

Terms and Conditions for the Purchase of Services and/or Goods

CONTRACT NUMBER: [TBC]

**Recruitment of Permanent
Programme/Project Management and PMO
Positions**

Recruitment of Permanent Programme/Project Management and PMO Positions

Contract [tbc]

Version 5 January 2015
HS2-HS2-PR-TEM-000-035

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SECTION ONE - SPECIAL CONDITIONS

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

BETWEEN:

- (1) **High Speed Two (HS2) Limited**, (company number 06791686) whose registered office is at One Canada Square, London E14 5AB ("**Employer**"); and
- (2) **[SUPPLIER NAME]**, Company Registration Number **[NUMBER]** whose registered office is at **[REGISTERED OFFICE ADDRESS]** (the "**Supplier**").

OPERATIVE PROVISIONS

1. The Contract shall be deemed to incorporate and be read as comprising, as if they were set out herein:
 - 1.1 Section One – Special Conditions (including the Contract Details, Pricing Schedule and Annexures attached) ("**Special Conditions**"); and
 - 1.2 Section Two – Standard Terms and Conditions of Purchase ("**Standard Conditions**")If there is any inconsistency between the Special Conditions and the Standard Conditions, the Special Conditions shall take precedence.
2. In accordance with the provisions of the Contract, the Supplier shall provide the Services and/or the Goods and the Employer will pay the Price (as defined in the Standard Conditions).
3. The Contract constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter and neither party has entered into the Contract in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement which is not expressly set out in the Contract. Nothing in this clause will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.
4. This Contract may be executed in any number of counterparts, each of which shall constitute an original.

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

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

Name:

Position:

Signed)
duly authorised to sign for)
and on behalf of)
[SUPPLIER NAME])

Name:

Position:

CONTRACT DETAILS

Contract Number	tbc	
Description of the Services	Recruitment of Permanent Programme/Project Management and PMO Positions	
Price	Please refer to ITT	
Performance Date(s) for Services	Please refer to ITT	
Delivery Date(s) for Goods	Please refer to ITT	
Supplier Representative	tbc	
Commencement Date	Please refer to ITT	
Contract End Date	Please refer to ITT	
Contract Manager	tbc	
Employer's Representative	tbc	
Key Personnel	tbc	
Supplier's Limit of Liability	Subject to Condition 25.2 of the Standard Conditions, 125% of the total Price paid or payable under the Contract.	
Supplier Insurances and Levels	Employer's Liability Insurance	Not less than the statutory minimum per occurrence for each and every claim.
	Public Liability Insurance	Not less than one million pounds (£1,000,000) per occurrence for each and every claim.

	Professional Indemnity Insurance	Not less than one million pounds (£1,000,000) in respect of each and every claim.
Place(s) of work		

1. **CONTRACT TERM & TERMINATION**

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

2. **SCOPE**

Please refer to ITT.

3. **DELIVERABLES AND KEY MILESTONE DATES**

Please refer to ITT.

3.1 Time for performance of the Services will be of the essence of the Contract.

Please refer to ITT.

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

Please refer to ITT.

5. **PERFORMANCE REVIEW**

Please refer to ITT.

6. **ADDITIONAL PROCEDURES**

Please refer to ITT

PRICING SCHEDULE

1. **PRICE / RATES**

2. Please refer to ITT

All prices are exclusive of VAT.

3. **EXPENSES**

No expenses permitted

4. **TIMING/FREQUENCY OF INVOICES**

Invoices shall be paid within 30 days after receipt of an approved invoice.

5. **SPECIAL PAYMENT TERMS**

N/A

ANNEX 1

SCOPE

Please refer to ITT.

ANNEX 2

MANAGEMENT INFORMATION

Please refer to ITT

ANNEX 3
PERFORMANCE REVIEW

Please refer to ITT

SECTION TWO – STANDARD CONDITIONS**1. DEFINITIONS AND INTERPRETATIONS**

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

“Applicable Laws”	<p>any:</p> <ul style="list-style-type: none"> (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
“Bribery Act”	means the Bribery Act 2010
“Business Day”	a day that is not a Saturday, Sunday or public or bank holiday in England
“Change in Control”	<p>occurs where:</p> <ul style="list-style-type: none"> (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
"Commencement Date"	the date upon which the Contract is formed in accordance with Condition 2.1, or, if different, the date specified as the "Commencement Date" in the Special Conditions
"Conditions"	these Standard Conditions together with the Special Conditions. All references to Conditions are to the Standard Conditions unless otherwise stated
"Contract Manager"	such official of the Employer, or other person, as the Employer shall from time to time appoint to act on its behalf, as stated in the Special Conditions or as notified in writing by the Employer to the Supplier and who shall be responsible for the overall management of the Contract including those aspects specifically stated in the Contract,
"Confidential Information"	all information (whether written, oral, in electronic form or in any other media) of a confidential or proprietary nature that is disclosed by or on behalf of the Employer obtained by or made available to the Supplier or its

