

## HIGH SPEED TWO LIMITED

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# 1 DEFINITIONS AND INTERPRETATIONS

1.1 In this Contract, unless the context requires otherwise, the following words and phrases shall have the following meanings:

- (a) “Act” means the Freedom of Information Act 2000
- (b) “Agreed Purpose” means to assist and enable HS2 to advise the Secretary of State on the development of proposals for a new railway from London to the West Midlands and potentially beyond.
- (c) “Award Date” means the date of the award of this Contract by HS2 to the Contractor as specified in HS2’s Award Letter;
- (d) “Beneficiary” means HS2, the Secretary of State for Transport, any subsidiary of the Secretary of State, the Department for Transport and the Contractor.
- (e) “Change of Control” means an event where any single person, or group of persons acting in concert, acquires control of the Contractor or any direct or indirect interest in the relevant share capital of the Contractor, as a result of which that person or group of persons has a direct or indirect interest in more than 25% of the relevant share capital of the Contractor. For the purposes of the operation of Condition 26 of this Contract, where the Contractor is a limited company he shall be treated as though he were a public company.
- (f) “Change of Ownership” means:
  - (i) any material change to the direct or indirect legal or beneficial ownership of any shareholding in the Contractor. A change in the ownership is material if it relates directly or indirectly to a change of 3% or more of the issued share capital of the Contractor, or
  - (ii) any material change in the composition of the Contractor’s partnership. A change in the composition of the partnership is material if it directly or indirectly affects the performance of this Contract by the Contractor.
- (g) “Confidential Information” means all information of whatsoever nature relating to the Agreed Purpose obtained by or made available to, HS2 to the Contractor or their Representatives, directly or indirectly from any Beneficiary or any train operating company and includes all documents or other information prepared by the Secretary of State or TfL or their Representatives which contain or reflect or are generated from any of the foregoing information
- (h) “Conditions” means the General Conditions of Contract for Services, the Supplementary Conditions of Contract for Services and the Intellectual Property Conditions;
- (i) “Contract” means the agreement concluded between HS2 and the Contractor, contained in the documents listed in HS2’s Award Letter, the Conditions, the Specification and any Programme. In case of inconsistency between the Conditions and other documents forming part of this Contract, the Conditions shall prevail unless otherwise agreed in writing. In case of inconsistency between the Contractor’s offer and the Specification, the Contractor’s offer shall prevail unless otherwise agreed in writing;

- (j) “Contract Price” means the price or prices (exclusive of Value Added Tax) payable to the Contractor by HS2 under this Contract for the full and proper performance by the Contractor of this Contract, determined in accordance with the provisions of this Contract;
- (k) “Contractor” means the person appointed by HS2 for the performance of the Services (including any successors);
- (l) “Contractor’s Representative” means such competent person as the Contractor shall from time to time appoint to be his representative in relation to the performance of this Contract, who will receive and act on any directions given by the Contract Manager and whose appointment and contact details shall be notified in writing by the Contractor to HS2;
- (m) “Contract Manager” means such official of HS2, or other person, as HS2 shall from time to time appoint to act on its behalf for the purpose of managing this Contract, whose appointment and contact details shall be notified in writing by HS2 to the Contractor;
- (n) “data”, “data controller”, “personal data” and “processing” shall have the meanings set out in section 1 of the Data Protection Act 1998;
- (o) “HS2” means the company named High Speed Two (HS2) Limited;
- (p) “HS2’s Award Letter” means the letter or document confirming award of this Contract to the Contractor by HS2;
- (q) “Information Request” means a request for information under the Act or the Environmental Information Regulations in respect of information supplied by the Contractor.
- (r) “Discrimination Acts” means the Race Relations Act 1976, Sex Discrimination Act 1975 and the Disability Discrimination Act 1995;
- (s) “Expiry Date” means the date on which such contract period as has been specified comes to an end;
- (t) “Key Personnel” means any person who, in HS2’s opinion, is fundamental to the performance of this Contract;
- (u) “month” means calendar month, unless otherwise stated;
- (v) any reference to a “person” shall, as the context may require, include any individual, firm, company, corporation, Government Department, Agency or any association or partnership (whether or not having a separate legal personality);
- (w) “Premises” shall have the meaning set out in Condition 20;
- (x) “Programme” means any programme or timetable agreed by HS2 and Contractor which regulates or specifies the period or periods for the performance of the Services or any part of them, together with any activities ancillary to the performance of the Services or the preparation and submission of reports;
- (y) “relevant share capital” shall have the meaning set out in section 198(2) of the Companies Act 1985;

- (z) "Representatives" means in relation to any person means its officers, directors, employees, advisers and agents and Sub-Contractors in connection with the Agreed purpose.
- (aa) "Service(s)" means all the Services that the Contractor is required to carry out under this Contract;
- (bb) "Specification" means the document describing the Services to be performed under this Contract, as at the Award Date.
- (cc) "Sub-contractor" shall, as the context may require, include any adviser, consultant or agent engaged by the Contractor to assist in the performance of the Services.
- (dd) "Working Days" means any other day other than a Saturday, Sunday or a bank holiday.

