

**SECTION ONE - PACKAGE ORDER SPECIAL CONDITIONS – LAND AND PROPERTY PROFESSIONAL SERVICES FRAMEWORK - Property & Asset Management (061\_17)**

S43(2)

## 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

**“Change in Control”**

occurs where:

- (a) 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
- (b) 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

<b>"Commencement Date"</b>	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
<b>"Control"</b>	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
<b>"Confidential Information"</b>	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
<b>"Contract"</b>	the contract between the Employer and the Consultant as formed in accordance with Condition 1.3
<b>"Contract Manager"</b>	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
<b>"Consultant"</b>	the person appointed by the Employer for the supply of the Goods and/or performance of the Services
<b>"Consultant Personnel"</b>	means all employees, agents or consultants of the Consultant and the Consultant's Sub-contractors from time to time
<b>"Consultant's Representative"</b>	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
<b>"Data Controller"</b>	has the meaning set out in section 1 of the Data Protection Act 1998
<b>"Data Processor"</b>	has the meaning set out in section 1 of the Data Protection Act 1998
<b>"Disputed Sum"</b>	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

<b>“EIR”</b>	the Environmental Information Regulations 2004
<b>“Employer”</b>	the company named High Speed Two (HS2) Limited (company number 06791686) whose registered office is at Eland house, Bressenden Place, London SW1E 5DU
<b>“Excluded Matters”</b>	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
<b>“Expiry Date”</b>	the date upon which all of the Services are complete and all of the Goods (if any) have been delivered, or, if any, the date specified as the “Contract End Date” in the Package Order Special Conditions
<b>“FOIA”</b>	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
<b>“Goods”</b>	the Goods to be supplied by the Consultant (if any) under the Contract
<b>“Information”</b>	has the meaning given under section 84 of FOIA and/or under regulation 2(1) of the EIR
<b>“Insolvent”</b>	<p>where the Consultant:</p> <ul style="list-style-type: none"> <li>(c) 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;</li> <li>(d) has a winding up petition presented against it;</li> <li>(e) has a winding up order or a notice of striking off made in respect of it;</li> <li>(f) 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 and administrator filed in respect of it at any court;</li> </ul>

- (g) 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;
- (h) has a receiver or a provisional liquidator appointed over any of its assets, undertakings or income;
- (i) ceases to trade or appears, in the reasonable opinion of the Employer, to be likely to cease to trade;
- (j) 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;
- (k) 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”**

the written order placed by the Employer for provision of the Services

**“Package Order Conditions”**

these Package Order Standard Conditions together with the Package Order Special Conditions

**“Package Order Special Conditions”**

the Package Order Special Conditions (including the contract details and pricing schedule) contained within a Package Order

**“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
<b>"Premises"</b>	any premises owned by or occupied by the Employer from time to time
<b>"Processing" and "Process"</b>	has the meaning set out in section 1 of the Data Protection Act 1998
<b>"Request for Information"</b>	a request for information or an apparent request under any relevant guidance on accessing Government Information, FOIA or the EIR
<b>"Services"</b>	means the services that the Consultant is required to carry out under the Contract
<b>"Sub-contractor"</b>	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
<b>"TUPE"</b>	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.

- 1.3 The Consultant shall perform its obligations under the Contract for the benefit of each of the Beneficiaries. The parties acknowledge that the Beneficiaries shall have the right to enforce the Contract.

## 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 the Package Order, 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 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 performs the Contract 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 provisions in the Package Order 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 any applicable health and safety



legislation. The Consultant shall ensure such compliance and 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. To the extent that any additional expenses are claimed by the Consultant, these shall only be reimbursed by the Employer where they are in line with the Employer's "Contract Expense Policy", a copy of which is available on request.
- 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](mailto: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.
- 14.4 The Consultant, within 14 days of the Employer's request (not to be made after the later of the Expiry Date or the Contract End Date) shall use his reasonable endeavours to procure that each Sub-contractor named or identified in the Employer's request duly execute and deliver to the Employer a deed of warranty in the form attached at Annex 1 of the Contract in favour of the Employer.

#### 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 public liability insurance; and
  - 15.2.3 professional indemnity insurance with a minimum limit of indemnity as follows:  
  
Lot 3: £1,000,000 (one million pounds);
- 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 Contract,  
whichever 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.
- 22.6 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 £10,000,000 (ten million pounds) for Contracts under Lots 2 and 4, and £1,000,000 (one million pounds) for Contracts under Lot 3, 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**

Save as provided in Condition 1.3, the parties do not intend that any term of this Agreement will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person.

**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 6, 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, between 9.00 am and 4.00 pm on a Business Day.
- 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.

## 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

**“Change in Control”**

occurs where:

- (a) 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
- (b) 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

<b>"Commencement Date"</b>	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
<b>"Control"</b>	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
<b>"Confidential Information"</b>	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
<b>"Contract"</b>	the contract between the Employer and the Consultant as formed in accordance with Condition 1.3
<b>"Contract Manager"</b>	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
<b>"Consultant"</b>	the person appointed by the Employer for the supply of the Goods and/or performance of the Services
<b>"Consultant Personnel"</b>	means all employees, agents or consultants of the Consultant and the Consultant's Sub-contractors from time to time
<b>"Consultant's Representative"</b>	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
<b>"Data Controller"</b>	has the meaning set out in section 1 of the Data Protection Act 1998
<b>"Data Processor"</b>	has the meaning set out in section 1 of the Data Protection Act 1998
<b>"Disputed Sum"</b>	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

<b>“EIR”</b>	the Environmental Information Regulations 2004
<b>“Employer”</b>	the company named High Speed Two (HS2) Limited (company number 06791686) whose registered office is at Eland house, Bressenden Place, London SW1E 5DU
<b>“Excluded Matters”</b>	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
<b>“Expiry Date”</b>	the date upon which all of the Services are complete and all of the Goods (if any) have been delivered, or, if any, the date specified as the “Contract End Date” in the Package Order Special Conditions
<b>“FOIA”</b>	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
<b>“Goods”</b>	the Goods to be supplied by the Consultant (if any) under the Contract
<b>“Information”</b>	has the meaning given under section 84 of FOIA and/or under regulation 2(1) of the EIR
<b>“Insolvent”</b>	<p>where the Consultant:</p> <ul style="list-style-type: none"> <li>(c) 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;</li> <li>(d) has a winding up petition presented against it;</li> <li>(e) has a winding up order or a notice of striking off made in respect of it;</li> <li>(f) 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 and administrator filed in respect of it at any court;</li> </ul>

- (g) 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;
- (h) has a receiver or a provisional liquidator appointed over any of its assets, undertakings or income;
- (i) ceases to trade or appears, in the reasonable opinion of the Employer, to be likely to cease to trade;
- (j) 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;
- (k) 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”**

the written order placed by the Employer for provision of the Services

**“Package Order Conditions”**

these Package Order Standard Conditions together with the Package Order Special Conditions

**“Package Order Special Conditions”**

the Package Order Special Conditions (including the contract details and pricing schedule) contained within a Package Order

**“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
<b>"Premises"</b>	any premises owned by or occupied by the Employer from time to time
<b>"Processing" and "Process"</b>	has the meaning set out in section 1 of the Data Protection Act 1998
<b>"Request for Information"</b>	a request for information or an apparent request under any relevant guidance on accessing Government Information, FOIA or the EIR
<b>"Services"</b>	means the services that the Consultant is required to carry out under the Contract
<b>"Sub-contractor"</b>	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
<b>"TUPE"</b>	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.

- 1.3 The Consultant shall perform its obligations under the Contract for the benefit of each of the Beneficiaries. The parties acknowledge that the Beneficiaries shall have the right to enforce the Contract.

## 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 the Package Order, 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 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 performs the Contract 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 provisions in the Package Order 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 any applicable health and safety

legislation. The Consultant shall ensure such compliance and 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. To the extent that any additional expenses are claimed by the Consultant, these shall only be reimbursed by the Employer where they are in line with the Employer's "Contract Expense Policy", a copy of which is available on request.
- 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](mailto: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.
- 14.4 The Consultant, within 14 days of the Employer's request (not to be made after the later of the Expiry Date or the Contract End Date) shall use his reasonable endeavours to procure that each Sub-contractor named or identified in the Employer's request duly execute and deliver to the Employer a deed of warranty in the form attached at Annex 1 of the Contract in favour of the Employer.