	representatives
“Control”	the power (whether direct or indirect) to direct or cause the direction of the affairs of an entity, whether by means of holding shares, possessing voting power, exercising contractual powers or otherwise
“Contract”	the contract between the Employer and the Supplier as formed in accordance with Condition 2
“Contract Information”	means; (i) the Contract in its entirety (including from time to time any changes to the Contract agreed by the parties pursuant to Condition 2.6); (ii) any tender documents relating to the award of the Contract; and (iii) data from the Supplier’s invoices submitted pursuant to Condition 4.4 including (but not limited to) invoice number, clearing date and invoice amount.
“Data Controller”	has the meaning set out in section 1 of the Data Protection Act 1998
“Data Processor”	has the meaning set out in section 1 of the Data Protection Act 1998
“Disputed Sum”	that part of an amount invoiced by the Supplier which is the subject of a bona fide dispute, as notified by the Employer to the Supplier under Condition 4.9
“EIR”	the Environmental Information Regulations 2004
“Employer”	the company named High Speed Two (HS2) Limited (company number 06791686) whose registered office is

at One Canada Square, London E14 5AB

"Employer's Representative"	such official of the Employer, or other person, as the Employer shall from time to time appoint to act on its behalf as stated in the Special Conditions or as notified in writing by the Employer to the Supplier and who shall be responsible for the day to day management of the Contract including those aspects specifically stated in the Contract
"Expiry Date"	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 Special Conditions
"FOIA"	the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or the Secretary of State or relevant Government Department in relation to such Act
"Goods"	the Goods to be supplied by the Supplier (if any) under the Contract
"Information"	has the meaning given under section 84 of FOIA and/or under regulation 2(1) of the EIR
"Insolvent"	where the Supplier: (a) gives notice under section 84 Insolvency Act 1986 of, or proposes or passes a resolution for, its winding up or in the case of a limited liability partnership proposes or determines that it will be wound up;

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

jurisdiction

"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
"Key Personnel"	any person specified in the Special Conditions as such and any other person who has been notified to the Supplier as being, in the opinion of the Employer, fundamental to the performance of the Contract
"Notice of Proposed Variation" or "NPV"	has the meaning stated in Condition 2.6
"Personal Data"	has the meaning set out in section 1 of the Data Protection Act 1998
"Price"	the charges payable to the Supplier by the Employer under the Contract for the Goods and/or Services as set out in the Special Conditions, or, if none specified, then as set out in the Employer's purchase order
"Premises"	any premises owned by or occupied by the Employer from time to time
"Processing" and "Process"	has the meaning set out in section 1 of the Data Protection Act 1998

"Prohibited Act"	<p>means any of the following:</p> <ul style="list-style-type: none">(i) 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(ii) 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(iii) 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.
"Project"	<p>the high speed railway network connecting (at least) London and the West Midlands and referred to generally as 'High Speed Two';</p>
"Request for Information"	<p>a request for information or an apparent request under any relevant guidance on accessing Government Information, FOIA or the EIR</p>
"Services"	<p>means the services that the Supplier is required to carry out under the Contract</p>
"Special Conditions"	<p>If any, the Special Conditions (including the contract details, pricing schedule and annexures) contained in Section One of these Conditions</p>
"Standard Conditions"	<p>these standard terms and conditions for the purchase of</p>

	goods and/or services (Section Two)
“Supplier”	the person appointed by the Employer for the supply of the Goods and/or performance of the Services
“Supplier’s Representative”	such competent person as the Supplier 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 either the Employer’s Representative and/or the Contract Manager and whose appointment and contact details shall be notified in writing by the Supplier to the Employer’s Representative
“Sub-contractor”	shall, as the context may require, include any adviser, consultant, supplier or agent engaged by the Supplier to assist in the performance of the Contract
“Transparency Commitment”	means the transparency commitment stipulated by the UK government in May 2010 that all new central government contracts (including those of the Employer) will be published in full.
“TUPE”	the Transfer of Undertakings (Protection of Employment) Regulations 2006

1.2 In these 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 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 Supplier 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 Supplier on these Conditions and in accordance with the Contract. A contract for the supply of Goods and/or Services between the Supplier and

the Employer will be formed when the Supplier has signed Section One of these Conditions, or if earlier, on commencement of the performance of the Services or delivery of the Goods.