- 1.2 Unless the context requires otherwise, the singular shall include the plural and vice versa, and words expressed in any gender shall include any other gender.
- 1.3 The headings are inserted for convenience only and shall not affect the interpretation of this Contract.
- 1.4 Save where express provision is made to the contrary, any reference to a statute, statutory provision or subordinate legislation shall be construed as a reference to that legislation, as amended and in force from time to time, including any re-enactment, consolidation or replacement (with or without modification). In the case of a statute or statutory provision, the reference shall also be construed as a reference to all subordinate legislation made under such statute or statutory provision.

## **2 DURATION OF THIS CONTRACT**

Subject to HS2's rights of termination under the Conditions, this Contract shall be in force from the Award Date until the Expiry Date or, where there is no Expiry Date, until the Contractor has completed the Services in accordance with this Contract.

## **3 CONTRACTOR'S PERFORMANCE**

- 3.1 The Contractor shall properly perform the Services in accordance with this Contract and shall manage and monitor performance of the Services. The Contractor shall inform the Contract Manager as soon as reasonably practicable if any of the requirements of this Contract are not being or cannot be performed in accordance with this Contract.
- 3.2 If any part of the Services provided is found to be inadequate or not in accordance with this Contract, other than as a result of default or negligence on the part of HS2, the Contractor shall at his own expense replace or make good to the satisfaction of HS2 and, if required, re-schedule and perform that part of the work within such reasonable time as may be notified by HS2.
- 3.3 The Contractor shall provide all the necessary facilities, materials and any other equipment, and personnel of appropriate qualifications and experience to undertake the Services.
- 3.4 All Key Personnel and other personnel deployed on work relating to this Contract shall be appropriately qualified and competent and shall be acceptable to HS2. The Contractor shall

supervise and manage all such personnel properly. If HS2 gives the Contractor notice that any person is to be removed from involvement in the Services, the Contractor shall take immediate steps to comply with that notice. The decision of HS2 regarding the Contractor's personnel shall be final and conclusive.

3.5 The Contractor shall:

- (a) give HS2, if so requested, the name, role and details of relevant work experience of all persons who are or may be at any time employed on this Contract;
- (b) comply, and shall procure that his employees and Sub-contractors comply, with any rules, regulations and any safety and security instructions notified by HS2 to the Contractor in writing, including completion of any additional security clearance procedures required by HS2, and return of any passes required.

3.6 The Contractor shall take all reasonable steps to avoid changes to the Key Personnel. The Contractor shall give at least one month's notice to the Contract Manager of any proposal to remove or replace Key Personnel and HS2 must agree any replacement in writing, save that the Contractor shall be required to give such notice as is reasonable in the circumstances in the event that Key Personnel are changed as a result of illness, resignation or unusual personal circumstances.

3.7 Unless otherwise agreed by HS2, neither the Contractor nor any of his employees or Sub-contractors shall carry out any business or trading activity within or on the Premises and no advertisement, sign or notice of any description shall be exhibited without prior written approval from HS2.

3.8 The Contractor shall exercise due care and propriety when dealing with third parties in connection with this Contract and ensure that no commitments that might impose any obligations on HS2 are entered into (unless expressly required under this Contract) without HS2's prior written consent.

3.9 Nothing in this Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between HS2 and the Contractor.

#### **4 DUTY OF CARE**

The Contractor shall perform the Services with the standard of skill, care and diligence which a competent and suitably qualified person performing such services could reasonably be expected to exercise and in accordance with all relevant statutory requirements.

#### **5 ALTERATION OF REQUIREMENT**

Each of the parties may by notice to the other request an alteration to the requirements of this Contract, as detailed in the Specification, should this at any time become necessary or desirable. In the event of any such alteration being agreed by both parties, payment under this Contract shall be subject to fair and reasonable adjustment to be agreed between HS2 and the Contractor and recorded in writing. The parties shall continue to act in accordance with this Contract until any such alteration and adjustment has been agreed in writing.

#### **6 INVOICES AND PAYMENT**

- 6.1 The Contractor shall submit an invoice to HS2 as specified in this Contract or within 28 days of the completion of the Services. All invoices shall quote the contract number and, where appropriate, the purchase order number.
- 6.2 The Contractor shall submit with each invoice such records as HS2 may reasonably require including, but not limited to, time sheets, details of expenses incurred, invoices paid and any other documents which would enable HS2 to verify the information and the amounts referred to in that invoice.
- 6.3 The Contractor shall provide to HS2 the name and address of his bank, the account name and number, the bank sort code and any other details requested by HS2.
- 6.4 Except where otherwise provided in this Contract, the amount payable to the Contractor for the performance of the Services shall be inclusive of all costs, including but not limited to staff, facilities, equipment, materials and all other expenses incurred by the Contractor in discharging his obligations under this Contract. Claims for reimbursement for travel, meals and subsistence will only be paid if the Contract Manager is satisfied that they are consistent with HS2 Ltd's guidance on Contract Expense Reimbursement
- 6.5 HS2 is committed to prompt payment and shall pay the Contractor within 30 days of the receipt of a valid invoice, provided that that the Services to which the invoice relates have been performed fully in accordance with this Contract.

