoring Trustee appointed in accordance with paragraph 9 will monitor compliance with these Final Undertakings, including the progress of the implementation of the Primary Divestiture Remedy;
 - (c) the appointment of a Hold Separate Manager;
 - (d) the purchaser of the Divestment Business must be an Approved Purchaser in accordance with the Purchaser Approval Criteria in Annex 2; and
 - (e) these Final Undertakings include provisions enabling the CMA to direct the appointment of a Divestiture Trustee to effect the final disposal of the Divestment Business in accordance with the conditions set out in paragraph 10.
- E. The Report also provided that in the event that customer consent from each of Network Rail, SNCF and Deutsche Bahn to the transfer of their Backlog Contracts [✂] to the Approved Purchaser is not obtained within the Divestiture Period, prohibition would be an effective and proportionate alternative remedy (the **Alternative Remedy**).
- F. On [Date], in anticipation of the Primary Divestiture Remedy, a Hold Separate Manager was appointed pursuant to written Directions issued by the CMA pursuant to paragraph 3.5 of the Interim Undertakings to hold the Divestment Business separate from Hitachi Rail and to manage the day-to-day business of the Divestment Business under the supervision of the Monitoring Trustee.
- G. By virtue of section 80(8) of the Act, the Interim Undertakings cease to be in force on the date of acceptance by the CMA, pursuant to section 82 of the Act, of these Final Undertakings. To the extent applicable, any derogations already granted by the CMA pursuant to the Interim Undertakings shall remain applicable in the context of these Final Undertakings.
- H. On [Date] the CMA accepted undertakings from Hitachi, Ltd., Hitachi Rail and Thales under section 82 of the Act, in accordance with section 41 of the Act for the purpose of giving effect to the obligations of Hitachi, Ltd under the Primary Divestiture Remedy, and if necessary, giving effect to the Alternative Remedy in the event that the Primary Divestiture Remedy does not proceed due to the

failure to obtain the necessary customer consents within the time permitted (the **Additional Final Undertakings**).

- I. Now therefore, Hitachi Rail gives to the CMA on behalf of itself and, where relevant, its Subsidiaries and Affiliates, the following undertakings under section 82 of the Act, in accordance with section 41 of the Act, for the purpose of giving effect to the Primary Divestiture Remedy.

1. Interpretation

- 1.1 The purpose of these Final Undertakings is to give effect to the Primary Divestiture Remedy identified in the Report and they shall be construed in accordance with the Report.
- 1.2 Words and expressions used in these Final Undertakings or the recitals to the Final Undertakings shall, unless otherwise defined herein and/or the context otherwise requires, have the same meaning as they do in the Act or the Report (as appropriate).
- 1.3 In the Final Undertakings, the word ‘including’ means including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word, and the word ‘include’ and its derivatives shall be construed accordingly.
- 1.4 The headings used in the Final Undertakings are for presentation purposes and have no legal effect.
- 1.5 Unless the context requires otherwise, expressions in the singular include the plural and vice versa and references to persons include bodies of persons whether corporate or incorporate. Any reference to person or position includes its or their successor in title.
- 1.6 References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise stated.
- 1.7 References to recitals, paragraphs, subparagraphs and annexes are references to the recitals to, paragraphs and subparagraphs of, and annexes to, the Final Undertakings unless otherwise stated.
- 1.8 The annexes to the Final Undertakings form part of the Final Undertakings.
- 1.9 The Interpretation Act 1978 shall apply to these Final Undertakings as it does to Acts of Parliament.
- 1.10 For the purpose of the Final Undertakings and annexes:

Act means the Enterprise Act 2002;

Additional Undertakings means the final undertakings accepted by the CMA under section 82 of the Act, in accordance with section 41 of the Act for the purpose of giving effect to the Alternative Remedy in the event that the Primary

Divestiture Remedy does not proceed due to the failure to obtain the necessary customer consents within the Divestiture Period;

Affiliate means a person who is an affiliate of another person if they or their respective enterprises are to be regarded as being under common control for the purposes of section 26 of the Act;

Alternative Remedy means prohibition of the Merger as described in the Report;

Approved Purchaser means a purchaser of the Divestment Business approved by the CMA pursuant to paragraph 3 as meeting the relevant purchaser approval criteria as set out in Annex 2 to these Final Undertakings;

Approved Timetable means the divestment timetable approved by the CMA in accordance with paragraph 3.2.1;

Associated Person means a person who is an associated person within the meaning of section 127 of the Act;

Backlog Contracts means the ETCS ATP wayside, interlocking, legacy and ETCS OBU, service and maintenance, and components contracts awarded to Hitachi Rail France, Hitachi Rail Deutschland or the UK DMS Business, which will still be in place and with orders still outstanding at the time of Closing, as listed in Schedule [Backlog Contracts];

business has the meaning given by section 129(1) and (3) of the Act;

Closing means the date on which Effective Divestiture takes place;

CMA means the Competition and Markets Authority;

Commencement Date means the date on which the Final Undertakings are accepted by the CMA in accordance with section 82(2)(a) of the Act;

Compliance Statement means the statement provided by Hitachi Rail in accordance with paragraph 13.2 of the Final Undertakings;

Confidential Information: any business secrets, know-how, commercial information, intellectual property or any other information of a confidential or proprietary nature that is not in the public domain;

Control includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise, as defined in section 26 of the Act;

Core French Site means the headquarters and R&D site of the Divestment Business located at 4 avenue du Canada Les Ulis 91940, France;

Directions means written directions given by the CMA as set out in paragraph 11;

Divestment Business means the business or businesses as defined in Annex 1 and Chapter 13 of the Report;

Divestiture Period means the period until [X]; or other such period as the CMA may approve in accordance with paragraph 18;

Divestiture Trustee means any person appointed pursuant to paragraph 10.2;

Divestment Undertakings means those undertakings set out in paragraph 3;

Effective Divestiture means completion of the sale of the Divestment Business to an Approved Purchaser in accordance with the Transaction Agreements approved by the CMA;

Final Undertakings means these final undertakings accepted by the CMA, including the Annexes hereto, and as may be varied in terms of paragraph 12;

GB means Great Britain;

Generic Application: the software loaded onto the Safety Platform that translates the signalling rules received from each customer/infrastructure owner into algorithms, executed by the Safety Platform;

Generic Product: the common standard generic (*i.e.*, non-country and non-customer specific) Safety Platform on which the Generic and Specific Applications are being loaded;

Hitachi Rail means Hitachi Rail Limited, a private limited company incorporated under the laws of the United Kingdom under number 05598549, having its registered office at 7th Floor, One New Ludgate, 60 Ludgate Hill, London, England, EC4M 7AW;

Hitachi Rail business means: (a) prior to closing of the Merger, the business conducted by Hitachi Rail and its respective subsidiaries carried on at the Commencement Date, but excluding the Divestment Business; or (b) after closing of the Merger, the business conducted by Hitachi Rail and the Target and their respective subsidiaries carried on at the Commencement Date, but excluding the Divestment Business;

Hitachi Rail Deutschland means Hitachi Rail STS Deutschland GmbH, incorporated under the laws of Germany under number HRB 186128, having its registered office at Georg-Brauchle-Ring 56, 80992 München, Germany;

Hitachi Rail France means Hitachi Rail STS France SAS, incorporated under the laws of France under number 351 347 232, having its registered office at 4 Avenue du Canada, 91940 Les Ulis, France

Hold Separate Manager means the person appointed by Hitachi Rail for the Divestment Business in accordance with paragraph 8 and to perform the functions set out in Annex 4 to manage the day-to-day business under the supervision of the Monitoring Trustee;

Interim Undertakings means the Interim Undertakings given by Hitachi Rail and accepted by the CMA on 3 August 2023;

Key Personnel means all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in Annex 1, including the Hold Separate Manager;

Licences means the ARGOS Licence and German WSP Licence, as defined in Annex 1;

Merger means the anticipated acquisition by Hitachi Rail of the Target;

Monitoring Trustee means a person appointed or retained in accordance with paragraph 9;

ordinary course of business means matters connected to the day-to-day supply of goods and/or services, research and development, investment/divestment, business development and corporate transactions unrelated to the Effective Divestiture by the Divestment Business and for the avoidance of doubt matters not in anticipation or contemplation of the Effective Divestiture or closing of the Merger;

Parties means Hitachi Rail and Thales SA;

Personnel means all staff currently employed by the Divestment Business, including shared personnel as well as the additional personnel listed in Schedule [Personnel];

Primary Divestiture Remedy means the sale by Hitachi Rail of the Divestment Business to an Approved Purchaser within the Divestiture Period in accordance with the Transaction Agreements, as described in Chapter 13 of the Report;

Proposed Purchaser means a potential purchaser of the Divestment Business proposed to the CMA by Hitachi Rail;

Retained Business means the businesses retained by Hitachi Rail that will not form part of the Divestment Business;

Related Person means any Subsidiary, Affiliate, Associated Person or any person who is under common control for the purposes of section 26 of the Act;

Report means the CMA's report, pursuant to section 38 of the Act, titled 'Anticipated acquisition by Hitachi Rail, Ltd of Thales SA's Ground transportation Systems Business' (dated 4 October 2023);

Reverse Transitional Services Agreements means any agreements to be entered into between Hitachi Rail and the Approved Purchaser in respect of the provision of the services to be provided by the Approved Purchaser and/or the Divestment Business pursuant to Annex 1;

Reverse Licences means the reverse licences listed in paragraphs 6(m) and (n) of Annex 1;

Sale and Purchase Agreement means the agreement between Hitachi Rail and the Approved Purchaser for the sale and purchase of the Divestment Business;

SLC means substantial lessening of competition;

Specific Application: the configuration data and parameters for each specific project which are used to configure the Generic Application;

Supply Agreements means the supply agreements to be entered into between Hitachi Rail and the Approved Purchaser pursuant to Annex 1;

substantial change means any change that is likely to materially adversely impact the Divestment Business;

Sublease means the sublease under which the Approved Purchaser will sublease one or two floors of Building B or C to Hitachi Rail and share the carpark of the Core French Site (at least) until the corresponding lease between Hitachi Rail (to be transferred to the Approved Purchaser) and the freeholder (currently SCI Les Ulis) terminates in September 2029;

Subsidiary, unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

Target means Thales SA's Ground Transportations Systems Business, to be acquired by Hitachi Rail;

Target business means the business conducted by the Target and its subsidiaries carried on at the Commencement Date;

[✂]

[✂]

Transaction Agreements means the Sale and Purchase Agreement, the Transitional Services Agreements, Reverse Transitional Services Agreements, Licences, Reverse Licences, Supply Agreements, Sublease and any other transaction-related agreements which are stated to be 'agreed form' documents under those agreements;

Transitional Services Agreements means any agreements to be entered into between Hitachi Rail and the Approved Purchaser in respect of the provision of the services to be provided by Hitachi Rail pursuant to Annex 1;

Trustee Divestiture Period means a period as the CMA may direct for the Divestiture Trustee to meet the Trustee Obligation commencing from the date of appointment of the Divestiture Trustee;

Trustee Obligation means bringing about the Effective Divestiture, and includes the performance of all ancillary tasks as are necessary or desirable for the purpose of effecting the Effective Divestiture promptly and, in any event, within the Trustee Divestiture Period;

Working Day means a day other than Saturday, Sunday or a public holiday in any of the UK, France or Japan;

written consent means a consent given in writing, including by email.

2. Commencement

2.1 These Final Undertakings shall come into force and effect on the Commencement Date in accordance with section 82(2) of the Act.