- 2.2 The Contract comprises the only terms and conditions on which the Employer will purchase goods and/or services from the Supplier and will apply to the exclusion of all other terms and conditions including any terms and condition which the Supplier purports to apply under any quotation, acknowledgement, acceptance or confirmation of order, delivery note, invoice or similar document (whether subsequent or not and/or 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 the Standard Conditions and the Special Conditions. To the extent of any conflict or inconsistency between the Special Conditions and the Standard Conditions, the Special Conditions shall take precedence.
- 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 Supplier has completed the Services and/or delivered the Goods in accordance with the Contract.
- 2.5 The Supplier will comply with all Applicable Laws in performing its obligations under the Contract.

Variation

- 2.6 The Contract Manager may issue to the Supplier at any time in respect of any proposed variation of this Contract a Notice of Proposed Variation (NPV) in substantially the form stated in Part A of Appendix 1 to these Standard Conditions.
- 2.7 Within five (5) Business Days of receipt of such NPV, the Supplier shall reply in writing to the NPV (in the form stated in Part B of Appendix 1 to these Standard Conditions) in order to confirm the Supplier's acceptance of the proposed variation and to provide to the Supplier's full details of the fair and reasonable valuation of the variation with full supporting particulars.
- 2.8 If the Supplier's proposed valuation is acceptable, the Contract Manager shall confirm in writing in the form stated in Part C of Appendix 1 to these Standard Conditions to notify

the Supplier and accordingly, both the Services and the Price shall be varied as agreed with the Contract Manager.

- 2.9 No variation of this Contract shall be effective unless it is in writing in accordance with Condition 2.6 above and signed by the parties (or their authorised representatives). The parties shall continue to act in accordance with the Contract until any such variation has been agreed.

3. **PERFORMANCE OF THE SERVICES**

- 3.1 The Supplier 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 the business continuity plan and/or disaster recovery plan it submitted as part of its tender for the Good/Services;
- 3.1.9 complies with all reasonable instructions from the Employer's Representative as such relate to the performance of the Services and/or delivery of the Goods;
- 3.1.10 complies with the following policies of the Employer that may apply in relation to the performance of the Contract, copies of which are available on request:
 - conflicts of interest policy;

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- sustainability policy;
 - security policy; and
 - other policies expressly referred to in these Conditions;
- 3.1.11 at any Premises, complies with all lawful and reasonable directions of the Employer and the Employer's health and safety policy; and
- 3.1.12 does 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 Supplier shall perform the Services in accordance with the provisions in the Conditions relating to performance of the Services, including performance dates.
- 3.3 The Supplier acknowledges that health and safety is paramount to the Employer's objectives and that the Services must be provided in compliance with the Contract (including the Employer's health and safety policy in place from time to time (the current version of which can be found at <https://www.gov.uk/government/publications/health-and-safety-policy>)) and the Supplier shall manage and monitor performance of the Services accordingly. The Supplier shall have particular cognisance of assisting the Employer in taking all reasonable actions to mitigate work related road risks (including dangers to vulnerable road users) in performing its obligations under the Contract. The Supplier shall inform the Employer's Representative 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 Supplier 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 Supplier shall supervise and manage all such personnel properly.
- 3.6 The Supplier shall take all reasonable steps to avoid changes to the Key Personnel. The Supplier shall give at least one month's notice to the Employer's Representative of any proposal to remove or replace Key Personnel and the Contract Manager must agree any replacement in writing, save that the Supplier 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.

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- 3.7 If the Employer gives the Supplier notice that any person is to be removed from involvement in the Services, the Supplier shall take immediate steps to comply with that notice and to find a suitable alternative replacement. The decision of the Employer regarding the Supplier's personnel shall be final and conclusive.
- 3.8 The Supplier 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 Supplier 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 Supplier 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 Supplier 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 Supplier 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 Supplier 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 Supplier, in such amount as the Employer deems appropriate, until the Supplier 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 Supplier 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 Supplier 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 Conditions 3.11 and 3.12 shall be without prejudice to the Employer's rights under these Conditions or otherwise.

4. INVOICES AND PAYMENT

- 4.1 Subject to the Supplier performing its obligations in accordance with the terms of the Contract, the Employer will pay the Price to the Supplier in accordance with this Condition 4.

- 4.2 The Price will be inclusive of all costs and expenses incurred by the Supplier including all packaging, insurance, carriage and delivery costs, and costs relating to staff, facilities, equipment, materials. To the extent that any additional expenses are permitted to be claimed by the Supplier, 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 Supplier 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 Supplier shall not be entitled to submit interim invoices for the Services prior to completion unless stated in the Special Conditions or otherwise agreed by the Employer. The Employer shall not be required to pay any amount due to the Supplier under this Contract until the Supplier has submitted a valid invoice in accordance with Condition 4.5 below.