## **7 VALUE ADDED TAX**

HS2 shall pay to the Contractor the amount of any VAT chargeable in respect of the performance of the Services.

## **8 MEETINGS AND REPORTS**

- 8.1 The Contractor shall upon receipt of reasonable notice and during normal office hours attend all meetings arranged by HS2 for the discussion of matters connected with the performance of the Services.
- 8.2 Without prejudice to any other requirement in this Contract, the Contractor shall provide such reports on the performance of the Services as the Contract Manager may reasonably require.

## **9 INSPECTION**

- 9.1 During the course of this Contract the Contract Manager and HS2 shall have the power to inspect and examine any of the Services on the Premises at any reasonable time.
- 9.2 Where the Services are being performed on any other premises, the Contract Manager and HS2 shall, on giving reasonable notice to the Contractor, be entitled to inspect and examine such Services. The right to inspect and examine the Services shall not apply to the extent that an inspection or examination would jeopardise the confidentiality of information relating to the Contractor's other clients.
- 9.3 The Contractor shall provide all facilities required by the Contract Manager and HS2 for any inspection and examination free of charge.

- 9.4 In this Condition, Services includes all planning, preliminary and preparatory work for the Services.

## **10 CONFLICT OF INTEREST**

- 10.1 It shall be the Contractor's responsibility to ensure that no conflict of interest arises in connection with the Services to be carried out under this Contract. HS2 should be consulted if there is any uncertainty about whether any such conflict of interest may exist or arise and its decision on the matter shall be final.

- 10.2 In particular, at any time during the period of the Contract, the Contractor shall not, for any person (which includes the contractor himself) other than HS2 Ltd—

(a) perform work in respect of, or relating to, or

(b) promote,

any other scheme, or any part of any such scheme, either proposed or agreed, for the development of a high speed rail link anywhere in Great Britain.

A breach of this Condition shall entitle HS2 Ltd to terminate the contract with immediate effect and recover from the Contractor the amount of any loss resulting from such termination.

## **11 CORRUPT GIFTS AND PAYMENTS OF COMMISSION**

- 11.1 The Contractor shall not receive or agree to receive from any person, or offer or agree to give to any person, or procure for any person any gift or consideration of any kind as an inducement or reward for doing or not doing anything, or for showing favour or disfavour to any person in relation to this Contract or any other contract with HS2.

- 11.2 The Contractor shall not conspire with any person to do any of the acts mentioned in Condition 11.1.

- 11.3 Any:

(a) breach by the Contractor of this Condition; or

(b) commission of any offence by the Contractor under the Prevention of Corruption Acts 1889 to 1916 (to the extent that those Acts apply) in relation to this or any other contract with HS2

shall entitle HS2 to terminate this Contract and recover from the Contractor the amount of any loss resulting from such termination and recover from the Contractor the amount of value of any such gift, consideration or commission.

- 11.4 The decision of HS2 in relation to this Condition shall be final and conclusive.

## **12 OFFICIAL SECRETS ACTS**

The Contractor shall take all reasonable steps to ensure that all his employees and any Sub-contractor employed by him in connection with this Contract are aware of the Official Secrets Acts 1911 to 1989, and understand that these Acts may apply to them, to the extent that they are in receipt of official information during and after performance of any Services under or in connection with this Contract.

### 13 DISCLOSURE OF INFORMATION

13.1 The Contractor acknowledges that HS2 may receive requests for information relating to this Contract ("disclosure requests") pursuant to the Freedom of Information Act 2000 ("the FOI Act"), the Environmental Information Regulations 2004 ("the EIRs") or otherwise.

13.2 The Contractor further acknowledges that HS2 may be obliged (subject to the application of any relevant exemption(s) and, where applicable, the public interest test) to disclose information pursuant to such a request. Where HS2 consults the Contractor in accordance with section IV (consultation with third parties) of the Code of Practice<sup>1</sup> issued under section 45 of the FOI Act (or, as the case may be, any Code of Practice issued under powers contained in the EIRs), the Contractor hereby agrees to respond to any such consultation promptly and within any deadline set by HS2 and acknowledges that it is for HS2 to determine whether or not such information should be disclosed.

13.3 Subject to Conditions 13.4 and 13.5 below, the Contractor shall not disclose to any third party, publish, disseminate, or use other than for the purposes of this Contract:

- (a) any information relating to this Contract; or
- (b) any other information that has come into his possession during or as a result of his performance of this Contract relating to the business, affairs, properties, assets, operations, practices, policies, developments, trade secrets or know-how, of HS2, its personnel, customers and suppliers

without the prior written consent of HS2, which shall not be unreasonably withheld.

13.4 Condition 13.3 above shall not apply to any information which:

- (a) is or becomes public knowledge (otherwise than by breach of this Contract);
- (b) is lawfully in the possession of the Contractor, without restriction as to its disclosure, before he receives it from HS2; or
- (c) is received by the Contractor from a third party who lawfully acquired it and who is under no obligation restricting its disclosure.

