

ANNEXURE 7

HIGH SPEED TWO LIMITED

PACKAGE ORDER CONDITIONS OF CONTRACT FOR SERVICES

Dated **[DATE ONLY WHEN BOTH PARTIES HAVE SIGNED]**

[HS2 logo]

High Speed Two (HS2) Limited

and

[CONSULTANT NAME]

Package Order Contract for the Supply of
[DESCRIBE GOODS AND/OR SERVICES]

Contract No. **[NUMBER]**

SECTION ONE - PACKAGE ORDER SPECIAL CONDITIONS

THIS CONTRACT is dated [DATE ONLY WHEN BOTH PARTIES HAVE SIGNED]

BETWEEN:

- (1) **HIGH SPEED TWO (HS2) LIMITED**, (company number 06791686) whose registered office is at Eland House, Bressenden Place, London SW1E 5DU ("**EMPLOYER**"); and
- (2) [**CONSULTANT NAME**], Company Registration Number ([**NUMBER**]) whose registered address is at [**REGISTERED OFFICE ADDRESS**] (the "**CONSULTANT**").

IT IS AGREED that:

1. The Contract shall be deemed to incorporate and be read as comprising, as if they were set out herein:
 - 1.1 Section One – Package Order Special Conditions (including the Contract Details and Pricing Schedule attached) ("Package Order Special Conditions")
 - 1.2 Section Two – Package Order Standard Terms and Conditions of Purchase ("Package Order Standard Conditions")

If there is any inconsistency between the provisions of the sections listed above, the following order of precedence shall apply:

- (1) Section One – Package Order Special Conditions
 - (2) Section Two – Package Order Standard Conditions
2. In accordance with the provisions of the Contract, the Consultant shall provide the Goods and/or the Services and the Employer will pay the Price (as defined in the Standard Conditions).
 3. The Contract (together with any tender or quotation submitted by the Contract, to the extent it is not inconsistent with the Contract) constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter and neither party has entered into the Contract in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement which is not expressly set out in the Contract. Nothing in this clause will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.
 4. This Contract may be executed in any number of counterparts, each of which shall constitute an original.

SIGNED BY the duly authorised representatives of the parties on the date stated above.

SIGNED.....
duly authorised to sign for
and on behalf of
HIGH SPEED TWO (HS2) LIMITED

NAME:.....

POSITION:.....

SIGNED.....
duly authorised to sign for
and on behalf of
[CONSULTANT NAME]

NAME:.....

POSITION:.....

WORKS PACKAGE DETAILS

Description of the Goods	
Description of the Services	
Price	[please refer to Pricing Schedule]
Allowable Expenses	
Delivery Date(s) for Goods	
Performance Date(s) for Services	
Employer's Contract Manager	
Consultant Representative	
Commencement Date	
Contract End Date	
Key Personnel	
Consultant's Limit of Liability	[INSERT STANDARD POSITION]
Consultant Insurances and Levels	[INSERT STANDARD POSITION – NOTE THAT THE CONDITIONS ALREADY REQUIRE EMPLOYERS LIABILITY]

1. CONTRACT TERM & TERMINATION

The Contract shall commence on the Commencement Date and shall continue until the Contract End Date unless and until terminated earlier in accordance with the Package Order Standard Conditions.

2. PACKAGE ORDER SCOPE

[DETAIL HERE THE SPECIFICATION OF THE GOODS OR THE SERVICES TO BE PROVIDED. INCLUDE AS MUCH DETAIL AS POSSIBLE AND IF NECESSARY REFER TO SEPARATE DOCUMENTS WHICH SHOULD BE ATTACHED AS SCHEDULES TO THE CONTRACT]

3. DELIVERABLES AND KEY MILESTONE DATES

[DETAIL HERE ANY SPECIAL INSTRUCTIONS FOR DELIVERY OR PERFORMANCE, SERVICE LEVELS, METHOD OF DELIVERY, PACKAGING REQUIREMENTS, ETC WHICH WILL APPLY TO THE CONTRACT. BE AS SPECIFIC AS POSSIBLE INCLUDING MEASURABLE OBLIGATIONS AGAINST WHICH DEFECTS IN DELIVERY/PERFORMANCE CAN BE IDENTIFIED (E.G. DELIVERY TIMES) AND REFER TO SEPARATE DOCUMENTS IF NECESSARY WHICH SHOULD BE ATTACHED AS SCHEDULES TO THE CONTRACT]

3.1 Time for performance of the Services will be of the essence of the Contract. [INCLUDE THIS CLAUSE IF YOU REQUIRE THE OPTION TO TERMINATE THE CONTRACT IF THE SERVICES ARE NOT PERFORMED IN ACCORDANCE WITH THE AGREED PERFORMANCE DATES]

4. **MANAGEMENT INFORMATION (DETAIL AND FREQUENCY)**

[INSERT MANAGEMENT INFORMATION REQUIREMENTS TO INCLUDE TYPE OF REPORTS, FORMAT AND FREQUENCY]

5. **PERFORMANCE REVIEW**

[INSERT DETAILS OF HOW PERFORMANCE WILL BE REVIEWED INCLUDING WHO HAS RESPONSIBILITY TO MONITOR AND REPORT, HOW THIS WILL BE DONE, HOW OFTEN AND WHAT ACTION WILL BE TAKEN BY WHOM IF DEFECTS IN PERFORMANCE ARE IDENTIFIED]

6. **ADDITIONAL PROCEDURES**

[INSERT ANY ADDITIONAL REQUIREMENTS]

PRICING SCHEDULE

1. PRICE / RATES

[INSERT HERE DETAILS OF THE AGREED PRICE, THE METHOD FOR CALCULATING DAY RATES ETC]

2. EXPENSES

[INSERT ANY AGREED TERMS RELATING TO EXPENSES. LEAVE THIS BLANK IF NO EXPENSES ARE PERMITTED]

3. TIMING / FREQUENCY OF INVOICES

[INSERT ANYTHING SPECIFIC AGREED IN RELATION TO WHEN INVOICES MAY BE SUBMITTED. PRESUMPTION IF THIS IS BLANK IS THAT INVOICES WILL BE SUBMITTED ON COMPLETION OF THE SERVICES OR ON DELIVERY OF THE GOODS. SPECIFY HERE, FOR EXAMPLE, IF INTERIM INVOICING IS PERMITTED BEFORE THE FULL SERVICES HAVE BEEN COMPLETED]

4. SPECIAL PAYMENT TERMS

[STANDARD POSITION IS PAYMENT 30 DAYS AFTER RECEIPT OF INVOICE. IF DIFFERENT SPECIFY HERE]

SECTION TWO – PACKAGE ORDER STANDARD CONDITIONS

1 DEFINITIONS AND INTERPRETATIONS

1.1 In these Package Order Conditions, unless the context requires otherwise, the following words and phrases shall have the following meanings:

“Applicable Laws”

any:

- (i) statute, statutory instrument, bye-law, order, directive, treaty, decree or law (including any common law, judgment, demand, order or decision of any court, regulator or tribunal);
- (ii) rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body; and/or
- (iii) industry code of conduct or guideline

which relates to the Contract and/or the Goods and/or their manufacture, packaging, packing and/or delivery and/or the Services and/or the activities which are comprised in all or some of the Services or the use or application of the output from the Services

“Beneficiary”

the Employer, the Secretary of State for Transport, any subsidiary of the Secretary of State and the Department for Transport

“Business Day”

a day that is not a Saturday, Sunday or public or bank holiday in England

“Business Hours”

9:00 am to 4:00 pm on a Business Day

“Change in Control”

occurs where:

- (i) Control of the relevant entity is obtained (whether directly or as a result of obtaining Control of one or more other persons) by any person (either alone or together with persons acting in concert with it, as such expression is defined in the Takeover Code) who did not, at the date of the Contract, hold Control (whether directly or as a result of having Control of one or more other persons) of the relevant entity; or
- (ii) a person who has Control (whether directly or as a result of having Control of one or more other persons) of the relevant entity at any time during the term of the Contract ceases to have Control (whether directly or as a result of having Control of one or more other persons) of the relevant entity

"Control"	the power (whether direct or indirect) to direct or cause the direction of the affairs of an entity, whether by means of holding shares, possessing voting power, exercising contractual powers or otherwise
"Commencement Date"	the date upon which the Contract is formed in accordance with Condition 2.1, or, if different, the date specified as the "Commencement Date" in the Package Order Special Conditions
"Confidential Information"	all information (whether written, oral, in electronic form or in any other media) of a confidential or proprietary nature that is disclosed by or on behalf of the Employer obtained by or made available to the Consultant or its representatives
"Contract"	the contract between the Employer and the Consultant as formed in accordance with Condition 2
"Contract Manager"	such official of the Employer, or other person, as the Employer shall from time to time appoint to act on its behalf for the purpose of managing the Contract, whose appointment and contact details shall be set out in the Package Order Special Conditions or as notified in writing by the Employer to the Consultant
"Consultant"	the person appointed by the Employer for the supply of the Goods and/or performance of the Services
"Consultant's Representative"	such competent person as the Consultant shall from time to time appoint to be its representative in relation to the performance of the 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 Consultant to the Employer
"Data Controller"	has the meaning set out in section 1 of the Data Protection Act 1998
"Data Processor"	has the meaning set out in section 1 of the Data Protection Act 1998
"Disputed Sum"	that part of an amount invoiced by the Consultant which is the subject of a bona fide dispute, as notified by the Employer to the Consultant under Condition 4.9
"EIR"	the Environmental Information Regulations 2004
"Employer"	the company named High Speed Two (HS2) Limited (company number 06791686) whose registered office is at Eland house, Bressenden Place, London SW1E 5DU
"Excluded Matters"	any amounts payable by the Consultant under any of

the indemnities referred to in Package Order Conditions 16.3, 20.4.2 and 24.1.1

"Expiry Date"

the date upon which all of the Services are complete and all of the Goods have been delivered, or, if any, the date specified as the "Contract End Date" in the Package Order Special Conditions

"FOIA"

the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or the Secretary of State or relevant Government Department in relation to such Act

"Goods"

the Goods to be supplied by the Consultant (if any) under the Contract as set out in the Package Order Special Conditions

"Information"

has the meaning given under section 84 of FOIA and/or under regulation 2(1) of the EIR

"Insolvent"

where the Consultant: (a) gives notice under section 84 Insolvency Act 1986 of, or proposes or passes a resolution for, its winding up or in the case of a limited liability partnership proposes or determines that it will be wound up; (b) has a winding up petition presented against it; (c) has a winding up order or a notice of striking off made in respect of it; (d) has an administration order or an application for an administration order made in respect of it or has a notice of appointment of an administrator or a notice of intention to appoint an administrator filed in respect of it at any court; (e) proposes, makes or is subject to (i) a company voluntary arrangement; (ii) a composition with its creditors generally; (iii) an application to a court of competent jurisdiction for protection from its creditors generally; (iv) a scheme of arrangement under Part 26 Companies Act 2006; (f) has a receiver or a provisional liquidator appointed over any of its assets, undertakings or income; (g) ceases to trade or appears, in the reasonable opinion of the Employer, to be likely to cease to trade; (h) is unable to pay its debts as they fall due; or the value of its assets are less than its liabilities, including its contingent and prospective liabilities; (i) is the subject of anything analogous to the foregoing under the laws of any applicable jurisdiction

"Key Personnel"

any person specified in the Package Order Special Conditions as such and any other person who has been notified to the Consultant as being, in the opinion of the Employer, fundamental to the performance of the Contract

"Package Order Conditions"	these Package Order Standard Conditions together with the Package Order Special Conditions
"Package Order Special Conditions"	if any, the Package Order Special Conditions (including the contract details and pricing schedule) contained in Section One of these Package Order Conditions
"Package Order Standard Conditions"	the standard terms and conditions for the purchase of goods and/or services contained in Section Two of these Package Order Conditions
"Personal Data"	has the meaning set out in section 1 of the Data Protection Act 1998
"Price"	the charges payable to the Consultant by the Employer under the Contract for the Goods and/or Services as set out in the Package Order Special Conditions, or, if none specified, then as set out in the Employer's order
"Premises"	any premises owned by or occupied by the Employer from time to time
"Processing" and "Process"	has the meaning set out in section 1 of the Data Protection Act 1998
"Request for Information"	a request for information or an apparent request under any relevant guidance on accessing Government Information, FOIA or the EIR
"Services"	means all services that the Consultant is required to carry out under the Contract including any ancillary services required for the supply of the Goods
"Sub-contractor"	shall, as the context may require, include any adviser, consultant, supplier or agent engaged by the Consultant to assist in the performance of the Contract
"TUPE"	the Transfer of Undertakings (Protection of Employment) Regulations 2006

1.2 In these Package Order Conditions:

- 1.2.1 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;
- 1.2.2 the headings are inserted for convenience only and shall not affect the interpretation of these Package Order Conditions;
- 1.2.3 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;

- 1.2.4 any words following the words “include”, “includes”, “including”, “in particular” or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them;
- 1.2.5 the rule known as the ejusdem generis rule will not apply and accordingly the meaning of general words introduced by the word “other” or a similar word or expression will not be restricted by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things;
- 1.2.6 any reference to:
 - 1.2.6.1 time of day is to London time;
 - 1.2.6.2 a day is to a period of 24 hours running from midnight to midnight;
 - 1.2.6.3 a month is to a calendar month, unless otherwise stated;
 - 1.2.6.4 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);
- 1.2.7 an obligation on a party to procure or ensure the performance or standing of another person will be construed as a primary obligation of that party; and
- 1.2.8 any obligation on a party not to do or omit to do anything includes an obligation not to allow (whether expressly or by a failure to take reasonable steps to prevent) that thing to be done or omitted to be done by any other person.