- 4.5 Each invoice will be a valid value added tax invoice which shall quote the purchase order number 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 HS2accountspayable@hs2.org.uk. The Supplier shall at first instance raise any issues or queries related to payment under the Contract with the Employer's Representative.

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- 4.6 The Employer is committed to prompt payment and shall pay the Supplier 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 Supplier 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 Supplier, the Employer will be entitled, by giving written notice to the Supplier, to appropriate any payment by the Employer to any invoice issued by the Supplier.
- 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 Supplier including the right to recover any amount overpaid or wrongfully paid to the Supplier.
- 4.9 If the Employer, on bona fide grounds, disputes any part of an amount invoiced by the Supplier, the Employer may notify the Supplier 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 Supplier 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 Supplier 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 Supplier 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 Supplier has to it against any liability which it has to the Supplier, 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 Supplier 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 via the Employer's Representative on completion (or, if sooner, termination) of the Services, subject to the retention of proper professional records. The Deliverables shall be supplied by the Supplier to the Employer's Representative 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 Supplier shall produce such accounts, documents (including working documents) and records related to the Contract as the Employer, the Employer's Representative and/or the Contract Manager, may request at any time during the term of the Contract. Subject to the provisions of Condition 10, the right to request the production of documents under this Clause 6.1 shall not apply to the extent that production of the documents would cause the Supplier to breach confidentiality obligations to its other clients.

- 6.2 The Supplier shall retain and produce such accounts, documents (including working documents) and records related to the Contract as the Employer, the Employer's

Representative and/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 Supplier in writing at or before the commencement of the Contract.

6.3 The Supplier shall afford such facilities as the Employer may reasonably require for its representatives to visit the Supplier'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 Supplier's other clients.

6.4 Subject to the provision of reasonable notice to the Supplier, 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 Supplier.

6.5 The Supplier 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 Supplier.

7. **MEETINGS AND REPORTS**

7.1 The Supplier 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 Supplier shall provide such reports on the performance of the Contract as the Employer's Representative and/or Contract Manager may reasonably require.

8. CONFLICT OF INTEREST

- 8.1 It shall be the Supplier'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 Supplier 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 Supplier to take reasonable steps to avoid such conflict of interest and the Supplier shall comply with such directions.
- 8.3 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 23.3.1.

9. ANTI-CORRUPTION**9.1 The Supplier:**

- 9.1.1 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;
- 9.1.2 warrants, represents and undertakes (each as a continuing obligation) 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.

9.2 The Supplier shall:

- 9.2.1 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;
- 9.2.2 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 Supplier and all persons associated with it or other persons who are supplying goods or services in connection with the Contract.

The Supplier shall provide such supporting evidence of compliance as the Employer may reasonably request.

- 9.3 The Supplier 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.
- 9.4 If any breach of Condition 9.1 is suspected or known, the Supplier must notify the Employer immediately.
- 9.5 If the Supplier notifies the Employer that it suspects or knows that there may be a breach of Condition 9.1, the Supplier 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.
- 9.6 A breach of Condition 9.1 shall be deemed to be a material breach which is incapable of remedy.

10. **FREEDOM OF INFORMATION**

10.1 The Supplier 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 Supplier 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 Supplier shall and shall procure that its sub-contractors shall:

- 10.3.1 transfer any Request for Information to the Employer's Representative as soon as practicable after receipt and in any event within two Business Days of receiving it;
- 10.3.2 provide the Employer's Representative 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 Supplier respond directly to a Request for Information unless expressly authorised to do so by the Employer.

11. **CONFIDENTIALITY**

11.1 Subject to Conditions 11.2 and 11.3 below, the Supplier 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 Supplier, without restriction as to its disclosure, before he receives it from the Employer; or

11.2.3 is received by the Supplier 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 Supplier 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 Supplier 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 Supplier 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 If deemed necessary by the Employer, the Supplier shall upon the Employer's request, promptly sign any reasonable confidentiality agreement provided to it.

12. **DATA TRANSPARENCY**

- 12.1 The Supplier acknowledges that the Employer is subject to the Transparency Commitment. Accordingly, notwithstanding Conditions 10 and 11, the Supplier hereby gives its consent for the Employer to publish the Contract Information.

- 12.2 The Employer may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion the Employer may take account of any exemptions that may be available under the FOIA to prevent publication of all or any part of the Contract Information. The Employer may in its absolute discretion consult with the Supplier regarding any redactions to the Contract Information to be published pursuant to Condition 12.1. The Employer shall make the final decision regarding publication and/or redaction of the Contract Information.

