



Department
for Transport

HS2 Development Agreement

Moving Britain Ahead

July 2017

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Development Agreement

between

The Secretary of State for Transport
as the SoS

and

High Speed Two (HS2) Limited
as HS2 Ltd

relating to the High Speed Two Project

8 December 2014 and amended on 17 July 2017

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THIS AGREEMENT is dated the 8th day of December 2014 and amended on the 17th day of July 2017 and is made

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR TRANSPORT**, (the "SoS"), of Great Minster House, 33 Horseferry Road, London SW1P 4DR; and
- (2) **HIGH SPEED TWO (HS2) LIMITED**, ("HS2 Ltd"), a company registered under the laws of England and Wales (with company number 06791686) and having its registered office at 2 Snowhill, Queensway, Birmingham, England, B4 6GA,

(together the "Parties" and each a "Party").

RECITALS:

- (A) The "Core Programme" means the High Speed 2 project (comprised of Phase One, Phase 2a and Phase 2b) for the design, procurement, construction, commissioning, operation and maintenance of a new Railway, and includes all the work and functions to be carried out by HS2 Ltd in accordance with this Agreement, and any reference to the "Core Programme" includes a reference to a part thereof. The Core Programme will deliver the benefits set out in the Business Case.
- (B) The SoS has initiated a wider programme (the "Wider Programme") to ensure that HS2 Ltd helps to deliver the government's objectives for growth and regeneration. The Wider Programme will deliver benefits beyond those set out in the Business Case.
- (C) The SoS is the funder and sponsor of the Core Programme.
- (D) HS2 Ltd is the entity established by the SoS as an executive non-departmental public body to develop and deliver the Core Programme. HS2 Ltd is wholly owned by the SoS.
- (E) There are two key agreements relating to the Core Programme:
 - (1) this Agreement, which will be the principal mechanism for managing the relationship between: (a) the SoS as funder and sponsor of the Core Programme; and (b) HS2 Ltd; and
 - (2) the Framework Document, which will be the principal mechanism for managing the relationship between: (a) the SoS as owner of HS2 Ltd; and (b) HS2 Ltd as a separate legal entity and as an executive non-departmental public body.
- (F) Royal Assent was granted to the High Speed Rail (London to West Midlands) Act 2017 on 23 February 2017, relating to Phase One of the Core Programme.
- (G) In relation to Phase 2a and Phase 2b of the Core Programme, as at the date of this Agreement:
 - (1) the SoS confirmed his preferred route for Phase 2a in November 2015 and a Bill for Phase 2a is expected to be brought forward in Parliament in Summer 2017;

- (2) the SoS made an announcement in relation to his preferred route of Phase 2b on 15 November 2016 and made a further announcement on 17 July 2017;
 - (3) HS2 Ltd intends to develop a Bill for Phase 2b with a view to such Bill being brought forward in Parliament in 2019.
- (H) There are various agreements and documents which relate to this Agreement, including the Core Programme Documents, the Delivery Contracts and Delivery Sub-Contracts. This Agreement supersedes the version of the Agreement entered into by SoS and HS2 Ltd on 8 December 2014 and incorporates all Change Confirmation Notices signed up until 16 May 2017. The Operational Delegations Document in effect as at the date of this Agreement shall remain in effect upon the execution of this Agreement.
- (I) The Framework Document shall remain applicable throughout the duration of this Agreement unless and to the extent otherwise notified by the SoS to HS2 Ltd.

NOW IT IS AGREED AS FOLLOWS:

PART 1: PRELIMINARY

1. Definitions and Interpretation

1.1 Definitions

The definitions set out below shall apply and have effect in relation to the words and expressions used in this Agreement and the interpretation and construction of this Agreement.

“Advice & Policy Support Functions” means the Routine Advice & Policy Support Functions and the Non-Routine Advice & Policy Support Functions;

“Analytical Work Programme” means the programme of analytical work to support policy and investment decisions set by the SoS (in consultation with HS2 Ltd and other bodies as appropriate) as amended from time to time by the SoS;

“Annual Report” has the meaning given in Clause 24.7;

“Anti-Bribery Requirements” has the meaning given in Clause 36.1(A);

“Anti-Bribery Terms” has the meaning given in Clause 36.4;

“Anticipated Final Cost” means, for any Phase at a given date, the aggregate of the costs incurred from April 2012 by HS2 Ltd (and by DfT with respect to land and property) in carrying out the Permitted Purposes in respect of that Phase, together with the anticipated costs to be incurred by HS2 Ltd (and by DfT with respect to land and property) in delivering all remaining activities required to complete the Permitted Purposes for that Phase;

“Applicable Law” means:

- (A) any applicable national, regional, municipal, local, civil, criminal or administrative law, common law, statute, statutory instrument, regulation, directive, order, direction, ordinance, tariff regime;
- (B) any rule, code, standards and guidance (having the force of law); or
- (C) any decree or judgment or measure of similar effect to any of the foregoing (including any amendment, extension or re-enactment or any of the same enforced from time to time),

of any Government Authority which has appropriate jurisdiction;

“Applicable Standards” means all or any codes of practice or other guidelines issued by any Government Authority or other body having jurisdiction to issue such guidelines;

“Asset Register” means a register of Assets in the form to be approved by the SoS in accordance with Clause 18.3 and including the details set out in Clause 18.3;

“Assets” has the meaning given in Clause 18;

"Baseline Cost Model" means, in respect of a Phase, the baseline cost model including the minimum requirements set out at Clause 14.2, and which has been approved by the SoS or any amended version which is substituted for it in accordance with Clause 14.8;

"Baseline Delivery Schedule" means, in respect of a Phase, the baseline delivery schedule including the minimum requirements set out in Clause 14.1, and which has been approved by the SoS, or any amended version which is substituted for it in accordance with Clause 14.8;

"Baseline Operational Cost Model" means, in respect of a Phase, the baseline operational cost model including the minimum requirements set out at Clause 14.3, and which has been approved by the SoS, or any amended version which is substituted for it in accordance with Clause 14.8;

"Benefits Baseline" means, in respect of a Phase, the benefits baseline document including the requirements set out in Clause 14.4, and which has been approved by the SoS, or any amended version which is substituted for it in accordance with Clause 14.8;

"Best Current Practice" means the exercise of that degree of skill, care, diligence, prudence and foresight which would reasonably be expected from time to time from a delivery vehicle experienced in managing and delivering large scale programmes similar in scope and complexity to the Core Programme, taking into account successful, reliable and safe examples of relevant modern designs, construction methods, systems and systems operation, railway operation, management, maintenance and governance procedures used on recent national or international high speed railway projects;

"Bill" means a bill of legislation relating to the Core Programme which is intended to be passed as a Core Programme Act;

"Bill Design Development Functions" means those functions set out in Clause 19.2(A);

"Bill Support Functions" means those functions set out in Clause 19.2(B);

