

Dated [Insert date]

**FRANCHISE LETTING
PROCESS AGREEMENT
BETWEEN**

THE SECRETARY OF STATE FOR TRANSPORT

AND

THE APPLICANTS (AS DEFINED)

Department for Transport
Great Minster House
33 Horseferry Road
London
SW1P 4DR

THIS DEED IS MADE ON [Insert date]

BETWEEN

- (1) **THE SECRETARY OF STATE FOR TRANSPORT acting as part of the Crown (the "Secretary of State") whose principal place of business is Great Minster House, 33 Horseferry Road, London SW1P 4DR;**

AND

- (2) **Each Applicant (as defined in Schedule 1).**

***NOTE TO APPLICANTS:** Please complete Schedule 2.

BACKGROUND:

- (a) The Secretary of State has announced his intention to invite bids for the West Coast Partnership (WCP) passenger rail franchise (the "**Franchise**") in order to award the Franchise in November 2018 (indicative date) with the Franchise to commence on April 2019 (indicative date).
- (b) The Existing Franchise is operated by the Existing Franchisee, and as at the date of this Deed pursuant to the Existing Franchise Agreement ("**Existing Franchise**", "**Existing Franchisee**" and "**Existing Franchise Agreement**" all as defined in Schedule 1).
- (c) The Franchise relates to substantially the same geographical area as the Existing Franchise but now includes HS2 Phase 1, a planned high speed railway between London and Birmingham, and HS2 Phase 2a, a planned extension of the new railway between Birmingham and Crewe ("**HS2**").
- (d) A pre-qualification system (the "**Passport System**") is in operation as the first part of a two part pre-qualification process for passenger rail franchise competitions. The Passport System involves the award of a passport to an economic operator whose application meets all of the requirements of the Secretary of State for this first part ("**Passport**").
- (e) An economic operator must already hold a Passport, or be covered by a temporary permission for the relevant franchise letting process ("**Temporary Visa**"), or must apply for a new Passport or Temporary Visa prior to the applicable deadline, in order to be eligible to participate in the second part of the pre-qualification process and, as a consequence, in the Franchise Letting Process (as defined in Schedule 1).
- (f) The Applicants already hold a Passport, or are covered by a Temporary Visa, or are considering applying for a new Passport or Temporary Visa prior to the applicable deadline, and are considering submitting an application to the Secretary of State to participate in the Franchise Letting Process.
- (g) The Secretary of State possesses certain information relating to the Franchise, the Existing Franchise, the Existing Franchisee, and the HS2 programme, which is of a confidential nature and which he intends to share with the Applicants in relation to their involvement in the Franchise Letting Process.
- (h) The Applicants will require access to such information for the purpose of evaluating whether or not and (if so) on what terms they might submit the Letting Proposal, formulating the Letting Proposal and negotiating with the Secretary of State for the letting of the Franchise (if selected to do so) (the "**Agreed Purpose**").
- (i) The Secretary of State intends, subject to this Deed, to provide the Applicants with access to a web based franchise procurement portal used for the purposes of the Franchise Letting Process ("**AWARD**") and an electronic data site established for the purposes of the Franchise Letting Process (the "**Data Site**").

- (j) The Parties have agreed to comply with the following terms in connection with their involvement in the Franchise Letting Process, including with regard to general conduct, the use and disclosure of information and access to AWARD and the Data Site.
- (k) An application for a Temporary Visa may be submitted after one or more Applicants have entered into this Deed and, therefore, the Secretary of State has stipulated that Temporary Visa Partners, if they fall within the definition of Further Applicants (as defined in Schedule 1), shall (in recognition of any application for a Temporary Visa) be joined as Parties to this Deed on the same terms as the other Applicants as a requirement for submitting the application for a Temporary Visa.
- (l) It shall be for the Applicants to determine whether they will incorporate the Proposed Operator during the Franchise Letting Process. If they do so after one or more Applicants have entered into this Deed, the Proposed Operator shall immediately be joined as a Party to this Deed on the same terms as the other Applicants.
- (m) It is a condition of participating in the Franchise Letting Process that the Applicants enter into this Deed.

IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

The provisions of Schedule 1 (which contains definitions and principles of interpretation), and Schedules 2 to 4, are incorporated in this Deed.

2. GENERAL CONDUCT

2.1 The Applicants undertake that each Applicant shall at all times:

2.1.1 conduct itself in a manner which is consistent with applicable legal requirements and the Secretary of State's objective of carrying out a fair, transparent and non-discriminatory Franchise Letting Process; and

2.1.2 co-operate with the Secretary of State in order to allow him to ensure that the Franchise Letting Process is carried out in a fair, transparent and non-discriminatory manner.

3. WARRANTY

3.1 The Applicants warrant, represent and undertake to the Secretary of State that:

3.1.1 all Applicant Information is, unless otherwise notified in writing to the Secretary of State and accepted by him, accurate, complete and not misleading in all material respects both as at the date disclosed to or obtained by the Secretary of State (as the case may be) and at all times prior to the Announcement Date;

3.1.2 they will inform the Secretary of State in writing of any change to, and of any change in circumstances which may affect the truth, completeness or accuracy of, any Applicant Information immediately upon becoming aware of such change;

3.1.3 each Applicant is duly authorised to sign this Deed and each Applicant has validly executed this Deed as a deed in English law; and

3.1.4 the Deed executed by the Applicants is identical to the draft deed published by the Secretary of State on his website, subject only to amendments permitted by the Notes to Applicants shown in that draft deed.

4. **CONFIDENTIALITY**

4.1 Subject to clauses 4.3 and 4.6, the Applicants undertake that each Applicant and any person to whom Confidential Information is disclosed by an Applicant (including any Permitted Party):

4.1.1 shall at all times keep all Secretary of State Information secret and confidential and shall not disclose any Secretary of State Information to any Third Party (except disclosure by an Applicant to a Permitted Party, subject to clause 4.1.2) other than disclosure of the fact that the Applicants are investigating the possibility of submitting, or have submitted, a Letting Proposal; and

4.1.2 shall not disclose any Secretary of State Information to any Permitted Party, except to the extent that an Applicant discloses to a Permitted Party Secretary of State Information that the Permitted Party needs to know for the Agreed Purpose.

4.2 Subject to clauses 4.3 and 4.4, the Secretary of State undertakes that he and his representatives shall at all times keep all Applicant Information secret and confidential and shall not disclose any Applicant Information to any Third Party.

4.3 The undertakings in clauses 4.1 and 4.2 shall not apply to any disclosure of Confidential Information:

4.3.1 expressly authorised by this Deed or agreed in writing between the Parties;

4.3.2 required by any applicable law, court order or by any supervisory or regulatory body (including the Financial Conduct Authority, the Competition and Markets Authority, the National Audit Office and the Takeover Panel) to whose authority the disclosing Party (including its shares or securities) is subject or with whose rules the disclosing Party is required to comply;

4.3.3 which is in or subsequently comes into the public domain (unless as a result of a breach of this Deed or any undertaking given pursuant to this Deed);

4.3.4 which is lawfully in the disclosing Party's possession (as can be demonstrated by its written records) and, where the disclosing Party is not the Secretary of State, was not acquired directly or indirectly from HS2 Ltd or another Beneficiary; or

4.3.5 to Network Rail in accordance with any instructions or guidance given by the Secretary of State from time to time (including under any invitation to tender or similar document).