13. **PUBLICITY**

- 13.1 The Supplier shall not, except with the prior written consent of the Employer, make any press announcement, statement or any other form of communication, (i) publicising the Contract, (ii) its appointment by the Employer, or (iii) detailing its involvement in the Project.

- 13.2 The Supplier shall promptly notify the Employer of any press or other similar enquiries it receives concerning the Contract and/or the Project."

14. **DISCRIMINATION**

- 14.1 The Supplier shall, in its performance of the Contract:
- 14.1.1 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;

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- 14.1.2 without prejudice to the generality of Condition 14.1.1, 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
- 14.1.3 where in connection with the Contract, the Supplier, 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.
- 14.2 Should the Supplier or any of its employees, consultants, agents or sub-contractors breach any part of Condition 14.1, the Employer shall be entitled to terminate the Contract with immediate effect by notice in writing to the Supplier.
15. **ASSIGNMENT AND SUB-CONTRACTORS**
- 15.1 The Supplier 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.
- 15.2 The Supplier 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 Supplier of its obligations under the Contract.
- 15.3 Where the Supplier 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 Supplier to the Sub-contractor within a specified period not exceeding 30 days from receipt of an invoice properly issued in accordance with that contract.
16. **INSURANCE**
- 16.1 The Supplier 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.
- 16.2 Save where the Employer states otherwise in writing, the Supplier shall hold those insurances at such levels as set out in the Special Conditions.
- 16.3 Where the Supplier 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.

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- 16.4 Where in compliance with Conditions 16.1 and/or 16.2 the Supplier 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:
- 16.4.1 the completion of the Services; or
- 16.4.2 the termination of the Contract,
- whichever is the earlier.
- 16.5 When requested by the Employer the Supplier shall produce documentary evidence showing that the insurance required by this Condition 16 has been effected and is being maintained.
- 16.6 If, for whatever reason, the Supplier fails to effect and maintain the insurance required by this Condition 16, and/or fails to provide evidence requested under Condition 16.5 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 Supplier.
- 16.7 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.
- 16.8 The Supplier shall impose obligations on its Sub-contractors in terms substantially similar to those set out in this Condition 16, but this shall not relieve the Supplier of any of its obligations and liabilities under the Contract.
17. **DATA PROTECTION**
- 17.1 With respect to any Personal Data disclosed to the Supplier in connection with the Contract, the Supplier acknowledges that the Employer is the Data Controller and that the Supplier is the Data Processor.
- 17.2 In respect of any Personal Data processed by the Supplier pursuant to the Contract for and on behalf of the Employer, the Supplier warrants and undertakes that it will:
- 17.2.1 comply at all times with Applicable Law;
- 17.2.2 only process the Personal Data:

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- 17.2.2.1 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
 - 17.2.2.2 on instructions received from the Employer from time to time;
 - 17.2.3 promptly comply with any change of instructions from the Employer relating to:
 - 17.2.3.1 the Personal Data; and/or
 - 17.2.3.2 the Supplier's role as Data Processoras issued in accordance with the Contract and/or as otherwise required by Applicable Law;
 - 17.2.4 put in place:
 - 17.2.4.1 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 Supplier authorises to have access to such Personal Data will comply with like obligations as are contained in this Condition 17.2.4 and will respect and maintain all due confidentiality; and
 - 17.2.4.2 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 17.2.4;
 - 17.2.5 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 17.2.4 made by any of the Supplier's staff or any other identified or unidentified third party (a "Security Breach");
 - 17.2.6 promptly provide the Employer with all information in the Supplier's possession concerning any Security Breach;
 - 17.2.7 not make any announcement or publish or otherwise authorise any broadcast of any notice or information about a Security Breach (a "Security Breach Notice")

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- 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;
- 17.2.8 hold all Personal Data to which the Contract relates physically and electronically separate from any other data held by the Supplier and ensure that such Personal Data is readily identifiable;
- 17.2.9 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 Supplier or a customer of the Supplier is a Data Controller);
- 17.2.10 not make any copies of the Personal Data (whether in electronic or paper form) unless strictly necessary for the Services;
- 17.2.11 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
- 17.2.12 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 Supplier or by its respective agents, directors, officers, employees and sub-contractors.
- 17.3 The Supplier 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 17.
- 17.4 The Supplier 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.

18. TRANSFER OF THE SERVICES AND TUPE

- 18.1 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 Supplier (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.
- 18.2 The Supplier 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.
- 18.3 In addition to the legal obligation to provide “employee liability information” under regulation 11 of TUPE the Supplier 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).

19. OCCUPATION OF PREMISES

Where the Supplier requires access to 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 or IT required by the Supplier shall be subject to recharge by the Employer.