2.2 These Final Undertakings shall no longer apply if the Merger is terminated or otherwise abandoned.

3. Divestment undertakings

3.1 Hitachi Rail gives the following undertakings:

3.1.1 to give effect to Effective Divestiture of the Divestment Business as described in Annex 1 within the Divestiture Period, having due regard to the findings in the Report;

3.1.2 to procure that its Subsidiaries do all things necessary within their control to provide the CMA with such information as the CMA may require to ensure that Hitachi Rail is able to comply with these Final Undertakings;

3.1.3 to obtain prior CMA written consent to expand the scope of the Divestment Business in any material regard should Hitachi Rail consider it necessary to ensure Effective Divestiture, including for the purpose of obtaining the necessary consents pursuant to paragraph 4.2.2;

3.1.4 to inform the CMA as soon as practicable, and in any event, within six weeks of the Commencement Date of a shortlist of potential purchasers of the Divestment Business being drawn up for the CMA's formal approval against the Purchaser Approval Criteria;

3.1.5 to provide the CMA with sufficient information regarding each Proposed Purchaser for which Hitachi Rail seeks formal approval from the CMA,

having regard to the Purchaser Approval Criteria to enable the CMA to decide whether to give its approval of that Proposed Purchaser, which shall not be unreasonably withheld. The CMA will advise Hitachi Rail, whether any Proposed Purchaser is an Approved Purchaser within a reasonable period from the time the CMA reasonably concludes it has received sufficient information about the Proposed Purchaser;

- 3.1.6 to seek CMA approval of the final terms of the Transaction Agreements, which shall not be unreasonably withheld, to provide all Transaction Agreements or other information the CMA may require, and to modify any terms of the Transaction Agreements as necessary to obtain the CMA's approval; and
- 3.1.7 to inform the CMA as soon as practicable, and in any event within two Working Days of the date when: (i) Hitachi Rail has agreed heads of terms (if applicable); (ii) the Transaction Agreements have been agreed; (iii) each of the relevant customer consents under paragraph 4.2.2 have been obtained; (iv) the Transaction Agreements have been signed; and (v) the Effective Divestiture has been taken place.

3.2 Hitachi Rail further undertakes that:

- 3.2.1 within five Working Days following the Commencement Date, or such other period as may be agreed by the CMA, it will provide a timetable for the CMA's approval, setting out the key indicative milestones to ensure Effective Divestiture within the Divestiture Period, including the indicative milestones to: (i) procure any necessary third-party customer consents to give effect to the Primary Divestiture Remedy; (ii) separate the Divestment Business from the Hitachi Rail business; and (iii) obtain the necessary regulatory approvals. The CMA will as soon as reasonably practicable either approve this timetable as proposed or require reasonable amendments to it;
- 3.2.2 it will not, without the prior consent of the CMA (such consent not to be unreasonably withheld), make any material amendments to the form of the Transaction Documents approved by the CMA pursuant to paragraph 4.2.3, other than correcting typographical errors, completing any missing details or immaterial amendments notified to the CMA;
- 3.2.3 it will not and shall procure that any Related Person will not, for a period of 15 years after Effective Divestiture, directly or indirectly acquire any interest as a result of which it would own or control the Divestment Business in whole or in part without the prior written consent of the CMA;
- 3.2.4 it will not, for a period of 10 years after Effective Divestiture, use any elements of the WSP to bid for ETCS ATP wayside and interlocking projects in Germany, except with the prior written consent of the CMA. For the avoidance of doubt, this paragraph shall not prevent Hitachi Rail

from using the Target's technologies to bid for ETCS ATP wayside and interlocking projects in Germany; and

3.2.5 it will not for a period of 10 years after Effective Divestiture (or 15 years if the ARGOS Framework Agreement is extended by five additional years), use any elements of the SEI (subject to paragraph 7(e)) of Annex 1), PAI Interlocking, and ARGOS Platforms to bid for ETCS ATP wayside, interlocking, and ETCS and legacy on-board units (**OBUs**) projects in France, except with the prior written consent of the CMA. For the avoidance of doubt, this paragraph shall not prevent Hitachi Rail from using the Target's technologies to bid for ETCS ATP wayside, OBU and interlocking projects in France.

4. Additional obligations

4.1 Hitachi Rail undertakes that it shall not complete the Merger unless and until Hitachi Rail has received prior written confirmation from the CMA that all of the conditions precedent set out in paragraph 4.2 are satisfied, or the CMA otherwise consents to the completion of the Merger.

4.2 The conditions precedent referred to in paragraph 4.1 are:

4.2.1 the CMA has notified the Parties of its approval of the Proposed Purchaser as the Approved Purchaser (such approval not to be unreasonably withheld);

4.2.2 Network Rail, SNCF and Deutsche Bahn have each consented to the transfer of their respective relevant Backlog Contracts to the Approved Purchaser [✂];

4.2.3 the CMA has notified the Parties of its approval of the final drafts of the Transaction Agreements (such approval not to be unreasonably withheld);

4.2.4 an approved Sale and Purchase Agreement has been executed by the parties thereto, and the other Transaction Agreements have been executed by (or are otherwise in agreed form between) the parties thereto; and

4.2.5 the CMA has notified the Parties that it is fully satisfied that completion of the Merger will not have any material adverse impact on the successful completion of the Effective Divestiture (such approval not to be unreasonably withheld).

4.3 Hitachi Rail undertakes to inform the CMA as soon as practicable, and in any event within two Working Days of the date the condition precedent set out in paragraph 4.2.4 has been satisfied and the consents pursuant to paragraph 4.2.2 have been received. The CMA will promptly advise Hitachi Rail whether the conditions precedent have been satisfied within a reasonable period from the time the CMA concludes it has received sufficient information to confirm that

the conditions precedent have been satisfied. The CMA will promptly inform Hitachi Rail if, having been informed by Hitachi Rail that the condition precedent set out in paragraph 4.2.4 has been satisfied and the consents pursuant to paragraph 4.2.2 have been received, it considers that any information required by the CMA to confirm that the conditions precedent have been satisfied remains outstanding.

5. Reporting obligations

5.1 At any time until Effective Divestiture, Hitachi Rail undertakes that:

5.1.1 it will inform the CMA as soon as practicable, and in any event within five Working Days of becoming aware that it will not, or believes it is unlikely to, achieve Effective Divestiture within the Divestiture Period; and

5.1.2 it will notify the CMA as soon as reasonably practicable of any material changes or amendments to the Approved Timetable. In the event that Hitachi Rail does not meet or is unlikely to meet a step as set out in the Approved Timetable or is otherwise delayed in implementing the Effective Divestiture, Hitachi Rail undertakes to inform the CMA promptly in writing of the occurrence, the reasons for the failure and any remedial steps, not later than three Working Days from becoming aware that a step in the Approved Timetable has not been or is unlikely to be met.

5.2 Hitachi Rail undertakes to provide a written report to the CMA, copied to the Monitoring Trustee, every four weeks from the Commencement Date, or such other interval as agreed with the CMA, until Effective Divestiture. The report shall outline the progress Hitachi Rail has made towards Effective Divestiture, and the steps that have otherwise been taken to comply with these Final Undertakings and shall in particular report on:

5.2.1 the progress that has been made against the Approved Timetable;

5.2.2 the status of any discussions that have been held with the relevant customers of the Divestment Business pursuant to paragraph 4.2.2;

5.2.3 the total number of persons who have lodged a formal bid with Hitachi Rail for the acquisition of the Divestment Business since the publication of the Report;

5.2.4 the name of each person who has lodged a formal bid with Hitachi Rail for acquisition of the Divestment Business since the publication of the Report;

5.2.5 the name, address, email address, contact point and telephone number of each person who has lodged a formal bid with Hitachi Rail since the publication of the Report and subsequently been short-listed by Hitachi Rail as a Proposed Purchaser;

- 5.2.6 the status of any discussions that have been held with the short-listed parties, referenced in paragraph 5.2.5, that are interested in the purchase of the Divestiture Business;
- 5.2.7 the progress made towards agreeing heads of terms (including any put-option agreement or the draft Transaction Agreements) and the persons to whom any draft agreements have been distributed;
- 5.2.8 the progress made towards obtaining any regulatory and customer consents and approvals necessary to give effect to the Effective Divestiture, to the extent that Hitachi Rail has such information; and
- 5.2.9 such other matters as may be reasonably directed by the CMA from time to time.

6. Procedure for consent and approval

- 6.1 Hitachi Rail undertakes that where it requires the consent or approval of the CMA (however that requirement is expressed in the Final Undertakings) it will seek such consent or approval in writing. Any consent or approval given by the CMA under the Final Undertakings shall be given in writing.
- 6.2 Hitachi Rail undertakes that any application by it for the CMA's consent or approval shall make full disclosure of every fact and matter within its knowledge that it reasonably considers is relevant to the CMA's decision (**Relevant Information**).
- 6.3 Hitachi Rail recognises that where the CMA grants consent or approval on the basis of information that is false or misleading in a material respect, the consent or approval is voidable at the discretion of the CMA, acting reasonably.
- 6.4 In the event that Hitachi Rail discovers that an application for consent or approval has been made without full disclosure of, or with incorrect, Relevant Information, Hitachi Rail undertakes to:
 - 6.4.1 inform the CMA in writing identifying Relevant Information that it omitted to include and/or which is incorrect in the application for consent, promptly and no later than three Working Days of becoming aware that the Relevant Information is incomplete or incorrect; and
 - 6.4.2 provide to the CMA an application for consent that includes the missing and/or correct Relevant Information, promptly and no later than three Working Days starting with the date on which it informed the CMA of the omission or inaccuracy in accordance with paragraph 6.4.1 above.
- 6.5 Hitachi Rail shall use all reasonable endeavours to make each application or to procure that each application for consent or approval is made so that it is received by the CMA at least three Working Days before the day on which the CMA's consent or approval is necessary to avoid a breach of the Final Undertakings.

7. Asset maintenance undertakings

7.1 Hitachi Rail undertakes until Effective Divestiture to procure that, except with the prior written consent of the CMA (which includes any previous derogations granted pursuant to the Interim Undertakings which will remain applicable until the Effective Divestiture) it will not take any action which might prejudice the economic viability, marketability or competitiveness of the Divestment Business. In particular, Hitachi Rail undertakes:

7.1.1 not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;

7.1.2 [✂]

(a) [✂]

(b) [✂].

7.1.3 to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel and engineers to remain with the Divestment Business, and not to solicit or move any Personnel to Hitachi Rail's remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Business, Hitachi Rail shall provide a reasoned proposal to replace the person or persons concerned to the CMA and the Monitoring Trustee. Hitachi Rail must be able to demonstrate to the CMA that the replacement is well-suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the CMA; and

7.1.4 subject to customary limitations and applicable laws and regulations, not to solicit and to procure that Subsidiaries do not solicit the Key Personnel transferred with the Divestment Business for a period of up to 5 years after Closing.

8. Hold separate undertakings

8.1 Hitachi Rail undertakes to retain the Hold Separate Manager appointed on [Date] under the Interim Undertakings and to perform the functions set out in Annex 4 until Effective Divestiture.

8.2 The Hold Separate Manager as appointed in paragraph 8.1 and in accordance with Annex 4 until Effective Divestiture, shall manage the Divestment Business

independently and in the best interest of the business and in accordance with the Hold Separate Manager Obligation as set out in Annex 4 with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by Hitachi Rail (the **Hitachi Rail business**). The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee.