"Breakage Costs" means Losses that have been or will be reasonably and properly incurred by HS2 Ltd as a direct result of the termination of this Agreement, but only to the extent that:

- (A) the Losses are incurred in connection with the Core Programme, including:
- (1) any materials or goods ordered or Delivery Sub-Contracts placed that cannot be cancelled without such Losses due to termination being incurred;
 - (2) the cost of demobilisation including the cost of any relocation of equipment used in connection with the Core Programme; and
 - (3) redundancy payments;

- (B) the Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms;
- (C) in respect of any loss of profit, HS2 Ltd demonstrates to the reasonable satisfaction of the SoS that the quantum of loss of profit incurred is reasonable and appropriate, and on market standard terms referable, to the nature of the agreement or arrangement in question; and
- (D) HS2 Ltd and the relevant Delivery Contractors have each used their reasonable endeavours to mitigate the Losses;

"Budget Envelope" means [Redacted]

and references to "Budget Envelopes" shall be construed as including the Phase One Budget Envelope, the Phase 2a Budget Envelope and the Phase 2b Budget Envelope, as relevant;

"Budget Envelopes and Target Prices Document" means the document which will include, amongst other things, details of the Budget Envelopes and Target Prices for each Phase (the version existing at April 2017 is set out in Annex 6 (Budget Envelopes and Target Prices Document)) and which may be subject to amendment from time to time in accordance with Clause 32.7;

"Business Case" means the five-part business case comprised of:

- (A) "The strategic case for HS2";
- (B) "Financial case for HS2";
- (C) "Management case for HS2";
- (D) "Commercial case for HS2"; and
- (E) "Economic case for HS2",

as such business case (or part thereof) may be updated or replaced from time to time;

"CDM Regulations" means the Construction (Design and Management) Regulations 2015;

"Central Government Body" means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (A) Government Department;

- (B) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (C) Non-Ministerial Department; or
- (D) Executive Agency;

“Change” means:

- (A) any variation proposed by either the SoS or HS2 Ltd (whether by way of addition, deletion, amendment or further definition) to the Sponsor’s Requirements or the Functional Response;
- (B) any revisions to the Baseline Delivery Schedule, Baseline Cost Model or Baseline Operational Cost Model or Benefits Baseline for any Phase;
- (C) any revisions to the Target Price for any Phase;
- (D) any requirement of the SoS for HS2 Ltd to change the manner in which HS2 Ltd manages, develops and/or delivers the Core Programme (save in respect of changes to Non-Routine Advice & Support Functions which may be amended in accordance with Clause 19.4(B)(3)) including any additional or removed requirement or constraint unless such change is required to ensure that HS2 Ltd complies with its obligations under this Agreement;
- (E) any proposal by HS2 Ltd to implement a Continuous Improvement Opportunity;
- (F) any new HS2 Ltd Undertaking identified pursuant to Clause 15.2(D)(1), save where the Parties agree that in respect of any new HS2 Ltd Undertaking, Annex 7 (Change Procedure) shall not apply and an alternative procedure shall apply;
- (G) any other matter that this Agreement specifically deems to be a Change; or
- (H) any proposal to amend any Business Case, but excluding any proposal which addresses how HS2 Ltd intends to undertake the relevant matter (such methodology is intended to be addressed in HS2 Ltd’s Corporate Plan);

“Change Appraisal” means any written report delivered by HS2 Ltd in accordance with paragraph 3.2 of Annex 7 (Change Procedure) and containing (as a minimum) the information specified in paragraph 3.3 of Annex 7 (Change Procedure);

“Change Appraisal Consultation Period” has the meaning given in paragraph 3.4 of Annex 7 (Change Procedure);

“Change Appraisal Instruction” means a written notification provided by the SoS in accordance with paragraph 3.1(B) of Annex 7 (Change Procedure);

“Change Confirmation Notice” has the meaning given in paragraph 3.5(A) of Annex 7 (Change Procedure);

“Change Funding Determination” has the meaning given in paragraph 3.5(A) of Annex 7 (Change Procedure);

“Change Rejection Notice” has the meaning given in paragraph 3.1(C) of Annex 7 (Change Procedure);

“Client Board” means the body empowered by the SoS to act as the client board from time to time which has the role specified in Clause 8.1;

“Confidential Information” means:

- (A) information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party;
- (B) other information provided by the Disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient's attention or into the Recipient's possession in connection with this Agreement;
- (C) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement and all matters arising therefrom; and
- (D) information derived from any of the above,

but not including any information which:

- (1) was in the possession of the Recipient without obligation of confidentiality before its disclosure by the Disclosing Party;
- (2) the Recipient obtained on a non-confidential basis from a third party who was not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;
- (3) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or
- (4) was independently developed without access to the Confidential Information;

“Consents” means all permissions, approvals, certificates, permits, licences or authorisations of a Government Authority which are required for the Core Programme;

“Continuous Improvement Opportunity” has the meaning given in Clause 9.2;

“Core Programme” has the meaning given to such term in recital (A);

“Core Programme Act” means any Act of Parliament which comes into force in respect of the Core Programme, any Phase or any sub-phase of a Phase;

"Core Programme Benefits" means the benefits specified in the Benefits Baseline for each Phase;

"Core Programme Documents" means:

- (A) the Framework Document;
- (B) the Tripartite Cooperation Memorandum;
- (C) the Euston Option Agreement relating to the development of Euston station between the SoS and Network Rail dated 23 May 2014¹; and
- (D) any other document or agreement in connection with the Core Programme as may be notified from time to time by the SoS to HS2 Ltd as a "Core Programme Document" for the purposes of this Agreement;

"Core Programme Representative" means the representative appointed by the SoS pursuant to Clause 7.1, also known as the "Project Representative" or "P-Rep";

"Corporate Delegations" means all the delegations of powers and responsibilities of HS2 Ltd pursuant to the Framework Document;

"Corporate Plan" means the corporate plan required to be produced by HS2 Ltd by its shareholder pursuant to the Framework Document;

"Crichel Down Rules" means The Crichel Down Rules as set out in Part 2 of ODPM Circular 06/2004;

"Data Controller" has the meaning given in the Data Protection Act 1998;

"Data Processor" has the meaning given in the Data Protection Act 1998;

"Data Protection Legislation" means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations from time to time relating to Processing of Personal Data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;

"Data Subject" has the meaning given in the Data Protection Act 1998 and relates only to a subject of Personal Data;

"Delegations" means the Corporate Delegations and the Operational Delegations;

"Delivery Contract" means any agreement entered into or to be entered into by HS2 Ltd in relation to the management, development and delivery of the Core Programme and/or otherwise in connection with complying with its obligations under this Agreement, and such term shall include any Rolling Stock Contract, depots contract,

¹ The Parties are aware that the content of the Euston Option Agreement is out of date. The Parties are currently working together to agree a replacement of, or revision to, the Euston Option Agreement.

main works civils contracts, and contracts for stations and systems, but excludes any joint venture agreement entered into by HS2 Ltd;