4.4 The undertakings in clause 4.2 shall not apply to any disclosure of Applicant Information by the Secretary of State:

4.4.1 to HS2 Ltd, another Beneficiary, the Office of Rail and Road, Network Rail, the RSSB, the Health and Safety Executive, Parliament or any Parliamentary Committees or any other stakeholding or governmental body or to any of its or their representatives;

4.4.2 which is required to be made under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004; or

- 4.4.3 for the purposes set out in section 145(2) of the Railways Act 1993 (including to inform and/or develop policy for those purposes, to the extent that the Secretary of State, acting reasonably, requires).
- 4.5 The Applicants undertake that in the event that any Applicant or any person to whom Confidential Information has been disclosed by an Applicant (including any Permitted Party) becomes compelled by law or by any supervisory or regulatory body to disclose any Secretary of State Information, the relevant Applicant shall:
 - 4.5.1 give prompt notice of that fact and full details of any proposed disclosure to the Secretary of State in writing in advance of such disclosure so that the Secretary of State may seek an appropriate remedy to prevent such disclosure;
 - 4.5.2 take such steps as the Secretary of State may reasonably require for that purpose;
 - 4.5.3 keep the Secretary of State promptly and fully informed in writing of all developments relating to such potential disclosure; and
 - 4.5.4 ensure that disclosure is limited to the minimum amount of Secretary of State Information required to satisfy such disclosure obligation.
- 4.6 If the Applicants are invited to submit a letting proposal, the undertakings in clause 4.1 shall not apply to any disclosure of the Indicative Rolling Stock Specification by an Applicant to:
 - 4.6.1 a Notified Rolling Stock Consultee for the purposes of discussing the Indicative Rolling Stock Specification in relation to the Agreed Purpose; and/or
 - 4.6.2 an Other Rolling Stock Consultee (with the prior written approval of the Secretary of State, such approval not to be unreasonably withheld or delayed) for the purposes of discussing the Indicative Rolling Stock Specification in relation to the Agreed Purpose, provided that the Applicant shall procure that the relevant Other Rolling Stock Consultee enters into non-disclosure agreements (in the form supplied by the Secretary of State as part of the written approval) both with the Secretary of State and with the Applicants prior to disclosure of the Indicative Rolling Stock Specification.

5. **USE OF CONFIDENTIAL INFORMATION**

- 5.1 The Parties acknowledge that:
 - 5.1.1 they have given undertakings in clause 4 in relation to Confidential Information;
 - 5.1.2 any Applicant or any Associated Entity may now or in the future be in a contractual or commercial relationship with the Secretary of State in relation to matters other than the Agreed Purpose; and
 - 5.1.3 the disclosure of Secretary of State Information permitted under clauses 4.3, 4.6 and 12.2 may result in an Applicant disclosing Secretary of State Information to Third Parties who are now or may in the future be in a contractual or commercial relationship with the Secretary of State in relation to matters other than the Agreed Purpose.
- 5.2 The Applicants accordingly undertake that each Applicant and any person to whom Confidential Information is disclosed by an Applicant (including any Permitted Party):

- 5.2.1 shall not make contact with the Existing Franchisee or any other franchisee or franchise operator (not being an Applicant or an Associated Entity) or any of their representatives or associates, or HS2 Ltd or any of its associates, in connection with the Letting Proposal or the Franchise Letting Process without the prior written consent of the Secretary of State;
- 5.2.2 shall notify the Secretary of State in writing of the names of any of their current professional advisers and any professional advisers they intend to engage from time to time in relation to the Agreed Purpose;
- 5.2.3 shall ensure that work in relation to the Agreed Purpose shall be kept distinct from activities other than such work;
- 5.2.4 shall use and retain Secretary of State Information only for the Agreed Purpose;
- 5.2.5 shall at all times keep Confidential Information separate from all electronic and hard copy documents and records not relating to the Franchise Letting Process or the Agreed Purpose;
- 5.2.6 shall apply the same security measures and degree of care to the Confidential Information as they apply to their own confidential information, which the Applicants warrant as providing adequate protection from unauthorised disclosure, copying or use;
- 5.2.7 shall not reproduce any Secretary of State Information protected by copyright without the permission of the copyright owner;
- 5.2.8 shall, on written demand from the Secretary of State, or if the Applicants withdraw or are ejected from the Franchise Letting Process (or, in the case of any Applicant, that Applicant withdraws or is ejected from the Franchise Letting Process) or on written notification from the Secretary of State that the Applicants have not been successful in the Franchise Letting Process with the result that the Proposed Operator will not be the franchisee for the Franchise:
 - 5.2.8.1 immediately delete or destroy, return or hand over to the Secretary of State any Secretary of State Information (whether hard or electronic copies) in their possession or control and all notes, memoranda or other records (whether hard or electronic copies) containing or reflecting any Secretary of State Information without keeping any copies thereof (whether hard or electronic copies); and
 - 5.2.8.2 provide written confirmation of their compliance with this clause 5.2.8; and
- 5.2.9 shall so ensure the above by means where applicable including the use of separate communications links, separate accommodation, secure storage of files and separate reporting arrangements.
- 5.3 The Secretary of State (acting reasonably) shall be entitled to audit compliance with this clause 5 and the Applicants shall provide the Secretary of State and his representatives with such access to persons and information as they shall require in connection with any such audit.
- 6. **PUBLICITY**
- 6.1 The Applicants agree that they shall not and shall ensure that all Connected Persons do not, before the Announcement Date (in relation to clauses 6.1.1 and 6.1.2) or at any time