- 8.3 Unless implemented prior to the Commencement Date, prior to closing of the Merger and by no later than five Working Days from the Commencement Date, unless otherwise agreed with the CMA, Hitachi Rail undertakes to design and implement a suitable plan to ringfence the Divestment Business (including an appropriate physical separation of employees and systems), subject to oversight and monitoring from the Monitoring Trustee and final approval from the CMA.
- 8.4 Except with the prior written consent of the CMA (which, for the avoidance of doubt, includes any derogations already granted by the CMA pursuant to the Interim Undertakings, which shall remain applicable until Effective Divestiture, unless cancelled or revoked by the CMA), Hitachi Rail undertakes not to take any action and to procure that its Subsidiaries do not take any action until Effective Divestiture which might:
- 8.4.1 lead to any further integration of the Divestment Business with the Hitachi Rail business;
- 8.4.2 transfer the ownership or control of all or any part of the Divestment Business except in the course of complying with these Final Undertakings; or
- 8.4.3 otherwise impair the ability of the Divestment Business to compete independently of the Hitachi Rail business or the Target business (prior to closing of the Merger) in the relevant market.
- 8.5 Further, and without prejudice to the generality of paragraph 8.4 except with the prior written consent of the CMA (which, for the avoidance of doubt, includes any derogations already granted by the CMA pursuant to the Interim Undertakings, which shall remain applicable until Effective Divestiture, unless cancelled or revoked by the CMA), Hitachi Rail shall at all times from the Commencement Date until the Effective Divestiture procure that the Divestment Business is kept separate from the Hitachi Rail business. In particular, Hitachi Rail shall:
- 8.5.1 procure that the software and hardware platforms of the Divestment Business shall remain essentially unchanged, except for routine changes and maintenance or for the purposes of complying with these Final Undertakings;
- 8.5.2 except in the ordinary course of business or for the purposes of complying with these Final Undertakings, procure that the customer and supplier lists of the Divestment Business and the Hitachi Rail business

shall be operated and updated separately and that any negotiations with any existing or potential customers and suppliers, [REDACTED] (but subject always to paragraph 7.1.2(b)), in relation to the Divestment Business will be carried out by the Divestment Business alone and, for the avoidance of doubt, the Hitachi Rail business will not negotiate on behalf of the Divestment Business (and vice versa);

8.5.3 [REDACTED]

- (a) [REDACTED];
- (b) [REDACTED]; and
- (c) [REDACTED].

8.5.4 except for the purposes of complying with these Final Undertakings, procure that all existing contracts of the Divestment Business and the Hitachi Rail business continue to be serviced by the business to which they were awarded;

8.5.5 procure that no Confidential Information shall pass, directly or indirectly, from the Divestment Business (or any of its employees, directors, agents or Related Persons) to the Hitachi Rail business (or any of its employees, directors, agents, or Related Persons), or vice versa, except where strictly necessary in the ordinary course of business (for example, where required for compliance with external regulatory and/or accounting obligations) or for the purposes of complying with, or giving effect to, these Final Undertakings.

8.5.6 procure that management and staff of the Hitachi Rail business have no involvement in the Divestment Business, except as required to give effect to Effective Divestiture and Hitachi Rail's obligations under these Final Undertakings, in all cases subject to the supervision of the Monitoring Trustee; and

8.5.7 procure that the Key Personnel and Personnel of the Divestment Business have no involvement in the Hitachi Rail business.

9. Monitoring trustee – appointment and discharge

9.1 Hitachi Rail undertakes to secure the appointment (within 5 working days following the Commencement Date) or retention of an independent Monitoring Trustee to perform the functions set out in Annex 3 on behalf of the CMA. Provided that the other conditions set out in Annex 3 are complied with, the Monitoring Trustee may be the same as already appointed pursuant to the written directions made by the CMA on 8 August 2023 under the Interim Undertakings.

- 9.2 In the event that Hitachi Rail proposes to retain the current Monitoring Trustee, Hitachi Rail shall provide the CMA with a copy of the updated agreed terms and conditions of appointment that reflect these Final Undertakings no later than five Working Days after the Commencement Date.
- 9.3 Hitachi Rail acknowledges that if the Monitoring Trustee ceases to perform its duties, or for any other good cause, including the exposure of the Monitoring Trustee to a conflict of interest, the CMA may, after consulting the Monitoring Trustee, require Hitachi Rail to replace the Monitoring Trustee.
- 9.4 If the Monitoring Trustee is removed under paragraph 9.3 above, the Monitoring Trustee may be required to continue in its post until a new Monitoring Trustee is in place to whom the Monitoring Trustee has affected a full handover of all relevant information.

10. Divestiture trustee

- 10.1 Hitachi Rail recognises and acknowledges that the CMA may (after consultation with the European Commission) direct the appointment of a Divestiture Trustee following the expiration of the Divestiture Period if Hitachi Rail fails to achieve the Effective Divestiture within the Divestiture Period, or prior to the expiry of the Divestiture Period, including where, upon reasonable grounds and after consultation with the European Commission, the CMA considers that:
- 10.1.1 Hitachi Rail will fail to complete the divestiture process within the Divestiture Period and/or the CMA reasonably believes that there is a material risk that the divestiture process would fail to complete within the Divestiture Period;
- 10.1.2 Hitachi Rail is not engaging constructively with the CMA to ensure timely completion of the divestiture process, including any steps to obtain customer consent for the transfer of their contracts to the Approved Purchaser as required pursuant to paragraph 4.2.2;
- 10.1.3 Hitachi Rail has failed to comply with its material obligations under these Final Undertakings and has failed to rectify such failure upon the CMA's request; or
- 10.1.4 there is material deterioration of the Divestment Business during the divestiture process.
- 10.2 In the event that the CMA (after consultation with the European Commission) directs the appointment of a Divestiture Trustee in accordance with paragraph 10.1, Hitachi Rail undertakes to appoint a Divestiture Trustee in accordance with Annex 5 and to carry out the functions listed in Annex 5.

11. Directions

- 11.1 Hitachi Rail undertakes to comply with any written Directions given by the CMA under these Final Undertakings, and to procure that any holder of a specified office within Hitachi Rail including its Subsidiaries also comply, and to promptly take such steps as may be specified or described in the Directions for the purposes of complying with these Final Undertakings, including by doing, or refraining from doing, anything so described which they have undertaken to do or refrain from doing under these Final Undertakings.
- 11.2 Hitachi Rail acknowledges that:
- 11.2.1 the CMA may choose not to issue Directions immediately upon becoming entitled to do so, and recognise that any delay by the CMA in making a written Direction shall not affect its obligations at such time as the CMA makes any written Direction; and
- 11.2.2 the CMA may vary or revoke any Direction so given.

12. Variations to Final Undertakings

- 12.1 The terms of these Final Undertakings may be varied with the prior written consent of the CMA in accordance with sections 82(2) and 82(5) of the Act.
- 12.2 Where a request for consent to vary these Final Undertakings is made to the CMA, the CMA will consider any such request in light of the Report and will respond in writing as soon as is reasonably practicable having regard to the nature of the request and to its statutory duties.
- 12.3 The consent of the CMA shall not be unreasonably withheld or delayed.

13. General obligations to provide information to the CMA

- 13.1 Hitachi Rail undertakes that it shall promptly provide to the CMA such information as the CMA may reasonably require for the purpose of performing any of its functions under the Final Undertakings or under sections 82, 83, 92 and 94(6) of the Act.
- 13.2 Hitachi Rail undertakes that should it at any time be in breach of any provision of the Final Undertakings, it will notify the CMA promptly and no later than two Working Days starting with the date it becomes aware of the breach to inform the CMA that there has been a breach, the circumstances of that breach and the steps taken or to be taken to remedy the breach.
- 13.3 Hitachi Rail undertakes to keep and produce those records specified in writing by the CMA that relate to the operation of any provisions of these Final Undertakings.

14. Acceptance of service

- 14.1 Hitachi Rail hereby [✂], to accept service on its behalf of all documents, orders, requests, notifications or other communications connected with the Final Undertakings (including any document of any kind which falls to be served on or sent to Hitachi Rail or any of its Subsidiaries in connection with any proceedings in court in the UK) orders, requests, notifications or other communications connected with the Final Undertakings.
- 14.2 Unless Hitachi Rail informs the CMA in writing that [✂] has ceased to have authority to accept and acknowledge service on their or any of their Subsidiaries' behalf, any document, order, request, notification or other communication connected with these Final Undertakings shall be validly served on Hitachi Rail if it is served [✂]; and service or receipt shall be deemed to have been acknowledged by Hitachi Rail if it is acknowledged [✂] or such other nominee.
- 14.3 Paragraph 14.1 has effect irrespective of whether, as between Hitachi Rail and its legal representatives, its legal representatives have or continue to have any authority to accept and acknowledge service on their behalf (unless they inform the CMA that Hitachi Rail's legal representatives have ceased to have authority to accept and acknowledge service on its behalf), and no failure or mistake by Hitachi Rail's legal representatives (including a failure to notify the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these Final Undertakings, including any proceeding or judgment pursuant to these Final Undertakings.
- 14.4 Any communication from Hitachi Rail to the CMA under the Final Undertakings shall be addressed to The Competition and Markets Authority, The Cabot, 25 Cabot Square, London E14 4QZ (remediesmonitoringteam@cma.gov.uk) or other such address as the CMA may from time to time stipulate.

15. Compliance

- 15.1 Hitachi Rail undertakes to comply with such reasonable written directions as the CMA may from time to time give and to take such steps as are within its reasonable competence for the purpose of carrying out or securing compliance with the Final Undertakings.
- 15.2 Hitachi Rail undertakes to provide to the CMA such information or statement of compliance as it may from time to time require for the purpose of monitoring compliance by Hitachi Rail and its Subsidiaries with the Final Undertakings. In particular, by 5pm (UK time) two weeks from the Commencement Date and subsequently every four weeks or such other interval as agreed with the CMA (or, where such interval date does not fall on a Working Day, the first Working Day thereafter), until Effective Divestiture has occurred, Hitachi Rail shall provide a statement to the CMA in the form set out in Annex 6 to the Final Undertakings confirming compliance with the Final Undertakings.
- 15.3 Hitachi Rail undertakes to procure that each of its Subsidiaries and (as may be the case) successors in title complies fully with the Final Undertakings.

16. Provision of information

- 16.1 Where any person, including a Hold Separate Manager, Monitoring Trustee or a Divestiture Trustee, must provide information to the CMA under or in connection with these Final Undertakings, whether in the form of any notice, application, report or otherwise, Hitachi Rail undertakes that it will take reasonable steps within its respective power to procure that such person shall hold all information provided to it as confidential and shall not disclose any business-sensitive information of Hitachi Rail to any person outside Hitachi Rail or its Related Persons other than to the CMA and Hitachi Rail's legal and financial advisors, without the prior written consent of both the CMA and Hitachi Rail.

17. Effect of invalidity

- 17.1 Hitachi Rail undertakes that should any provision of the Final Undertakings be contrary to law or invalid for any reason, Hitachi Rail shall continue to observe the remaining provisions.

18. Extension of time

Hitachi Rail recognises and acknowledges that the CMA may, where it considers appropriate, in response to a written request from Hitachi Rail showing good cause, or otherwise at its own discretion grant an extension of any period specified in the Final Undertakings within which Hitachi Rail, the Monitoring Trustee, the Hold Separate Manager or the Divestiture Trustee (as the case may be) must take action. The grant of any such extension shall not be unreasonably withheld or delayed.

19. Governing law

19.2 These Final Undertakings shall be governed by and construed in all respects in accordance with English law. Disputes arising concerning these Final Undertakings shall be subject to the jurisdiction of the courts of England and Wales.