2 CONTRACT FORMATION AND DURATION

- 2.1 An order placed by the Employer constitutes an offer by the Employer to purchase Goods and/or Services from the Consultant on these Package Order Conditions and in accordance with the Contract. A contract for the supply of Goods and/or Services between the Consultant and the Employer will be formed when the Consultant has signed Section One of these Package Order Conditions, or if earlier, on commencement of the performance of the Services or delivery of the Goods.
- 2.2 The Contract comprises the only terms and conditions on which the Employer will purchase goods and/or services from the Consultant and will apply to the exclusion of all other terms and conditions including any terms and condition which the Consultant purports to apply under any quotation, acknowledgement, acceptance or confirmation of order, delivery note, invoice or similar document (whether or not such document is referred to in the Contract) and any terms and conditions which may otherwise be implied by trade, custom, practice or course of dealing.
- 2.3 The Contract shall comprise Section One (Package Order Special Conditions) and Section Two (Package Order Standard Conditions). To the extent of any conflict or inconsistency between such sections, this shall be resolved in the following order of precedence:
 - 2.3.1 Package Order Special Conditions;
 - 2.3.2 Package Order Standard Conditions.
- 2.4 Subject to any other rights of the Employer’s to terminate the Contract (howsoever arising), the Contract shall be in force from the Commencement Date until the Expiry Date or, where there is no Expiry Date, until the Consultant has completed the Services in accordance with the Contract.

- 2.5 The Consultant will comply with all Applicable Laws in performing its obligations under the Contract.
- 2.6 Each of the parties may by notice to the other request an alteration to the requirements of the Contract. In the event of any such alteration being agreed by both parties, payment under the Contract shall be subject to fair and reasonable adjustment to be agreed between the Employer and the Consultant and recorded in writing. The parties shall continue to act in accordance with the Contract until any such alteration and adjustment has been agreed in writing and signed by a duly authorised representative on behalf of each party.

3 PERFORMANCE OF THE SERVICES

- 3.1 The Consultant shall properly perform the Services in accordance with the Contract and shall ensure that it:
- 3.1.1 uses the degree of skill, care, prudence, supervision, diligence, foresight, quality control and quality management which would be adopted by a competent professional provider of the Services;
 - 3.1.2 uses appropriately qualified, trained and experienced personnel;
 - 3.1.3 fulfils all requirements set out in the Contract;
 - 3.1.4 conducts itself in a safe manner which is free from any unreasonable or avoidable risk to any person's health and well-being;
 - 3.1.5 in an economic and efficient manner;
 - 3.1.6 fully co-operates with the Employer's agents, representatives and contractors;
 - 3.1.7 ensures that it has and maintains all licences, permissions and consents required from time to time;
 - 3.1.8 complies with all health and safety and security policies that apply at any Premises, and all lawful and reasonable directions of the Employer; and
 - 3.1.9 not do or omit to do anything which may cause the Employer to lose any licence, permission or consent or to be in breach of any Applicable Law.
- 3.2 The Consultant shall perform the Services in accordance with the Package Order Special Conditions relating to performance of the Services, including performance dates.
- 3.3 The Consultant acknowledges that health and safety is paramount to the Employer's objectives and that the Services must be provided in compliance with the Contract and the Consultant shall manage and monitor performance of the Services accordingly. The Consultant shall inform the Contract Manager as soon as reasonably practicable if any of the requirements of the Contract are not being or cannot be performed in accordance with the Contract.
- 3.4 Unless otherwise agreed with the Employer, the Consultant shall provide all the necessary facilities, materials and any other equipment, and personnel of appropriate qualifications and experience to undertake the Services.
- 3.5 All Key Personnel and other personnel deployed on work relating to the Contract shall be appropriately qualified and competent and shall be acceptable to the Employer. The Consultant shall supervise and manage all such personnel properly.

- 3.6 The Consultant shall take all reasonable steps to avoid changes to the Key Personnel. The Consultant shall give at least one month's notice to the Contract Manager of any proposal to remove or replace Key Personnel and the Employer must agree any replacement in writing, save that the Consultant 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 If the Employer gives the Consultant notice that any person is to be removed from involvement in the Services, the Consultant shall take immediate steps to comply with that notice and to find a suitable alternative replacement. The decision of the Employer regarding the Consultant's personnel shall be final and conclusive.
- 3.8 The Consultant shall:
- 3.8.1 to the extent that it is able to do so in accordance with Applicable Law, give the Employer, 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 the Contract;
- 3.8.2 comply with any rules, regulations and any safety and security instructions notified by the Employer to the Consultant in writing, including completion of any additional security clearance procedures required by the Employer, and return of any passes required.
- 3.9 Unless otherwise agreed by the Employer, the Consultant shall not 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 the Employer.
- 3.10 The Consultant shall exercise due care and propriety when dealing with third parties in connection with the Contract and ensure that no commitments that might impose any obligations on the Employer are entered into (unless expressly authorised by the Employer) without the Employer's prior written consent.
- 3.11 Where, in the opinion of the Employer, the Consultant has failed to perform the whole or any part of the Services in accordance with the Contract, the Employer may:
- 3.11.1 give the Consultant a notice specifying that its performance falls short of the requirements of the Contract, or is otherwise unsatisfactory; and
- 3.11.2 suspend payments to the Consultant, in such amount as the Employer deems appropriate, until the Consultant has rectified the defective performance of the Services to the Employer's satisfaction.
- 3.12 Any notice served by the Employer pursuant to Condition 3.11.1 may require that the Consultant re-schedules and re-performs the Services to the Employer's satisfaction at its own expense, including where necessary, the correction or re-execution of any Services already carried out, and the Consultant shall comply with the requirements of such notice within such period as shall be specified by the Employer in the notice (or where no such period is specified, as soon as reasonably practicable).
- 3.13 Any notice served by the Employer pursuant to Package Order Conditions 3.11 and 3.12 shall be without prejudice to the Employer's rights under these Package Order Conditions or otherwise.

4 INVOICES AND PAYMENT

- 4.1 Subject to the Consultant performing its obligations in accordance with the terms of the Contract, the Employer will pay the Price to the Consultant in accordance with this Condition 4.
- 4.2 The Price will be inclusive of all costs and expenses incurred by the Consultant including all packaging, insurance, carriage and delivery costs, and costs relating to staff, facilities, equipment, materials.