13.5 Condition 13.3 above shall not prevent the Contractor from disclosing, without HS2's consent, any information:

- (a) which is required to be disclosed by law or by any professional or regulatory obligation, provided that prior to disclosure the Contractor consults HS2 and takes full account of HS2's views about whether (and, if so, the extent to which) the information should be disclosed;

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<sup>1</sup> On the discharge of public authorities' functions under Part I of the Freedom of Information Act 2000  
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- (b) to such persons and to such extent as may be necessary for the performance of this Contract;
- (c) for the purpose of complying with his obligations under Condition 24 of this Contract.

13.6 The Contractor shall take all reasonable steps to ensure the observance of the provisions of Conditions 13.3 to 13.5 inclusive above by all his employees, office holders, workers and Sub-contractors.

## **14 DISCRIMINATION**

14.1 The Contractor shall not discriminate directly or indirectly or by way of victimisation or harassment against any person:

- (a) on grounds of colour, race, nationality, or ethnic or national origin contrary to the Race Relations Act 1976; or
- (b) on grounds of sex contrary to the Sex Discrimination Act 1975; or
- (c) on grounds of disability contrary to the Disability Discrimination Act 1995.

14.2 Where any employee or Sub-contractor employed by the Contractor is required to carry out any activity on the Premises or alongside HS2's employees on any other premises the Contractor shall ensure that the each such employee and Sub-contractor complies with HS2's employment policies and codes of practice relating to discrimination and equal opportunities.

14.3 The Contractor shall notify the Contract Manager and HS2 in writing as soon as he becomes aware of any investigation or proceedings brought against the Contractor under the Discrimination Acts in connection with the Contractor's performance of this Contract. Where there is such an investigation or proceedings the Contractor shall free of charge:

- (a) provide any information requested by the investigating body, court or tribunal in the timescale allotted;
- (b) attend, and permit a representative from HS2 to attend, any associated meetings;
- (c) promptly allow access to any documents and information relevant to the investigation or proceedings;
- (d) co-operate fully and promptly with the investigatory body, court or tribunal.

14.4 The Contractor shall indemnify HS2 against all costs, charges, expenses (including legal and administrative expenses) and payments made by HS2 arising out of or in connection with any such investigation or proceedings.

14.5 The Contractor shall impose obligations on its Sub-contractors in terms substantially similar to those set out in Conditions 14.1 to 14.4.

## **15 ASSIGNMENT, SUB-CONTRACTORS AND SUPPLIERS**

- 15.1 The Contractor shall not sub-contract or transfer, assign, charge, or otherwise dispose of this Contract or any part of it without the prior written consent of HS2.
- 15.2 The Contractor shall ensure that any Sub-contractor complies with the Conditions of this Contract, so far as they are applicable. Any sub-contract shall not relieve the Contractor of his obligations under this Contract.
- 15.3 Where the Contractor enters into a contract with a supplier or Sub-contractor for the purpose of performing this Contract or any part of it, he shall cause a term to be included in such contract which requires payment to be made by the Contractor to the supplier or Sub-contractor within a specified period not exceeding 30 days from receipt of an invoice properly issued in accordance with that contract.

## **16 INSURANCE**

- 16.1 The Contractor shall effect and maintain an adequate level of insurance cover in respect of all risks that may be incurred by him in the performance of this Contract.
- 16.2 The Contractor shall hold employer's liability insurance in respect of his employees and of any Sub-contractors used by him in the performance of this Contract.
- 16.3 Where the Contractor sub-contracts part of this Contract, he shall procure that any Sub-contractor effects and maintains insurance to cover its liabilities under that sub-contract.
- 16.4 Where in compliance with Condition 16.1 the Contractor effects professional indemnity insurance the insurance policy and any renewal shall cover liabilities under this Contract from the commencement of the Services until 6 years after:
  - (i) the completion of the Services; or
  - (ii) the termination of this Contractwhichever is the earlier.
- 16.5 When requested by HS2 the Contractor shall produce documentary evidence showing that the insurance required by Conditions 16.1, 16.2 and 16.3 has been effected and is being maintained.
- 16.6 If, for whatever reason, the Contractor fails to effect and maintain the insurance required by this Condition HS2 may make alternative arrangements necessary to protect its interests and recover the costs thereof from the Contractor.
- 16.7 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under this Contract.
- 16.8 The Contractor shall impose obligations on its Sub-contractors in terms substantially similar to those set out in Conditions 16.1 to 16.7, but this shall not relieve the Contractor of any of his obligations and liabilities under this Contract.

## **17 DATA PROTECTION**

- 17.1 Where the Data Protection Act 1998 applies to any aspect of the Services to be performed under this Contract, the Contractor shall take such measures as are necessary to comply with its terms.
- 17.2 Without prejudice to Condition 17.1, the Contractor shall:
- (a) only accept instructions in respect of data processing from HS2;
  - (b) adopt all technical and organisational measures necessary to protect all personal data processed by him on behalf of HS2 against unauthorised or unlawful processing, and accidental loss, damage or destruction; and
  - (c) ensure that all employees and Sub-contractors involved in data processing are suitable for the task.