20. Termination

Hitachi Rail recognises and acknowledges that the Final Undertakings shall remain in force until such time as Effective Divestiture and, with respect to the Final Undertakings in paragraph 3.1.1 until such time as all Transitional Service Agreements, secondment arrangements and other ongoing obligations identified in Annex 1 have been concluded, in paragraph 3.2.3 for a period of 15 years from Effective Divestiture, in paragraph 3.2.4 for a period of 10 years from Effective Divestiture and paragraph 3.2.5 for a period of 10 years (or 15 years if the ARGOS Framework Agreement is extended by 5 years) from the Effective Divestiture, subject to paragraph 7(e) of Annex 1).

FOR AND ON BEHALF OF HITACHI RAIL LIMITED

Signature

Name

Title

Date

Annex 1

Divestment Business

1. The Divestment Business comprises two current legal entities: (a) Hitachi Rail STS France SAS (**Hitachi Rail France**) (including its branches in Algeria, Morocco, South Korea, and Tunisia); (b) Hitachi Rail STS Deutschland GmbH (**Hitachi Rail Deutschland**). In addition, the Divestment Business will include the UK digital mainline signalling business (**UK DMS Business**),¹ which will be carved out from Hitachi Rail Limited to a newly incorporated legal entity or branch, which will be transferred to (and become a subsidiary or branch of) or set up by Hitachi Rail France.
2. The Divestment Business comprises the following existing business lines of Hitachi Rail France, Hitachi Rail Deutschland and the Hitachi's UK DMS Business: Wayside Systems; On-Board Units; Components; and Maintenance & Services.
3. For the avoidance of doubt, the Divestment Business shall not include Hitachi Rail France's communications-based train control (**CBTC**) business (the **Retained CBTC Business**), including all relevant assets, personnel, IP, customer and supplier contracts, customer track records, licences, permits and authorisations, and branches, which are exclusively dedicated to the Retained CBTC Business, as set out in paragraph 5 of this Annex.
4. The Divestment Business includes, but is not limited to:
 - (a) the following main tangible assets:
 - (i) all the hardware and other tangible assets necessary to operate the SEI Wayside Platform and SEI Interlocking Platform, including the SEI+ technology (together, the **SEI Platforms**) and PAI Interlocking Platform (together, the **PAI Platforms**);
 - (ii) all the hardware and other tangible assets necessary to operate the ARGOS Wayside Platform and ARGOS Interlocking Platform (together, the **ARGOS Platforms**);

¹ For the avoidance of doubt, the Divestment Business shall not include Hitachi Rail's ETCS ATP wayside, interlocking or OBUs projects carried out by other legal entities within the Hitachi Rail Group and in countries other than those specified in this Annex and **Schedule [Backlog contracts]** or any part of the Target.

- (iii) all the hardware and other tangible assets necessary to operate the German WSP Wayside Platform and German WSP Interlocking Platform (together, the **German WSP Platforms**);
- (iv) all hardware and other tangible assets necessary to operate Hitachi Rail France's ETCS and legacy OBU business (the **OBU Business**);
- (v) Hitachi Rail France's site in Les Ulis, France (the **Core French Site**) and all equipment and other tangible assets currently located at the Core French site and relating to the development, sales, bidding, project management, engineering, and research and development (**R&D**) functions (including test benches and verification and validation (**V&V**) tools), as well as all tangible assets currently located at the Core French Site relating to support functions (ie accounting and finance, human resource (**HR**), legal, procurement, information technology (**IT**), and supply chain);
- (vi) Hitachi Rail France's manufacturing site in Riom, France (the **French Manufacturing Site**) and all production equipment and other tangible assets currently located at the French Manufacturing Site (including one plant and one warehouse), to which the manufacturing capabilities in respect of the German WSP Platforms (as well as any residual capabilities not yet transferred in relation to the ARGOS Platforms) will be transferred;²
- (vii) Hitachi Rail France's service and maintenance site in Paris, France (the **French Maintenance Site**) and all maintenance equipment and other tangible assets currently located at the French Maintenance Site;
- (viii) Hitachi Rail Deutschland's office in Munich, Germany (the **German Office**) and all equipment and other tangible assets currently located at the German Office and relating to the sales

² The transfer of manufacturing capabilities will comprise: (i) the provision to the Riom manufacturing team of all drawings, bills of material and test specifications necessary to manufacture and test the German WSP equipment; (ii) training for the benefit of the Riom manufacturing team, to be completed prior to Closing (iii) the transfer or novation of agreements with external suppliers of services and off-the-shelf components used to manufacture the German WSP from Hitachi Rail to the Divestment Business or, if the manufacturing of the Germans WSP for the backlog projects has been completed before the Closing, the list of such suppliers and the relevant scope of work in order for the Approved Purchaser to issue new orders when new projects using the German WSP will be awarded and (iv) at the request of the Approved Purchaser, a TSA to address any residual requirements for a transitional period.

and project management functions (including an integration and testing laboratory); and

- (ix) Hitachi Rail France's branches in Algeria, Morocco, South Korea, and Tunisia (together, the **Foreign Branches**) and all tangible assets currently located at the Foreign Branches.
- (b) the following main intangible assets:
- (i) all software, intellectual property (**IP**) rights, and other intangible assets necessary to operate the SEI Platforms and PAI Interlocking Platform,³ including the full rights and know-how relating to all elements and components of: (a) the SEI and PAI safety platforms (with the related technology, know-how, source code, drawings, and documentation); (b) the software Generic Application and relevant tools, documentation, *etc.*; and (c) the Specific Applications configuration tool suites, manuals, and test environment;
 - (ii) the complete transfer of technology of Hitachi Rail's ARGOS Platforms pursuant to the following mechanism: (a) the divestment by Hitachi Rail to the Divestment Business of the full rights and know-how relating to all of the country- and customer-specific elements and components of the ARGOS Platforms,⁴ including all relevant know-how, material, software, drawings, tools, documents, manuals, source code and bills of quantity;⁵ and (b) the transfer by Hitachi Rail to the Divestment Business, through a perpetual, irrevocable, royalty-free and non-exclusive licence, of all non-country and non-customer specific elements and components of the Wayside Standard Platform (**WSP**) used to build the ARGOS Platforms which Hitachi Rail will retain (the **ARGOS Licence**);⁶
 - (iii) the complete transfer of technology of Hitachi Rail's German WSP Platforms pursuant to the following mechanism: (a) the divestment by Hitachi Rail to the Divestment Business of the full rights and know-how relating to all country- and customer-specific elements of the German WSP (*i.e.*, (i) the software Generic Application and relevant tools, documentation, *etc.*; and

³ For the avoidance of doubt, such elements are already part of the activities owned and performed by Hitachi Rail France.

⁴ [REDACTED].

⁵ The Divestment Business will also have a laboratory and test environment.

⁶ For the avoidance of doubt, the ARGOS Licence will include the right to, among others, use, copy, modify, improve, upgrade, and reverse-engineer all non-country and non-customer specific elements and components of the ARGOS Platforms.

- (ii) the Specific Applications configuration tool suites, manuals, and test environment), including all relevant know-how, material, software, drawings, tools, documents, manuals, source code and bills of quantity;⁷ and (b) the transfer by Hitachi Rail to the Divestment Business, through a perpetual, irrevocable, royalty-free and non-exclusive licence, of all non-country and non-customer specific elements and components of the WSP used to build the German WSP Platforms which Hitachi Rail will retain (the **German WSP Licence**);⁸
- (iv) all software, IP rights, and other intangible assets necessary to operate the OBU Business;
- (v) the dedicated permits and consents required for the operation of the UK DMS Business more generally (to the extent they can be lawfully transferred); and
- (vi) all other intangible assets currently owned by Hitachi Rail France and Hitachi Rail Deutschland and necessary to operate the Divestment Business.
- (c) subject to obtaining any necessary consents from contractual counterparties, which Hitachi Rail will use its best efforts to procure, the following main customer contracts, supplier agreements, and leases:
- (i) Customer contracts: all ETCS ATP wayside, interlocking, legacy and ETCS OBU, service and maintenance, and components contracts awarded to Hitachi Rail France, Hitachi Rail Deutschland or the UK DMS Business, which will still be in place and with orders still outstanding at the time of Closing (the **Backlog Contracts**), as listed in **Schedule [Backlog Contracts]**; as well as ([✂]);
- (ii) Supplier and partnership agreements: all third-party supplier agreements contracted to Hitachi Rail France, Hitachi Rail Deutschland or the UK DMS Business, which will still be in place and with orders still outstanding at the time of Closing (the **Supplier Agreements**), including: (a) all contracts with integrators or other third-party suppliers offering similar services related to the delivery of the Network Rail, SNCF and Deutsche

⁷ The Divestment Business will also have a laboratory and test environment for the testing and further development of the German WSP.

⁸ For the avoidance of doubt, the German WSP Licence will include the right to, among others, use, copy, modify, improve, upgrade, and reverse-engineer all non-country and non-customer specific elements and components of the German WSP.

Bahn contracts included in the Divestment Business; (b) all current supplier contracts with Hitachi Rail's hardware development suppliers for the SEI Platforms, ARGOS Platforms and German WSP Platforms; and (c) all third-party supply agreements relating to the Backlog Contracts for the installation and commission activities carried out by joint venture partners or third parties (including the consortium agreement currently in place between Hitachi Rail, Systra, and Eiffage Energie Ferroviaire); and

- (iii) Leases: the lease for the occupation of the Core French Site (the **French Lease**) and the German Office (the **German Lease**).
- (d) the exclusive right to refer to the track records and customer credentials related to past or current mainline projects that were/are awarded to and delivered by Hitachi Rail France (including Hitachi Rail's UK DMS Business once transferred to Hitachi Rail France) and Hitachi Rail Deutschland.⁹
- (e) the following Personnel currently employed by Hitachi Rail France, Hitachi Rail Deutschland and Hitachi Rail's UK DMS Business as set out in Schedule [Personnel], which shall provide the Approved Purchaser with sufficient personnel to run the Divestment Business as an effective competitor in the relevant markets:¹⁰
 - (i) [490-520] Full-Time Equivalent (FTEs) currently employed by Hitachi Rail France and currently located at the Core French Site, the French Manufacturing Site, the French Maintenance Site, or the Foreign Branches, including [200-250] R&D, engineering, and delivery project FTEs, [65-75] production FTEs, [5-15] sales and bidding FTEs, [5-15] procurement FTEs, [65-75] maintenance FTEs, [45-55] support functions (HR, IT, legal, finance, treasury and accounting) FTEs, and [20-30] supply chain and logistics FTEs;
 - (ii) [10-20] FTEs currently employed by Hitachi Rail Deutschland and currently located at the German Office, including [5-15] engineering, and project delivery, 2 sales and bidding FTEs, and

⁹ The Divestment Business will have the exclusive right to refer to the track records and customer credentials related to past mainline projects that were awarded to and delivered by the Divestment Business. Where delivered by (but not awarded to) the Divestment Business, it will be able to rely on the reference for the portion of the signalling solution / scope of work that it delivered. The right to these references will be then "shared" with Hitachi Rail's retained business to the extent of the relevant portion of the signalling solution / scope of work delivered.

¹⁰ Figures as of [Date].