20. SUSTAINABILITY REQUIREMENTS

- 20.1 In performing the Contract the Supplier shall comply with the Employer’s sustainability policy with regard to the key themes of growth and regeneration, environmental change, skills and employment, climate change, resilience, resources and waste, and integrated transport.
- 20.2 Without prejudice to Condition 20.1, the Supplier 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/>

21. INTELLECTUAL PROPERTY RIGHTS

- 21.1 All Intellectual Property Rights in any materials provided by the Employer to the Supplier for the purposes of this Contract shall remain the property of the Employer but the Employer hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Contract for the sole purpose of enabling the Supplier to perform its obligations under the Contract.
- 21.2 Subject to Condition 21.3, all Intellectual Property Rights in any materials created or developed by the Supplier pursuant to the Contract or arising as a result of the provision of the Services shall vest in the Supplier. If, and to the extent, that any Intellectual Property Rights in such materials vest in the Employer by operation of law, the Employer hereby assigns to the Supplier, by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such Intellectual Property Rights, all its Intellectual Property Rights in such materials (with full title guarantee and free from all third party rights).
- 21.3 The Supplier hereby grants the Employer:
- 21.3.1 a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use, modify and develop all Intellectual Property Rights in the materials (including any Deliverable(s)) created or developed pursuant to the Contract and any Intellectual Property Rights arising as a result of the provision of the Services; and
- 21.3.2 a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use:
- (a) any Intellectual Property Rights vested in or licensed to the Supplier on the Commencement Date; and
- (b) any Intellectual Property Rights created during the performance of the Services but which are neither created or developed pursuant to the Contract nor arise as a result of the provision of the Services, including any modifications to or derivative versions of any such Intellectual Property Rights, which the Employer reasonably requires in order to exercise its rights and take the benefit of the Contract including the Services provided.

21.4 The Supplier 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.

21.5 The Supplier:

21.5.1 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 Supplier will not infringe any Intellectual Property Rights owned by third parties; and

21.5.2 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.

22. **MERGER, TAKE-OVER OR CHANGE OF CONTROL**

22.1 The Supplier 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 Supplier, 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 Supplier becomes aware of the same. If such consent is not obtained when required by this Condition 22.1, the Employer has the right to terminate the Contract at its election as set out in Condition 23 (Termination of the Contract).

22.2 The Supplier shall inform the Employer of any change, or proposed change in the name of or status of the Supplier.

23. **TERMINATION OF THE CONTRACT**

23.1 The Supplier may not terminate the Contract.

23.2 The Employer may terminate the Contract by giving not less than 30 days' written notice to that effect to the Supplier at any time. If the Employer exercises its right of cancellation under this Condition 23.2 then the Employer's sole liability will be to pay to the Supplier 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 regardless of whether or not the Employer engages another supplier to provide the Services and/or Goods.

23.3 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:

23.3.1 the Supplier is in material breach of the Contract which is incapable of remedy;

23.3.2 the Supplier is in material breach of the Contract which can be remedied but fails to remedy that breach within the timescale stipulated by the Employer (acting reasonably) in a written notice served by the Employer on the Supplier setting out the breach and requiring it to be remedied

23.3.3 the Supplier has failed to comply with a notice given under Condition 3.11;

23.3.4 a Change of Control occurs without the prior approval of the Employer; or

23.3.5 the Supplier is Insolvent.

23.4 For the avoidance of doubt and without prejudice to the generality of Condition 23.3.1, breach by the Supplier of any of Conditions 8 (Conflict of Interests), 9.1(Anti-Corruption), 10 (Freedom of Information) and 35.2 (Inspection and Testing) of the Contract, shall be deemed to be material breaches of the Contract which are incapable of remedy.

23.5 The Supplier will give written notice to the Employer immediately upon becoming Insolvent.

23.6 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.

24. CONSEQUENCES OF TERMINATION AND EXPIRY

24.1 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 Conditions 1, 3.11, 3.12, 3.13, 4, 5, 6, 9, 10, 11, 12, 13, 17, 18, 18,

21.5, 24, 26, 27, 28, 29, 30, 31, 31, 32, 33.6, 34.4 and 34.5 together with any other provision which expressly or impliedly will survive termination.

24.2 Where the Contract is terminated under Condition 23.3, the following provisions shall apply:

24.2.1 pending final ascertainment of such sums as are payable under the Contract any sum due or accruing from the Employer to the Supplier may be withheld or reduced by such amount as the Employer in either case considers reasonable and appropriate;

24.2.2 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 Supplier 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 Supplier so as to reduce to a minimum any interruption in the provision of the Goods or performance of the Services;

24.2.3 where the total costs reasonably and properly incurred by the Employer by reason of any arrangements made under Condition 24.2.2 exceed the amount that would have been payable to the Supplier for the completion of the Services, the excess shall be recoverable from the Supplier and the Employer reserves the right to recover such excess under Condition 26.