#### 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 public liability insurance; and
  - 15.2.3 professional indemnity insurance with a minimum limit of indemnity as follows:  
  
Lot 3: £1,000,000 (one million pounds);
- 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 Contract,  
whichever 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.
- 22.6 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 £10,000,000 (ten million pounds) for Contracts under Lots 2 and 4, and £1,000,000 (one million pounds) for Contracts under Lot 3, 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**

Save as provided in Condition 1.3, the parties do not intend that any term of this Agreement will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person.

**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 0, 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, between 9.00 am and 4.00 pm on a Business Day.
- 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.



**Appendix A –**  
**Property Management Services**  
**Management Services**



## Appendix A –Management services

The following table sets out those services required by the employer in delivery of the property and asset management services.

- General Management
- Property Management
- Financial Management
- Service Management
- Asset Management
- Performance Management

These services are to be covered within the Consultant's overheads on the fees set down in the commercial submission and not to be charged separately.

If the estate falls below 100 lettable properties then the Consultant can charge for the Management Services.



	ITEM	DETAILED SERVICE REQUIREMENTS	Covered within Fee structure
1.1	Leadership & Management	<p>i) The Consultant will provide and manage the services as described in this specification, any variation to the Services may only be delivered with prior consent of the Employer and in accordance with the Employer's contract variation process.</p> <p>ii) The Consultant is to provide a single point of leadership and support to the Employer and take ownership and full responsibility for the provision of the Services to the Employer.</p> <p>iii) The Consultant lead or his/her representative is required to provide appropriate attendance at the Employer's relevant governing and managing committees that relate to this Contract.</p>	YES
1.2	Business Planning	<p>i) The Consultant is required to prepare a short annual business plan setting out the tasks to be carried out and the projected financial performance of the portfolio under management. The Consultant must use enough competent and skilled staff to deliver the relevant components of the business plan accurately and promptly in line with the Employer's business-planning timetable. When the Employer has approved the business plan, it will be form the mandate for activity to be undertaken and the financial performance targeted for that financial year.</p> <p>ii) The business plan must contain the following parts, or any other parts the Employer reasonably requires:</p> <ul style="list-style-type: none"> <li>• Key activities to be delivered in the subsequent 12-month period.</li> <li>• Prepare budgets, capturing landlord's obligations for each lease in the coming year;</li> <li>• Proposals for any activity to be carried out during the coming year outside the scope of this Contract; and</li> <li>• A tenant service plan, including details of a meetings programme with tenants for consideration and approval by the Employer.</li> </ul>	YES

1.3	Operational Effectiveness	<p>The Consultant will:</p> <ul style="list-style-type: none"> <li>i) Prepare and issue a Transition Plan for Employer approval within 2 weeks of contract start. The Transition Plan will set out in detail the actions to be progressed over the first three months of the Contract as well as the approach to managing the Services, resource plan, programme plan, performance management and reporting during the programme timeframe.</li> <li>ii) Co-ordinate, procure, manage and provide the Employer with the full scope of Services to meet the service requirements in accordance with legislative requirements and good practice, and quickly resolve any issues arising from service delivery.</li> <li>iii) Optimise the provision and maximise the performance of the Services delivered during the contract period, whilst focussing on meeting the Employer's aims and objectives from this Contract.</li> <li>iv) Work in close co-operation with the Employer to ensure that the interfaces and interdependencies with the other key suppliers are clearly defined, understood and managed.</li> <li>v) Work with your employees and suppliers, as appropriate, to drive out efficiencies and ensure that the Employer is receiving best value for money at all times.</li> <li>vi) Ensure that the Services delivered comply with the Employer's policies, guidance and standards.</li> <li>vii) Ensure the Employer remains compliant with all relevant legislation and any relevant planning or other restrictions and requirements related to the delivery of the Services.</li> <li>viii) Ensure only competent employees operate at the Employer's properties or in respect of the delivery of Services to the Employer.</li> <li>ix) Co-operate with all internal Employer resources and its nominated contractors and advisers, as may be appointed from time to time.</li> </ul>	YES
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	ITEM	DETAILED SERVICE REQUIREMENTS	Covered within Fee structure
		<p>x) Comply with good employment practices including worker insurance, working environment, respect for individual and equal opportunities and ensure your appointed sub-contractors do the same.</p>	
1.4	Staffing	<p>i) As part of operating an effective approach to employee management, the Consultant will:</p> <ul style="list-style-type: none"> <li>• Facilitate effective communication between the Employer, its employees or representatives and the Consultant's employees and sub-contractors;</li> <li>• Optimise the time the Consultant can provide in dealing with Tenants or their representatives;</li> <li>• Enable the Consultants' staff to be empowered to make appropriate decisions at a site level;</li> <li>• Minimise the bureaucracy involved in dealing with issues and decisions at the service delivery level;</li> <li>• Ensure all Consultants' managers, contractors and consultants have a good understanding of the scope of the Contract and are kept up to date with any variations or developments;</li> </ul> <p>Identify and implement opportunities to multi-skill employees in order to drive out efficiencies and deliver value for money to the Employer.</p>	YES

	ITEM	DETAILED SERVICE REQUIREMENTS	Covered within Fee structure
1.5	Systems & Information	<p>The Consultant will:</p> <ul style="list-style-type: none"> <li>i) Comply with the Employer's guidelines with regard to the sharing, storing and management of Employer's information and documents, and ensure there is agreement with the Employer on the definition of any information standards relating to the services provided, as appropriate, such as RIBA, RICS or other professional recognised standards.</li> <li>ii) Host effective systems to support communication between the Consultant and the Employer, or their representatives, and the transference of data in a format compatible with Employer's systems.</li> <li>iii) Ensure all systems storing or processing Employer information operated by the Consultant comply with Employer policies. Where a system cannot be made compliant the Consultant must request a dispensation for these systems which the Employer may determine at its discretion.</li> <li>iv) Ensure that all management information generated and held in the system is accurate and kept up to date.</li> <li>v) Be responsible for supplying and maintaining all systems related to the provision of the Services at its cost.</li> <li>vi) At the end of the Contract, ensure that all data and information is handed back to the Employer in a usable form. All data shared and developed during the Term of the Contract will remain the property of the Employer.</li> <li>vii) Ensure any issues with data transfer are resolved within reasonable time and does not inconvenience or adversely impact the Employer's business.</li> </ul>	YES

1.6	Monitoring & Reporting	<ul style="list-style-type: none"> <li>i) The Consultant will ensure reporting is responsive, effective, flexible to change, and supports the governance structure put in place to manage the Contract and any subsequent variations. The scope of the reporting requirements includes, but is not limited to, the reports required for the Services in the Contract. The exact detail of the content, format and distribution of the respective reports may vary over time and are to be agreed with the Employer. Any variations to the scope, format, content and distribution of reports should not incur any additional costs to the Employer and be in accordance with good industry practice.</li> <li>ii) The Consultant must report on any matters of a sensitive nature, or by exception where income and expenditure is inconsistent with the relevant business plan. The Consultant should inform the Employer of any significant matters within 24 hours of occurrence.</li> <li>iii) The Consultant will co-operate fully with the Employer by providing attendance, support and relevant information to enable the Employer or its appointed agent to undertake any monitoring or auditing activities relating to the Services within this Contract.</li> <li>iv) The Consultant should put records of lease renewals, rent reviews, service charge budgets, energy performance certificates and other significant actions on the Employer's system within 10 working days of any changes. The Consultant will produce a Property Activity Report every quarter for the Quarterly Employer/Consultant Review meeting. This will review the current and future lease events including matters of a sensitive nature or by exception and where income / expenditure is inconsistent with agreed business plan, projects under management, property inspections, major arrears and performance against KPIs. Review lease events (rent reviews, lease renewals, vacant units) breaks, sensitive matters including litigation, top 20 arrears and service charge, customer service action plan and exit interviews, contract management information. Major works, dilapidations, summary of budgets and reconciliation, top rent and top arrears.</li> <li>v) The Consultant will produce a Finance Summary Report once a month. This will report any financial issues, including review of reforecast and budget variance, suspense account, rent accounting. Last revenue reforecast and actual v budget variance, suspect account listing.</li> </ul>	YES
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	ITEM	DETAILED SERVICE REQUIREMENTS	Covered within Fee structure
		<p>Aged debtors, un-invoiced void liabilities, un-invoiced inclusive and capped liabilities, balancing charges, non-recoverable expenditure, VAT return.</p> <p>vi) The Consultant will produce a Health &amp; Safety Report &amp; risk register every quarter for the Quarterly Employer/Consultant Review Meeting, including issues relating to overall management of H&amp;S and maintenance of the monitoring system.</p>	
1.7	Routine Legal Support	<p>i) The Consultant must give the Employer's solicitors all necessary and appropriate instructions to enable the legal advisor to carry out all appropriate routine legal work (i.e. not associated with Asset Management Services as described below) that may arise during the period of a tenancy, including assignments, licenses for alterations, and managing the exit of any leases including the dilapidations process.</p> <p>ii) The Consultant should get Employer's permission in writing before giving instructions to solicitors relating to licenses to assign or underlet, or before the commencement of non-routine or sensitive litigation.</p> <p>iii) When requesting permission, the reasons for the legal action and expected costs must be clearly set out. A written report of all non-routine or sensitive litigation and on all other matters where the Employer may not be able to recover legal costs should be produced and provided to the Employer.</p>	YES