- 4.3 Any sum payable under the Contract is exclusive of value added tax (and any other similar or equivalent taxes, duties, fees and levies imposed from time to time by any government or other authority) which will be payable in addition to that sum in the manner and at the rate prescribed by law from time to time, subject to receipt by the paying party of a valid value added tax invoice.
- 4.4 The Consultant shall be entitled to submit an invoice to the Employer following delivery of the Goods or within 28 days of the completion of the Services. The Consultant shall not be entitled to submit interim invoices for the Services prior to completion unless otherwise agreed by the Employer. All invoices shall quote the contract number and, where appropriate, the purchase order number.
- 4.5 Each invoice will be a valid value added tax invoice and will be accompanied by such records as the Employer may reasonably require including, but not limited to, time sheets, details of expenses incurred, invoices paid and any other documents which would enable the Employer to verify the information and the amounts referred to in that invoice. Invoices will be submitted electronically to accountspayable@hs2.org.uk
- 4.6 The Employer is committed to prompt payment and shall pay the Consultant within 30 days of receipt of a valid invoice, provided that that Goods have been delivered and/or the Services to which the invoice relates have been performed fully in accordance with the Contract. The Consultant shall provide to the Employer the name and address of its bank, the account name and number, the bank sort code and any other details requested by the Employer.
- 4.7 Notwithstanding any purported contrary appropriation by the Consultant, the Employer will be entitled, by giving written notice to the Consultant, to appropriate any payment by the Employer to any invoice issued by the Consultant.
- 4.8 No payment made by the Employer will constitute acceptance or approval by the Employer of the Goods or Services or otherwise prejudice any rights or remedies which the Employer may have against the Consultant including the right to recover any amount overpaid or wrongfully paid to the Consultant.
- 4.9 If the Employer, on bona fide grounds, disputes any part of an amount invoiced by the Consultant, the Employer may notify the Consultant in writing of such dispute giving details of the nature of the dispute and the amount that it claims should have been invoiced and:
- 4.9.1 the Employer will pay that part of the invoice which is not the Disputed Sum in accordance with Condition 4.6;
- 4.9.2 the Employer will be entitled to withhold payment of the Disputed Sum; and
- 4.9.3 following resolution of the dispute the Employer will, within 30 days, pay to the Consultant that part of the Disputed Sum (if any) as it is resolved is payable by the Employer.
- 4.10 For the avoidance of doubt, if the Employer fails to notify any dispute about the amount of an invoice to the Consultant in accordance with Condition 4.9, this will not constitute a waiver of the Employer's right to dispute the amount of that invoice.
- 4.11 If any sum payable under the Contract is not paid on or before the due date for payment the Consultant will be entitled to charge the Employer interest on that sum at 2% per annum above the base lending rate from time to time of the Bank of England from the due date until the date of payment (whether before or after judgment), such interest to accrue on a daily basis. Such interest will not be chargeable on any Disputed Sum, provided that if it is agreed or determined that part or all of the Disputed Sum is payable, interest will be chargeable on the relevant part of the Disputed Sum in accordance with this Condition 4.11 but from the date on which payment of that sum is due in accordance with Condition 4.9.3 rather than from the date on which payment of the original invoice which included that sum was originally due. The parties agree that

this Condition 4.11 is a substantial remedy for late payment of any sum payable under the Contract, for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.

- 4.12 The Employer will be entitled to set-off any liability which the Consultant has to it against any liability which it has to the Consultant, whether such liability is present or future, liquidated or unliquidated, under the Contract or any other contract between the parties or other cause of action.

5 DRAWINGS, SPECIFICATIONS, SOFTWARE, DESIGNS AND OTHER DATA

- 5.1 The final 'deliverable' version of anything which the Consultant produces in its performance of the Services including written reports, data, calculations, software, designs, drawings, specifications, maps and photographs completed or provided in connection with the Contract (each a "Deliverable") shall be delivered up to the Employer on completion (or, if sooner, termination) of the Services, subject to the retention of proper professional records. The Deliverables shall be supplied by the Consultant in an agreed format.
- 5.2 If the Contract is terminated by the Employer the provisions of Condition 5.1 shall apply to the working version of each Deliverable (a "Working Deliverable") that has not been completed as at the date of termination of the Contract. The Employer 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.

6 PRODUCTION AND RETENTION OF DOCUMENTATION

- 6.1 The Consultant shall produce such accounts, documents (including working documents) and records related to the Contract as the Employer, or the Contract Manager, may request at any time during the term of the Contract. Subject to the provisions of Condition 10, the Employer's right to request the production of documents shall not apply to the extent that production of the documents would cause the Consultant to breach confidentiality obligations to its other clients.
- 6.2 The Consultant shall retain and produce such accounts, documents (including working documents) and records related to the Contract as the Employer, or the Contract Manager, may request for a period of 6 years from the Expiry Date or termination of the Contract, or such longer period as may be agreed between the Employer and the Consultant in writing at or before the commencement of the Contract.
- 6.3 The Consultant shall afford such facilities as the Employer may reasonably require for its representatives to visit the Consultant's premises and examine the records held under this Condition 6. The right to these records shall not apply to the extent that an examination would jeopardise the confidentiality of information relating to the Consultant's other clients.
- 6.4 Subject to the provision of reasonable notice to the Consultant, and for the purpose of:
- 6.4.1 examining and certifying the Employer's accounts; or
- 6.4.2 any examination, pursuant to section 7(1) of the National Audit Act 1983, of the economy, efficiency and effectiveness with which the Employer 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 Consultant.
- 6.5 The Consultant 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.

- 6.6 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 Consultant.

7 MEETINGS AND REPORTS

- 7.1 The Consultant shall, upon receipt of reasonable notice, on Business Days attend all meetings arranged by the Employer for the discussion of matters connected with the Contract.
- 7.2 Without prejudice to any other requirement in the Contract, the Consultant shall provide such reports on the performance of the Contract as the Contract Manager may reasonably require.

8 CONFLICT OF INTEREST

- 8.1 It shall be the Consultant's responsibility to ensure that no conflict of interest arises in connection with the Services to be carried out under the Contract.
- 8.2 The Consultant will immediately notify and consult with the Employer in the event that any circumstances arise which give rise, or may give rise to a conflict of interest. The Employer shall be entitled to direct the Consultant to take reasonable steps to avoid such conflict of interest and the Consultant shall comply with such directions.
- 8.3 Without prejudice to the generality of the foregoing provisions of this Condition 8, the Consultant shall not, for any person (which includes the Consultant itself) other than the Employer:
- 8.3.1 perform work in respect of, or relating to; or
- 8.3.2 promote,
- any scheme, or any part of any scheme, either proposed or agreed, for the development of a high speed rail link anywhere in Great Britain.
- 8.4 A breach of this Condition 8 shall be deemed to be a material breach which cannot be remedied entitling the Employer to terminate the Contract under Condition 22.3.1.