- [0-5] HR FTE;
- (iii) at the option of the Approved Purchaser, the Hitachi Rail France Additional Wayside Personnel, as defined below; and
 - (iv) [10-20] FTEs currently employed by Hitachi Rail UK and located in the UK (plus [0-5] additional FTEs to be hired), in charge of sales, bidding, project management and project engineering for digital mainline signalling projects.
- (f) the following Key Personnel:
- (i) the following Key Personnel dedicated to engineering and R&D (the **Key Engineering and R&D Personnel**): [REDACTED];
 - (ii) the following Key Personnel dedicated to the sales and marketing activities (the **Key Sales Personnel**): [REDACTED];
 - (iii) the following Key Personnel dedicated to project management and delivery activities (the **Key Delivery Personnel**): [REDACTED];
 - (iv) the following Key Personnel dedicated to production activities (the **Key Production Personnel**): [REDACTED];
 - (v) the proposed Hold Separate Manager: [REDACTED]; and
 - (vi) the following Key Personnel dedicated to Hitachi Rail's UK DMS Business: [REDACTED];
- (g) a secondment arrangement¹¹ in respect of at least [5-10] (the appropriate number to be agreed with the Approved Purchaser on a necessary and proportionate basis, including if requested by the Approved Purchaser, a number less than [5-10]) Italy-based suitably qualified engineers from Hitachi Rail on terms to be agreed in good faith with the Approved Purchaser without the imposition of employee non-solicit obligations (the **Italian Engineering Secondment**), where:
- (i) the maximum duration of the Italian Engineering Secondment shall not exceed five years from Closing;
 - (ii) the scope and terms of the Italian Engineering Secondment will be tailored to the Approved Purchaser's requirements and will be

¹¹ Such secondments would be subject to contractual protections and procedures (e.g., non-disclosure obligations, training and firewalls) to manage the transfer of any confidential information both during and after the secondments.

finalised and agreed prior to the signing of the Sale and Purchase Agreement;

- (iii) the Approved Purchaser will have the ability to request secondees with any of the capabilities available at Hitachi Rail's Italian Centres of Competence in [X] and [X];
- (iv) the Approved Purchaser should decide the tasks it gives to the secondees, including (if the Approved Purchaser so chooses) supporting its bids in any market using the ARGOS Platforms and the German WSP Platforms, to the extent that their involvement does not conflict with the relevant national procurement laws or applicable procurement rules;
- (v) the number of secondees required by the Approved Purchaser will be agreed between Hitachi Rail and the Approved Purchaser, but should cover at least the number of secondees necessary to:
(a) complete the remaining activities to achieve the homologation of the ARGOS Wayside Platform (the **ARGOS Wayside Homologation**) and the completion of the German WSP Platform (the **German WSP Completion**¹²) (and to the extent necessary, the homologation of the ARGOS Interlocking Platform (the **ARGOS Interlocking Homologation**¹³)); and (b) transfer the necessary know-how to the staff of the Core French Site to continue the development of the ARGOS Platforms and the German WSP Platforms (including to modify them to the needs of other customers), having regard at all times to the Approved Purchaser preferences as between support from secondees and support via TSAs for the purposes of (a) and (b) in this subparagraph;
- (vi) the Approved Purchaser shall be given the option to request 'remote' secondees subject to appropriate ringfencing mechanisms at Hitachi Rail's Italian Centres of Competence in [X] and [X], agreed with the Approved Purchaser;
- (vii) Hitachi Rail will continue to remunerate each secondee for the entire duration of the Italian Engineering Secondment – the specific mechanism through which the secondees will be paid will be agreed with the Approved Purchaser in the Sale and Purchase Agreement; and
- (viii) Hitachi Rail will take reasonable steps to incentivise its staff to accept a 'remote secondment' or relocation, depending on the requests of the Approved Purchaser, including guaranteeing staff employment upon their return at least at the same level as before

¹² The German WSP Completion is to be construed as the achievement of the German WSP Milestones, as defined below in paragraph 4(i)(v), leading to the approval to be obtained by Deutsche Bahn for the entry into revenue service of the German WSP for a given project.

¹³ Hitachi Rail plans to obtain the ARGOS Interlocking Homologation before Closing. Otherwise, paragraph 4(g) of this Annex 1 shall apply *mutatis mutandis* to the ARGOS Interlocking Platform.

the secondment; making appropriate adjustments for cost of living discrepancies; covering all reasonable expenses for their relocation to the Core French Site and relocation expenses on their return to Italy.

- (h) at the option of the Approved Purchaser, the transfer of up to [5-10] FTEs to be identified within Hitachi Rail or otherwise recruited, so that they would have the same level of competence as the Italy-based engineers from Hitachi Rail working on the WSP by, or soon after, Closing, that the Approved Purchaser could use for any bids for tenders using these platforms, perform the remaining development and/or engineering activities linked to the projects where the ARGOS Platforms and German WSP Platforms would be used (the **Additional Trained Staff**¹⁴).
- (i) the following arrangements for the supply of products or services by Hitachi Rail to the Approved Purchaser, to be discussed and agreed with the Approved Purchaser on fair terms with a view to ensuring that the support provided is both required and proportionate to its needs, and taking account of any overlaps between the below arrangements and the Italian Engineering Secondment and the Additional Trained Staff: ¹⁵
 - (i) with regards to the transfer of technology of the ARGOS Wayside Platform provided at paragraph 4(b)(ii) above, at the option of the Approved Purchaser, either:
 - (A) (1) a Transitional Services Agreement (**TSA**) on [X] until the obtention of the ARGOS Wayside Homologation under which Hitachi Rail will undertake to complete the development of the ARGOS Wayside Platform that will be integrated with the Generic and Specific Applications of the ARGOS wayside (radio block center (**RBC**)) developed by Hitachi Rail France to obtain the homologation thereof (the **ARGOS Wayside TSA**) as soon as reasonably practical after the Closing and in any event no later than [X],¹⁶ committing to the following milestones (the **ARGOS Wayside Milestones**):

¹⁴ For the avoidance of doubt, the option to the Approved Purchaser of the Additional Trained Staff is distinct from the option of the Hitachi Rail France Additional Wayside Personnel, explained below in paragraph 4(i)(i)(B). Both options are available to the Approved Purchaser, with the appropriate number of FTEs to be discussed and agreed with the Approved Purchaser on the basis of strict necessity and proportionality and taking into account any overlaps between the Additional Trained Staff and the Hitachi Rail France Additional Wayside Personnel.

¹⁵ The different options presented below provide the Approved Purchaser with multiple choices, which may be combined in a way which best suits the needs / goals of the Approved Purchaser.

¹⁶ [X]

[✂]

[✂];

and

(2) an agreement [✂] under which Hitachi Rail will undertake to train on the job the Divestment Business resources around the transfer of technology of the ARGOS Wayside Platform (the **Developed ARGOS Wayside Training Agreement**);

or

- (B) a TSA on [✂] under which Hitachi Rail will undertake to:
- (a) hire a maximum of [5-10] additional FTEs to be employed by Hitachi Rail France (the **Hitachi Rail France Additional Wayside Personnel**) before the Closing, or if this is not feasible, as soon as reasonably practical thereafter (and in any event within nine months after Closing);
 - (b) train on the job the Hitachi Rail France Additional Wayside Personnel to the extent reasonably required by the Approved Purchaser for the development, homologation, and ultimately transfer of the ARGOS Wayside Platform as soon as reasonably practical after the Closing;
 - (c) continue the development of the ARGOS Wayside Platform until the completion of the training of the Hitachi Rail France Additional Wayside Personnel;
 - (d) provide sufficient support to enable the Purchaser to reach the ARGOS Wayside Milestones,
 - (e) provide the ARGOS Wayside Additional Assurances *mutatis mutandis*; and
 - (f) at the option of the Approved Purchaser, support the Hitachi Rail France Additional Wayside Personnel and the Key R&D Personnel for the development and homologation of the ARGOS Wayside Platform until the obtention of the ARGOS Wayside Homologation and to the extent reasonably required by the Approved Purchaser (the **ARGOS Wayside Training, Development and Transfer TSA**).¹⁷

¹⁷ For the avoidance of doubt Hitachi Rail (i) will transfer all IP rights relating to the country- and customer-specific elements and components of the ARGOS Interlocking Platform and (ii) will retain (and grant to the Approved Purchaser a non-exclusive right, among others, to use, copy, modify,

- (ii) at the option of the Approved Purchaser, a TSA [X] for a period of up to [X] years after the obtention of the ARGOS Wayside Homologation under which Hitachi Rail will undertake to train and/or support the Approved Purchaser for possible bug fixes, upgrades, new releases, modifications, and improvements of the ARGOS Wayside Platform post-homologation (the **ARGOS Wayside Post-Homologation TSA**);
- (iii) at the option of the Approved Purchaser, and to the extent that the ARGOS Interlocking Homologation has not been obtained before Closing, a TSA [X] until the obtention of the ARGOS Interlocking Homologation under which Hitachi Rail will undertake to train and/or support the Key R&D Personnel for the development and homologation of the ARGOS Interlocking Platform to the extent reasonably required by the Approved Purchaser (the **ARGOS Interlocking Support TSA**);¹⁸

in addition, and to the extent that the ARGOS Interlocking Homologation has not been obtained before Closing, Hitachi Rail will provide [X];

- (iv) at the option of the Approved Purchaser, a TSA on a [X] for a period of [X] years after the obtention of the ARGOS Interlocking Homologation under which Hitachi Rail will undertake to train and/or support the Approved Purchaser for possible bug fixes, upgrades, new releases, modifications, and improvements of the ARGOS Interlocking Platform post-homologation (the **ARGOS Interlocking Post-Homologation TSA**);
- (v) at the option of the Approved Purchaser, a TSA on a [X] under which Hitachi Rail will undertake to train and/or support the Approved Purchaser for the development of the German WSP to the extent reasonably required by the Approved Purchaser until the German WSP Completion (the **German WSP TSA**), including (to the extent not already completed before Closing) for the German WSP Interlocking;¹⁹

– [X];

improve, upgrade, and reverse-engineer) the non-country and non-customer specific components and elements of the ARGOS Interlocking Platform, which are used by other technologies (that is "applications"), including CBTC, in addition to mainline signalling.

¹⁸ [X]

¹⁹ The dates of the German WSP Interlocking Milestones are aligned with the schedule of [X] as of September 2023 and the successful and timely completion of their predecessors.

- [REDACTED]
- [REDACTED];
- [REDACTED]);
- [REDACTED];

and for the German WSP ATP Wayside:²⁰

- [REDACTED];
- [REDACTED];
- [REDACTED]);
- [REDACTED]);

in addition, Hitachi Rail will provide reasonable additional contractual assurances [REDACTED];

- (vi) at the option of the Approved Purchaser, a TSA [REDACTED] for a period of [REDACTED] years after the obtention of the German WSP Completion under which Hitachi Rail will undertake to train and/or support the Approved Purchaser for possible bug fixes, upgrades, new releases, modifications, and improvements of the German WSP post-completion (the **German WSP Post-Completion TSA**);
- (vii) at the option of the Approved Purchaser, a TSA [REDACTED] for a period of [REDACTED] years after the Closing under which Hitachi Rail will undertake to train the Approved Purchaser for the development of the German WSP Interlocking and ATP Wayside Generic and Specific Applications (the **German WSP Applications TSA**);
- (viii) At the option of the Approved Purchaser, a TSA for a period up to [REDACTED] under which Hitachi Rail will undertake the development and engineering activities relevant to the odometry installed on GEOS platform based projects (the **OB Odometry TSA**)
- (ix) to the extent required, a supply agreement for a period of approximately [REDACTED] months on [REDACTED] under which Hitachi Rail will undertake to provide BTM and antennas for the few ongoing

²⁰ The German WSP RBC Milestones are aligned with the schedule of the [REDACTED] as of September 2023 and the successful and timely completion of their predecessors.