## **18 DATA PROTECTION – PERSONAL DATA**

- 18.1 The data controller in respect of such personal data as is held or acquired by HS2 in relation to this Contract is the Company Secretary of HS2.
- 18.2 The data controller's nominated representative for the purposes of the Data Protection Act 1998 is HS2's Data Protection Officer.
- 18.3 HS2 shall use such personal data only for purposes relating directly to:
- (a) the management and performance of this Contract by the Contractor; and
  - (b) the provision by HS2 of references within HS2 and to Government Departments.
- 18.4 The Contractor hereby agrees and shall procure from any relevant individual agreement to the publication by HS2 in any format of the following personal data: name and contact details. The Contractor shall provide a copy of any relevant individual's consent to HS2 on request.
- 18.5 If, having regard to the circumstances in which HS2 processes such personal data, HS2 requires the Contractor or any relevant individual to provide additional information to enable HS2 to process that personal data fairly it shall notify the Contractor in writing and the Contractor shall provide or procure the additional information within 7 days of receipt of the request.

## **19 CONTRACTOR'S OBLIGATIONS IN CONNECTION WITH THE TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006 ("TUPE")**

- 19.1 The Contractor shall provide HS2, and/or any other person authorised by HS2 who is to be invited to submit a tender in relation to the provision of similar Services, with such information (including any changes to and interpretations thereof) in connection with TUPE as HS2 may require. The Contractor shall provide the information within 10 days of HS2's request.
- 19.2 During the 8 month period preceding the Expiry Date or any notice period, the Contractor shall not without the prior consent of HS2 (which shall be in writing, but shall not be unreasonably withheld or delayed):
- (a) materially amend the terms and conditions of employment of any employee whose work, wholly or mainly falls within the scope of this Contract; or

- (b) materially increase the number of employees whose work (or any part of it) is work undertaken for the purposes of this Contract; or
- (c) move or deploy any Key Personnel away from the performance of the Services under this Contract.

19.3 The Contractor shall not knowingly do, or omit to do, anything which may adversely affect the orderly transfer of responsibility for provision of the Services.

## 20 OCCUPATION OF PREMISES

Any land or premises (including temporary buildings) made available to the Contractor by HS2 in connection with this Contract ("the Premises") shall be made available to the Contractor free of charge and shall be used by the Contractor solely for the purposes of performing this Contract. The Contractor shall have the use of the Premises as licensee and shall vacate the same upon completion or determination of this Contract. Any utilities required by the Contractor shall be subject to such charges as are set out elsewhere in this Contract.

## 21 ENVIRONMENTAL REQUIREMENTS

- 21.1 In providing the Services the Contractor shall comply with HS2's environmental policy, which is to conserve energy, water and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 21.2 The paper for all written outputs, including reports, produced in connection with the Contract shall (unless otherwise specified) comply with the relevant OGC Quick Wins standard [OGCbuying.solutions - Corporate - Sustainable Solutions](#) and shall be used on both sides where appropriate.
- 21.3 All goods purchased by the Contractor on behalf of HS2 (or which will become the property of HS2) must comply with the relevant minimum environmental standards specified in OGCbs' Quick Wins, see [OGCbuying.solutions - Corporate - Sustainable Solutions](#)

## 22 INTELLECTUAL PROPERTY, ROYALTIES AND LICENCE FEES

- 22.1 In the absence of any specific provision for the allocation of intellectual property rights between the parties elsewhere in this Contract and subject to the prior rights (if any) of the Contractor, the Crown or any third parties, such intellectual property rights as are derived from or arise as a result of the performance of the Services by the Contractor shall vest in HS2. The Contractor shall not use, supply, reproduce, publish, modify, adapt, enhance or otherwise deal with any materials in which such intellectual property rights exist without HS2's prior written approval.
- 22.2 In this Condition the term 'intellectual property rights' means all intellectual and industrial property rights of any nature whatsoever, including all of the following: patents, copyrights, database rights, design rights; all rights in or arising out of discoveries, inventions, improvements, know-how, confidential information, trade marks, designs and works; the right to apply for any form of protection for any of these, applications for and registrations of any of these and all resulting registrations. In each case it includes these rights and interests in every

part of the world for their full terms, including any renewals and extensions, and the right to receive any income from them and any compensation in respect of their infringement.

- 22.3 The Contractor shall ensure that all royalties, licence fees and similar expenses in respect of all intellectual property or intellectual property rights used in connection with this Contract have been paid and are included in the Contract Price.

## **23 DRAWINGS, SPECIFICATIONS, SOFTWARE, DESIGNS AND OTHER DATA**

- 23.1 The final 'deliverable' version of any data, including written reports, calculations, software, designs, drawings, specifications, maps and photographs completed or provided in connection with this Contract (each a "Deliverable") shall be delivered up to HS2 on completion (or, if sooner, termination) of the Services, subject to the retention of proper professional records. The Deliverables shall be supplied by the Contractor in an agreed format.
- 23.2 If this Contract is terminated by HS2 pursuant to the provisions of Conditions 28, 29, or 30 the provisions of Condition 23.1 shall apply to the working version of each Deliverable (a "Working Deliverable") that has not been completed as at the date of termination of this Contract. HS2 acknowledges that Working Deliverables may contain information that is incomplete and agrees that should it choose to rely upon any Working Deliverable that reliance shall be at its own risk.