1.8	Health & Safety Management	<p>The Employer employs independent consultants that advise HS2 Ltd on health, safety and compliance matters. The Consultant is required to:</p> <ul style="list-style-type: none"> <li>i) Liaise with the Employer's appointed Health &amp; Safety (H&amp;S) adviser as appropriate and is responsible for the management and delivery of any changes that are required to ensure the Employer remains legally compliant.</li> <li>ii) Adhere to the Employer's Health &amp; Safety policy at all times and report on matters relating to the buildings under management.</li> <li>iii) Manage all health and safety issues and ensuring the Employer meets all its obligations relating to health and safety.</li> <li>iv) Manage and maintain all appropriate Fire, Health &amp; Safety procedures at the Properties, arranging appropriate and regular risk assessments and ensuring all the Properties are compliant with the statutory regulations.</li> <li>v) Ensure a suitable investigation is carried out in response to any accidents, incidents or environmental incident at any of the Properties, and that the findings are communicated to the Employer in a timely manner. For any serious or major incident the Consultant must inform the Employer within 24 hours. The Consultant must also report any 'near-miss' incidents or accidents.</li> <li>vi) Ensure that all contractors and suppliers appointed to carry out work at the Properties, on behalf of the Consultant, are competent and have an effective health, safety and environmental management systems relevant to the work involved. The Consultant must review these systems regularly and make sure any necessary controls are implemented at site level.</li> <li>vii) Ensure, so far as is reasonably practicable, that all contracts placed on behalf of the Employer comply with all statutory requirements relating to the management of the Properties and staff, including Health &amp; Safety at Work and Fire Safety Acts.</li> <li>viii) Ensure that all assessments of risks to the property are carried out and formally reviewed at least once every 12 months, and make any necessary changes on-site within agreed timescales.</li> <li>ix) Inform the Employer of any intended works to the Properties (including service charge works) and ensure all relevant obligations are met and in accordance with relevant industry regulations. The Consultant must provide assurance that the contractor meets the standards required. The Consultant must make sure the Employer is fully aware of the extent of the</li> </ul>	YES
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	ITEM	DETAILED SERVICE REQUIREMENTS	Covered within Fee structure
		<p>proposed works and have sufficient understanding of the arrangements in place to control the activity, including a pre-start inspection of the site.</p> <p><b>For the avoidance of doubt</b>, the costs for the management of H&amp;S items provided by the Consultant, as described above, are to be included within the overall management fee. The costs of the works required to remedy any areas of non-compliance or poor performance are an additional item to be funded by the Employer.</p>	
1.9	Performance Management	<ul style="list-style-type: none"> <li>i) The Consultant will undertake accurate and effective 'self-monitoring' of the services provided to ensure the scope and standards of service are being met.</li> <li>ii) The Consultant will adopt the Performance Management System as described in this Services Specification and provide all information and reports as required and in accordance with the defined timescales.</li> <li>iii) The Consultant must provide consistent and continuous improvements to service delivery and performance management under this Contract. Effective controls, processes and IT systems need to be in place to monitor and manage the performance in providing the services, the quality of the services, budgets, health and safety and risk.</li> <li>iv) The Employer requires evidence of performance trends on a monthly basis as part of the overall performance reporting process.</li> </ul>	YES



	ITEM	DETAILED SERVICE REQUIREMENTS	Covered within Fee structure
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2.1	Tenant Liaison	<p>The Consultant will:</p> <ul style="list-style-type: none"> <li>i) Provide all tenants within 5 working days of the Contract Start Date, all relevant contact details to ensure the tenant(s) are clear on how and whom to contact should a problem arise. Similarly, within 5 working days of the Contract Start Date ensure all current tenant contact details are correct and, thereafter, accurately recorded on an on-going basis and reviewed every quarter to ensure all changes have been captured.</li> <li>ii) Oversee the day to day management of the properties and supervise all property and tenant related issues. This will include ensuring tenants are compliant with lease covenants, reporting on all matters requiring Employer involvement, keeping the Employer informed of new activities and problems affecting the property and handling miscellaneous enquiries related to the property.</li> <li>iii) Answer and respond to all queries from tenant(s) relating to the management of the property. This may include, responding to pre-contract enquiries, producing regular property related reports, attending regular Employer and tenant meetings and responding to correspondence directly or drafting responses where required.</li> <li>iv) Respond to all general enquiries, reports, complaints and other correspondence from the tenants or other occupiers of the Properties and from solicitors and other professional representatives in connection with matters arising from day to day management. At all times, the Consultant must endeavour to maintain good relationships with tenants and respond to any queries or complaints promptly (within 3 working days) and effectively aim to minimise disruption. All tenant complaints are to be reported to the Employer within 5 working days of receipt by the Consultant. A monthly report of all complaints, the response and outcome must be provided to the Employer at the end of each calendar month.</li> <li>v) Undertake all tenant meetings in accordance with the tenant liaison programme, approved as part of the business planning process. In Year 1 of the Contract, the programme is to be developed and issued to the Employer within one month of the Contract Start Date.</li> </ul>	YES
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	ITEM	DETAILED SERVICE REQUIREMENTS	Covered within Fee structure
		<p>vi) Oversee the mobilisation of all new leases, ensuring all property data is updated within 5 working days of the contracts being signed.</p> <p>vii) Upon lease terminations and tenants exiting leases, carry out a vacant property exit inspection, assessing the condition of the property, agree dilapidations, ensure the balance of all payments as stipulated in the lease or other agreements have been settled and return the rental deposit within the stipulated timeframe.</p>	

	ITEM	DETAILED SERVICE REQUIREMENTS	Covered within Fee structure
2.2	Data Management	<p>The Consultant will:</p> <ul style="list-style-type: none"> <li>i) Maintain full and accurate records of the Properties including copies of all relevant correspondence and documents relating to the Properties, as supplied by the Employer or their solicitors and the maintenance of file records of all activities and correspondence with tenants, contractors, suppliers, local and statutory authorities and others in relation to the properties. Ensure a full and up-to-date, audit-proof record of correspondence at all times.</li> <li>ii) Maintain the Employer's database of tenants lease terms, and forthcoming rent review dates, options, lease expiries and any other significant lease events.</li> <li>iii) Report at the end of each calendar month on forthcoming events and deadlines over the subsequent 3 months and actions required. Notwithstanding these timescales the Employer to be given a minimum of 3 months notice of any event requiring Employer decision such as servicing a notice to vacate.</li> <li>iv) As appropriate, ensure all new lease details are entered correctly on the Employer's system and within 10 working days of contracts being exchanged on the Employer's property management system. Any leases which are entered and recorded as draft or provisional should be marked as final within five working days of receiving the completed lease.</li> <li>v) As appropriate, ensure all details of rent free periods, step rental agreements, rental concessions and all rent review provisions should be accurately and promptly recorded and updated on the relevant property management system.</li> </ul>	YES

	ITEM	DETAILED SERVICE REQUIREMENTS	Covered within Fee structure
2.3	Protecting Landlord interest	The Consultant will carry out every 12 calendar months, as a minimum, or in accordance with the terms of a lease or as agreed within the business plan, programmed property inspections to: ensure compliance with lease covenants; identify encroachments; and report when necessary on the state of repair, decoration, use and other relevant matters including attending to routine repair and maintenance works. Property inspection reports should be completed and status reports delivered within [10] working days at of completing the inspection report.	YES
2.4	Void Management	At least three months, where possible, before a property becomes vacant, the Consultant must send a formal, written management plan to the Employer with a proposal for the future management and occupation of the relevant property. The Consultant will continue to be responsible for providing any services necessary to protect a vacant property, unless the Employer specifies otherwise. The associated service charges for vacant premises will be borne by the Employer.	YES