Backlog Contracts,²¹ as listed in **Schedule [Backlog Contracts]**;

- (x) at the option of the Approved Purchaser, a supply agreement for a period of approximately 60 months at market conditions under which Hitachi Rail will undertake to supply the Italian STM Module (the **SCMT**), the Eurobalises (with the programming tools), the Lineside Electronics Units (the **LEUs**) and the Euroloop required for ongoing OBU and wayside projects with SNCF (the **Components Supply Agreement**);
 - (xi) a TSA for a period of approximately 12 to 18 months for the provision of IT services by Hitachi Rail to the Approved Purchaser (the **IT TSA**);
 - (xii) (a) a TSA for a period of approximately 6 months for the provision of HR third-party services and (b) a TSA for a period of approximately 6 to 12 months for the provision of HR support for UK DMS Business employees (such as payroll management) (the **HR TSAs**);
 - (xiii) (a) a TSA for a period of approximately 6 months for the provision of finance operation support related to the UK DMS Business, (b) a TSA for a period of approximately 6 to 12 months for the provision of support related to the reporting and consolidation of financials for Hitachi Rail Germany and the UK DSM Business and (c) a TSA for a period of approximately 6 months for the provision of accounts payable accounting support in France (the **Finance TSAs**); and
 - (xiv) at the option of the Approved Purchaser and under terms to be mutually agreed with the Approved Purchaser, any additional short-term TSA(s) with Hitachi Rail that the Approved Purchaser might deem necessary for initial support.
- (j) (1) all reasonable further contractual assurances to the Approved Purchaser [X]; and
 - (k) a warranty by Hitachi Rail that, at Closing, the Divestment Business will comply with the European Committee for Electrotechnical Standardization (CENELEC) standards (in particular UNE-EN 50126, 50128, and 50129) and with Commission Implementing Regulation (EU)

²¹ In some cases, Hitachi Rail Italy would also provide [X], to be evaluated on a project-by-project basis considering the activities still to be delivered at the time of entering into the agreement and considering that these activities could be carried out internally by Hitachi Rail France.

No 402/2013 of 30 April 2013 on the common safety method for risk evaluation and assessment.

5. The Divestment Business shall not include the Retained CBTC Business including all relevant assets, personnel, IP, customer and supplier contracts, customer track records, licences, permits, and authorisations, and branches, which are dedicated to the Retained CBTC Business. CBTC resources to be carved out of the Divestment Business include: ²²
- (a) **Assets:** all equipment, tools and other tangible and intangible assets fully dedicated to or solely used by the Retained CBTC Business, other, as listed in Schedule [CBTC Assets];
 - (b) **Personnel:** between [100-150] FTEs in Les Ulis currently employed by Hitachi Rail France and dedicated to or used by the Retained CBTC Business and currently located at the Core French Site, and Hitachi Rail France's branches in Belgium and the UK (the **Belgian and UK Branches**);
 - (c) **IP:** all the IP dedicated to or used by the Retained CBTC Business under the understanding that the Approved Purchaser will have the right to use any IP that would be shared between the Divestment Business and the Retained CBTC Business;
 - (d) **Customer and supplier contracts:** the CBTC customer and supplier contracts including those relating to (i) Brussels metro, (ii) Glasgow metro, (iii) Seoul metro, (iv) several metro contracts in China,²³ and (v) the intragroup agreements to which Hitachi Rail France is party and relating to CBTC contracts delivered by other Hitachi Rail entities; and
 - (e) **Branches:** the Belgian and UK Branches (if any).
6. These Final Undertakings shall not prevent Hitachi Rail from entering into the following arrangements with the Approved Purchaser to support the Retained Business and to satisfy the requirements of the carveout of the Retained CBTC Business:
- (a) [✂];
 - (b) [✂];
 - (c) [✂];

²² The Monitoring Trustee would ensure that the personnel and assets within the Retained CBTC Business are not required by the Divestment Business and monitor relocation/co-location process within the Core French Site.

²³[✂]

- (d) [REDACTED];
- (e) [REDACTED];
- (f) [REDACTED];
- (g) [REDACTED];
- (h) [REDACTED];
- (i) [REDACTED];
- (j) [REDACTED];
- (k) [REDACTED];
- (l) [REDACTED];
- (m) [REDACTED];
- (n) [REDACTED];
- (o) [REDACTED]; and
- (p) a sublease under which the Approved Purchaser will sublease one or two floors of [REDACTED] the Core French Site (at least) until the corresponding lease terminates in [REDACTED].

7. These Final Undertakings shall not prevent Hitachi Rail from agreeing with the Approved Purchaser the terms of a reverse licence, whereby the Approved Purchaser will grant Hitachi Rail a reverse licence permitting Hitachi Rail to use and modify the technologies required to deliver its on-board and CBTC solutions, including the [REDACTED] (the [REDACTED] **Reverse Licence**), and associated reverse transitional service agreements, subject to the following conditions:

- (a) Hitachi Rail's use of the [REDACTED] Reverse Licence shall be strictly limited to:
 - (i) Hitachi Rail's obligations under the Retained [REDACTED] Projects (the mainline signalling projects/contracts detailed in the Report, which Hitachi Rail will retain where SEI was deployed);²⁴
 - (b) Hitachi Rail's obligations under its retained projects using the [REDACTED] technology; and
 - (c) Hitachi Rail's CBTC solutions;
- (b) the Approved Purchaser's obligations under any reverse transitional agreements associated with the [REDACTED] Reverse Licence should not represent a material restriction on the Approve Purchaser's ability to use

²⁴ [REDACTED]

the business and resources it has acquired for the benefit of the Divestment Business;

- (c) the Approved Purchaser will not be prevented from competing with Hitachi Rail for any aspect of the Retained [X] Projects (or any future work based on them) should the opportunity arise;
 - (d) the final terms of the [X] Reverse Licence and any associated reverse transitional service agreements will be subject to CMA approval; and
 - (e) Hitachi Rail will not be permitted to compete with [X] technology globally (unless linked to extensions, modifications, or upgrades of the Retained [X] Projects or retained [X] projects).
8. The Divestment Business shall not include FTEs, which are listed in **Schedule [Excluded Staff]**, which are either part of the Retained CBTC Business or are currently employed by Hitachi Rail France and which are non-essential to Hitachi Rail France and provide essential support to other Hitachi Rail entities at a global level (the **Excluded Staff**).
9. The Divestment Business shall not include Hitachi Rail France's subsidiary in Hong Kong, Hitachi Rail STS Hong Kong Ltd., [X]
10. If there is any asset or personnel which is not covered by paragraph 2 of this Annex but which is both used (exclusively or not) in the Divestment Business and necessary for the continued viability and competitiveness of the Divestment Business, that asset or adequate substitute will be offered to potential purchasers.

Annex 2

Purchaser Approval Criteria

These Purchaser Approval Criteria are to be construed in a manner that is consistent with, and for the purpose of giving effect to, the Report.

The CMA shall on reasonable request give Hitachi Rail guidance on the interpretation of specific aspects of these Purchaser Approval Criteria, so as to enable Hitachi Rail to ensure that its selected purchaser for the Divestment Business will meet the requirements of this Annex.

In order for a Proposed Purchaser to be approved by the CMA, the CMA must be satisfied that the Proposed Purchaser:

- (a) **Is independent of the Parties.** The Proposed Purchaser should have no significant connection to either Hitachi Rail or the Target that may compromise the purchaser's incentives to compete with Hitachi Rail (for example, an equity interest, common significant shareholders, shared directors, material reciprocal trading relationships or continuing financial assistance).
- (b) **Has the necessary capability to compete.**
 - (i) The Proposed Purchaser must have access to appropriate financial resources, expertise (including managerial, operational and technical capability (including understanding of the regulatory regime)) and assets to enable the assets comprising the Divestment Business to be used to compete effectively in the market as part of a viable and active business. This should be sufficient to enable the purchaser of the Divestment Business to continue to develop as an effective competitor.
 - (ii) The Proposed Purchaser should have the relevant experience either in the rail signalling sector or in adjacent markets (e.g., in the markets for rolling stock or CBTC).
 - (iii) The Proposed Purchaser should have sufficient financial resources to support the Divestment Business and [X].
 - (iv) The Proposed Purchaser should have the capabilities and attributes necessary to enable it to obtain the consents of the customers pursuant to paragraph 4.2.2 of the Final Undertakings. The CMA will engage with each of Network Rail, SNCF and Deutsche Bahn as soon as reasonably practicable on: (a) their views of each Proposed Purchaser's prospects and likelihood of obtaining their final consents under their respective legal frameworks governing the transfer of contracts to the purchaser;

and (b) the process that the relevant customer intends to follow in determining whether to grant such approval;

- (v) The Proposed Purchaser must reasonably be expected to obtain all necessary approvals, licences and consents from any regulatory or other authority for the acquisition of the Divestment Business.
- (c) **Is committed to competing in the relevant market.** The CMA will wish to be satisfied that the Proposed Purchaser has an appropriate business plan and objectives for competing in the relevant market and that the Proposed Purchaser has the incentive and intention to maintain and operate the Divestment Business as part of a viable and active business in competition with Hitachi Rail and other competitors in the market.
- (d) **That divestiture to the Proposed Purchaser will not create further competition concerns.**
 - (i) Divestiture to the Proposed Purchaser should not create a realistic prospect of an SLC within any market in the UK. This is regardless of whether or not the transaction constitutes a relevant merger situation under the Act.
 - (ii) To the extent applicable, the CMA will have regard to the time required by the Proposed Purchaser to obtain approvals from competition authorities for its acquisition of the Divestment Business within the Divestiture Period.
 - (iii) The Proposed Purchaser shall not be Siemens or Alstom.

Annex 3

Monitoring Trustee Functions

Monitoring Trustee – Appointment

1. The Monitoring Trustee must possess appropriate qualifications and experience to carry out its functions. The Monitoring Trustee must be under an obligation to carry out its functions to the best of its abilities.
2. The Monitoring Trustee must neither have nor become exposed to a conflict of interest that impairs the Monitoring Trustee's objectivity and independence in discharging its duties under these Final Undertakings unless it can be resolved in a manner and within a time frame acceptable to the CMA.
3. Hitachi Rail shall remunerate and reimburse the Monitoring Trustee for all reasonable costs and professional fees properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the Monitoring Trustee's independence or ability to carry out its functions effectively and properly.
4. The Monitoring Trustee's mandate shall specify that the Monitoring Trustee will carry out the functions set out in this Annex

Monitoring Trustee – Functions

5. The Monitoring Trustee shall:
 - (i) oversee, in close co-operation with the Hold Separate Manager, the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by Hitachi Rail with the conditions and obligations under these Final Undertakings. To that end, the Monitoring Trustee shall:
 - (a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by Hitachi Rail, in accordance with paragraph 8.5 of these Final Undertakings;
 - (b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 8.2 of these Final Undertakings;
 - (c) with respect to Confidential Information:

- determine all necessary measures to ensure that Hitachi Rail does not after the Effective Date obtain any Confidential Information relating to the Divestment Business;
 - in particular, strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business;
 - make sure that any Confidential Information relating to the Divestment Business obtained by Hitachi Rail before the Commencement Date is eliminated and will not be used by Hitachi Rail; and
 - decide whether such information may be disclosed to or kept by Hitachi Rail as the disclosure is reasonably necessary to allow Hitachi Rail to carry out the divestiture or as the disclosure is required by law;
- (d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and Hitachi Rail or its Subsidiaries;
- (ii) propose to Hitachi Rail such measures as the Monitoring Trustee considers necessary to ensure Hitachi Rail's compliance with these Final Undertakings, in particular the asset maintenance undertakings, the holding separate of the Divestment Business and the non-disclosure of Confidential Information;
- (iii) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:
- (a) potential purchasers receive sufficient and correct information relating to the Divestment Business and the Personnel in accordance with the Report in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process; and
 - (b) potential purchasers are granted reasonable access to the Personnel;
- (iv) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to these Final Undertakings;
- (v) provide to the CMA, sending Hitachi Rail a non-confidential copy at the

same time, a written report within 15 days after the end of every month, or such other period as may be agreed by the CMA, that shall cover the operation and management of the Divestment Business as well as the splitting of assets and the allocation of Personnel so that the CMA can assess whether the business is held in a manner consistent with the Final Undertakings and the progress of the divestiture process as well as potential purchasers;