## **24 PRODUCTION AND RETENTION OF DOCUMENTATION**

- 24.1 The Contractor shall produce such accounts, documents (including working documents) and records related to this Contract as HS2, or the Contract Manager, may request at any time during this Contract. Subject to the provisions of Condition 13, HS2's right to request the production of documents shall not apply to the extent that production of the documents would cause the Contractor to breach confidentiality obligations to his other clients.
- 24.2 The Contractor shall retain and produce such accounts, documents (including working documents) and records related to this Contract as HS2, or the Contract Manager, may request for a period of 2 years from the Expiry Date or termination of this Contract, or such longer period as may be agreed between HS2 and the Contractor in writing at or before the commencement of this Contract.
- 24.3 The Contractor shall afford such facilities as HS2 may reasonably require for its representatives to visit the Contractor's premises and examine the records held under this Condition. The right to these records shall not apply to the extent that an examination would jeopardise the confidentiality of information relating to the Contractor's other clients.
- 24.4 Subject to the provision of reasonable notice to the Contractor, and for the purpose of:
- (a) examining and certifying HS2's accounts; or
  - (b) any examination, pursuant to section 7(1) of the National Audit Act 1983, of the economy, efficiency and effectiveness with which HS2 has used its resources

the Comptroller and Auditor General shall have a right of access to such relevant documents as are owned, held or otherwise within the control of the Contractor.

- 24.5 The Contractor shall assist the Comptroller and Auditor General to understand such documents and provide any oral and/or written information and explanation of the documents as may reasonably be requested.
- 24.6 For the avoidance of doubt, nothing in this Condition constitutes a requirement or agreement for the purposes of section 6(3)(d) of the National Audit Act 1983 for the examination, certification or inspection of the accounts of the Contractor.

## **25 TRANSFER OF RESPONSIBILITY**

In the event that a different organisation is required to take over the Services at the expiry or termination of this Contract, the Contractor shall co-operate in the transfer, under arrangements notified to him by HS2.

## **26 MERGER, TAKE-OVER OR CHANGE OF CONTROL**

- 26.1 The Contractor shall obtain HS2's written consent (which shall not be unreasonably withheld, but may be given subject to conditions) prior to any Change of Control of the Contractor, provided that where a Change of Control arises from any change in the beneficial or legal ownership of shares that are listed on the stock exchange, such approval shall be obtained promptly as soon as the Contractor becomes aware of the same. If such consent is not obtained when required by this Condition 26.1, HS2 has the right to terminate this Contract at its election as set out in Condition 29 (Termination of this Contract).
- 26.2 The Contractor shall inform HS2 immediately of any Change of Ownership of the Contractor.
- 26.3 The Contractor shall inform HS2 of any change, or proposed change in the name of or status of the Contractor.

## **27 UNSATISFACTORY PERFORMANCE**

- 27.1 Where in the opinion of HS2 the Contractor has failed to perform the whole or any part of the Services in accordance with this Contract HS2 may:
- (a) give the Contractor a notice specifying the way in which his performance falls short of the requirements of this Contract, or is otherwise unsatisfactory, or
  - (b) withhold or reduce payments to the Contractor, in such amount as HS2 deems appropriate.
- 27.2 Any notice served by HS2 pursuant to Condition 27.1 may require from the Contractor that he re-schedules and performs the Services to HS2's satisfaction within such period as shall be specified by HS2 in the notice and at his own expense, including where necessary, the correction or re-execution of any Services already carried out.
- 27.3 Any notice served by HS2 pursuant to Conditions 27.1 and 27.2 shall be without prejudice to HS2's rights under these Conditions.

## **28 INSOLVENCY OF THE CONTRACTOR**

- 28.1 If the Contractor:

- (a) being an individual (or if the Contractor is a partnership any individual being a partner of such partnership) has a bankruptcy order made against him; applies to court for an interim order or makes an arrangement or composition with his creditors; is subject to any distress, execution or other similar process in relation to his assets; takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors; takes any step or any step is taken towards any of the matters referred to in this Condition 28.1(a): or
- (b) being a company, a limited liability partnership or a partnership has an order made or a resolution passed for the winding up of the Contractor or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order; is subject to an order made by a court of competent jurisdiction or a resolution passed for the administration of the Contractor or documents are filed with the court for the appointment of an administrator or notice of intention to appoint an administrator is given by the Contractor or its directors or by a qualifying floating charge holder (as defined by Paragraph 14 of Schedule B1 to the Insolvency Act 1986); has a receiver, administrative receiver or manager appointed (or any step is taken to make such appointment) in respect of the whole or any part of the assets and undertaking of the Contractor; is subject to any distress, execution or other similar process in relation to any of its assets; makes any arrangement or composition with its creditors;
- (c) takes or is subject to any similar or analogous action to any of the matters referred to in Conditions 28.1(a) and (b) above in any other jurisdiction;

then without prejudice to any other rights available to it, HS2 may give notice in writing at any time to the Contractor terminating this Contract with immediate effect.

28.2 The Contractor shall give notice in writing to HS2 of the occurrence of any of the events referred to in Conditions 28.1 (a) to (c) above immediately on becoming aware of the same.