### 3 FINANCIAL MANAGEMENT



	ITEM	DETAILED SERVICE REQUIREMENTS	Covered within Fee structure
3.1	Rent, & Rental Deposits	<p>The Consultant will:</p> <ul style="list-style-type: none"> <li>i) Ensure all rents and other charges are paid promptly and in accordance with the provisions of the respective leases and any subsequent variations or agreements.</li> <li>ii) In the event of non-payment of rent or other monies, make contact with all respective tenants and determine the issue and when the Employer can expect full payment.</li> <li>iii) Retain all monies collected in an allocated Employer account and to place all Employer monies with a reputable banks which is authorised by the FSA.</li> <li>iv) Pay into the Employer's bank account, on a monthly basis all amounts which have been collected having deducted monies to cover the payment of service charge, insurance premiums, minor redecoration works, and any other monies which are due and with the agreement of the Employer.</li> <li>v) Ensure the prompt collection of all rental deposits and warrant the recording of details of all rent deposits on the appropriate property management system (within 5 days of receipt of rental deposit.) On receipt of a customer deposit take responsibility for maintaining the required segregation and records in accordance with market practice and report to the Employer's finance department on a monthly basis details of customer deposits held.</li> <li>vi) Advise tenants promptly of any changes to their existing standing orders, including, but not limited to, change of bank account details.</li> </ul>	YES

	ITEM	DETAILED SERVICE REQUIREMENTS	Covered within Fee structure
3.2	Management of Arrears	<p>The Consultant will:</p> <ul style="list-style-type: none"> <li>i) Notify the Employer of all non-payments on a monthly basis with a clear action plan on how any outstanding rental arrears will be recovered. Monitor and report on all corresponding actions on a weekly basis or until such a time as rents have been paid.</li> <li>ii) Ensure accurate calculation and collection of interest on late payment of monies in accordance with the lease terms or any other agreements made at the Employers discretion.</li> <li>iii) Appoint and oversee the instruction and proceedings of certified bailiffs, solicitors or other methods of recovery of any arrears of rent, service charge, insurance premiums or any other monies due, in accordance with lease terms or specific Employer instructions.</li> <li>iv) Arrange the payment for rates and other periodical outgoings and disbursements arising in relation to the common parts of the Property or such other parts that are the responsibility of the Employer, or are vacant.</li> </ul>	YES
3.3	Insurance	The Consultant will comply with the Employer's requirements for obtaining insurance and recovering insurance payments from tenants in the event that the Employer decides to insure its property portfolio	YES

	ITEM	DETAILED SERVICE REQUIREMENTS	Covered within Fee structure
3.4	Budget	<p>The Consultant will:</p> <ul style="list-style-type: none"> <li>i) Provide key input and advice in relation to the preparation of capital and revenue budget for each financial year. (See section 12.2 of Invitation to Quote)</li> <li>ii) Monitor budgets and forecasts of income and expenditure in accordance with Employer guidelines and report on any variance in accordance with an approach to be agreed with the Employer.</li> </ul>	YES
3.5	Regulation	<ul style="list-style-type: none"> <li>i) The Consultant will ensure all financial management is fully compliant with the Members' Accounts Regulations of the Royal Institution of Chartered Surveyors (RICS) and that the management of any service charges complies with the latest RICS / BPF Code of Practice, subject to the terms of the leases.</li> </ul>	YES

3.6	Service Charge	<p>The Consultant will:</p> <ul style="list-style-type: none"> <li>i) Manage the service charges of all relevant properties in line with statutory regulations and complies with the latest RICS Code of Practice.</li> <li>ii) Follow best practice and consider value for money, when awarding contracts for services, including those paid for through a service charge.</li> <li>iii) Prepare annual budgets for service charge costs, amending 'on-account demands' to tenants as necessary, and tenants 'on-expenditure proposals' prior to and during each service charge year as appropriate.</li> <li>iv) Ensure that service charge budgets are promptly distributed to tenants, along with explanatory notes and at least two months before the start of each service charge year.</li> <li>v) Ensure that within [three] months of the end of the financial year tenants receive a full reconciliation of the previous years' service charge budget.</li> <li>vi) Ensure that tenants receive a half year service charge statement, showing a reforecast for the full year identifying any major variances. If there are no major variances, this must be clearly stated.</li> <li>vii) Update the Employer of any irrecoverable service charge costs where a property is vacant or where an agreement is in place for the rent to be inclusive of relevant service charges.</li> <li>viii) Aggregate and reconcile all costs properly incurred in respect of service charges during the period, compiling detailed accounts of such costs and arranging audits as required and in accordance with lease terms.</li> <li>ix) Ensure that balancing amounts due from or to tenants in respect of a completed service charge period are correctly and expeditiously demanded from or credited to tenants accounts.</li> </ul>	YES
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	ITEM	DETAILED SERVICE REQUIREMENTS	Covered within Fee structure
		<p>x) Pay from retained service charge monies all invoices properly arising in respect of the supply of services to the Property and due to general suppliers, contractors, statutory authorities, professional advisers, insurers and others as may be appropriate.</p> <p>xi) Regularly report to the Employer of any service charge budgets which are 10% or more over the previous years' budget and of any revised forecasts of service charge budgets which have been issued to tenants and that are 10% or more above or below budget.</p> <p>xii) Ensure the service charge funds are regularly administered and monitored providing the maintenance of services to appropriate levels in accordance with the previously agreed budget and the terms of the leases.</p>	
3.7	Reporting	<p>The Consultant will prepare and distribute quarterly/monthly reports to the Employer, for review at the relevant management meeting, for the following:</p> <ul style="list-style-type: none"> <li>• Full charges report, showing what rent has been billed in the previous [month]</li> <li>• An interest audit, to answer questions and support the need for charges</li> <li>• Aged debt report, for credit control review</li> <li>• Unallocated credits, to identify mistakes in invoicing.</li> <li>• A full reconciliation (for rents and other income normally remitted to the Employer) each month of closing debtors as against the opening debtors taking into account billing, payments by tenants and remittances to the Employer.</li> </ul>	YES



	ITEM	DETAILED SERVICE REQUIREMENTS	Covered within Fee structure
4.1	Scope	<p>The Consultant will provide and manage the appropriate services required for HS2 Ltd's property portfolio, including:</p> <ul style="list-style-type: none"> <li>• Security</li> <li>• Building Repairs &amp; Maintenance</li> <li>• Landscaping &amp; Grounds Maintenance</li> </ul> <p>The Consultant is required to clarify and confirm those services whose costs will be recoverable from tenants, in accordance with their respective lease terms, and those that are the responsibility of the Employer.</p>	Yes
4.2	Service Mobilisation	<p>The Consultant will:</p> <ol style="list-style-type: none"> <li>Deliver the activities within the Mobilisation Plan, issued as part of the procurement process, that relate to service provision subject to any Employer amendments. The plan will include as a minimum details of the proposed service delivery model, service scope and standards, contractual arrangements and performance measures for service provision.</li> <li>Demonstrate that the appointment of suppliers will deliver value for money to the Employer – either by benchmarking costs for the services provided or running a competitive procurement process.</li> </ol>	Yes