24.3 In addition to its obligations under Condition 24.2.2, the Supplier shall upon termination or earlier expiry of the Contract:

24.3.1 give all reasonable assistance to the Employer and any incoming supplier of the Goods and/or Services; and

24.3.2 return and/or deliver up all requested documents, information and data within the Supplier's possession, custody or power to the Employer as soon as reasonably practicable.

25. **LIABILITY AND INDEMNITY**

25.1 Subject to Condition 25.2, the Supplier will indemnify, keep indemnified and hold harmless the Employer in full and on demand from and against:

- 25.1.1 death and/or personal injury;
- 25.1.2 damage or loss to property;
- 25.1.3 breach of statutory duty; or
- 25.1.4 third party claims;

arising from any breach of the Contract or negligent performance of the Contract by the Supplier.

25.2 Subject to Condition 25.3, the Supplier's total liability to the Employer for each and every claim arising under or in connection with the Contract, is limited to the amount specified in the Contract Details section of the Special Conditions and applies in contract, tort and otherwise to the extent permitted under English law.

25.3 Nothing in the Contract limits or excludes the Supplier's liability for:

- 25.3.1 losses against which the Supplier is entitled to an indemnity under any policy of insurance required to be maintained under this Contract (or would have been entitled but for any breach or failure to maintain such insurance);
- 25.3.2 breach of Condition 9;
- 25.3.3 acts of a criminal nature;
- 25.3.4 death or bodily injury; or
- 25.3.5 any amounts payable by the Supplier under any of the indemnities referred to in Standard Conditions 17.3 (Data Protection), 21.5.2 (Intellectual Property Rights) and 25.1 (General Liabilities).

26. **RECOVERY OF SUMS DUE**

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

27. SERVICE OF NOTICES

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

- 27.1.1 delivery in person to the Supplier's Representative, when it shall be deemed served at the time the notice is delivered to the Supplier's Representative, or
- 27.1.2 sending it to the Supplier's Representative by first-class post, when it shall be deemed served on the second working day after posting; or
- 27.1.3 delivery in person to the Employer's Representative, when it shall be deemed served at the time the notice is delivered to the Employer's Representative, or
- 27.1.4 sending it to the Employer's Representative by first-class post, when it shall be deemed served on the second working day after posting.

28. 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 Supplier shall immediately commence negotiations in good faith to remedy the invalidity.

29. WAIVER

- 29.1 Any failure by the Employer or the Supplier to exercise any right or remedy shall not constitute a waiver of that right or remedy.
- 29.2 No waiver shall be effective unless it is communicated to the other party in writing.
- 29.3 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.

30. 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.

31. DISPUTE RESOLUTION

- 31.1 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 Supplier and the Employer's Head of Procurement.
- 31.2 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.
- 31.3 If the dispute cannot be resolved by the parties pursuant to Condition 31.1, the dispute shall be referred to mediation pursuant to the procedure set out in Condition 31.5 unless the Employer considers that the dispute is not suitable for resolution by mediation or the Supplier does not agree to mediation.
- 31.4 The performance of the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Supplier (and its employees, consultants, agents or sub-contractors) shall comply fully with the requirements of the Contract at all times.
- 31.5 The procedure for mediation is as follows:
- 31.5.1 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;
 - 31.5.2 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;

- 31.5.3 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 31.5.4);
- 31.5.4 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;
- 31.5.5 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;
- 31.5.6 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 32.

32. **LAW**

The Contract shall be governed by and interpreted in accordance with English law and, subject to Condition 31, any dispute arising out of or in connection with it shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

CONDITIONS RELATING TO GOODS (WHERE APPLICABLE)

33. **DELIVERY OF THE GOODS**

- 33.1 The Supplier 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's Representative, between 9.00 am and 4.00 pm on a Business Day.
- 33.2 The Supplier 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.
- 33.3 The Supplier may not deliver the Goods by separate instalments unless the Employer's Representative gives its prior written consent to this. If the Employer's Representative gives such consent, the Supplier 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 Conditions or otherwise) in respect of the relevant instalment or the whole Contract.

33.4 The Supplier will ensure that:

33.4.1 the Goods are marked in accordance with any instructions given by the Employer's Representative and any Applicable Laws and are properly packed and secured so as to reach their destination in an undamaged condition;

33.4.2 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 33.3, the outstanding balance of Goods remaining to be delivered;

33.4.3 if the Supplier requires the Employer to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material will only be returned to the Supplier at the cost of the Supplier;

33.4.4 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 Supplier in order to satisfy its own obligations under the Health and Safety at Work Act 1974 and any relevant Applicable Laws; and

33.4.5 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.