## 29 **TERMINATION OF THIS CONTRACT**

29.1 Without prejudice to any other power of termination, HS2 may by notice in writing terminate this Contract with immediate effect for any of the following reasons:

- (a) breach by the Contractor of any of Conditions 10 (Conflict of Interests) 11 (Corrupt Gifts & Payments of Commission), 12 (Official Secrets Acts), 13 (Disclosure of Information) of this Contract, or any other material breach of contract;
- (b) failure by the Contractor to comply with a notice given under Condition 27 (Unsatisfactory Performance);
- (c) the Contractor ceases or proposes to cease to carry on his business;
- (d) a Change of Control occurs without the prior approval of HS2.

## 30 **BREAK**

30.1 HS2 shall in addition to its powers under any other of these Conditions have power to terminate this Contract at any time by giving to the Contractor one month's written notice.

30.2 In particular in the event that, during the period of the Contract—

- (a) HS2 Ltd is dissolved or wound up, or
- (b) HS2 Ltd is restructure, or the Government makes material change to the objectives and remit of HS2 Ltd, such that the Services are no longer required,

the contract would terminate with immediate effect.

### **31 CONSEQUENCES OF TERMINATION OR BREAK**

- 31.1 Upon the expiry of any notice period, or immediately upon termination without notice, this Contract shall be terminated without prejudice to any right of action or remedy which shall have accrued or shall thereupon accrue to the parties. Termination shall not affect the continued operation of Conditions 11, 12, 13, 16, 17, 18, 24, 25, 32 and 35.
- 31.2 Where this Contract is terminated under Condition 28 (Insolvency of the Contractor) or 29 (Termination of this Contract), the following provisions shall apply:
  - (a) Pending final ascertainment of such sums as are payable under this Contract any sum due or accruing from HS2 to the Contractor may be withheld or reduced by such amount as HS2 in either case considers reasonable and appropriate;
  - (b) HS2 may make all arrangements which are in its view necessary to procure the orderly completion of the Services, including the letting of another contract or contracts. In the event that a different organisation is required to take over the Services the Contractor shall co-operate in the transfer and with any arrangements notified to him by HS2. The transfer shall be arranged between HS2 and the Contractor so as to reduce to a minimum any interruption in the Services;
  - (c) Where the total costs reasonably and properly incurred by HS2 by reason of any arrangements made under Condition 31.2(b) exceed the amount that would have been payable to the Contractor for the completion of the Services, the excess shall be recoverable from the Contractor and HS2 reserves the right to recover such excess by way of set-off as provided for under Condition 33 (Recovery of Sums Due).
- 31.3 Without prejudice to Condition 31.1, where this Contract is terminated under Condition 30 (Break), HS2 shall pay to the Contractor all reasonable costs necessarily and properly incurred by him in relation to the orderly cessation of the Services, including any commitments, liabilities or expenditure which have been reasonably and properly incurred, and would otherwise represent an unavoidable loss by the Contractor by reason of the termination of this Contract. For the avoidance of doubt HS2 shall not indemnify the Contractor against loss of profit or consequential losses. HS2 shall in no case be liable to pay under the provisions of this Condition any sum which, when taken together with any sums paid or due or becoming due to the Contractor under this Contract, exceeds the total Contract Price.
- 31.4 Where this Contract is terminated pursuant to Condition 30.1 (Break), during the notice period HS2 may direct the Contractor to perform all or any of the Services, or any part or component thereof in accordance with this Contract, and HS2 shall pay the Contractor the agreed Contract Price or, where no price has been agreed or is applicable to an element of work, a fair and reasonable price.

### **32 LIABILITY FOR LOSS OR DAMAGE**



- 32.1 The Contractor shall indemnify HS2, its servants and agents against all actions, claims, demands, costs, expenses, charges, payments and liabilities incurred by or made against HS2, its servants or agents, in respect of any loss or damage which arises out of or in connection with this Contract which is caused directly or indirectly by any act or omission of the Contractor.
- 32.2 In this Condition loss or damage includes, without limitation:
- (a) loss or damage to property;
  - (b) personal injury and death;
  - (c) loss of use; and
  - (d) any other loss.
- 32.3 Without prejudice to any other exclusion or limitation of liability in this Contract, the liability of the Contractor for any claim or claims under this Contract shall be limited to such sums as it would be just and equitable for the Contractor to pay having regard to the extent of his responsibility for the loss or damage giving rise to such claim or claims (“the loss and damage”) and on the assumptions that:
- (a) all other contractors, sub-contractors or advisers engaged in connection with the performance of the Services have provided contractual undertakings on terms no less onerous than those set out in these Conditions to HS2 in respect of the carrying out of their obligations; and
  - (b) there are no exclusions or limitations of liability nor joint insurance or co-insurance provisions between HS2 and any other party referred to in this Condition and any such other party who is responsible to any extent for the loss and damage is contractually liable to HS2 for the loss and damage; and
  - (c) all such other contractors, sub-contractors or advisers have paid to HS2 such sum as it would be just and equitable for them to pay having regard to the extent of their responsibility for the loss and damage.

### **33 RECOVERY OF SUMS DUE**

Whenever under this Contract any sums of money shall be recoverable from or payable by the Contractor to HS2, that amount may be deducted from any sum then due, or which at any later time may become due, to the Contractor under this Contract or under any other contract with HS2 or with any Department, Agency or Office of Her Majesty’s Government.