4.3	On-going Service Management	<p>The Consultant will:</p> <ul style="list-style-type: none"> <li>i) Recruit, discharge, replace and supervise security guards, building managers, caretakers, cleaning, maintenance engineering or other staff involved in the management of the properties.</li> <li>ii) Manage all associated costs, as may be requisite for the management of the property and the performance of any of the services.</li> <li>iii) Arrange the procurement of services, supplies and replacements for items as appropriate to the supply of required services within the Properties, in accordance with the Employer's obligations under the occupational lease(s).</li> <li>iv) Manage the sub-contractors appointed by the Consultant to deliver the required services on behalf of and to appropriate standards required by the Employer.</li> <li>v) Implement the terms and conditions within the supplier arrangements that relate to the Consultant and ensure compliance with your contractors and suppliers.</li> <li>vi) Ensure where the Employer is responsible for the carrying out of any repairs to the property, fittings or fixtures, plant or machinery or the provision of services: <ul style="list-style-type: none"> <li>• The Employer's obligations in respect of repair and maintenance are observed;</li> <li>• Arrange and supervise minor works of repair and maintenance, including where appropriate preparing specifications and obtaining competitive tenders of the work; and</li> <li>• Arrange and supervise all such other services and the doing of all such works and other things as may be requisite to comply with the obligations of the Employer to the tenants or other occupiers of the Property.</li> </ul> </li> <li>vii) Manage any associated costs, as may be requisite for the management of the property and the performance of any of the services. :</li> </ul>	Yes
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	ITEM	DETAILED SERVICE REQUIREMENTS	Covered within Fee structure
4.4	Contract Exit	<p>The Consultant will</p> <ul style="list-style-type: none"> <li>i) Prepare an exit plan for Employer approval three months before the Contract End Date that describes in detail how the Consultant's arrangements will be migrated to a new supplier should that be required.</li> <li>ii) Implement the exit plan and keep the Employer informed throughout the process to ensure the Employer is not bearing any unnecessary risk should it decide to appoint a different Consultant at the end of the Contract.</li> </ul>	YES

## 5 ASSET MANAGEMENT

	ITEM	DETAILED SERVICE REQUIREMENTS	Covered within Fee structure
5.1	Management	<p>The Consultant will support the Employer in identifying opportunities for maximising rental income or adding value to the property portfolio. Management activities includes, but are not limited to:-</p> <ul style="list-style-type: none"> <li>• Identifying opportunities to enhance rental income to HS2 Ltd from the retained portfolio.</li> <li>• Issue notices and ensure the Employer remains compliant with the relevant lease terms prior to any lease event, such as rent review, lease break, or lease renewal.</li> <li>• Ensure that any empty property is maintained in a condition appropriate for marketing.</li> <li>• Monitor and manage project development activity, limited to small scale and low value refurbishment works or redecoration, within the property portfolio.</li> <li>• The Consultant shall provide a quarterly update report to the Employer/Consultant Quarterly Review meeting) , documenting forthcoming lease events, new lease agreements, letting voids and works of repair &amp; maintenance.</li> </ul>	Yes
5.2	Delivery	<p>The Consultant will be required to deliver the transaction activities agreed as part of the Asset Management service. Activities to be delivered by the Consultant, include but are not limited to:-</p> <ul style="list-style-type: none"> <li>• Handle the letting process to secure new occupants within minimal amount of time whilst endeavouring to maximise rental income.</li> <li>• Lead and undertake all the activiites and negotiations for all rent reviews and lease renewals, and seek Employer approval prior to exchange of contracts.</li> </ul>	Yes



## 6 PERFORMANCE MANAGEMENT

### 6.1 Overview

The Consultant's performance will be assessed and monitored against a series of Key Performance Indicators (KPIs). The Consultant will report on each KPI as part of the Monthly Performance Review Meetings. The KPIs are summarised in Table 1 below.

**Table 1 - Key Performance Indicators**

No	KPI	Type	Definition	Performance Standard	Evidence
A	Statutory Obligations	General Management	With regard to the services provided under this Contract, ensure the Employer meets all its statutory obligations as a landlord and provider of services to tenants, or as an owner-occupier and provider of serviced accommodation to staff.	No failure to avoid any non-compliance at any of the Employer sites.	<ul style="list-style-type: none"> <li>Independent audit results</li> <li>Spot Checks</li> <li>Information provided by Employer or Consultants' staff.</li> </ul>
B	Management Information & Reporting	General Management	Consultant to keep service-related records and data and provide management information and reports on a monthly basis in accordance with Employer's requirements. The Employer retains the right to adapt the reporting structure and content to suit changing needs as required.	No failure to provide full scope of information and reporting requirements in accordance with required timeframes.	<ul style="list-style-type: none"> <li>Structure and content to be agreed during mobilisation of the Contract, subject to any subsequent amendments agreed in writing by the Employer.</li> </ul>
C	Continuous Improvement Plan	General Management	If requested by the Employer, the Consultant is to prepare a formal review and Service Improvement Plan every quarter on how to improve either the efficiency or effectiveness of an aspect of the Services provided.	No failure to provide a service improvement plan that meets the Employer's requirements and sets out clear actions for improvement.	<ul style="list-style-type: none"> <li>Consultant's Service Review and Improvement Plan document</li> <li>Monthly Performance Review Meetings</li> <li>Quarterly Performance Review Meetings</li> </ul>

No	KPI	Type	Definition	Performance Standard	Evidence
D	Statutory Notices	Property Management	Ensure all statutory notices are issued to tenants in a compliant and timely manner and that the Employer's commercial position is protected at all times.	No failure to issue notices in a format and timescale required by the terms of the lease or relevant legislation.	<ul style="list-style-type: none"> <li>Monthly reports</li> </ul>
E	Complaint Handling	Property Management	Consultant to respond to all tenant complaints, communicate the issue and share the response with the Employer. The Consultant is to provide details of any remedial action to the Tenant with 1 working day of receipt of complaint: recording: the reason, date, remedial action and timescale for resolution.	No failure to respond to a tenant complaint, or to communicate the complaint to the Employer, or to complete the required actions on time, as agreed with the Employer.	<ul style="list-style-type: none"> <li>Service / Helpdesk requests</li> <li>Consultant monthly reports</li> <li>Tenant Satisfaction Surveys</li> <li>Employer staff</li> </ul>
F	Income Management	Financial Management	No failure to issue accurate rental and service charge demands on time and ensure any non-payments are followed up within 5 working days of due date and confirm to the Employer the actions to redress any non-payments.	No failure to provide and deliver action plans in response to failure to pay rent.	<ul style="list-style-type: none"> <li>Monthly reports</li> <li>[Weekly reconciliation sheets]</li> </ul>
G	Management of Voids	Financial Management	Minimise void periods between tenancies and ensure there is a clear action plan in place with the agreement of the Employer to address all existing and potential voids. Employer to be notified within [5] working days of notices to exit by tenants.	No failure to notify the Employer of all current and potential voids and no failure to implement actions to address potential voids.	<ul style="list-style-type: none"> <li>Monthly reports</li> </ul>
H	Service Charge Payments	Financial Management	Ensure service charge payments are reconciled on a monthly or quarterly basis (as agreed with the Employer) and that tenants and the Employer are charged accurately for services provided. Any changes or issues with	No failure to rectify any anomalies that arise.	<ul style="list-style-type: none"> <li>Monthly reports</li> </ul>

No	KPI	Type	Definition	Performance Standard	Evidence
			service charges to be calculated and rectified within [one] calendar month.		
I	Rental Payments to the Employer	Financial Management	Ensure all rents received are transferred to the Employer's account in accordance with the Service Specification.	No failure to transfer rental monies to the Employer within 5 working days of receipt from the tenants.	<ul style="list-style-type: none"> <li>Financial Statements</li> <li>Monthly reports</li> </ul>
J	Service Availability	Service Management	All Facilities Management (FM) services provided and managed by the Consultant directly to tenants and Employer staff to be provided as stated in the relevant FM services specifications and in accordance with the relevant Risk and Method Statements provided to the Consultant.	Absence of any service in any building will result in service failure unless notified to and mitigating actions agreed by the Employer.	<ul style="list-style-type: none"> <li>Tenant Complaint</li> <li>Reactive Service Request</li> <li>Spot check by any Employer staff.</li> <li>Management information or report.</li> </ul>
K	Response / Rectification Times	Service Management	The Consultant is responsible for responding to complaints, tenant reactive calls within the Service specification.	No failure to meet the required response times.	<ul style="list-style-type: none"> <li>Service / Helpdesk requests log</li> <li>Monthly Consultant reports</li> <li>Spot Checks</li> <li>Information provided by Employer staff.</li> <li>Information provided by Tenants</li> </ul>



## **Appendix B –**

### **Property Management Services**

#### **Residential and Agricultural Property Services**

## **Appendix B**

### **SCOPE OF SERVICES - Residential Services**

The Consultant will provide the services as stated within this Scope of Services

#### **Overview:**

The Consultant will provide an estate management role for each property and/or site of which the Employer notifies the Consultant in writing from time to time.

The Employer's involvement will be limited to particular approvals and input as described below in this Scope.

The Employer's role will be undertaken by the Employer's Property Asset Manager.

The Consultant will provide property management services on behalf of the Employer.