"Delivery Contractor" means a third party which has entered into a Delivery Contract with HS2 Ltd;

"Delivery Sub-Contractor" means any sub-contractor (of any tier) engaged by any Delivery Contractor from time to time in relation to the management, development and delivery of the Core Programme and/or otherwise in connection with HS2 Ltd's obligations under this Agreement;

"Delivery Sub-Contracts" means the sub-contracts entered into or to be entered into between any Delivery Contractor (or any Delivery Sub-Contractor) and any Delivery Sub-Contractors in relation to the management, development and delivery of the Core Programme and/or otherwise in connection with HS2 Ltd's obligations under this Agreement;

"Dispute" means any dispute, disagreement, difference of opinion or deadlock arising between the Parties under or in respect of any matter arising from or in connection with this Agreement;

"Dispute Resolution Procedure" means the procedure for the escalation and resolution of Disputes set out in Clause 30;

"Effective Date" means the date when this Agreement is signed;

"Environmental Minimum Requirements" means, in respect of each Phase, the requirements set out in the "Environmental Minimum Requirements" document relating to that Phase and such other environmental minimum requirements as may be notified by the SoS to the HS2 Ltd;

"Equality Impact Assessment" means any equality impact assessment relating to the Core Programme;

"Existing Network" means the railway facilities of which Network Rail or a passenger or freight train operator is the facility owner (as defined in section 17(6) of the Railways Act 1993) and any network or asset in relation to which Network Rail holds its network licence;

"e-PIMS" means the "Electronic Property Information Mapping Service" maintained by the Cabinet Office and includes the electronic mapping of property boundaries on a geographical information system map;

"Final Certificate" means, in respect of each Phase, the authorisation for the commercial use of the Railway to be issued by the SoS pursuant to Clause 13.3(B);

"Final Delivery Date" means the Phase One Final Delivery Date or the Phase 2a Final Delivery Date or the Phase 2b Final Delivery Date (as the case may be);

"Financial Annex" means the document setting out the details of the agreed funding regime for each Phase, which shall be agreed between the Parties and maintained and updated by HS2 Ltd in accordance with Clause 21.4. The current version is annexed at Annex 1 (Financial Annex);

“Financial Year” means 1 April to 31 March;

“First Level Representatives” has the meaning given in Clause 30.2;

“First Semi-Annual Delivery Report” means the delivery report to be delivered by HS2 Ltd following the first Semi-Annual Reporting Period of each Financial Year;

“FOIA” means the Freedom of Information Act 2000;

“FOIA Discloser” has the meaning given in Clause 35.2;

“FOIA Recipient” has the meaning given in Clause 35.2;

“FOI Legislation” means the FOIA, all regulations made under it and the Environmental Information Regulations 2004, and any guidance issued by the Information Commissioner, the Ministry of Justice, or the Department for Environment, Food and Rural Affairs (including in each case its successors) in relation to such legislation;

“Framework Document” means the High Speed Two (HS2) Ltd Framework Document dated on or about the date of this Agreement as may be updated from time to time;

“Framework Document Applicable Standard” means any Applicable Standard (or part thereof) which HS2 Ltd must comply with pursuant to the Framework Document;

“Full Business Case”, means each Business Case, for each Phase, developed to full business case stage in accordance with the Green Book;

“Functional Response” means the document developed by HS2 Ltd setting out the functional response which it shall deliver to satisfy the Sponsor’s Requirements, as amended from time to time in accordance with Clause 12.3. The version existing in June 2016 is annexed to this Agreement at Annex 3 (Functional Response);

“Functions” means:

- (A) the Bill Design Development Functions;
- (B) the Bill Support Functions;
- (C) the Advice & Policy Support Functions; and
- (D) the Promotion, Engagement and Communications Functions;

“Funding Regime” means a Phase One Funding Regime, a Phase 2a Funding Regime and/or a Phase 2b Funding Regime;

“Government Authority” means any legislative, judicial, regulatory, governmental or administrative body, agency or other authority of any kind (whether of a national, regional, municipal, local, civil or administrative nature) (or any subdivision of them) of the United Kingdom or the European Union or any supranational body which has rule-making power or whose directions, instructions, rulings, laws or regulations are directly enforceable against a person including Her Majesty’s Treasury, the Health and Safety Executive, the Environment Agency, the Rail Safety and Standards Board, and the ORR;

“General Vesting Declaration” means a general vesting declaration made pursuant to the Compulsory Purchase (Vesting Declarations) Act 1981;

“Green Book” means the Treasury Guidance for the appraisal and evaluation of Public Sector Business Cases using the Five Case Model, on Delivering Public Value from Spending Proposals;

“HS2 Ltd Board” means the board of HS2 Ltd which has the role specified in Clause 8.2;

“HS2 Ltd Dependency Milestone” means an activity to be completed by HS2 Ltd (or a third party on behalf of HS2 Ltd) which has a critical interface with the SoS’s interests;

“HS2 Ltd Dependency Milestone Date” means the date for completion of a HS2 Ltd Dependency Milestone, as specified in the Baseline Delivery Schedule for each Phase;

“HS2 Ltd Related Parties” means:

- (A) HS2 Ltd;
- (B) all the Delivery Contractors engaged in connection with the Core Programme;
- (C) all the Delivery Sub-Contractors engaged in connection with the Core Programme; and
- (D) all directors, officers, employees, representatives, servants, agents, consultants and contractors of those persons referred to in paragraphs (A), (B) and (C) of this definition;

“HS2 Ltd Undertaking” has the meaning given in Clause 15.2(A);

“HS2 Ltd Undertakings Default” has the meaning given in Clause 15.2(I);

“HS2 Ltd’s Core Programme Risks” has the meaning given in Clause 27.1;

“HS2 Ltd’s Liabilities” has the meaning given in Clause 27.2;

“Information” has the meaning given to such term in Section 84 of the FOIA;

“Information Request” means any request by any person for Information under the FOI Legislation;

“Infrastructure” means infrastructure forming part of the Core Programme, such “infrastructure” satisfying the definition of “infrastructure” as set out in Section 2(1) of the ROGS;

“Infrastructure Manager” means, in relation to any infrastructure forming part of the Core Programme, the person satisfying the definition of “infrastructure manager” as set out in Section 2(1) of the ROGS in relation to such infrastructure;

“Initial Change Appraisal” means any written report delivered by HS2 Ltd in accordance with paragraph 1.1(B) or 1.2(B) of Annex 7 (Change Procedure) and

containing (as a minimum) the information specified in paragraph 2.1 of Annex 7 (Change Procedure);

“Land” means land of any tenure and mines and minerals and buildings or parts of buildings and includes any easement, right, privilege or benefit in, over or derived from land;

“Land & Property Strategy” has the meaning given in Clause 17.1;

“Legislation” means any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any EU enforceable right within the meaning of Section 2 of the European Communities Act 1972, in each case in the United Kingdom;