9 ANTI-CORRUPTION

- 9.1 In this clause:
- 9.1.1 "Bribery Act" means the Bribery Act 2010;
- 9.1.2 "Prohibited Act" means any of the following:
- 9.1.2.1 to directly or indirectly offer, promise or give any person working for or engaged by the Employer a financial or other advantage to (i) induce that person to perform improperly a relevant function or activity or (ii) reward that person for improper performance of a relevant function or activity; or
- 9.1.2.2 to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract; or
- 9.1.2.3 committing any offence (i) under the Bribery Act; (ii) under legislation creating offences concerning fraudulent acts; (iii) at common law concerning fraudulent acts relating to the Contract or any other contract with the Employer; or (iv) defrauding, attempting to defraud or conspiring to defraud the Employer.

9.2 The Consultant:

- 9.2.1 shall not and shall procure that any of its employees, consultants, agents, or sub-contractors shall not commit a Prohibited Act in connection with the Contract;
- 9.2.2 warrants, represents and undertakes to the Employer that it is not aware of any financial or other advantage being given to any person working for or engaged by the Employer, or that an agreement has been reached to that effect, in connection with the execution of the Contract, excluding any arrangement of which full details have been disclosed in writing to the Employer before formation of the Contract.

9.3 The Consultant shall:

- 9.3.1 if requested, provide the Employer with any reasonable assistance to enable the Employer to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
 - 9.3.2 if so required by the Employer within 20 Business Days of the Commencement Date, and annually thereafter, certify to the Employer in writing compliance with this Condition 9 by the Consultant and all persons associated with it or other persons who are supplying goods or services in connection with the Contract. The Consultant shall provide such supporting evidence of compliance as the Employer may reasonably request.
- 9.4 The Consultant shall have and maintain an anti-bribery policy (which shall be disclosed to the Employer on request) to prevent it and any of its employees, consultants, agents or sub-contractors from committing a Prohibited Act and shall enforce it where appropriate.
- 9.5 If any breach of Condition 9.2 is suspected or known, the Consultant must notify the Employer immediately.
- 9.6 If the Consultant notifies the Employer that it suspects or knows that there may be a breach of Condition 9.2, the Consultant must respond promptly to the Employer's enquiries, co-operate with any investigation, and allow the Employer to audit books, records and any other relevant documentation. This obligation shall continue for three years following the expiry or termination of this Contract.
- 9.7 A breach of Condition 9.2 shall be deemed to be a material breach which is incapable of remedy.

10 FREEDOM OF INFORMATION

10.1 The Consultant acknowledges that:

- 10.1.1 the Employer is a public authority for the purposes of FOIA and EIR; and
- 10.1.2 public authorities have certain information disclosure requirements under the Act and Environmental Information Regulations.

10.2 The Consultant shall assist and co-operate with the Employer (at its own expense) to enable the Employer to comply with any relevant Requests for Information with which the Employer is obliged by FOIA or EIR to comply, within the time limits set out in Condition 10.3.

10.3 The Consultant shall and shall procure that its sub-contractors shall:

- 10.3.1 transfer any Request for Information to the Employer as soon as practicable after receipt and in any event within two Business Days of receiving it;

- 10.3.2 provide the Employer with a copy of all Information in its possession or power in the form that the Employer requires within five Business Days (or such other period as the Employer may specify) of the Employer requesting that Information; and
- 10.3.3 provide all necessary assistance as reasonably requested by the Employer to enable the Employer to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- 10.4 The Employer shall be responsible for determining at its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the EIR.
- 10.5 In no event shall the Consultant respond directly to a Request for Information unless expressly authorised to do so by the Employer.

11 CONFIDENTIALITY

- 11.1 Subject to Package Order Conditions 11.2 and 11.3 below, the Consultant shall not disclose to any third party, nor shall it publish, disseminate, or use, other than for the purposes of the Contract any Confidential Information without the prior written consent of the Employer.
- 11.2 Condition 11.1 shall not apply to any Confidential Information which:
 - 11.2.1 is or becomes public knowledge (otherwise than by breach of the Contract);
 - 11.2.2 is lawfully in the possession of the Consultant, without restriction as to its disclosure, before he receives it from the Employer; or
 - 11.2.3 is received by the Consultant from a third party who lawfully acquired it and who is under no obligation restricting its disclosure.
- 11.3 Condition 11.1 shall not prevent the Consultant from disclosing, without the Employer's consent, any Confidential Information to the extent that it is required to be disclosed by law or by any professional or regulatory obligation, provided that prior to disclosure the Consultant consults the Employer and takes full account of the Employer's views about whether (and, if so, the extent to which) the Confidential Information should be disclosed.
- 11.4 The Consultant shall take all reasonable steps to ensure the observance of the provisions of this Condition 11 by all of its employees, office holders, workers and Sub-contractors.
- 11.5 The provisions of this Condition 11 will survive any termination of the Contract.

12 PUBLICITY

The Consultant shall not, except with the prior written consent of the Employer, make any press announcements or publicise the Contract or its appointment by the Employer in any way unless expressly permitted by the provisions of Condition 11.

13 DISCRIMINATION

- 13.1 The Consultant shall, in its performance of the Contract:
 - 13.1.1 not unlawfully discriminate either directly or indirectly or by way of victimisation or harassment within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in age,

disability, gender reassignment, marriage and civil partnerships, pregnancy, paternity and maternity, race, religion or belief, sex or sexual orientation or otherwise) and shall take all reasonable steps to ensure that its employees, similarly do not unlawfully discriminate;

- 13.1.2 without prejudice to the generality of Condition 13.1.1, not unlawfully discriminate within the meaning and scope of the Equality Act 2010 and all other relevant legislation and any statutory modification or re-enactment of such legislation; and
- 13.1.3 where in connection with the Contract, the Consultant, its agents or Sub-contractors, or its staff are required to carry out work on Premises or alongside the Employer's employees on any other premises, comply with the Employer's own employment policy and codes of practice relating to equality and diversity in the workplace.
- 13.2 Should the Consultant or any of its employees, consultants, agents or sub-contractors breach any part of Condition 13.1.1, the Employer shall be entitled to terminate the Contract with immediate effect by notice in writing to the Consultant.

14 ASSIGNMENT AND SUB-CONTRACTORS

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

15 INSURANCE

- 15.1 The Consultant shall effect and maintain an adequate level of insurance cover in respect of all risks that may be incurred by it in the performance of the Contract.
- 15.2 The Consultant shall hold:
 - 15.2.1 employer's liability insurance in respect of its employees and of any Sub-contractors used by it in the performance of the Contract;
 - 15.2.2 those insurances at such levels as set out in the Package Order Special Conditions.
- 15.3 Where the Consultant sub-contracts part of the Contract, he shall procure that any Sub-contractor effects and maintains insurance to cover its liabilities under that sub-contract.
- 15.4 Where in compliance with Package Order Conditions 15.1 and/or 15.2 the Consultant effects professional indemnity insurance, the insurance policy and any renewal shall cover liabilities under the Contract from the commencement of the Services until 6 years after:
 - 15.4.1 the completion of the Services; or
 - 15.4.2 the termination of the Contractwhichever is the earlier.