This will range from accepting properties into management to issuing rent demands and collection of rents financial management and reporting and dealing with tenants on a day to day basis.

Additionally the Consultant will provide the marketing of the properties to let and handle all aspects of the letting process upon the Employer confirming requirements to let.

The Consultant must be ISO 9001 accredited and provide electronic reporting in a form required by the Employer.



## **Stage 1: Handover of Property and Completion date**

The Employer shall give the Consultant reasonable notice to enable an inspection of each property to be arranged and carried out before the acquisition completion date (Completion). Following the inspection the Consultant shall provide a pre letting report for each property (to be known as the Pre-Completion and Letting Report) to the Employer before Completion and in any event within 10 working days from the date upon which the Employer issues the request. The report must detail such matters as the condition and lettability of the property reflecting repair/maintenance works required and health and safety testing/certification needs plus the estimated rental value which shall include marketing data showing a list of comparable properties with passing rents; the Consultant must also provide professional advice in the report on the estimated rental value, with clear reasons.

The Consultant (Grade 5 – Surveyor or its equivalent) must attend all sites on Completion at a pre-determined time, as notified by the Employer on 5 working days notice, to accept keys on behalf of the Employer and must: (i) ensure all properties are secured by changing locks (ii) consider whether security should be increased and (iii) use reasonable endeavours to secure where necessary access to surrounding grounds and outbuildings.

In addition the Consultant shall carry out statutory testing of installations , install Carbon Monoxide and Smoke Detectors in accordance with statutory requirements, carry out a Housing Health & Safety Rating System (HHSRS) inspection [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/15810/14\\_2631.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/15810/14_2631.pdf) and instruct a non-intrusive management asbestos survey. The Consultant must seal letter boxes and disconnect telephones.

At Completion the Consultant must take and record meter readings for all utilities.

The Consultant will use reasonable endeavours to ensure that properties are protected against frost damage and be secured against wind and water damage.

Council tax, Business and Water rates must be handled by the Consultant following the statutory rate free period and the Consultant must immediately apply for exception/discount on vacant property.

All trees at the sites of the properties shall be inspected and recommendations made to the Employer and re-inspected annually at each site and the Consultant shall arrange for tree works as appropriate as instructed by the Employer.

At all sites, rubbish must be removed cleared and grass cutting undertaken prior to tenants taking occupation.

## **Stage 2: Property Management (Before Letting)**

The Consultant upon request of the Employer, will obtain other specialist surveys and, in such cases, at all times the Consultant will liaise with the Employer and their valuer.

Within five working days of Completion for each property the Consultant must seek the Employer's consent to establish whether a Building Surveyor should be used to prepare a schedule of works.

If the condition of the property is deemed to require works under £5,000 per property then the Consultant may make arrangements for these works to be undertaken but must advise the Employer within 7 working days of completion of the acquisition and provide a schedule identifying the repairs.

If the works are above the limit of £5,000 the Consultant will with the Employers consent instruct a Building Surveyor to prepare a detailed schedule of works and promptly obtain costs estimates from 2 competent contractors for the carrying out of such works. Upon receiving the cost estimates for such works the Consultant must promptly notify the Employer for the Employer's decision as to whether it is cost effective to repair the property and the Consultant will not proceed to carry out such repairs, or to instruct anyone else to do so, without the Employer's consent.

## **Stage 3: Letting Services**

Within such timeframes as reasonably notified by the Employer, the Consultant must provide a report on marketing progress to the Employer (which shall be updated at monthly intervals) for all properties which the Employer notifies the Consultant that the Employer intends to let. A one off fee will be payable to the Consultant as per Pricing Schedule (Appendix 1)

The Consultant must use all appropriate multimedia services available to the market and promote the availability of vacant property which the Employer notifies the Consultant that it intends to let on behalf of the Employer.

Once a tenant is found for the property the Consultant will engage with the tenant to establish that they meet the standard/criteria to establish a tenancy in the property.

This may be done by using credit referencing agencies and assessment of suitable references the cost of which is recovered from the prospective tenant by the Consultant.

The Consultant will report to the Employer with proposed heads of terms for the letting and will, upon agreement with the Employer, establish a Crown Tenancy or such other tenancy agreed between the Consultant and the Employer.

The Consultant must promptly notify the Employer when any Crown tenancy agreement is ready to be signed and liaise with the tenant in respect of obtaining the tenant's signature to the tenancy agreement and with the Employer's legal department in respect of obtaining the Landlord's signature to the tenancy agreement or provided the relevant delegated authority is in place the Consultant may sign the agreement on behalf of the Landlord.

The Consultant will also manage the process for holding rent deposit monies and administer the check in process of the tenancy agreement (the cost of which shall be recovered from the tenant by the Consultant) and check out procedures including: 1) Inventory checks, 2) Meter readings of all utilities, 3) Advising Councils about new tenancy 4) Undertaking Soft FM (cleaning of the property before handing over to tenant).

#### **Stage 4: Property management (upon letting the property)**

For lease extensions on the Crown Tenancies or other lets for residential property the Consultant must engage with the tenant at least 3 months prior to renewal date.

Where an agreement to extend the lease has been agreed by all parties the document must be issued at least 10 days prior to expiry.

The Consultant shall use Farm Business Tenancy agreements for agricultural land and property. Tenancies must not be let under the Agricultural Tenancies Act 1995 (the 1995 Act) for more than 2 years.

The Consultant must ensure that, where applicable and when obtaining vacant possession, the appropriate notice procedure under the 1995 Act is satisfied.

Where agricultural land or property can be relet the Consultant must engage with the tenant 6 months prior to the expiry of the existing lease.

The Consultant must ensure that a secure tenancy is not created. Where Agricultural land and properties are concerned the Consultant shall take necessary steps to ensure that: (a) tenants employ good husbandry methods to manage and cultivate the land in accordance with best farming practices; (b) any environmental/heritage requirements of the Employer are complied with; and (c) any quotas, grants or other benefits, including EU payments, due are received and protected.

In particular the Consultant shall protect the Employer's entitlement to Single Farm Payments or any other future entitlement.

Care must be taken by the Consultant where a Farm Business Tenancy exists to ensure that no consent is given to any improvement which may lead to a claim from the tenant for compensation for improvements unless the Employer has given prior permission in writing.

Where a tenant is in breach of contract the Consultant must provide written notice to the tenants reminding them of the terms of their contract and pointing out the breach and require appropriate remedy for such breach.

The Employer must be advised by the Consultant of any and all aforementioned breaches immediately before contract renewal.

Where contracts have provisions for rent review the Consultant shall six months in advance of the review date prepare a report containing market information and comparable property rental values supporting an increase in rent or proposing that the rent level remains the same.

The rent review must then be reviewed in line with the frequency set out in the agreement. Rent reviews must be conducted timeously.

Any dispute over rental increases must be dealt with in the manner advised by the Employer including references to appropriate methods of dispute resolution.

The Employer is required by the UK government equality legislation to demonstrate that its policies and procedures do not disadvantage certain groups in society. The Consultant shall collect and supply such data as reasonably requested by the Employer in complying with its obligations in this regard

Inspections of vacant properties must be carried out every 14 working days or 28 working days by agreement with the Employer. Unoccupied properties must be protected against vandalism theft fire damage illegal squatting and trespass and the Consultant shall assess the security of each property and advise the Employer of the appropriate security measures which with the Employer's approval are to be put in place.

The Consultant will arrange for repairs to the exterior and interior of properties in accordance with tenancy agreement terms and will operate a 24 hour telephone helpline to deal with requests for repairs from tenants. For ongoing reactive repairs and maintenance the Consultant may spend up to £5,000 (+VAT) per item of repair,

replacement or maintenance required to Tenanted properties. Expenditure required beyond this will be subject to obtaining cost estimates from 2 competent contractors for the carrying out of such works for the Employers approval. Upon receiving the cost estimates the Consultant must promptly notify the Employer for the Employers decision to proceed.

The Consultant shall provide and agree with the Employer an annual maintenance programme to include (but not be limited to) internal redecoration and external redecoration overhaul/replacement of any defective sections of gutters/downpipes overhaul/replacement of defective timbers mortar fillets mastic joints pointing or rendering This programme once agreed will be managed by the Consultant by means of a Facilities Maintenance Tracker in a format to be agreed with the Employer

The Consultant will prepare a monthly report on a property by property basis, the format of which must be discussed and agreed (and both parties shall act in good faith in such discussions) with the Employer within one month of signing this Contract. The report must detail income collection, disbursements paid, rent arrears and performance highlighting any areas of concern and how these may be addressed. The discussion will take account of the investment strategy, letting, property management, and health and safety actions/works. These topics, including health and Safety as a specific agenda item will form the basis of a quarterly review meeting to be held between the Employer and Consultant to assess performance address contract management matters and property management policy issues.