“Losses” means all damages, losses, liabilities, costs, expenses and charges whether arising under statute, contract or at common law or in connection with judgments, excluding any loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature;

“Major Baseline Departure” means a deviation from the Baseline Delivery Schedule, Baseline Cost Model, Baseline Operational Cost Model and/or Benefits Baseline which:

- (A) in the case of a deviation from the Baseline Delivery Schedule, is reasonably likely to cause a delay to the Baseline Delivery Schedule to an extent to be agreed between the Parties on or before agreement of the Full Business Case; and
- (B) in the case of a deviation from the Baseline Cost Model, causes an increase to the Anticipated Final Cost for the relevant Phase by an amount to be determined pursuant to the Financial Annex;
- (C) in the case of a deviation from the Baseline Operational Cost Model, is reasonably likely to have an effect to be agreed between the Parties at a later date; and
- (D) in the case of a deviation from the Benefits Baseline, is reasonably likely to have an effect to be agreed between the Parties at a later date;

“Management Information” has the meaning given in Clause 24.2;

“Management Information System” means HS2 Ltd’s system(s) for the production and storage of Management Information and other information, the specifications of which shall enable HS2 Ltd to meet its Management Information obligations in line with Best Current Practice;

“Monthly Delivery Report” has the meaning given to such term in Clause 24.5(A);

“Network Rail” means Network Rail Infrastructure Limited, whose registered address is Kings Place, 90 York Way, London, N1 9AG with company number 02904587;

“Non-Routine Advice & Policy Support Functions” means those functions set out in Clause 19.4(B)(1);

“Non-Routine Advice & Policy Support Functions Record” means the record of Non-Routine Advice & Policy Support Functions which HS2 Ltd shall perform, which is maintained and updated in accordance with Clause 19.4(B)(3);

“Operational Delegations” means the delegations of powers and responsibilities of HS2 Ltd pursuant to the Operational Delegations Letter and the High Speed Rail (Preparation) Act 2013 and each Core Programme Act;

“Operational Delegations Letter” means the letter, as updated from time to time in accordance with Clause 23, from the SoS to HS2 Ltd conferring authority, by way of Operational Delegations, upon HS2 Ltd to procure, award and/or, as the case may be, execute the Delivery Contracts, spend its annual budget, effect changes to the scope of the Core Programme, and undertake any other matter referred to in Clause 27.1. The pro forma version existing in November 2016 is annexed to this Agreement at Annex 9 (Operational Delegations Letter);

“Operations” means HS2 Ltd’s functions in relation to the operation of the Railway, to be carried out in accordance with Clause 20;

“Operator” has the meaning given to such term in Section 6(2) of the Railways Act 1993;

“ORR” means the independent statutory body named the Office of Road & Rail established under the Railways and Transport Safety Act 2003;

“Outline Business Case” means each Business Case, for each Phase, developed to outline business case stage in accordance with the Green Book;

“Performance Default” means a Type 1 Performance Default or Type 2 Performance Default;

“Periodic Land and Property Plan” has the meaning given in Clause 17.1(A)(4);

“Permitted Purposes” has the meaning given in Clause 21.1(A);

“Personal Data” has the meaning given in the Data Protection Act 1998;

“Phase” means Phase One, Phase 2a or Phase 2b;

“Phase One” has the meaning given to it in the High Speed Rail (London to West Midlands) Act 2017;

“Phase One Budget Envelope” means the Budget Envelope for Phase One, constituting the amount described as such in paragraph 1.1 of the Budget Envelopes and Target Prices Document, as updated in accordance with Clause 32.1 and/or 32.2;

“Phase One Final Delivery Date” means the date when the Final Certificate is issued by the SoS for Phase One;

“Phase One Funding Regime” means the funding regime for Phase One, as described in the Phase One Funding Regime Details;

"Phase One Funding Regime Details" means the details of the funding regime for Phase One to be agreed between the Parties in accordance with Clause 21.3(A)(2);

"Phase One Funding Regime Principles" means the principles of the funding regime for Phase One to be agreed between the Parties in accordance with Clause 21.3(A)(1);

"Phase 2a" means the phase of the Core Programme in respect of the Railway which provides high speed rail provision between (a) Phase One, from a point near Fradley Wood in Staffordshire, and (b) a junction with the West Coast Main Line near Crewe in Cheshire;

"Phase 2a Budget Envelope" means the Budget Envelope for Phase 2a, to be agreed in accordance with Clause 32.1(B), as updated in accordance with the remainder of Clause 32;

"Phase 2a Final Delivery Date" means the date when the Final Certificate for Phase 2a is issued by the SoS;

"Phase 2a Post-Consultation Route Announcement" has the meaning given in recital (F);

"Phase 2b" means the phase of the Project in respect of the Railway which will comprise of a Western Leg and an Eastern Leg. The Western Leg (subject to a post-consultation route decision) connects to Phase 2a south of Crewe and continues to Manchester with new stations at Manchester Piccadilly and Manchester Airport and a connection to the West Coast Main Line (WCML) at Golborne, reducing journey times further to places further north including Edinburgh and Glasgow. The Eastern Leg (subject to a post-consultation route decision) connects to Phase One at Marston and continues to Leeds, with new stations at Leeds and the East Midlands Hub, a spur from the HS2 main line onto the Midland Main Line (MML) to Sheffield Midland, and a connection onto the East Coast Main Line (ECML) at Church Fenton will allow HS2 services to continue to places as far as Newcastle;

"Phase 2b Budget Envelope" means the Budget Envelope for Phase 2b, to be agreed in accordance with Clause 32.1(C), as updated in accordance with the remainder of Clause 32;

"Phase 2b Final Delivery Date" means the date when the Final Certificate for Phase 2b is issued by the SoS;

"Phase 2b Post-Consultation Route Announcement" has the meaning given in recital (F);

"Potential Performance Default" has the meaning given to it in Clause 26.1;

"Processing" has the meaning given to it under the Data Protection Act 1998 and "Process" and "Processed" shall be construed accordingly;

"Promotion, Engagement and Communications Functions" has the meaning given in Clause 19.5;

"Protective Provisions Agreements" means:

- (A) those agreements listed in Annex 1 (Protective Provisions Agreements);
- (B) all other agreements between the SoS, or a nominated undertaker appointed under a Core Programme Act, and third parties whereby the SoS or nominated undertaker, as the case may be, agrees not to exercise its powers under a Core Programme Act or to exercise them in a certain manner;
- (C) all memorandums of understanding between the SoS and any other government department or agency (including the Oil and Pipelines Agency) which would, if the government department or agency were an independent third party, be a protective provisions agreement relating to the Core Programme; and
- (D) all letters of comfort or other assurances provided by the SoS to support agreements with statutory undertakers (including National Grid) in respect of early works relating to the Core Programme;

“Proxy Operator” means a person representing the requirements and interests of a notional TOC;