- 15.5 When requested by the Employer the Consultant shall produce documentary evidence showing that the insurance required by this Condition 15 has been effected and is being maintained.
- 15.6 If, for whatever reason, the Consultant fails to effect and maintain the insurance required by this Condition 15, and/or fails to provide evidence requested under Condition 15.5 within the timescales stipulated by the Employer, the Employer may make alternative arrangements necessary to protect its interests and recover the costs thereof from the Consultant.
- 15.7 The terms of any insurance or the amount of cover shall not relieve the Consultant of any liabilities under the Contract.
- 15.8 The Consultant shall impose obligations on its Sub-contractors in terms substantially similar to those set out in this Condition 15, but this shall not relieve the Consultant of any of its obligations and liabilities under the Contract.

16 DATA PROTECTION

- 16.1 With respect to any Personal Data disclosed to the Consultant in connection with the Contract, the Consultant acknowledges that the Employer is the Data Controller and that the Consultant is the Data Processor.
- 16.2 In respect of any Personal Data processed by the Consultant pursuant to the Contract for and on behalf of the Employer, the Consultant warrants and undertakes that it will:
- 16.2.1 comply at all times with Applicable Law;
 - 16.2.2 only process the Personal Data:
 - 16.2.2.1 on behalf of the Employer to the extent necessary to provide the Goods and/or Services and then only in accordance with the Contract; and
 - 16.2.2.2 on instructions received from the Employer from time to time;
 - 16.2.3 promptly comply with any change of instructions from the Employer relating to:
 - 16.2.3.1 the Personal Data; and/or
 - 16.2.3.2 the Consultant's role as Data Processor
- as issued in accordance with the Contract and/or as otherwise required by Applicable Law;
- 16.2.4 put in place:
- 16.2.4.1 a level of security measures which ensures that only authorised personnel have access to the Personal Data and processing equipment to be used to process such Personal Data and that any such persons whom the Consultant authorises to have access to such Personal Data will comply with like obligations as are contained in this Condition 16.2.4 and will respect and maintain all due confidentiality; and
 - 16.2.4.2 a level of security measures which reflects the level of harm, damage and/or distress that might be suffered by a Data Subject to whom the Personal Data relates, as a result of a breach of this Condition 16.2.4;

- 16.2.5 promptly give notice to the Employer of any actual or suspected incident of unauthorised or accidental disclosure of or access to the Personal Data or other breach of Condition 16.2.4 made by any of the Consultant's staff or any other identified or unidentified third party (a "Security Breach");
- 16.2.6 promptly provide the Employer with all information in the Consultant's possession concerning any Security Breach;
- 16.2.7 not make any announcement or publish or otherwise authorise any broadcast of any notice or information about a Security Breach (a "Security Breach Notice") without the prior written consent of the Employer and prior written approval by the Employer of the content, media and timing of the Security Breach Notice;
- 16.2.8 hold all Personal Data to which the Contract relates physically and electronically separate from any other data held by the Consultant and ensure that such Personal Data is readily identifiable;
- 16.2.9 not process any or all of the Personal Data to which this Contract relates as a means to enhance or enrich any Personal Data to which this Contract does not relate (which includes any Personal Data in respect of which the Consultant or a customer of the Consultant is a Data Controller);
- 16.2.10 not make any copies of the Personal Data (whether in electronic or paper form) unless strictly necessary for the Services;
- 16.2.11 not cause or permit the Personal Data to be transferred outside the European Economic Area (as defined in the DPA) without the prior written consent of the Employer; and
- 16.2.12 not cause the Employer to be in breach of any part of Applicable Law relating to privacy or data protection, whether by reason of an act or omission by the Consultant or by its respective agents, directors, officers, employees and sub-contractors.
- 16.3 The Consultant will indemnify, keep indemnified and hold harmless the Employer in full and on demand from and against all liabilities (including any tax liability), direct, indirect and consequential losses, damages, claims, proceedings and legal costs (on an indemnity basis), judgments and costs (including costs of enforcement) and expenses which the Employer incurs or suffers directly or indirectly in any way whatsoever as a result of or arising out of or in connection with any breach of this Condition 16.
- 16.4 The Consultant will inform the Employer immediately if it receives any correspondence or request for information from any Regulatory Authority (including the Information Commissioner's Office ("ICO")) in relation to the Personal Data to which the Contract relates including correspondence or requests which relate to an ICO enforcement notice or information notice.

17 TRANSFER OF THE SERVICES AND TUPE

- 17.1 Where following the performance or termination of the Contract the Employer intends to acquire services similar to the Services either by performing them itself or by the appointment of a replacement contractor the Consultant (assuming it does not successfully tender for the work) shall use all reasonable endeavours to ensure that the transition is undertaken with the minimum of disruption to the Employer.
- 17.2 The Consultant shall co-operate fully during the transition period and provide full access to all non-confidential data, documents, manuals, working instructions, reports or other information which the Employer considers it necessary to see.
- 17.3 In addition to the legal obligation to provide "employee liability information" under regulation 11 of TUPE the Consultant will, in respect of any person at that time employed by it and assigned to the economic grouping of employees working on the Contract, provide the Employer with information equivalent to

employee liability information whenever requested to do so in writing by the Employer (provided that the Employer shall not make such a request more than once in any 6 month period).

18 OCCUPATION OF PREMISES

Where the Consultant requires access Premises, it shall be granted such access on a non-exclusive basis and only to the extent reasonably required for the purpose of performing its obligations under the Contract. Any utilities required by the Consultant shall be subject to recharge by the Employer.

19 ENVIRONMENTAL REQUIREMENTS

19.1 In performing the Contract the Consultant shall comply with the Employer'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.

19.2 Without prejudice to Condition 19.1, the Consultant will comply with the UK Government Procurement Service "Government Buying Standards for Sustainability" accessible at <http://sd.defra.gov.uk/advice/public/buying/standards/suppliers/>

20 INTELLECTUAL PROPERTY RIGHTS

20.1 In the absence of any specific provision for the allocation of intellectual property rights between the parties elsewhere in the Contract and subject to the prior rights (if any) of the Consultant, the Crown or any third parties, such intellectual property rights as are derived from or arise as a result of the performance of the Contract by the Consultant shall vest in the Employer, including any Deliverables, as such term is defined in Condition 5.1. The Consultant shall not use, supply, reproduce, publish, modify, adapt, enhance or otherwise deal with any materials in which such intellectual property rights exist without the Employer's prior written approval.