The Consultant will maintain an accurate tenancy record for each property completing and updating this where necessary.

The Consultant will accurately generate and issue to tenants rent and service charge demands in a timely fashion and be able to provide on request arrears reports to the Employer.

The Consultant must monitor all arrears and issue standard letters chasing all late payments.

The Consultant will bring to the attention of the Employer payments that are overdue by 14 days or more and on the Employer's instructions assist and provide advice to the Employer when the Employer or its Legal representative takes necessary legal action in order to recover arrears.

On the Employer's behalf the Consultant to arrange for payment of rates and other expenses which may arise from time to time.

Management of the portfolio will require regular contact by the Consultant with tenants to handle requests and complaints.

The Consultant will advise the Employer on all aspects of Landlord obligations under the Crown Tenancy agreements or Farm Business Tenancies.

Where service charge recoverability exists the Consultant will provide a budget for agreement with the tenants. Prior to this it must be agreed with the Employer.

Where properties are bought and form part of a larger development the Consultant will engage with the Freeholder's or Superior Lessor's Managing Agent to ensure the Employer is provided with all detailed budgetary information and where a Freeholder or Superior Lessor is letting a contract the Managing Agent is demonstrating value for money.

Lease expiry reports must be provided to the Employer 3 months in advance of the expiry date.

Where anti-social behaviour is reported or reasonably believed to exist (by the Employer or the Consultant) the Consultant must investigate and deal with reports promptly and in a fair and robust manner.

The Consultant must refer to the Employer on all matters and report to the Employer both orally and in writing if there are any such instances of Anti Social behaviour.

In the case of properties which are let to tenants who qualify for Income Support the Consultant shall request the tenant to sign a form notifying the Benefits Agency office of their wish that the housing element of income support is to be paid directly to the Consultant.

If there is an arrear of 1 month in rent the Consultant must write to the Benefits Agency pointing out the breach in rent and request the Benefit Agency to pay the Consultant direct. In circumstances where National Housing Benefit ("NHB") is applied for and where the tenants are not eligible for Income Support the Consultant shall offer tenants reasonable help and advice about claiming Housing Benefit.

The Consultant must check regularly with Local Authorities to ensure that tenants receiving NHB are still entitled to receive it.

As an absolute minimum the Consultant shall make enquiries whenever: it suspects tenants' circumstances have changed; whenever a tenancy is renewed; and in any event every 6 months as a matter of course.

The Employer may alter its procedures in relation to benefits following the introduction of Universal Credits in areas where the properties are situated and will notify the Consultant of any changes in its policy in this respect.

The Consultant must retain documentary evidence of all benefits checks for future monitoring by the Employer, the Employer's auditors and the National Audit Office.

### **Tenants Handbook**

Upon the grant of a residential Crown tenancy all tenants must promptly be given a copy of the Tenant's Handbook document by the Consultant, a copy of the current Tenant's Handbook is attached at appendix `` The Employer reserves the right to amend it and issue a new version to the Consultant which the Consultant must in turn provide to the tenants.

The Employer and the Consultant shall work together to agree and update the Tenant's Handbook at regular intervals to be advised by the Employer.

The Consultant must promptly advise the Employer on the validity of, and reasonableness of, any claim where it is made against the Employer for compensation for improvements or any other matter arising.

The Consultant must have an environmental policy in place to ensure that the management activities of the Consultant are undertaken-with all possible steps taken to minimize the impact on the environment.

### **Health and Safety**

The Employer and the Consultant shall comply with all applicable health and safety and housing legislation to provide tenants, contractors and other staff and public with a safe environment.

The Consultant shall operate a management system that is compliant with the requirements of OHSAS 18001 or are implementing health and safety management in accordance with the guidelines of HSG65 and shall have procedures and controls in place to demonstrate performance of its own health and safety duties in relation to management of properties

The Consultant will be required to comply and act in accordance with the provisions contained in the HS2 Ltd Health and Safety Hazard Log and will be updated by the Employer from time to time setting out the requirements and actions to be undertaken in managing identified health and safety hazards

The Consultant shall have maintained at all times access to suitably competent person to assist in discharging their duties under health and safety legislation and providing advice to the Employer. The Consultant shall be proactive in providing health and safety advice in association with the activities of this contract.

The Consultant shall submit for acceptance to the Employer a copy of Health and Safety Plan for their work including how appointments are to be made for any design, construction and maintenance work would be made and where the project is notifiable under CDM how the agent will proactively support the Employer to comply with their duties under Construction (Design and Management) Regulations 2007.

Where the project is notifiable under CDM the Consultant must give sufficient notice to the Employer of any appointments (i.e. CDM Co-ordinator, Principal Contractor, Contractor) they intend to make in connection with the works. The Consultant shall maintain a register of appointments and the associated works in connection with these appointments and make this available to the Employer for review.

The Consultant shall have systems in place and maintain records to demonstrate that all design and construction work is undertaken by competent contractors.

For work where CDM regulation applies, unless otherwise instructed the Consultant shall undertake activities on behalf of the Employer to fulfil the Employer's duties under Regulation 9 of the CDM regulations. The arrangement shall be recorded in the H&S plan and records maintained to demonstrate compliance with the regulation.

The Consultant shall ensure that arrangements for work being undertaken by the contractors provides adequate protection to both workers and members of the public provides adequate welfare facilities and a suitable and sufficient construction phase plan is provided where required.

The Consultant will on a monthly basis provide the Employer with a report in agreed format to record health and safety duties discharged including but not restricted to incident reporting RIDDOR and non-RIDDOR and near misses HHSRS inspections and Asbestos surveys undertaken in that month the number of annual inspections undertaken and CDM notifiable schemes

## **General**



The Consultant acknowledges that the properties being managed are acquired by the Secretary of State for Transport as the Secretary of State is the acquiring authority with the Employer appointed as the Secretary of State's agent to implement his powers

The Consultant will owe a duty of care to the Secretary of State as well as the Employer in relation to management of the properties.

At the expiry or termination of this contract the Consultant shall work with the Employer to ensure a smooth handover to any new Consultant including handing over to the Employer all documents records or data relating to management of the portfolio submitting final accounts and reports providing handover notes in respect of each property and providing a list of time-critical cases for example in litigation with tenant compliance matters or with rent review critical dates.

**Documents to be produced:**

Tenants Handbook

Health and Safety Hazard Log



**Appendix C –**  
**Commercial Property Management Services**  
Including Office, Retail and Industrial property

## **Appendix C**

### **SCOPE OF SERVICES - Commercial Property Management Services**

The Consultant will provide the services as stated within this Scope of Services

#### **Overview:**

The Consultant will provide an estate management role for each property and/or site of which the Employer notifies the Consultant in writing from time to time.

The Employer's involvement will be limited to particular approvals and input as described below in this Scope.

The Employer's role will be undertaken by the Employer's Property Asset Manager.

The Consultant will provide commercial property management services on behalf of the Employer.

This will range from accepting properties into management to issuing rent demands and collection of rents financial management and reporting and dealing with tenants on a day to day basis.

Additionally the Consultant will provide the marketing of the properties to let and handle all aspects of the letting process upon the Employer confirming requirements to let.

The Consultant must be ISO 9001 accredited and provide electronic reporting in a form required by the Employer.

## **Stage 1: Handover of Property and Completion date**

The Employer shall give the Consultant reasonable notice to enable an inspection of each property to be arranged and carried out before the acquisition completion date. Following the inspection the Consultant shall provide a pre letting report for each property (to be known as the Pre-Completion and Letting Report) to the Employer before legal completion and within 10 working days from The Employers written request. The report in a format to be agreed with the Employer must include details of the condition and lettability of the property reflecting repair/maintenance works required and health and safety testing/certification needs. The Consultant must also provide professional advice in the report on the estimated rental value of the property including a list of comparable properties with passing rents. The Consultant with the Employers prior agreement will obtain any necessary specialist surveys that are recommended as a result of the inspection.