“Railway” means the rail transport system to be delivered by HS2 Ltd for the purposes of the Core Programme (or Phase thereof) in accordance with this Agreement including infrastructure, rolling stock, all railway systems, operations and maintenance facilities and full systems integration of these elements;

“Register of Undertakings and Assurances” means the register (or registers) of undertakings and assurances published and maintained by HS2 Ltd on behalf of the SoS in connection with the Core Programme (or a Phase thereof), as updated from time to time;

“Reporting Requirements” has the meaning given in Clause 24.8;

“ROGS” means the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (SI599/2006);

“Rolling Stock Contract” means, in respect of each Phase, a contract to be entered into by HS2 Ltd with a contractor engaged to carry out the following key roles: (A) design and manufacture of the rolling stock together with some or all related systems including signalling, train control systems and communications systems; and (B) (if relevant) maintenance of the rolling stock (and any related systems) and securing access to the depots and all materials required to support service introduction and provision;

“Routine Advice & Policy Support Functions” means those functions set out in Clause 19.4(A);

“RS Draft Documents” means the draft documents relating to Rolling Stock Contracts referred to in Clauses 13.5(F)(1)(a) to (d);

“RS Draft Document Request Dates” means the dates by which HS2 Ltd shall submit the RS Draft Documents, being such dates as are specified in the Baseline Delivery Schedule for each Phase or such alternative dates as may be agreed between the Parties in accordance with Clause 13.5(F)(3);

“RS Draft Document Due Dates” means the dates by which the SoS shall approve or reject the RS Draft Documents, being such dates as are specified in the Baseline Delivery Schedule for each Phase or such alternative dates as may be agreed between the Parties in accordance with Clause 13.5(F)(3);

“Safety Authorisation” means a safety authorisation as defined in ROGS;

“Safety Certificate” means a safety certificate as defined in ROGS;

“Safety Management System” means a safety management system as defined in ROGS;

“Safety Verification Scheme” means a written safety verification scheme, as required by regulation 6(4) of ROGS;

“Second Level Representatives” has the meaning given in Clause 30.3;

“Second Semi-Annual Delivery Report” means the delivery report to be delivered by HS2 Ltd following the second Semi-Annual Reporting Period of each Financial Year;

“Semi-Annual Delivery Report” has the meaning given in Clause 24.6(A);

“Semi-Annual Reporting Period” means either the first six-month period of each Financial Year (between 1 April and 30 September) or the second six-month period of each Financial Year (between 1 October and 31 March);

“SoS Dependency” means:

- (A) the SoS complying with Clause 13.5(F)(2);
- (B) the SoS complying with Clause 14.1(D);
- (C) the SoS complying with Clause 15.2(B);
- (D) the SoS complying with Clause 21.3(B);
- (E) the SoS securing the granting of Royal Assent for any Bill in respect of each Phase by the relevant date set out in the Baseline Delivery Schedule for that Phase; or
- (F) where this Agreement expressly refers to obtaining wider Government approvals, the SoS being responsible for managing such process;

“SoS Dependency Milestone” means an activity to be completed by the SoS (or a third party on behalf of the SoS) which has a critical interface with HS2 Ltd’s delivery of the Core Programme;

“SoS Dependency Milestone Date” means the date for completion of a SoS Dependency Milestone, as specified in the Baseline Delivery Schedule for each Phase;

“SoS Retained Risk Event” means the occurrence after the Effective Date of any of the following events (together, the “SoS Retained Risk Events”):

- (A) war, civil war, armed conflict or terrorism;
- (B) nuclear, chemical or biological contamination unless the source or cause of the contamination is as a result of the acts of or breaches by HS2 Ltd or any HS2 Ltd Related Parties;
- (C) pressure waves caused by devices travelling at supersonic speeds;
- (D) the discovery of any fossils, antiquities or other objects of archaeological interest of national significance;
- (E) that element of inflation risk determined by the SoS, and implemented through the Financial Annex, which is intended to be borne by the SoS;
- (F) the introduction, repeal (in whole or in part) or amendment, alteration or modification to or change in interpretation of any Applicable Law (save for any Core Programme Act) or any Framework Document Applicable Standard which HS2 Ltd can demonstrate to the reasonable satisfaction of the SoS it cannot bear and/or cannot, or has not been able to, flow down to the Delivery Contractors or to other tiers of sub-contractors on commercially reasonable terms;
- (G) the introduction, repeal (in whole or in part) or amendment, alteration or modification to or change in interpretation of any Applicable Law (save for any Core Programme Act) or any Framework Document Applicable Standard, the terms of which apply expressly to: (1) the Core Programme and not to similar projects; and/or (2) HS2 Ltd and not to other persons;
- (H) any amendment to the Framework Document proposed by the SoS;
- (I) the impact of any decisions by the SoS on wider rail (including franchising) and/or transport policy and the implementation thereof; or
- (J) the failure by the SoS to provide a SoS Dependency,

which results in a material and adverse impact on HS2 Ltd's ability to perform its obligations under this Agreement, which impact cannot reasonably be mitigated by HS2 Ltd;

"SoS Retained Risk Event Notice" has the meaning given in Clause 28;

"SoS Retained Risk Event Remedial Action Plan" has the meaning given in Clause 28.3;

"Sponsor's Requirements" means the requirements of the SoS for the Core Programme which HS2 Ltd shall deliver and which may be subject to amendment from time to time in accordance with Clause 11.3. The version existing in June 2017 is annexed to this Agreement at Annex 2 (Sponsor's Requirements);

"Strategic Goals and Objectives" means the "Wider Programme Strategic Goals and Objectives" jointly developed by the SoS and HS2 Ltd, which forms the basis of a single set of goals and objectives for the Core Programme and the Wider Programme, approved by BICC on 18 January 2016, which version is annexed at Annex 8 (Strategic Goals and Objectives);

"Target Final Delivery Date" means the target date on which the Parties intend that the Final Certificate will be issued by the SoS for a Phase, being either the Target Phase One Final Delivery Date, the Target Phase 2a Final Delivery Date or the Target Phase 2b Final Delivery Date;

"Target Phase One Final Delivery Date" means the target date on which the Parties intend that the Final Certificate will be issued by the SoS for Phase One, being such date referred to as the "Target Phase One Final Delivery Date" in the Sponsor's Requirements;

"Target Phase 2a Final Delivery Date" means the target date on which the Parties intend that the Final Certificate will be issued by the SoS for Phase 2a, being such date referred to as the "Target Phase 2a Final Delivery Date" in the Sponsor's Requirements;

"Target Phase 2b Final Delivery Date" means the target date on which the Parties intend that the Final Certificate will be issued by the SoS for Phase 2b, being such date referred to as the "Target Phase 2b Final Delivery Date" in the Sponsor's Requirements;

"Target Price" has the meaning given in Clause 32.2(B) as amended from time to time pursuant to the terms of this Agreement;

"TOC" means a train operating company or any entity providing train services;

