

INVITATION TO TENDER (ITT)

Implementation Audit of HS2 Ltd Transport Models & Analysis

Ref : HS2/644

Appendix C – Confidentiality Agreement

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is dated

BETWEEN

(1) High Speed Two (HS2) Limited, a company (company number 06791686) having its registered office at One Canada Square, London E14 5AB (the "Disclosing Company"),

and

(2) [Name], a company (company number [Number]) having its registered office at [Address] (the "Recipient").

WHEREAS:

The Disclosing Company wishes to disclose to the Recipient Confidential Information of the Disclosing Company and wishes to ensure that the Recipient maintains the confidentiality of that Confidential Information. In consideration of benefits to the parties of disclosing and receiving the Confidential Information for the Purpose, the parties have agreed to comply with the following terms in connection with the use and disclosure of Confidential Information.

THEREFORE IT IS HEREBY AGREED by the parties as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement, the following capitalised words and expressions shall, unless the context otherwise requires, bear the meanings hereinafter ascribed to them:

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|----------------------------|--|
| "Act" | means the Freedom of Information Act 2000 (as amended or re-enacted); |
| "Beneficiaries" | means the Secretary of State for Transport, the Department for Transport and any subsidiary of the Department for Transport; |
| "Confidential Information" | means all confidential information (however recorded or preserved) disclosed or made available (including prior to the date of this Agreement), directly or indirectly, by the Disclosing Company or its employees, officers, representatives or advisers to the Recipient and its Representatives including but not limited to:
a) the terms of this Agreement;
b) any information that would be regarded as confidential by a reasonable business person relating to: the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the Disclosing Company; and
c) the analyses, studies, compilations, operations, processes, product information, know-how, designs, trade secrets or software of the |

Disclosing Company;

d) any information or analysis derived from Confidential Information;

But not including any information that:

a) is or becomes generally available to the public other than as a result of its disclosure by the Recipient or its representatives in breach of this Agreement), (except that any compilation of otherwise public information in a form not publicly known shall nevertheless be treated as Confidential Information); or

b) was available to the Recipient on a non-confidential basis prior to disclosure by the Disclosing Company; or

c) was, is or becomes available to the Recipient on a non-confidential basis from a person who, to the knowledge of the Recipient, is not bound by a confidentiality agreement with the Disclosing Company or otherwise prohibited from disclosing the information to the Recipient; or

d) was lawfully in the possession of the Recipient before the information was disclosed to it by the Disclosing Company as evidenced by written records; or

e) the parties agree in writing is not confidential or may be disclosed; or

g) is trivial, obvious or useless.

"Information Request" means a request for information under the Act or the Regulations;

"Purpose" means collaboration and the sharing of information in connection with the project referred to generally as **"High Speed Two"** relating to the delivery of a high speed railway network;

"Regulations" means the Environmental Information Regulations 2004 (as amended or re-enacted);

"Representatives" in relation to any person means its officers, directors, employees, advisors, consultants, sub-contractors and agents.

1.2. In this Agreement :

1.2.1. the singular includes the plural and the masculine includes the feminine and neuter and vice versa;

1.2.2. references to persons shall include bodies corporate, unincorporated associations and partnerships;

1.2.3. references to clauses are, unless the contrary intention appears, references to the clauses of this Agreement;

1.2.4. the headings and sub-headings of this Agreement are inserted for convenience only and shall not affect the construction thereof; and

1.2.5. the recitals form part of this Agreement.

2. OBLIGATIONS OF THE RECIPIENT

2.1. The Recipient shall keep the Confidential Information of the Disclosing Company confidential and, except with the prior written consent of the Disclosing Company, shall, and shall procure that its Representatives shall:

2.1.1. not use or exploit the Confidential Information in any way except for the Purpose;

2.1.2. not disclose or make available the Confidential Information in whole or in part to any third party, except as expressly permitted by this Agreement;

2.1.3. not copy, reduce to writing or otherwise record the Confidential Information except as necessary for the Purpose (and any such copies, reductions to writing and records shall be the property of the Disclosing Company);

2.1.4. unless electronic Confidential Information is password protected/encrypted to a standard reasonably expected from a competent supplier working with a public authority, not use, reproduce, transform, or store the Confidential Information in an externally accessible computer or electronic information retrieval system or transmit it in any form or by any means whatsoever outside of the Recipient's usual place of business; and

2.1.5. ensure that any hard copy document or other records containing Confidential Information shall be kept at the premises of the Recipient and shall not remove or allow to be removed such document or records from those premises.

2.2. The undertakings in clause 2.1 above shall not apply to any disclosure of Confidential Information:

2.2.1. to the Recipient's professional advisers (provided that the Recipient has supplied such Confidential Information to them on the basis that they shall be bound to treat it as if they were a party to this undertaking); or

2.2.2. as required by any applicable law or by any supervisory or regulatory body provided that in the event that the Recipient or their Representatives become compelled to disclose any Confidential Information, full details of any proposed disclosure have been given to the Disclosing Company in advance of such disclosure; or

2.2.3. following an Information Request provided the procedure set out in clause 3 of this Agreement has been complied with; or

2.2.4. to the extent expressly approved in writing by the Disclosing Company.