(in relation to clauses 6.1.3 and 6.1.4), in each case without the prior written consent of the Secretary of State:

- 6.1.1 issue any press notice, press release or statement in relation to or connected with the Franchise Letting Process or the Letting Proposal (except as permitted by clause 4.1.1);
- 6.1.2 make any statement or comment (whether to national, local or industry media, Transport Focus, Passenger Transport Executives, Combined Authorities, Local Authorities, Members of Parliament, stakeholders or otherwise) in relation to or connected with the Franchise Letting Process or the Letting Proposal (except as permitted by clause 4.1.1). For the avoidance of doubt this shall not prevent the Applicants holding confidential discussions with such persons for the purpose of developing or informing their Letting Proposal, provided that the Applicants comply with this Deed, including clause 2 (*General Conduct*), clause 4 (*Confidentiality*) and clause 5 (*Use of Confidential Information*);
- 6.1.3 seek to canvass public opinion in relation to or connected with the Franchise Letting Process or the Letting Proposal; or
- 6.1.4 otherwise seek to publicly influence the outcome of the Franchise Letting Process,

in each case whether written or oral and howsoever communicated, including by electronic means, on a website or via social media.

- 6.2 The Applicants agree that if there are compelling reasons to make a public statement or comment then the Applicants shall discuss the contents of such a statement or comment with the Secretary of State in advance and shall only make such a statement or comment when the written consent of the Secretary of State has been obtained (not to be unreasonably withheld or delayed where the Applicant is legally required to make such a statement or comment).

7. **ACCESS TO AND USE OF AWARD AND THE DATA SITE**

- 7.1 The Secretary of State may publish Confidential Information relating to the Franchise on the Data Site and grant access to the Data Site in accordance with the Data Site Authorisation Process and this Deed, including this clause 7 and clause 8 (*Secretary of State Information*).
- 7.2 The Secretary of State may publish Confidential Information relating to the Franchise Letting Process on AWARD and grant access to AWARD in accordance with the AWARD Authorisation Process and this Deed, including this clause 7 and clause 8 (*Secretary of State Information*).
- 7.3 Where the Secretary of State provides an Applicant with access to any external database with functionality in the Data Site, clause 4 (*Confidentiality*), this clause 7 and this Deed shall apply to the Applicant's accessing and use of any such external database as if it were a part of the Data Site.
- 7.4 The Applicants agree and acknowledge that:
 - 7.4.1 if an Applicant wishes to be granted access to AWARD, the relevant Applicant must follow the authorisation process set out in Schedule 3 (the "**AWARD Authorisation Process**"), or any other instructions issued by the Secretary of State from time to time for that purpose;
 - 7.4.2 if an Applicant wishes to be granted access to the Data Site, the relevant Applicant must follow the authorisation process set out in Schedule 4 (the