"Tripartite Cooperation Memorandum" means the Tripartite Cooperation Memorandum dated 21 January 2014 between the SoS, Network Rail and HS2 Ltd governing the relationship between those parties about the delivery of the Core Programme and its impact on the existing national rail network;

"Type 1 Performance Default" means:

- (A) a Major Baseline Departure; or
- (B) any breach by HS2 Ltd of this Agreement (except any Type 2 Performance Default),

which in either case has not been remedied within 15 Working Days (or such other time period as may be agreed between the Parties from time to time) following its occurrence;

"Type 1 Performance Default Notice 1" has the meaning given in Clause 26.3(A);

"Type 1 Performance Default Notice 2" has the meaning given in Clause 26.3(B);

"Type 1 Performance Default Notice 3" has the meaning given in Clause 26.3(C);

"Type 2 Performance Default" means:

- (A) any breach by HS2 Ltd of Clauses 10.1(G), 10.1(O), 10.1(P), 32.5 or 36; or
- (B) any breach by HS2 Ltd of any of its obligations under this Agreement (except any Major Baseline Departure) which materially and adversely affects the management, development and/or delivery of the Core Programme;

“UAR Allocation Process” has the meaning given in Clause 15.2(C);

“Undertakings, Assurances and Requirements” means in respect of each Phase, the requirements set out in:

- (A) the Environmental Minimum Requirements;
- (B) the Protective Provisions Agreements;
- (C) the Register of Undertakings and Assurances; and
- (D) any other undertakings or assurances given by the SoS to any third party in the course of or in connection with the proceedings of a Select Committee in respect of a Bill (whether or not such undertaking or assurance is given before the Select Committee);

“Wider Programme” has the meaning given in recital (B);

“Working Day” means any day on which banks are generally open for business in the City of London, except for Saturdays, Sundays and public holidays in England and Wales; and

“Works” means all works of design, procurement, construction and commissioning of the Railway and all related building and civil engineering works (including the making good of defects), and any reference to the “Works” includes a reference to a part thereof.

1.2 Interpretation

Save as otherwise expressly provided in this Agreement:

- (A) words importing the singular include the plural and vice versa;
- (B) references to “persons” include individuals, bodies corporate (wherever incorporated), unincorporated associations and partnerships, governments, states or agencies of a state, or any associations, foundations or trusts (whether or not having separate legal personality) or two or more of the foregoing and words denoting natural persons include any other persons;
- (C) references to the words “include” and “including” are to be construed without limitation;
- (D) references to one gender include all genders;
- (E) references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court official or any other legal concept are, in respect of any jurisdiction other than England, deemed to include the legal concept or term which most nearly approximates in that jurisdiction to the English legal term;
- (F) the headings to the Clauses and Annexes are for convenience only and do not affect the interpretation of this Agreement;

- (G) references in this Agreement to Clauses, paragraphs and Annexes are, unless the context otherwise requires, to clauses, paragraphs of and annexes to this Agreement;
- (H) references in this Agreement to persons include their successors, replacement organisations and permitted assigns and permitted transferees from time to time;
- (I) all references to agreements, documents or other instruments in this Agreement (including references to this Agreement) shall, provided that all relevant approvals of the SoS and other relevant parties required with respect to the amendment, variation, supplement, novation or assignment of those agreements, documents or instruments have been given, be construed as references to such agreements, documents or instruments as amended, varied, supplemented, substituted, suspended, novated or assigned from time to time;
- (J) all references to any statute or statutory provision include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute;
- (K) the governing language of this Agreement is English, as well as of all notices to be given by any party and all other communications and documentation which are in any way relevant to this Agreement or its performance or termination; and
- (L) a reference to “writing” includes typing, printing, lithography, photography and other modes of representing or reproducing words in a visible form and expressions referring to writing are to be construed accordingly.

1.3 **Annexes**

The Annexes to this Agreement form part of this Agreement.

2. **Precedence of documentation**

2.1 **Clauses and Annexes of this Agreement**

In the event of any discrepancy, inconsistency and/or divergence arising between the Clauses of this Agreement and the Annexes, or between any of the Annexes (or any part of any Annex), then (save as expressly provided in this Agreement) the following order of precedence shall apply:

- (A) Clauses 1 (Definitions and Interpretation) to 50 (Governing Law) of this Agreement; and
- (B) the Annexes, provided always that if there is any discrepancy, inconsistency and/or divergence within or between any provisions in any of the Annexes, the SoS (acting reasonably and taking into account any representations made by HS2 Ltd) shall at his sole discretion be entitled to determine which provision takes precedence.

2.2 Sponsor's Requirements and the Functional Response

In the event of any discrepancy, inconsistency and/or divergence between the Sponsor's Requirements and the Functional Response, the Sponsor's Requirements take precedence.

2.3 Framework Document, Operational Delegations Letter and this Agreement

In the event of any discrepancy, inconsistency or divergence within or between any provisions in the Framework Document, the Operational Delegations Letter and/or this Agreement, the SoS (acting reasonably and taking into account any representations made by HS2 Ltd) shall at his sole discretion be entitled to determine which provision takes precedence.

PART 2: TERM

3. Commencement

- 3.1 This Agreement commences on the Effective Date and continues unless and until terminated in accordance with Clause 38.

PART 3: ROLES AND CO-OPERATION

4. Roles

- 4.1 Clauses 5.1, 6.1, 7.1, 8.1 and 8.2 set out the respective key roles of the SoS, HS2 Ltd, the Core Programme Representative, the Client Board and the HS2 Ltd Board in relation to this Agreement. These roles are non-exhaustive and should be read in conjunction with the obligations of the Parties as specified elsewhere in this Agreement, in the Core Programme Documents and in the Undertakings, Assurances and Requirements.

5. The SoS's role

- 5.1 Without prejudice to the SoS's obligations set out elsewhere in this Agreement, the SoS's key roles in relation to the Core Programme shall be to:

- (A) act as funder and sponsor of the Core Programme;
- (B) set the Sponsor's Requirements and approve changes to the Sponsor's Requirements as appropriate;
- (C) be accountable for the delivery of the benefits of the Core Programme;
- (D) keep the Business Case under review and up to date;
- (E) manage any processes for advising and seeking policy approvals from Government (including HM Treasury), save to the extent that HS2 Ltd is required by this Agreement or otherwise to obtain approvals from Government;
- (F) develop, set and make available information on Government policy in relation to or affecting the Core Programme (including in relation to any proposed passenger model, the Wider Programme and/or wider rail and transport policy), and to obtain information from and/or commission advice from HS2 Ltd and/or other third parties (including Network Rail) as needed in order to develop such policy;
- (G) lead the management of relationships between the UK and devolved Government ministers and their departments and liaise with international and supranational bodies where appropriate;
- (H) set and amend specifications for franchises in a manner which acknowledges any interfaces with the Core Programme and to collaborate with the devolved administrations where appropriate;
- (I) define the final operational model for the Railway and manage the management contract or franchise contract arrangements (or their equivalent) with TOCs during the delivery and operation phases of the Core Programme;
- (J) take responsibility for the legislative process and any assurances and undertakings provided to Parliament, and promote all Bills for the Core Programme through Parliament; and

- (K) build and maintain skills, capabilities and systems which are necessary and appropriate to enable the SoS to comply with his obligations under this Agreement and effectively to fulfil his roles as specified in this Clause 5.1.