20.2 In this Condition 20 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.

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

20.4 The Consultant:

20.4.1 warrants that the use of any intellectual property rights which derive from or arise as a result of the performance of the Contract by the Consultant will not infringe any intellectual property rights owned by third parties; and

20.4.2 will indemnify, keep indemnified and hold harmless the Employer in full and on demand from and against all liabilities (including any tax liability), direct, indirect and consequential losses, damages, claims, proceedings and legal costs (on an indemnity basis), judgments and costs (including costs of enforcement) and expenses which the Employer incurs or suffers directly or indirectly in any way whatsoever as a result of any claim that such intellectual property rights infringe any intellectual property rights owned by third parties.

21 MERGER, TAKE-OVER OR CHANGE OF CONTROL

- 21.1 The Consultant shall obtain the Employer's written consent (which shall not be unreasonably withheld, but may be given subject to conditions) prior to any Change of Control of the Consultant, 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 Consultant becomes aware of the same. If such consent is not obtained when required by this Condition 21.1, the Employer has the right to terminate the Contract at its election as set out in Condition 22 (Termination of the Contract).
- 21.2 The Consultant shall inform the Employer of any change, or proposed change in the name of or status of the Consultant.

22 TERMINATION OF THE CONTRACT

- 22.1 The Consultant may not terminate the Contract.
- 22.2 The Employer may terminate the Contract by giving not less than 30 days' written notice to that effect to the Consultant at any time. If the Employer exercises its right of cancellation under this Condition 22.2 then the Employer's sole liability will be to pay to the Consultant fair and reasonable compensation for work-in-progress at the time of cancellation but such compensation will not include loss of profits (whether direct or indirect and whether actual or anticipated) or any indirect or consequential loss.
- 22.3 Without prejudice to any other power of termination, howsoever arising, the Employer may by notice in writing terminate the Contract with immediate effect and without liability where:
- 22.3.1 the Consultant is in material breach of the Contract which is incapable of remedy;
 - 22.3.2 the Consultant is in material breach of the Contract which can be remedied but fails to remedy that breach within the timescale stipulated by the Employer in a written notice served by the Employer on the Consultant setting out the breach and requiring it to be remedied
 - 22.3.3 the Consultant has failed to comply with a notice given under Condition 3.11;
 - 22.3.4 a Change of Control occurs without the prior approval of the Employer; or
 - 22.3.5 the Consultant is Insolvent.
- 22.4 For the avoidance of doubt and without prejudice to the generality of Condition 22.3.1, breach by the Consultant of any of Package Order Conditions 8 (Conflict of Interests), 9.2 (Anti-Corruption), 10 (Freedom of Information) and 34.2 (Inspection and Testing) of the Contract, shall be deemed to be material breaches of the Contract which are incapable of remedy.
- 22.5 The Consultant will give written notice to the Employer immediately upon becoming Insolvent.
- 30.2 In the event that, during the period of the Contract the Employer is dissolved or wound up, then the Contract shall terminate with immediate effect.

23 CONSEQUENCES OF TERMINATION

- 23.1 Upon the expiry of any notice period, or immediately upon termination without notice, the 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 Package Order Conditions 1,

3.11, 3.12, 3.13, 4, 5, 6, 9, 10, 11, 12, 15, 16, 17, 20.4, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32.6, 33.4 and 33.5 together with any other provision which expressly or impliedly will survive termination.

23.2 Where the Contract is terminated under Condition 22.3, the following provisions shall apply:

- 23.2.1 pending final ascertainment of such sums as are payable under the Contract any sum due or accruing from the Employer to the Consultant may be withheld or reduced by such amount as the Employer in either case considers reasonable and appropriate;
- 23.2.2 the Employer may make all arrangements which are in its view necessary to procure the orderly completion of the Employer's requirements under the Contract, including the letting of another contract or contracts. In the event that a different organisation is required to provide the Goods and/or Services, the Consultant shall co-operate in the transfer and with any arrangements notified to it by the Employer. The transfer shall be arranged between the Employer and the Consultant so as to reduce to a minimum any interruption in the provision of the Goods or performance of the Services;
- 23.2.3 where the total costs reasonably and properly incurred by the Employer by reason of any arrangements made under Condition 23.2.2 exceed the amount that would have been payable to the Consultant for the completion of the Services, the excess shall be recoverable from the Consultant and the Employer reserves the right to recover such excess under Condition 25.

24 LIABILITY AND INDEMNITY

24.1 The Consultant will indemnify, keep indemnified and hold harmless the Employer in full and on demand from and against:

- 24.1.1 death and/or personal injury;
- 24.1.2 damage or loss to property;
- 24.1.3 breach of statutory duty; or
- 24.1.4 third party claims

arising from the Consultant's performance of the Contract.

24.2 The Consultant's liability to the Employer for each and every claim arising under or in connection with the Contract, save for any of the Excluded Matters, is limited to the amount stated in the Package Order Special Conditions and applies in contract, tort (including negligence) or delict and otherwise to the extent permitted under English Law.

25 RECOVERY OF SUMS DUE

Whenever under the Contract any sums of money shall be recoverable from or payable by the Consultant to the Employer, that amount may be deducted from any sum then due, or which at any later time may become due, to the Consultant under the Contract or under any other contract with the Employer.

26 SERVICE OF NOTICES

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

- 26.1.1 delivery in person to the Consultant's Representative, when it shall be deemed served at the time the notice is delivered to the Consultant's Representative, or

- 26.1.2 sending it to the Consultant's Representative by first-class post, when it shall be deemed served on the second working day after posting; or
- 26.1.3 delivery in person to the Contract Manager, when it shall be deemed served at the time the notice is delivered to the Contract Manager, or
- 26.1.4 sending it to the Contract Manager by first-class post, when it shall be deemed served on the second working day after posting.

27 SEVERABILITY

If any provision of the 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 the Contract shall continue in full force and effect. In the event that an invalid, illegal or unenforceable condition is fundamental to the performance of the Contract, the Employer and the Consultant shall immediately commence negotiations in good faith to remedy the invalidity.

28 WAIVER

- 28.1 Any failure by the Employer or the Consultant to exercise any right or remedy shall not constitute a waiver of that right or remedy.
- 28.2 No waiver shall be effective unless it is communicated to the other party in writing.
- 28.3 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 the Contract.