3. FREEDOM OF INFORMATION

3.1. The parties agree that:

3.1.1. The Disclosing Company has certain disclosure requirements under the Act and the Regulations.

3.1.2. The Disclosing Company is responsible for determining in its absolute discretion which information is to be disclosed pursuant to an Information Request, to include whether any Confidential Information is exempt from disclosure.

- 3.1.3. The Recipient shall (at its own expense) use reasonable endeavours to provide assistance to the Disclosing Company so as to enable the Disclosing Company to comply with its obligations under the Act and/or the Regulations.

4. RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION

- 4.1. Save that the Recipient may, on notice to the Disclosing Company, retain a copy of the Confidential Information only to the extent required by any applicable law or by any supervisory or regulatory body, the Recipient will, if so requested in writing at any time by the Disclosing Company:
 - 4.1.1. return to the Disclosing Company all Confidential Information received by it together with all hard copies thereof as soon as is reasonably practicable;
 - 4.1.2. erase or destroy all Confidential Information copied or held in computerised or other electronic form except where such Confidential Information is retained on backup tapes, servers or otherwise in a form which is not readily accessible to the Recipient or its Representatives and cannot practicably be erased or destroyed; and
 - 4.1.3. deliver to the Disclosing Company all hard copies of information derived from Confidential Information received by it.
- 4.2. The Recipient will, if so requested in writing at any time by the Disclosing Company, procure that an authorised senior executive certify in writing that clauses 4.1.1 and/or 4.1.2 and/or 4.1.3 have been complied with in full.

5. RESPONSIBILITY AND ACKNOWLEDGEMENT

- 5.1. The Recipient acknowledges that neither the Disclosing Company nor any representative of the Disclosing Company makes or accepts responsibility for, or will make or accept responsibility for, any warranty or representation, express or implied, with respect to the accuracy or completeness of the Confidential Information.
- 5.2. The Recipient acknowledges that neither the Disclosing Company nor any representative of the Disclosing Company shall have any liability of whatsoever nature in respect of the Confidential Information or its provision to the Recipient, whether by virtue of any purported representation or warranty or otherwise.
- 5.3. The Recipient acknowledges that damages alone would not be an adequate remedy for the breach of any of the provisions of this Agreement. Accordingly, without prejudice to any other rights and remedies it may have, the Disclosing Company shall be entitled to the granting of equitable relief (including without limitation injunctive relief) concerning any threatened or actual breach of any of the provisions of this Agreement.

6. CONFLICTS OF INTEREST – EXISTING CONTRACTORS

- 6.1. Recipients with an existing relationship with the Disclosing Company are required to immediately notify the Disclosing Company of an actual, or perceived, conflict of interest from their existing activities and any future business opportunities for which they intend submit a tender.
- 6.2. This assurance must be provided in the form of an 'Ethical Wall' statement, demonstrating how the Recipient will prevent conflicts of interest arising to cover (as a minimum) the

separation of:

- 6.2.1. People (named individuals and the services that they are providing);
- 6.2.2. Systems & Resources (including office locations); and
- 6.2.3. Governance Arrangements (including line management).

7. PERSONAL CONFLICT OF INTEREST

The Recipient confirms that they have declared any actual, potential or perceived conflicts of interest with the activities of the Disclosing Company, whether of a financial or personal nature. The Recipient also confirms that any future conflicts of interest which arise will be promptly disclosed to the Disclosing Company.

8. TERM AND CONTINUING EFFECT

The obligations contained in this Agreement will survive indefinitely for as long as the Confidential Information remains confidential. No breach of the terms of this Agreement by the Recipient shall serve to permit the termination of this Agreement.

9. ENTIRE AGREEMENT AND VARIATION

- 9.1. This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.
- 9.2. Each party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that its only liability in respect of those representations and warranties that are set out in this Agreement (whether made innocently or negligently) shall be for breach of contract.

10. NO WAIVER

No failure or delay by either party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise preclude any further exercise of any such right, power or privilege hereunder or otherwise.

11. ILLEGALITY AND UNENFORCEABILITY

If any term or provision of this Agreement shall be held to be illegal or unenforceable in whole or in part, under any applicable enactment or rule of law, such term or provision or part thereof shall to that extent be deemed not to form part of this Agreement, but the enforceability of the remainder of this Agreement shall not be affected.

12. ASSIGNMENT

This Agreement shall be binding on the parties and their successors. Neither party shall be entitled to assign any rights or obligations under this Agreement.

13. THIRD PARTY RIGHTS

The parties hereby grant to each of the Beneficiaries the right to enforce the Disclosing Company's rights under this Agreement.

14. VARIATION

November 2015

No variation of this Agreement shall be effective unless in writing and signed for by or on behalf of each of the parties.

15. NOTICES

Any notice or communication in connection with this Agreement shall be given in writing to the relevant party at the address specified below (or any such other address as it shall previously have notified to the other party). Any notice sent by hand shall be deemed to be received when delivered and any notice sent by first class post within the United Kingdom shall be deemed to have been received 48 hours after posting.

Disclosing Company:

High Speed Two (HS2) Limited
One Canada Square
London
E14 5AB
FAO: The Company Secretary

Recipient:

[Name]
[Address]
FAO: [Name]

16. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English courts in respect of all matters or disputes arising hereunder or in connection herewith.

SIGNED for and on behalf of High Speed Two (HS2) Limited

Signature: _____

Name: _____

SIGNED for and on behalf of [Name]

Signature: _____

Name: _____