6. **HS2 Ltd's role**

6.1 Without prejudice to HS2 Ltd's obligations set out elsewhere in this Agreement, HS2 Ltd's key roles in relation to the Core Programme will include:

- (A) the delivery of the Railway;
- (B) the execution and completion of the Works;
- (C) acting as a Proxy Operator;
- (D) the acquisition, management and disposal of all interests in, or rights over, Land;
- (E) the performance of the Functions;
- (F) the performance of the Operations (including acting as Infrastructure Manager for the Infrastructure);
- (G) delivery of those Core Programme Benefits which are allocated to HS2 Ltd in the Benefits Baseline for the relevant Phase; and
- (H) ensuring that station design takes account of the potential for future development and regeneration of adjacent local communities².

6.2 The Parties acknowledge that HS2 Ltd's roles and responsibilities will differ before and after finalisation of the Full Business Case for each Phase, and the Parties will work together collaboratively to achieve the desired outcomes, on a value for money basis, throughout delivery of the Core Programme for each Phase.

7. **Core Programme Representative**

7.1 **Core Programme Representative's role**

As part of the SoS's overall assurance function, the SoS has appointed a representative (the "Core Programme Representative") to act as his agent in relation to the monitoring of the management, development and delivery of the Core Programme with the purpose of providing certain aspects of assurance to the SoS. The SoS shall notify HS2 Ltd of the identity of the Core Programme Representative and of any changes in the identity of such Core Programme Representative from time to time.

7.2 **HS2 Ltd's assistance**

- (A) Without prejudice to Clause 24.3(B)(2), HS2 Ltd shall (and shall procure that all other HS2 Ltd Related Parties shall (save for Delivery Contractors and

² The Parties acknowledge that HS2's Ltd's role in commercial development adjacent to, over, and surrounding the HS2 stations (and the interface between such role and station design/construction) is proposed to be addressed in the next version of the Development Agreement.

Delivery Sub-Contractors and their directors, officers, employees, representatives, servants, agents, consultants and contractors in respect of whom the obligation on HS2 Ltd is to use all reasonable endeavours to procure)) co-operate with the Core Programme Representative and provide the Core Programme Representative with such:

- (1) information (including all HS2 Ltd correspondence, files, records, agreements (including Delivery Contracts and Delivery Sub-Contracts) and documents);
- (2) assistance and access to persons (including senior management) involved in the Core Programme; and
- (3) access to the Works and the Railway,

as the Core Programme Representative may reasonably require to enable the Core Programme Representative to carry out its role specified in Clause 7.1.

- (B) The Core Programme Representative shall be provided with an office and such other facilities as the Core Programme Representative may reasonably require at HS2 Ltd's offices.

8. Role of the Boards

8.1 Client Board

The Parties acknowledge that the role of the Client Board shall be to act as the primary channel of communication between the SoS and HS2 Ltd for managing this Agreement, which role shall include:

- (A) monitoring and overseeing the performance of HS2 Ltd of its obligations under the Agreement;
- (B) receiving Management Information;
- (C) delivering and/or responding to communications, notices, decisions, guidance and advice required of the SoS under this Agreement; and
- (D) considering such other matters as the Parties may agree from time to time.

8.2 HS2 Ltd Board

The Parties acknowledge that the role of the HS2 Ltd Board shall be to provide robust oversight of, and strategic direction to, HS2 Ltd's business activities.

9. Co-operation

9.1 Co-operation and acting in good faith

- (A) The Parties agree to act reasonably and co-operate with each other, and with local authorities, the local community and other relevant third parties (including in the case of HS2 Ltd with the Core Programme Representative), in good faith and in a reasonable and transparent manner to facilitate HS2 Ltd's management, development and delivery of the Core Programme, including where SoS approval is required.

- (B) The Parties agree to work collaboratively to support Network Rail, other owners and operators of the Existing Network or other railway infrastructure, rail franchise holders and/or TOCs effectively to:
 - (1) optimise benefits for all railway infrastructure in Great Britain in accordance with the Sponsor's Requirements;
 - (2) manage any interface issues; and
 - (3) address and seek to minimise adverse impacts of the Core Programme on:
 - (a) the Existing Network including Network Rail's obligations as network owner and operator of the Existing Network and other owners and operators of other railway infrastructure in Great Britain; and/or
 - (b) rail franchise holders and/or TOCs affected by the Core Programme.

9.2 Continuous Improvement

- (A) HS2 Ltd shall seek to identify and secure continuous improvement opportunities (a "Continuous Improvement Opportunity"), which could include:
 - (1) accelerating the achievement of the Baseline Delivery Schedule and/or the Final Delivery Date for any Phase;
 - (2) reducing the whole life, whole system costs (in accordance with the Sponsors' Requirements) of the delivery of the Core Programme;
 - (3) improving the efficiency and/or value to the SoS of the Core Programme; or
 - (4) other opportunities of benefit to the SoS or to wider Government.
- (B) HS2 Ltd may propose the implementation of a Continuous Improvement Opportunity as a Change in accordance with Annex 7 (Change Procedure).

9.3 Early Warning Notice

Notwithstanding each Party's obligations under this Agreement to give certain specific notices, responses and reports within pre-defined timescales (subject to the SoS not fettering his discretion and/or his absolute discretion to maintain confidentiality without providing reasons therefor), each Party shall act in good faith promptly to give early written notice to the other Party if it or he becomes aware during the course of this Agreement of:

- (A) any Change which it or he intends to propose;
- (B) any HS2 Ltd Undertakings Default;
- (C) any expected delay in the achievement of any SoS Dependency Milestone Date, HS2 Ltd Dependency Milestone Date and/or the Target Final Delivery Date for any Phase;
- (D) any anticipated need for an increase in funding to be provided to HS2 Ltd in accordance with Part 5 (Funding);

- (E) any Performance Default;
- (F) any breach or potential breach by either Party of this Agreement, any Core Programme Document to which it or he is a party or (in the case of HS2 Ltd) any Delivery Contract;
- (G) any SoS Retained Risk Event; and/or
- (H) any other matter whatsoever which may have a material adverse impact on either Party's compliance with its or his obligations under this Agreement, any Core Programme Document or any Delivery Contract.

9.4 Strategic Goals and Objectives

The Parties acknowledge that in January 2016 the Strategic Goals and Objectives were agreed between the Parties. The Parties shall use their reasonable endeavours to deliver the Strategic Goals and Objectives.