33.5 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 Supplier be entitled to raise an objection on this ground to any subsequent rejection of the Goods.

33.6 If the Supplier fails to deliver the Goods on the date specified in Condition 33.1 and the provisions of Condition 23.3.1 or 23.3.2 are satisfied, 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 Supplier, in which case:

33.6.1 the Supplier will refund any monies already paid by the Employer under the Contract in relation to the Goods that have not been delivered; and

33.6.2 the Employer will be entitled to recover from the Supplier any and all liabilities, losses, damages, costs and expenses incurred by the Employer as a result of the Supplier's failure to supply Goods, including in obtaining substitute goods from another supplier.

33.7 Risk in and ownership of the Goods will pass to the Employer on delivery.

34. **STANDARD OF THE GOODS**

34.1 The quantity and description of the Goods will be as set out in any quotation or tender submitted by the Supplier, the Contract and the order placed by the Employer.

34.2 The Supplier will ensure that the Goods will:

34.2.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979;

34.2.2 be fit for any purpose held out by the Supplier or made known to the Supplier expressly or by implication and in this respect the Employer relies on the Supplier's skill and judgement;

34.2.3 be free from defects in design, materials and workmanship;

34.2.4 comply with all relevant Applicable Laws; and

34.2.5 be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.

34.3 The Supplier 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.

34.4 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 34.1 or 34.2 and the provisions of Condition 23.3.1 or 23.3.2 are satisfied, the Employer may (whether or not the Goods have been accepted):

34.4.1 terminate the Contract in accordance with, as applicable, Condition 23.3.1 or Condition 23.3.2; or

34.4.2 require the Supplier, 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 Supplier 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.

34.5 Condition 34.4 will apply to any repaired or replacement Goods supplied under Condition 34.4.2.

35. **INSPECTION AND TESTING**

35.1 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 Supplier will permit the Employer, its officers, employees, agents and sub-contractors to enter upon the Supplier'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.

35.2 If, following inspection or testing under Condition 35.1, the Employer gives written notice to the Supplier that it is not satisfied that the Goods and/or the Services will comply with the Contract, the Supplier will take all steps necessary to ensure compliance. Any breach of this obligation by the Supplier shall be deemed to be a material breach which cannot be remedied entitling the Employer to terminate the Contract under Condition 23.3.1.

35.3 No inspection or testing under Condition 35.1 will reduce or otherwise affect the Supplier's obligations under the Contract.

Schedule 1**Notice of Proposed Variation****Notice of Proposed Variation (NPV)****FORM (A)**

Contract No. -----		Variation number	
Contract title -----			
Supplier -----		Date	
Details of the proposed variation:			
<div style="border: 1px solid black; padding: 5px;"> <p>The Supplier is requested to supply a quotation within five (5) Business Days on Form B of this NPV. (A version of Form B should be supplied with this NPV Form A).</p> </div>			
<div style="border: 1px solid black; padding: 5px;"> <p>The Form B quotation should be sent by the Supplier to the Contract Manager (as defined in the Contracts) unless otherwise set out below:-</p> </div>		Name:	
Address:			
IMPORTANT This work is not to commence unless instructed in writing by the Contract Manager on Form C for this Notice of Proposed variation			
	Name	Signed	Date

Contract Manager			
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Quotation against NPV**FORM (B)**

Contract No. -----	Variation number	
Contract title -----		
Supplier -----	Date	

Details of the proposed variation (as a reference to the original NPV in Form 'A').

Acceptance of the proposed variation setting out clearly any proposed deviations from the revised scope:

Confirmation of Supplier's price for the revised Goods/Services and the revised Price for the Contract:

IMPORTANT

This work is not to commence unless instructed in writing by the Contract Manager on Form C for this Notice of Proposed variation

	Name	Signed	Date
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Supplier's Representative			
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Acceptance of quotation against NPV

FORM (C)

Contract No. -----	Variation number	
Contract title -----		
Supplier -----	Date	
Details of the proposed variation (as a reference to the original NPV in Form 'A'):		
Confirmation of the revised Goods/Services that are now being instructed:		

This form together with previous contract documents continue to form a binding contract between **(insert Supplier name)** ('the Supplier') and High Speed Two (HS2) Limited ('the Employer').

The Contract Manager for this variation is:		The Employer's Representative for this variation is:	
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The new capped Price, which shall not be exceed without the written authority of the undersigned, is:	£XXX (+VAT)
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Purchase Order number and contract number are to be quoted on all invoices.	Purchase order No.		
	Contract No.		
	Name	Signed	Date
Contract Manager			