- (vi) promptly report in writing to the CMA if it concludes on reasonable grounds that Hitachi Rail is failing to comply with these Final Undertakings; and
 - (vii) assume the other functions assigned by the CMA to the Monitoring Trustee pursuant to the Report.
6. If the Monitoring and Divestiture Trustee are not the same legal or natural persons, the Monitoring Trustee and any Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

Annex 4

Appointment of a Hold Separate Manager

1. Pursuant to paragraph 8 of the Final Undertakings, Hitachi Rail undertakes to comply with the following obligations, as are deemed appropriate and necessary by the CMA.
2. The function of the Hold Separate Manager is distinct from the function of the Divestiture Trustee, although the two functions may be performed by the same person subject to that person possessing the qualifications necessary for the performance of the Hold Separate Manager Mandate and shall on appointment and thereafter being free of any conflict of interest including any conflict of interest that might arise by virtue of the terms of remuneration.
3. Hitachi Rail shall remunerate and reimburse the Hold Separate Manager for all reasonable costs properly incurred in accordance with the terms and conditions of his or her appointment and in accordance with the Directions or instructions given in paragraph 18 of this Annex, in such a way so as not to impede the Hold Separate Manager's independence or ability to fulfil the Hold Separate Manager Obligation effectively and properly.

Hold Separate Manager Obligation

4. The primary obligation of the Hold Separate Manager will be to exercise day-to-day management and control of the Divestment Business so as to preserve and, if necessary, restore effective competition in the markets affected by the Merger. The Hold Separate Manager will exercise management and control of the Divestment Business in such a way as to ensure that it is held separate from the Hitachi Rail business.
5. The Hold Separate Manager Obligation shall include the performance of any other act or task necessary for the performance of the primary obligation of the Hold Separate Manager including the performance of the reporting obligations at paragraphs 13 to 14 of this Annex.
6. The Hold Separate Manager shall ensure that, except in the ordinary course of business or for the purposes of complying with these Final Undertakings:
 - a. all of the assets of the Divestment Business are maintained and preserved, including facilities and goodwill;
 - b. none of the assets of the Divestment Business are disposed of; and

- c. no interest in the assets of the Divestment Business is created or disposed of;
- 7. The Hold Separate Manager shall further:
 - a. maintain the Divestment Business as a going concern and make available, or procure to make available, sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;
 - b. except in the ordinary course of business or for the purposes of complying with these Final Undertakings, not make any substantive changes to the organisational structure of, or the management responsibilities within, the Divestment Business; and
 - c. except in the ordinary course of business or for the purposes of complying with these Final Undertakings, not alter the nature, description, range and quality of goods and/or services supplied by the Divestment Business;
- 8. [✂]
- a. [✂]
 - b. [✂]
 - c. [✂];
- 9. The Hold Separate Manager shall take such steps as the Hold Separate Manager reasonably considers necessary including but not limited to:
 - a. Giving such directions to the officers and staff of Hitachi Rail or the Divestment Business including any person holding such position on a temporary basis as are necessary for the fulfilment of the Hold Separate Manager Obligation;
 - b. Attending such meetings of employees, officers (including board meetings, and meetings of any committee of the board) and members of Hitachi Rail and the Divestment Business as the Hold Separate Manager considers necessary for the fulfilment of the Hold Separate Manager Obligation; and
 - c. Complying with such requests as the CMA may reasonably make for the purpose of ensuring Hitachi Rail and the Divestment Business enable the Hold Separate Manager to fulfil the Hold Separate Manager Obligation.

10. The CMA may, on its own initiative or at the request of the Hold Separate Manager or Hitachi Rail, give written Directions or instructions to the Hold Separate Manager in order to assist it in the discharge of the Hold Separate Manager Obligation (including Directions as to the divestiture of such property, assets, rights, consents, licences, privileges or interests as the CMA considers necessary to bring about Effective Divestiture).
11. The Hold Separate Manager may enter into such agreements, deeds, instruments of transfer and other instruments and documents on behalf of the Divestment Business as are necessary for the performance of its duty, on such terms and conditions as it reasonably considers appropriate.
12. The Hold Separate Manager shall work with the Divestiture Trustee, if applicable, to bring about Effective Divestiture in a timely manner.

Hold Separate Manager Reporting Obligations

13. The Hold Separate Manager will provide to the CMA at such times to be agreed with the CMA from the Hold Separate Manager's appointment to Effective Divestiture a written report in relation to:
 - a. material developments concerning matters relating to paragraphs 6 to 8 above;
 - b. details of Key Personnel who leave or join the Divestment Business;
 - c. any interruption of the business of the Divestment Business (including, without limitation, procurement, processing, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;
 - d. all substantial changes to customer volumes won or lost for the Divestment Business including any substantial changes to customer demand as forecast in the business plan of the Divestment Business at the Commencement Date;
 - e. substantial changes in the Divestment Business' contractual arrangements or relationships with key suppliers;
 - f. adverse substantial changes in any material litigation or regulatory enforcement action;
 - g. the initiation, defence, progress and resolution of any material litigation or regulatory enforcement action; and

- h. adverse substantial changes in relation to the financial position and/or performance of the Divestment Business.
14. The Hold Separate Manager shall actively keep the CMA informed of any decision by the Divestment Business:
- a. to depart in any material respect from any commitment contained in its response to [X]
 - b. to change any of the key staff with executive, managerial or technical responsibility (engaged at the date of these Final Undertakings) for the Divestment Business' participation in [X] (other than as a result of employee departures or hiring in the ordinary course of business); and
 - c. to make any substantial change to any partnership, joint bidding, consortium or a subcontracting relationship that relates to elements that would constitute a significant contribution [X] or any other companies providing similar type of services [X].

Hold Separate Manager – Hitachi Rail and Divestment Business Obligations

15. Hitachi Rail and the Divestment Business shall enable the Hold Separate Manager to carry out the Hold Separate Manager Obligation.
16. The Hold Separate Manager shall act on the instructions of the CMA in the performance of the Hold Separate Manager Obligation and shall not be bound by any instruction of Hitachi Rail. Hitachi Rail shall not seek to create or vary the Hold Separate Manager Obligation except with the CMA's prior written consent.
17. Hitachi Rail shall remunerate the Hold Separate Manager and reimburse the Hold Separate Manager in full for all reasonable costs and expenses properly incurred, in accordance with the terms and conditions of the Hold Separate Manager's appointment, provided that such remuneration and reimbursement shall not give rise to any conflict of interest or otherwise impair the ability of the Hold Separate Manager to discharge the Hold Separate Manager Obligation. For the avoidance of doubt such reimbursement shall include the fees and disbursements of such legal or other professional advisers, consultants and assistants as the Hold Separate Manager reasonably considers necessary for the discharge of the Hold Separate Manager Obligation.
18. The Hold Separate Manager may give written directions to Hitachi Rail and/or the Divestment Business for the purpose of fulfilling the Hold Separate Manager Obligation. Hitachi Rail and the Divestment Business shall comply with such reasonable directions as the Hold Separate Manager may specify and

cooperate fully with the Hold Separate Manager in its performance of the Hold Separate Manager Obligation.

19. Without prejudice to the generality of paragraph 18 of this Annex, that cooperation shall include:
 - a. the grant to the Hold Separate Manager of all reasonable rights, powers and authorities as are necessary for the performance of the Hold Separate Manager Obligation;
 - b. ensuring that personnel are reasonably available where necessary for meetings in order to provide the Hold Separate Manager with all information necessary for the performance of the Hold Separate Manager Obligation;
 - c. the provision of such facilities as are necessary for the discharge by the Hold Separate Manager of the Hold Separate Manager Obligation; and
 - d. the provision of full and complete access to all personnel, books, records, documents, facilities and information of the Divestment Business as the Hold Separate Manager may reasonably require.

Hold Separate Manager – Replacement, discharge, and reappointment

20. If the Hold Separate Manager ceases to perform the Hold Separate Manager Obligation, or for any other good cause, including the exposure of the Hold Separate Manager to a conflict of interest, the CMA may (after consultation with the European Commission) issue directions to dismiss the Hold Separate Manager.
21. If the Hold Separate Manager is removed under paragraph 20 of this Annex, the Hold Separate Manager may be required to continue in its post until a new Hold Separate Manager is in place to whom the Hold Separate Manager has effected a full handover of all relevant information. The new Hold Separate Manager shall be appointed in accordance with the procedure in paragraphs 29 to 30 of this Annex.
22. Other than in accordance with paragraph 20 of this Annex, the Hold Separate Manager shall cease to act as Hold Separate Manager only after the CMA has discharged it from its duties at a time when all the functions with which the Hold Separate Manager has been entrusted have been met.
23. If the Hold Separate Manager is removed under paragraph 20 of this Annex. Hitachi Rail shall within the period of five Working Days from the direction to dismiss the Hold Separate Manager, submit to the CMA for approval a list of up to two persons whom it proposes to appoint as Hold Separate Manager. The

proposal shall contain sufficient information for the CMA to verify that each proposed person fulfils the requirements set out in paragraph 24 of this Annex and shall include a schedule of the steps to be taken to give effect to the Hold Separate Manager Mandate.

24. Each person on the list referred to in paragraph 23 of this Annex shall possess the qualifications necessary for the performance of the Hold Separate Manager Mandate and shall on appointment and thereafter be free of any conflict of interest including any conflict of interest that might arise by virtue of the terms of remuneration.
25. The CMA may (after consultation with the European Commission) approve or reject any or all of the proposed persons (such approval not to be unreasonably withheld) and may approve the proposed mandate subject to any modifications it deems necessary for the Hold Separate Manager to fulfil the Hold Separate Manager Obligation. If only one proposed person is approved, Hitachi Rail shall use its reasonable endeavours to appoint the person concerned as Hold Separate Manager in accordance with the Hold Separate Manager Mandate. If more than one proposed person is approved, Hitachi Rail shall decide which person to appoint as Hold Separate Manager from among the approved persons. Hitachi Rail shall appoint the Hold Separate Manager within two Working Days from the CMA's approval and on the terms of the Hold Separate Manager Mandate.
26. If all the proposed Hold Separate Managers are rejected by the CMA (after consultation with the European Commission), Hitachi Rail shall submit the names of at least two further persons within four Working Days from being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 23 to 25 of this Annex.
27. The provisions of paragraph 28 of this Annex shall apply if:
 - a. Hitachi Rail fails to nominate further persons in accordance with paragraph 23 of this Annex;
 - b. Those further persons nominated by Hitachi Rail in accordance with paragraph 26 of this Annex are rejected by the CMA (after consultation with the European Commission), acting reasonably; or
 - c. Hitachi Rail is unable for any reason to conclude the appointment of the Hold Separate Manager within the time limit specified by the CMA (after consultation with the European Commission).