"Data Site Authorisation Process"), or any other instructions issued by the Secretary of State for that purpose;

- 7.4.3 the Secretary of State may amend the AWARD Authorisation Process, the Data Site Authorisation Process and this clause 7 at any time and will notify the Applicants as soon as reasonably practicable of any such amendments;
 - 7.4.4 only Authorised AWARD Users may access AWARD;
 - 7.4.5 only Authorised Data Site Users may access the Data Site;
 - 7.4.6 Data Site Information and AWARD Information will be updated during the Franchise Letting Process, including as further relevant information is made available to the Secretary of State; and
 - 7.4.7 while the Secretary of State shall take reasonable steps to notify the Authorised Users of changes to any Data Site Information and/or AWARD Information (as appropriate), it is the sole responsibility of each Applicant to ensure that they are using the most up to date data and information available on the Data Site and/or AWARD.
- 7.5 The Applicants undertake:
- 7.5.1 not to enable or allow any Unauthorised Person to access the Data Site or AWARD;
 - 7.5.2 to only access the Data Site and AWARD during the Franchise Letting Process (or, if earlier, until the Applicants withdraw or are ejected from the Franchise Letting Process (or, in the case of any Applicant, that Applicant withdraws or is ejected from the Franchise Letting Process) or on written notification from the Secretary of State that the Proposed Operator will not be selected to operate the Franchise) and only in accordance with this Deed;
 - 7.5.3 to ensure that each Authorised User shall at all times keep their User Account Details secret and confidential;
 - 7.5.4 to notify the Secretary of State immediately if at any time any Applicant believes that any User Account Details may have been obtained by any Unauthorised Person or that any User Account Details (or any record of either or both) may have been lost or stolen;
 - 7.5.5 that, in the event that an Applicant, or a representative of an Applicant, gains access (howsoever gained) to any section of the Data Site and/or AWARD, and/or to any Data Site Information and/or AWARD Information, to which an Applicant knows or suspects, or should reasonably have known or suspected, that he should not have gained access, that Applicant shall immediately exit such section or item of Data Site Information and/or AWARD Information, inform the Secretary of State of such unauthorised access and immediately delete, destroy or return to the Secretary of State at the expense of the Applicants, any copies of any Data Site Information and/or AWARD Information obtained; and
 - 7.5.6 not to divulge the fact of any unauthorised access described in clause 7.5.5 above nor the Data Site Information and/or AWARD Information gained thereby to any other person, save where required to do so by an order of a court or other competent body, in which case the Applicant shall inform the Secretary of State accordingly prior to release of any such information.
- 7.6 The Applicants undertake that, when accessing and/or using information obtained from the Data Site or AWARD, each Applicant and any Authorised User shall:

- 7.6.1 (in the case of each Applicant) fully comply with this Deed, including clause 2 (*General Conduct*), clause 4 (*Confidentiality*), clause 5 (*Use of Confidential Information*), this clause 7 and clause 8 (*Secretary of State Information*);
 - 7.6.2 (in the case of each Authorised User) be fully aware of and accept the content of this Deed, including the AWARD Authorisation Process and/or Data Site Authorisation Process, clause 2 (*General Conduct*), clause 4 (*Confidentiality*), clause 5 (*Use of Confidential Information*), this clause 7 and clause 8 (*Secretary of State Information*) and agree to be bound by, and fully complies with, equivalent obligations that are identical in effect to the obligations of the Applicants under this Deed including those clauses;
 - 7.6.3 subject to clause 4.1.2 and clause 4.3 take all reasonable steps to ensure that none of the Data Site Information or AWARD Information is visible to, or capable of being seen or read by, any Unauthorised Person;
 - 7.6.4 not attempt to circumvent any of the security features on the Data Site or AWARD;
 - 7.6.5 ensure the correct procedure for exiting and logging out of the Data Site and/or AWARD is followed; and
 - 7.6.6 comply immediately and fully with any instruction from, and submit to any reasonable security procedures required by, the Secretary of State.
- 7.7 The Secretary of State reserves the right at his sole discretion to refuse any Applicant access to, or to withdraw consent to an Authorised User accessing, the Data Site and/or AWARD (or any part thereof) or any Data Site Information and/or AWARD Information (or any part thereof) at any time and without providing prior notice or any reason for such refusal or withdrawal.
- 7.8 The Applicants may save Data Site Information and AWARD Information to a computer or any other storage device and print Data Site Information and AWARD Information, provided that they comply with the obligations under this Deed, including clause 4 (*Confidentiality*) and clause 5 (*Use of Confidential Information*).
- 8. SECRETARY OF STATE INFORMATION**
- 8.1 The Secretary of State, in his sole discretion, reserves the right to add Confidential Information to AWARD and/or the Data Site, to amend or remove any Data Site Information disclosed on the Data Site, to amend the Folder Structure on the Data Site (in whole or in part) at any time and to amend or remove any AWARD Information.
- 8.2 The Secretary of State does not, and HS2 Ltd and the other Beneficiaries do not, make any representation or warranty, express or implied, as to:
- 8.2.1 the accuracy, completeness, reliability, legality, validity, enforceability, or non-infringing character of any of the Secretary of State Information;
 - 8.2.2 the accuracy, completeness, reliability, reasonableness, legality, validity, enforceability, or non-infringing character of any other written or oral communication transmitted or made available in connection with the Secretary of State Information; and
 - 8.2.3 the reasonableness of any opinions in any of the Secretary of State Information, or the likelihood that any future projections, management targets, estimates, prospects or returns contained in any of the Secretary of State Information will be achieved,

and the Secretary of State, HS2 Ltd, the Beneficiaries and their representatives (unless otherwise stated) shall not have and will not accept, to the extent permitted by law, (and other than in respect of fraud or fraudulent misrepresentation) any liability for such Secretary of State Information or for any of the matters referred to in clauses 8.2.1 to 8.2.3 or for any reliance that any Applicant or any other party may seek to place upon such Secretary of State Information.

- 8.3 Nothing contained on the Data Site, AWARD, or within any Secretary of State Information, is or shall be relied upon as, a promise or representation. The only representations and warranties that may have any legal effect are those made in a duly executed franchise agreement entered into between the Proposed Operator and the Secretary of State (on the face of which it is apparent that such agreement is intended by all parties thereto to be a franchise agreement for the purposes of the Railways Act 1993), and associated agreements entered into between the Proposed Operator and/or any other Applicant or Applicants and the Secretary of State, where the Applicants have been successful in the Franchise Letting Process with the result that the Proposed Operator is the franchisee for the Franchise. The legal effect of such representations and warranties shall be subject to such limitations and restrictions as may be specified in the relevant franchise agreement or associated agreement.
- 8.4 All liability of the Secretary of State, HS2 Ltd, Network Rail, the Existing Franchisee (or equivalent, where the relevant passenger rail services are being operated by the Secretary of State in accordance with Section 30 of the Railways Act 1993) and any other person providing Secretary of State Information which is made available on the Data Site and/or AWARD (and/or otherwise), including liability for negligence, is excluded to the extent permissible by law (and other than in respect of fraud or fraudulent misrepresentation). Without prejudice to the generality of the foregoing, the Secretary of State, HS2 Ltd, Network Rail, the Existing Franchisee (or equivalent, as above) and any other Secretary of State Information provider shall have no liability in respect of any loss resulting from any inaccuracy or incompleteness of any Secretary of State Information made available on the Data Site and/or AWARD (and/or otherwise), or for any technical failure, any breach of security or any computer virus.

9. DATA PROTECTION

- 9.1 The Applicants warrant and undertake that each Applicant and any person to whom Secretary of State Information is disclosed by an Applicant (including any Permitted Party), shall, in respect of all Secretary of State Information which is also Personal Data, comply at all times with the Personal Data Legislation and process the Personal Data solely for the Agreed Purpose.
- 9.2 Without prejudice to clause 9.1, the Applicants will not cause or permit the Personal Data to be transferred or otherwise processed outside the European Economic Area without the prior written consent of the Secretary of State.