### **34 SERVICE OF NOTICES**

Any notice required to be given or served under this Contract shall be in writing and shall be served by:

- (a)
  - (i) delivery to the Contractor’s Representative, when it shall be deemed served at the time of delivery, or
  - (ii) sending it to the Contractor’s Representative by first-class post, when it shall be deemed served on the second working day after posting; or
- (b)
  - (i) delivery to the Contract Manager, when it shall be deemed served at the time of delivery, or

- (ii) sending it to the Contract Manager by first-class post, when it shall be deemed served on the second working day after posting.

## **35 DISPUTE RESOLUTION**

- 35.1 Where any dispute, difference or question ("Dispute") between HS2 and the Contractor arising out of or in connection with this Contract cannot be resolved by the Contract Manager and Contractor's Representative, either may refer the Dispute to a senior representative of HS2 and of the Contractor (a director or other senior office holder) ("the Senior Representatives").
- 35.2 Without prejudice to Condition 35.5, if any Dispute is not resolved within 14 days of the referral to the Senior Representatives then the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") model conditions. To initiate the mediation a party must give a notice in writing ("the Mediation Notice") to the other party requesting a mediation in accordance with this Condition. The referring party must send a copy of the Mediation Notice to CEDR.
- 35.3 Any mediation is to take place not later than 28 days after service of the Mediation Notice. If there is any issue on the conduct of the mediation which the parties cannot agree within 14 days of the Mediation Notice then CEDR will, at the request of either party, decide the issue. If the Dispute is not resolved within 42 days of service of the Mediation Notice then the parties may litigate the Dispute in accordance with Condition 36.
- 35.4 Except where required to preserve the legal rights of HS2 or the Contractor, or to obtain interim relief, or where the Dispute concerns a matter upon which HS2's decision is final, neither HS2 nor the Contractor shall commence Court proceedings unless the Dispute remains unresolved after having been referred to the Senior Representatives, to mediation or to any other alternative means of resolving the Dispute chosen by the parties pursuant to Condition 35.5.
- 35.5 After a failure of the Senior Representatives to resolve the Dispute the parties may by agreement in writing elect to pursue any means of alternative dispute resolution.

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## **36 LAW**

This Contract shall be governed by and interpreted in accordance with English law and, subject to Condition 35, any dispute arising out of or in connection with it shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

## **37 SEVERABILITY**

If any provision of this Contract is held invalid, illegal or unenforceable for any reason by any court, such provision shall be severed and the remainder of the provisions of this Contract shall continue in full force and effect. In the event that an invalid, illegal or unenforceable clause is fundamental to the performance of this Contract, HS2 and the Contractor shall immediately commence negotiations in good faith to remedy the invalidity.

## **38 WAIVER**

- 38.1 Any failure by HS2 or the Contractor to exercise any right or remedy shall not constitute a waiver of that right or remedy.

- 38.2 No waiver shall be effective unless it is communicated to either HS2 or the Contractor in writing.
- 38.3 A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of this Contract.

### 39 RIGHTS OF THIRD PARTIES

Nothing in this Contract confers or purports to confer on any third party any right to enforce any term of this Contract.

## 40. FREEDOM OF INFORMATION

40.1. The parties acknowledge that:

40.1.1. HS2 is a public authority for the purposes of the Act; and

40.1.2. public authorities have certain information disclosure requirements under the Act and Environmental Information Regulations.

40.2. The Contractor shall assist and co-operate with HS2 (at its own expense) to enable HS2 to comply with any relevant requests for information which HS2 is obliged by the Act to comply within the time limits set out in paragraph 40.4 below

40.3. HS2 is responsible for determining at its absolute discretion whether any Confidential Information, or any other information:

40.3.1. Is exempt from disclosure in accordance with the provisions of the Act or the Environmental Information Regulations;

40.3.2. Is to be disclosed in response to a request for information.

40.4. In the event that HS2 receives an Information Request it shall:

40.4.1. as soon as is reasonably practicable but in any event not less than five (5) Working Days of receipt of the said Information Request, give notice to the Contractor in writing that such an Information Request has been made setting out exactly what is being requested; and

40.4.2. take reasonable endeavours to seek the views of the Contractor so as to allow the Contractor the opportunity to consider if any of the requested information might be exempt information for the purposes of the Act or the Environmental Information Regulations and to provide detailed reasons to HS2 in support of the Contractor's views. The Contractor shall use reasonable endeavours to respond to HS2 within ten (10) Working Days of receipt of the notice referred to in clause 40.4.1 with confirmation of consent to release the relevant information or with detailed reasons as to why the Contractor considers that the information is exempt from disclosure

40.4.3. If the Contractor fails to provide a response to HS2 in accordance with clause 40.4.2 within 10 Working Days of receipt of the notice referred to in clause 40.4.1 or if the

Contractor considers that the relevant information is exempt from disclosure under the Act but HS2, acting reasonably, does not agree then HS2 will not be in breach of these General Conditions of Contract for Services if they release any Confidential Information pursuant to HS2's obligations under the Act.