The Consultant (Grade 5 Surveyor or its equivalent) must attend all sites on Completion day at a pre-determined time notified by the Employer to accept keys on behalf of the Employer and must: (i) ensure all properties are secured by changing locks (ii) consider whether security should be increased and (iii) use reasonable endeavours to secure where necessary access to surrounding grounds and outbuildings.

In addition the Consultant shall test all service installations at the property and instruct a non-intrusive asbestos management survey. The Consultant must seal letter boxes, disconnect telephones and record meter readings for all utilities.

The Consultant will use all reasonable endeavours to ensure that properties are protected against frost damage and be secured against wind and water damage.

Council tax, Business and Water rates relating to the subject property must be dealt with by the Consultant ensuring vacant property exemptions and any available rate poundage adjustments or reliefs are applied for.

## **Stage 2: Property Management (Before Letting)**

If the condition of the property is deemed to require works under £5,000 then the Consultant may make arrangements for these to be undertaken immediately upon advising the Employer and providing a schedule of works.

If the proposed works are above the £5,000 per property limit the Consultant will with the Employers consent instruct a Building Surveyor to prepare a detailed schedule of works and promptly obtain quotations from 2 competent contractors and submit to The

Employer for approval. The Consultant will not proceed to carry out such repairs without The Employer's consent.

### **Stage 3: Letting Services**

The Consultant must use all appropriate media services to market and promote the availability of vacant property to let and will report marketing progress to the Employer

Upon receipt of an offer to rent the property The Consultant will provide Heads of Terms for the letting to The Employer for approval. The Consultant is to ensure that any lease or tenancy entered into is for a fixed term and enables the Employer to obtain vacant possession upon expiry. All tenancies are to be contracted out of the security of tenure provisions of the Landlord and Tenant Act 1954 sections 24 to 28. The Consultant must use the services of the Employers contracted solicitors to prepare tenancy agreements and serve Landlord and Tenant Act notices and arrange for signature and completion of all lettings, all instructions to the Employers contracted solicitors shall be via the Employer's in-house legal department.

Prior to completion The Consultant will liaise with The Employers solicitor in the preparation of a completion statement to include rent and all sums due on completion.

The Consultant will notify The Employer upon completion of each letting and will manage the process for holding rent deposit monies and administer inventory checks, schedules of condition meter readings of all utilities and advising the local rating authority of the new tenancy

### **Stage 4: Property management (upon letting the property)**

Where a tenant is in breach of lease the Consultant must serve written notice on the tenant setting out details of the breach and what is required under the terms of the agreement with timescales in which the specified breach is to be remedied. If the tenant fails to comply this shall be reported to The Employer to agree further action.

Six months prior to any rent review The Consultant is to prepare a report for The Employer to include a summary of the review provisions in the lease and its recommendations of rental value with supporting comparable evidence. The Consultant will upon authorisation by The Employer proceed to negotiate and settle the rent review within agreed parameters. Upon settlement the rent review memorandum will be prepared by The Employers solicitor.

Any dispute over rental increases must be dealt with in accordance with the lease terms including reference to appropriate methods of dispute resolution set out in the agreement and will require The Employers approval before referral to third party determination.

The Employer is required under UK government equality legislation to demonstrate that its policies and procedures do not disadvantage certain groups in society. The Consultant shall collect and supply such data as reasonably requested by the Employer in complying with its obligations in this regard

Inspections of vacant properties must be carried out every 14 working days or 28 working days by agreement with the Employer. Unoccupied properties must be secured against vandalism theft fire damage illegal squatting and trespass. The Consultant shall assess each property and gain The Employers approval to any security measures to be put in place.

The Consultant will have regard to the Lease and all relevant Statutory requirements when determining the respective repairing obligations of landlord and tenant and when undertaking or requiring repair works to be carried out to the property . The Consultant shall provide and agree with the Employer an annual maintenance programme. This programme once agreed will be managed by the Consultant by means of a Facilities Maintenance Tracker in a format to be agreed with the Employer

The Consultant will prepare a monthly report on a property by property basis, the format of which must be discussed and agreed (and both parties shall act in good faith in such discussions) with the Employer within one month of signing this Contract. The report must detail income collection, disbursements paid, rent arrears and performance highlighting any areas of concern and how these may be addressed. The discussion will take account of the investment strategy, letting, property management, and health and safety actions/works. These topics, including health and Safety as a specific agenda item will form the basis of a quarterly review meeting to be held between the Employer and Consultant to assess performance address contract management matters and property management policy issues.

The Consultant will maintain an accurate tenancy record for each property completing and updating this where necessary.

The Consultant will accurately generate and issue to tenants rent and service charge demands in a timely fashion and be able to provide on request arrears reports to the Employer.

The Consultant must monitor all arrears and issue standard letters chasing all late payments.

The Consultant will bring to the attention of the Employer payments that are overdue by 14 days or more and on the Employer's instructions assist and provide advice to the Employer in taking necessary legal action in order to recover arrears.

On the Employer's behalf the Consultant to arrange for payment of business rates and other expenses which may arise from time to time.

Management of the portfolio will require regular contact by the Consultant with tenants to handle requests and complaints.

Where service charge recoverability exists the Consultant will provide a budget for agreement with the tenants. Prior to this it must be agreed with the Employer.

Where properties are bought and form part of a larger development the Consultant will engage with the Freeholder's or Superior Lessor's Managing Agent to ensure the Employer is provided with all detailed budgetary information and where a Freeholder or Superior Lessor is letting a contract the Managing Agent is demonstrating value for money.

The Employer to be advised by The Consultant of lease expiries 12 months in advance of their expiry date. Terms for any renewal to be agreed in advance of any offer for renewal being made or any notices being served. The Consultant must ensure suitable safeguards are in place so that secure tenancies are not created upon lease expiry.

The Consultant must promptly advise the Employer on the validity of, and reasonableness of, any claim where it is made against the Employer for compensation for improvements or any other matter arising.

The Consultant must have an environmental policy in place to ensure that the management activities of the Consultant are undertaken with all possible steps taken to minimize the impact on the environment.

## **Health and Safety**

The Employer and the Consultant shall comply with all applicable health and safety and legislation to provide tenants, contractors and other staff and public with a safe environment.

The Consultant shall operate a management system that is compliant with the requirements of OHSAS 18001 or are implementing health and safety management in accordance with the guidelines of HSG65 and shall have procedures and controls in place to demonstrate performance of its own health and safety duties in relation to management of properties

As far as they relate to commercial properties The Consultant will be required to comply and act in accordance with the provisions contained in the HS2 Ltd Health and Safety Hazard Log and will be updated by the Employer from time to time setting out the requirements and actions to be undertaken in managing identified health and safety hazards. For multi-let buildings where The Employer is the responsible person for safety matters The Consultant is to ensure a compliant maintenance and testing regime is in place with all relevant records kept.

The Consultant shall have maintained at all times access to suitably competent person to assist in discharging their duties under health and safety legislation and providing advise to the Employer. The Consultant shall be proactive in providing health and safety advise in association with the activities of this contract.

The Consultant shall submit for acceptance to the Employer a copy of Health and Safety Plan for their work including how appointments are to be made for any design, construction and maintenance work would be made and Where the project is notifiable under CDM how the agent will proactively support the Employer to comply with their duties under Construction (Design and Management) Regulations 2007.

Where the project is notifiable under CDM the Consultant must give sufficient notice to The Employer of any appointments (i.e. CDM Co-ordinator, Principal Contractor, Contractor) they intend to make in connection with the works.

The Consultant shall maintain a register of appointments and the associated works in connection with these appointments and make this available to the Employer for review.

The Consultant shall have systems in place and maintain records to demonstrate that all design and construction work is undertaken by competent contractors.

For work where CDM regulation applies, unless otherwise instructed the Consultant shall undertake activities on behalf of the Employer to fulfil the Employer's duties under Regulation 9 of the CDM regulations. The arrangement shall be recorded in the Health and Safety plan and records maintained to demonstrate compliance with the regulation.

The Consultant shall ensure that arrangements for work being undertaken by the contractors provides adequate protection to both workers and members of the public provides adequate welfare facilities and a suitable and sufficient construction phase plan is provided where required.

The Consultant will on a monthly basis provide the Employer with a report in agreed format to record health and safety duties discharged including but not restricted to incident reporting RIDDOR and non-RIDDOR and near misses HHSRS inspections and Asbestos



surveys undertaken in that month the number of annual inspections undertaken and CDM notifiable schemes.