28. The CMA shall (after consultation with the European Commission) nominate one or more persons to act as Hold Separate Manager, and Hitachi Rail shall appoint one of those Hold Separate Managers within two working days starting with the date of nomination under the terms of the Hold Separate Manager Mandate.
29. The function of the Hold Separate Manager is distinct from the function of the Divestiture Trustee, although the two functions may be performed by the same person subject to that person meeting the requirements of paragraph 24 of this Annex.
30. Hitachi Rail shall remunerate and reimburse the Hold Separate Manager for all reasonable costs properly incurred in accordance with the terms and conditions of his or her appointment and in accordance with the Directions or instructions given in paragraph 10 of this Annex, in such a way so as not to impede the Hold Separate Manager's independence or ability to fulfil the Hold Separate Manager Obligation effectively and properly.

Annex 5

Appointment of a Divestiture Trustee

1. Pursuant to paragraph 10 of the Final Undertakings, Hitachi Rail undertakes to comply with the following obligations, as are deemed appropriate and necessary by the CMA.

Nomination of a Divestiture Trustee

2. Within the period of five Working Days following the day on which pursuant to paragraph 2 of the Final Undertakings the CMA, following consultation with the European Commission, issues a direction, or such other period as may be agreed by the CMA, Hitachi Rail shall submit to the CMA for approval a list of two or more persons whom Hitachi Rail proposes to appoint as Divestiture Trustee, together with sufficient information for the CMA to verify that each proposed person fulfils the requirements set out in paragraph 3 of this Annex and shall include among other things:
 - a. the full terms of the proposed mandate, which shall include all provisions necessary to enable the Divestiture Trustee to perform its duties; and
 - b. a schedule of the steps to be taken to give effect to the mandate.
3. Each person on the list referred to in paragraph 2 of this Annex shall be independent of and unconnected to Hitachi Rail (other than to the extent that it is the current Monitoring Trustee under paragraph 9.2 of the Final Undertakings) and Thales, possess the qualifications necessary for the performance of the mandate and shall on appointment and thereafter be free of any conflict of interest including any conflict of interest that might arise by virtue of the terms of remuneration.
4. The CMA may (after consultation with the European Commission) approve or reject any or all of the proposed persons (such approval not to be unreasonably withheld or delayed) and may approve the proposed mandate subject to any modifications it deems necessary for the Divestiture Trustee to bring about Effective Divestiture (the **Divestiture Trustee Obligation**). If only one proposed person is approved, Hitachi Rail undertakes to use its reasonable endeavours to appoint, or cause to be appointed, the individual or institution concerned as Divestiture Trustee in accordance with the mandate approved by the CMA. If more than one proposed person is approved, Hitachi Rail shall decide which person to appoint as Divestiture Trustee from among the approved persons. Hitachi Rail undertakes to appoint the Divestiture Trustee within three Working

Days from the CMA's approval and on the terms of the mandate approved by the CMA.

5. If all the proposed Divestiture Trustees are rejected by the CMA (acting reasonably), Hitachi Rail shall submit the names of at least two further persons within four Working Days of the date on which it is informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 2 to 4 of this Annex.
6. The provisions of paragraph 7 of this Annex shall apply if:
 - a. Hitachi Rail fails to nominate further persons in accordance with paragraph 2 of this Annex; or
 - b. those further persons nominated by Hitachi Rail in accordance with paragraph 5 of this Annex are rejected by the CMA (acting reasonably); or
 - c. Hitachi Rail is unable for any reason to conclude the appointment of the Divestiture Trustee within the time limit specified by the CMA.
7. The CMA shall (after consultation with the European Commission) nominate one or more persons to act as Divestiture Trustee, and Hitachi Rail shall appoint or cause to be appointed one of those Divestiture Trustees within two Working Days starting with the date of nomination under the terms of a Divestiture Trustee mandate approved by the CMA.
8. Hitachi Rail recognises that the function of the Divestiture Trustee is distinct from the function of the Monitoring Trustee, although the two functions may be performed by the same person subject to that person meeting the requirements of paragraph 3 of this Annex.
9. Hitachi Rail undertakes to remunerate and reimburse the Divestiture Trustee for all professional fees, expenses and reasonable costs (including reasonable costs incurred under paragraph 18 of this Annex) properly incurred in accordance with the terms and conditions of its appointment and in accordance with the directions or instructions given in paragraph 10.2 of the Final Undertakings, in such a way so as not to impede the Divestiture Trustee's independence or ability to fulfil effectively and properly the Divestiture Trustee Obligation.

Divestiture Trustee – functions

10. Hitachi Rail undertakes to enable the Divestiture Trustee to carry out the Divestiture Trustee Obligation.

11. The Divestiture Trustee shall undertake such preparatory matters as it considers necessary to discharge the Divestiture Trustee Obligation and for these purposes may give written directions to Hitachi Rail and Hitachi Rail undertakes to comply with any such written directions.
12. Hitachi Rail recognises and acknowledges that:
 - 12.1 The CMA may, on its own initiative or at the request of the Divestiture Trustee or Hitachi Rail, give written directions or instructions to the Divestiture Trustee in order to assist it in the discharge of the Divestiture Trustee Obligation (including directions as to the divestiture of such property, assets, rights, consents, licences, privileges or interests as the CMA considers necessary to bring about Effective Divestiture).
 - 12.2 The Divestiture Trustee may include in such agreements, deeds, instruments of transfer and other instruments and documents as are necessary for the performance of its duty, such terms and conditions as it reasonably considers appropriate.
 - 12.3 The Divestiture Trustee shall protect the legitimate financial interests of Hitachi Rail subject to the Divestiture Trustee's overriding obligation to give effect to the Divestiture Trustee Obligation which may include the Effective Divestiture of the Divestment Business at no minimum price.
13. Hitachi Rail recognises and acknowledges that the Divestiture Trustee shall take such steps and measures it considers necessary to discharge the Divestiture Trustee Obligation and to that end the Divestiture Trustee may give written directions to Hitachi Rail and Hitachi Rail undertakes to comply with such directions or to procure compliance with such directions as are within its powers and to take such steps within its competence as the Divestiture Trustee may specify.
14. Hitachi Rail recognises and acknowledges that in the performance of the Divestiture Trustee Obligation the Divestiture Trustee shall act solely on the instructions of the CMA and shall not be bound by any instruction of Hitachi Rail and Hitachi Rail undertakes that it shall not seek to create or vary the obligations and duties of the Divestiture Trustee except with the CMA's prior written consent.
15. The Divestiture Trustee shall every two weeks until the date on which Effective Divestiture takes place, report to the CMA on its progress towards Effective Divestiture, compliance with this Annex and any other matter specified by the CMA.

Divestiture Trustee – obligations of Hitachi Rail

16. Hitachi Rail undertakes to provide the Divestiture Trustee with all such cooperation, assistance and information (including by the production of financial or other information whether or not such information is in existence at the time of the request but excluding any material properly the subject of legal privilege) as the Divestiture Trustee may reasonably require in the discharge of the Divestiture Trustee Obligation.
17. Hitachi Rail recognises and acknowledges that the Divestiture Trustee shall be entitled, subject to the duty of confidentiality, to full and complete access to the books, records, documents, management or other personnel, facilities, sites and technical information reasonably necessary for the fulfilment of its Divestiture Trustee Obligations (save where material is properly the subject of legal privilege). Hitachi Rail undertakes to provide the Divestiture Trustee upon request with copies of any such document. On the reasonable request of the Divestiture Trustee, Hitachi Rail undertakes to make available to the Divestiture Trustee one or more offices on its premises and to ensure that personnel are available where necessary for meetings in order to provide the Divestiture Trustee with all information reasonably necessary for the performance of the Divestiture Trustee Obligation, subject in each case to the Divestiture Trustee's compliance with Hitachi Rail's internal policies.
18. Hitachi Rail undertakes to grant reasonable comprehensive powers of attorney, on terms approved by the CMA, and duly executed, to the Divestiture Trustee to enable it to discharge the Divestiture Trustee Obligation including by the appointment of advisers to assist with the divestiture process. Before appointing any advisers, the Divestiture Trustee will consider using the advisers already appointed by Hitachi Rail and will only appoint advisers (whether in replacement of, or in addition to Hitachi Rail's advisers) if it reasonably considers the appointment of such advisers necessary or appropriate in the discharge of the Divestiture Trustee Obligation. Hitachi Rail undertakes that, upon the reasonable request of the Divestiture Trustee, it shall execute the documents required to give effect to the Divestiture Trustee Obligation. Should Hitachi Rail refuse to approve the advisers proposed by the Divestiture Trustee, the CMA may, after consulting with Hitachi Rail, approve and direct the appointment of such advisers.
19. Hitachi Rail undertakes to hold the Divestiture Trustee, its employees, agents or advisers harmless against any liabilities arising out of the proper performance of the Divestiture Trustee Obligation. Hitachi Rail recognises and acknowledges that the Divestiture Trustee, its employees, agents or advisers shall have no liability to Hitachi Rail or any of its Subsidiaries or Affiliates for any liabilities

arising out of the proper performance of the Divestiture Trustee Obligation, except to the extent that such liabilities result from the wilful default, recklessness, negligence or bad faith of the Divestiture Trustee, its employees, agents or advisers.

20. Hitachi Rail undertakes to make no objection to the fulfilment by the Divestiture Trustee of the Divestiture Trustee Obligation or any part thereof save on the grounds of bad faith by the Divestiture Trustee or failure of the Divestiture Trustee to reasonably protect the legitimate financial interests of Hitachi Rail subject always to the Divestiture Trustee Obligation; and where Hitachi Rail wishes to make an objection on these grounds it shall submit to the CMA a notice setting out its objections promptly and no later than three Working Days from the day on which it became aware of the fact or facts giving rise to its objection.

Divestiture Trustee – replacement, discharge, and reappointment

21. Hitachi Rail acknowledges that if the Divestiture Trustee ceases to perform the Divestiture Trustee Obligation, or for any other good cause, including the exposure of the Divestiture Trustee to a conflict of interest, the CMA may, after consulting with Hitachi Rail, require Hitachi Rail to replace the Divestiture Trustee.
22. If the Divestiture Trustee is removed under paragraph 21 of this Annex, the Divestiture Trustee may be required to continue in its post until a new Divestiture Trustee is in place to whom the Divestiture Trustee has effected a full handover of all relevant information. The new Divestiture Trustee shall be appointed in accordance with the procedure in paragraphs 2 to 4 of this Annex.
23. Hitachi Rail recognises and acknowledge that, other than in accordance with paragraph 21, the Divestiture Trustee shall cease to act as Divestiture Trustee only after the CMA has discharged it from its duties at a time at which all the functions with which the Divestiture Trustee has been entrusted have been met.

Annex 6

Pro forma compliance statement

Anticipated acquisition by Hitachi Rail Limited of Thales SA's Ground Transportation Systems Business (the Merger)

Compliance statement for Hitachi Rail

I **[insert name]** confirm on behalf of Hitachi Rail Limited (**Hitachi Rail**) that:

Compliance in the Relevant Period

1. In the period from **[insert date]** to **[insert date]**:
 - (a) Hitachi Rail has complied with the Final Undertakings accepted by the CMA that are applicable to it on **[insert date of the Final Undertakings]** in relation to the Merger.
 - (b) The subsidiaries of Hitachi Rail have also complied with the Final Undertakings (where applicable to them) in the period from **[insert date]** to **[insert date]**.
 - (c) Except with the prior written consent of the CMA, no action has been taken by Hitachi Rail to prejudice Effective Divestiture and Effective Transition or otherwise impair the ability of the Approved Purchaser to compete effectively with Hitachi Rail in the relevant market.
 - (d) Hitachi Rail and its subsidiaries remain in full compliance with the Final Undertakings that are applicable to it.

Interpretation

2. Terms defined in the Final Undertakings have the same meaning in this compliance statement.

FOR AND ON BEHALF OF HITACHI RAIL LIMITED

Signature

Name

Title

Date