29 RIGHTS OF THIRD PARTIES

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

30 DISPUTE RESOLUTION

- 30.1 The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Business Days of either party notifying the other of the dispute. If necessary such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of the Consultant and the Employer's Head of Procurement.
- 30.2 Nothing in this dispute resolution procedure shall prevent the parties from seeking from any court of the competent jurisdiction an interim order restraining the other party from doing any act or compelling the other party to do any act.
- 30.3 If the dispute cannot be resolved by the parties pursuant to Condition 30.1, the dispute shall be referred to mediation pursuant to the procedure set out in Condition 30.5 unless the Employer considers that the dispute is not suitable for resolution by mediation or the Consultant does not agree to mediation.
- 30.4 The performance of the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Consultant (and its employees, consultants, agents or sub-contractors) shall comply fully with the requirements of the Contract at all times.
- 30.5 The procedure for mediation is as follows:

- 30.5.1 a neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the parties. If they are unable to agree upon a Mediator within 10 Business Days after a nomination of a Mediator by one party to the other or if the Mediator agreed upon is unable or unwilling to act, either party shall within 10 Business Days from the date of the nomination or within 10 Business Days of discovering that the nominated Mediator is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("CEDR") to appoint a Mediator;
- 30.5.2 the parties shall within 10 Business Days of the appointment of the Mediator meet with the appointed Mediator in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure;
- 30.5.3 unless otherwise agreed in writing, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings (subject to Condition 30.5.4);
- 30.5.4 if the parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the parties once it is signed by their duly authorised representatives;
- 30.5.5 failing agreement, either of the parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both parties;
- 30.5.6 if the parties fail to reach agreement in the structured negotiations within 45 Business Days of the Mediator being appointed, or such longer period as may be agreed by the parties in writing, then any dispute or difference between them may be referred to the Courts in accordance with Condition 31.

31 LAW

The Contract shall be governed by and interpreted in accordance with English law and, subject to Condition 30, any dispute arising out of or in connection with it shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

PACKAGE ORDER CONDITIONS RELATING TO GOODS (WHERE APPLICABLE)

32 DELIVERY OF THE GOODS

- 32.1 The Consultant will deliver the Goods to the delivery address and on the date stated in the Employer's order or as otherwise agreed with the Employer, during Business Hours.
- 32.2 The Consultant will be responsible for off-loading the Goods from the delivery vehicle. Delivery of the Goods will occur when they arrive at the delivery address.
- 32.3 The Consultant may not deliver the Goods by separate instalments unless the Employer gives its prior written consent to this. If the Employer gives such consent, the Consultant will invoice the Price for each instalment separately in accordance with Condition 4 and the Employer will be entitled, at its sole discretion, to exercise its rights and remedies (whether under these Package Order Conditions or otherwise) in respect of the relevant instalment or the whole Contract.
- 32.4 The Consultant will ensure that:
- 32.4.1 the Goods are marked in accordance with any instructions given by the Employer and any Applicable Laws and are properly packed and secured so as to reach their destination in an undamaged condition;

- 32.4.2 the delivery is accompanied by a prominently displayed delivery note which shows the order number, date of order, type and quantity of Goods, code numbers of Goods (if applicable), any special storage instructions and, where delivery by instalments is permitted under Condition 32.3, the outstanding balance of Goods remaining to be delivered;
- 32.4.3 if the Consultant requires the Employer to return any packaging material for the Goods to the Consultant, that fact is clearly stated on the delivery note. Any such packaging material will only be returned to the Consultant at the cost of the Consultant;
- 32.4.4 on or before delivery, the Employer is provided in writing with a list by name and description of any harmful or potentially harmful properties or ingredients in the Goods supplied whether in use or otherwise and thereafter information concerning any changes in such properties or ingredients. The Employer will rely on the supply of such information from the Consultant in order to satisfy its own obligations under the Health and Safety at Work Act 1974 and any relevant Applicable Laws; and
- 32.4.5 on or before delivery the Employer is supplied with all operating and safety instructions, clearly displayed warning notices and such other information as may be necessary for the proper use, maintenance and repair of the Goods.
- 32.5 The Employer reserves the right to mark the Goods immediately on delivery. This is undertaken for the purposes of security and the Employer will not be deemed to have accepted the Goods by reason of this nor will the Consultant be entitled to raise an objection on this ground to any subsequent rejection of the Goods.
- 32.6 If the Consultant fails to deliver the Goods on the date specified in Condition 32.1, without prejudice to any other rights or remedies of the Employer (whether express or implied), the Employer may terminate the Contract immediately by giving written notice to that effect to the Consultant, in which case:
 - 32.6.1 the Consultant will refund any monies already paid by the Employer under the Contract in relation to the Goods that have not been delivered; and
 - 32.6.2 the Employer will be entitled to recover from the Consultant any and all liabilities, losses, damages, costs and expenses incurred by the Employer as a result of the Consultant's failure to supply Goods, including in obtaining substitute goods from another supplier.
- 32.7 Risk in and ownership of the Goods will pass to the Employer on delivery.

33 STANDARD OF THE GOODS

- 33.1 The quantity and description of the Goods will be as set out in any quotation or tender submitted by the Consultant, the Contract and the order placed by the Employer.
- 33.2 The Consultant will ensure that the Goods will:
 - 33.2.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
 - 33.2.2 be fit for any purpose held out by the Consultant or made known to the Consultant expressly or by implication and in this respect the Employer relies on the Consultant's skill and judgement;
 - 33.2.3 be free from defects in design, materials and workmanship;
 - 33.2.4 comply with all relevant Applicable Laws; and
 - 33.2.5 be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.

- 33.3 The Consultant will maintain and observe quality control and supplier quality assurance standards in respect of the Goods in accordance with the requirements of the Employer, relevant British Standards and the requirements of any relevant statutory and regulatory bodies.
- 33.4 Without prejudice to any other rights or remedies of the Employer (whether express or implied), if any Goods do not conform with any of the terms of Condition 33.1 or 33.2, the Employer may (whether or not the Goods have been accepted):
- 33.4.1 terminate the Contract immediately by giving written notice to that effect to the Consultant; or
- 33.4.2 require the Consultant, at the Employer's option, to promptly repair or replace the relevant Goods free of charge or to refund the Price for the relevant Goods,
- and, in either case, the Employer will be entitled to recover from the Consultant any and all liabilities, losses, damages, costs and expenses incurred by the Employer as a result of the non-conformity of the Goods, including in obtaining substitute goods from another supplier.
- 33.5 Condition 33.4 will apply to any repaired or replacement Goods supplied under Condition 33.4.2.

34 INSPECTION AND TESTING

- 34.1 The Employer will have the right to inspect and test the Goods at any time prior to delivery (or any planning, preliminary and preparatory work in relation thereto) at any reasonable time. The Consultant will permit the Employer, its officers, employees, agents and sub-contractors to enter upon the Consultant's premises for such purpose, and will procure permission for such persons to enter upon any relevant third party premises, to carry out such inspection and testing and will provide the Employer with all facilities reasonably required.
- 34.2 If, following inspection or testing under Condition 34.1, the Employer gives written notice to the Consultant that it is not satisfied that the Goods and/or the Services will comply with the Contract, the Consultant will take all steps necessary to ensure compliance. Any breach of this obligation by the Consultant shall be deemed to be a material breach which cannot be remedied entitling the Employer to terminate the Contract under Condition 22.3.1.
- 34.3 No inspection or testing under Condition 34.1 will reduce or otherwise affect the Consultant's obligations under the Contract.