PART 4: DELIVERY OF THE CORE PROGRAMME

10. HS2 Ltd's obligations

10.1 HS2 Ltd shall manage, develop and deliver the Core Programme and discharge its obligations under this Agreement at all times:

- (A) so as to satisfy the Sponsor's Requirements;
- (B) in accordance with the Functional Response;
- (C) in accordance with the terms of this Agreement and the Delivery Contracts;
- (D) in accordance with the Baseline Delivery Schedule, Baseline Cost Model, Baseline Operational Cost Model and Benefits Baseline for each Phase, save that HS2 Ltd shall be entitled to deviate from the Baseline Delivery Schedule, Baseline Cost Model, Baseline Operational Cost Model and Benefits Baseline for each Phase to such extent as will not cause a Major Baseline Departure;
- (E) using best endeavours, to ensure that HS2 Ltd's costs of carrying out the Permitted Purposes in respect of each Phase shall not exceed the Target Price or, as the case may be, Budget Envelope for that Phase;
- (F) so as to ensure that the Final Delivery Date for each Phase is met by the Target Final Delivery Date for that Phase;
- (G) so as to comply with the Delegations it has been granted;
- (H) so as to comply with all Core Programme Documents to which it is a party;
- (I) (in its capacity as the SoS's agent) so as to comply with and discharge the SoS's obligations and/or commitments to third parties under any Core Programme Documents to which HS2 Ltd is not a party;
- (J) so as not to cause or contribute to any breach by the SoS of any of his obligations under this Agreement or any Core Programme Document;
- (K) so as to comply with all Applicable Laws, Applicable Standards and Consents;
- (L) so as to comply with Best Current Practice;
- (M) so as to comply with the public sector equality duty set out in section 1 of the Equality Act 2010 in a way that is consistent with the findings set out in any Equality Impact Assessment;
- (N) so as to comply with and discharge the Undertakings, Assurances and Requirements (unless they are allocated to another person pursuant to Clause 15.2);
- (O) acting in a highly transparent manner about its use of public funds in accordance with Applicable Laws and Applicable Standards;

- (P) so as not to put the SoS into disrepute; and
 - (Q) so as to ensure that there are no circumstances which might lead to the suspension, alteration or cancellation of any material Consents necessary to enable HS2 Ltd to carry on its business effectively and without hindrance in the manner and in the places in which its business is carried on.
- 10.2 HS2 Ltd will organise, manage and co-ordinate the delivery of each of the different parts and/or Phases of the Core Programme so that:
- (A) the progress of the design process for the various parts and/or Phases of the Core Programme, and the provision of design inputs and solutions for and from each part and/or Phase of the Core Programme;
 - (B) the progress of the construction and completion of each part and/or Phase of the Core Programme that interfaces with other parts and/or Phases of the Core Programme; and
 - (C) the commissioning, acceptance and completion process for each of the various parts and/or Phases of the Core Programme,
- is effectively planned and co-ordinated across the Core Programme as a whole, so as to promote the efficient, timely and cost-effective delivery of the Core Programme.
- 10.3 HS2 Ltd will operate and maintain each of the various parts and/or Phases of the Core Programme in accordance with Best Current Practice.
- 10.4 Subject to Clause 32.4, HS2 Ltd shall ensure that the Railway shall be designed and procured to minimise the whole-life, whole-system costs (across the HS2 and wider Great Britain network), covering infrastructure, rolling stock, operations, maintenance and renewals. Whole life cost should be assessed using the Green Book Appraisal and Evaluation in Central Government methodology.
- 10.5 The SoS acknowledges that the ability of HS2 Ltd to comply with its obligations under this Agreement in relation to the delivery of the Core Programme, including its obligations under Clauses 8, 10.1, 10.2 and 10.3, will be limited by the level of influence or control that it has over any third party nominated undertaker (if any) appointed in relation to any part of the works in connection with the Core Programme (a "Third Party Nominated Undertaker"). In such circumstances and provided that:
- (A) HS2 Ltd has used its reasonable endeavours to co-operate and co-ordinate to the fullest extent necessary with any Third Party Nominated Undertaker in order to give effect to HS2 Limited's obligations under this Agreement;
 - (B) HS2 Ltd has provided such information as the SoS may reasonably request in relation to the interfaces and co-ordination between HS2 Limited and any Third Party Nominated Undertaker; and
 - (C) HS2 Ltd has kept the SoS fully informed of any potential breaches under this Agreement resulting from any potential act or inaction of a Third Party Nominated Undertaker and has mitigated the effect of any such breach,
- then, to the extent HS2 Ltd is limited from performing its obligations under this Agreement, it is agreed that HS2 Ltd shall not be regarded as being in breach of this

Agreement (including Clauses 10.1, 10.2 and 10.3) in consequence of any action or inaction by any Third Party Nominated Undertaker that HS2 Ltd had no reasonable ability to control.

11. **Sponsor's Requirements**

- 11.1 Annex 2 (Sponsor's Requirements) sets out the version of the Sponsor's Requirements issued by the SoS as at June 2017.
- 11.2 Any variation proposed by either Party to the Sponsor's Requirements shall be treated as a Change and subject to the procedure in Annex 7 (Change Procedure).
- 11.3 The SoS shall be responsible at all times for maintaining an up-to-date version of the Sponsor's Requirements. Where any Change to the Sponsor's Requirements is made in accordance with the procedure in Annex 7 (Change Procedure), the SoS shall produce a revised version of the Sponsor's Requirements (for the purposes of this Clause 11, the "Revised Sponsor's Requirements") incorporating such amendment with the next sequential issue marked on each page together with a cover page clearly named with the issue number and date of issue and a record of changes from the preceding version.
- 11.4 The Parties shall use the Revised Sponsor's Requirements unless and until it is amended again in accordance with this Agreement.
- 11.5 When a Revised Sponsor's Requirements document is issued by the SoS in accordance with Clause 11.3, it shall supersede any previous versions and shall constitute the definitive version of the Sponsor's Requirements.

12. **Functional Response**

- 12.1 Annex 3 (Functional Response) sets out the version of the Functional Response issued by HS2 Ltd as at June 2016.
- 12.2 Any variation proposed by either Party to the Functional Response shall be treated as a Change and subject to the procedure in Annex 7 (Change Procedure).
- 12.3 HS2 Ltd shall be responsible at all times for maintaining an up-to-date version of the Functional Response. Where any Change to the Functional Response is made in accordance with the procedure in Annex 7 (Change Procedure), HS2 Ltd shall produce a revised version of the Functional Response (for the purposes of this Clause 12, the "Revised Functional Response") incorporating such amendment with the next sequential issue marked on each page together with a cover page clearly named with the issue number and date of issue and a record of changes from the preceding version.
- 12.4 The Parties shall use the Revised Functional Response unless and until it is amended again in accordance with this Agreement.
- 12.5 When a Revised Functional Response is issued by HS2 Ltd in accordance with Clause 12.3, it shall supersede any previous versions and shall constitute the definitive version of the Functional Response.

12A **Business Case**