10. INTELLECTUAL PROPERTY

- 10.1 All Intellectual Property in the Secretary of State Information shall remain the property of the Secretary of State or his licensors. The disclosure by the Secretary of State to the Applicants of Secretary of State Information does not imply or confer any licence or permission for the Applicants to use such Secretary of State Information for any purpose other than the Agreed Purpose.
- 10.2 All Intellectual Property in the Applicant Information shall remain the property of the relevant Applicant or its licensors. The Secretary of State shall not, without the prior consent of the Applicants (such consent not to be unreasonably withheld or delayed), be entitled to use or authorise any other person to use the Intellectual Property in the Applicant Information except for the purposes of the Franchise Letting Process. This clause 10.2 is without prejudice to any rights of the Secretary of State existing as at the date of this Deed and any rights he may have in respect of any franchise agreement or other agreement which may be entered into pursuant to the Franchise Letting Process.

10.3 The Applicants shall, in good faith, consider with the Secretary of State any request by the Secretary of State for consent for the purposes of clause 10.2.

11. **PROHIBITED GIFTS**

11.1 No Applicant shall, and the Applicants shall ensure that their representatives, Associated Entities and representatives of their Associated Entities do not, on or before the Franchise Start Date and in connection with the Franchise Letting Process directly or indirectly without the prior written approval of the Secretary of State:

11.1.1 pay any sum to;

11.1.2 grant any concession or benefit to;

11.1.3 make any gift or entertainment of significant cost or value to; or

11.1.4 enter into any business relationship with,

HS2 Ltd, any other Beneficiary, Alternative Applicant or Alternative Associated Entity or any representative of HS2 Ltd, any other Beneficiary, Alternative Applicant or Alternative Associated Entity, undertake to do so or indicate to any person that it will or may do so.

12. **ANTI COLLUSION**

12.1 Subject to clause 12.2, no Applicant shall, and the Applicants shall ensure that their representatives, Associated Entities and representatives of their Associated Entities do not, at any time on or before the Franchise Start Date:

12.1.1 fix or adjust the amount of any payment proposed or to be proposed in connection with an Applicant's Letting Proposal (including any franchise payment) by or in accordance with any agreement, arrangement or understanding with any Alternative Applicant or Alternative Associated Entity or any representative of any Alternative Applicant or Alternative Associated Entity;

12.1.2 communicate to any person, other than as expressly permitted by the terms of this Deed, the amount or approximate amount of any payment (including any franchise payment) so proposed;

12.1.3 enter into any agreement or arrangement with any person that such person shall refrain from expressing an interest in the Franchise Letting Process or responding to the Franchise specific questionnaire, or from making any proposal for the letting of the Franchise, or in relation to the terms (including payment terms, the amount of any franchise payment or other payment) proposed or to be proposed in connection with any such proposal for the letting of the Franchise, or that such person shall withdraw such interest once expressed or amend or withdraw any such proposal once offered or vary the terms (including the amount of any franchise payment or other payment) proposed or to be proposed in connection with any such proposal;

12.1.4 cause or induce any person to enter into an agreement to inform an Applicant of the amount or approximate amount of any other proposal for the letting of the Franchise;

12.1.5 pay, give or offer or agree to pay or give any sum of money, inducement or other valuable consideration directly or indirectly to any person for doing or having done, or refraining from doing, or causing or having caused to be done in relation to any other expression of interest in the Franchise Letting Process, response to the Franchise specific questionnaire or proposal for the letting of the Franchise any act or omission; or

- 12.1.6 disclose to any person other than the Secretary of State and except as permitted by this Deed the whole or any part or any details of the Letting Proposal.
- 12.2 The provisions of clause 12.1 shall not apply to the Applicants:
 - 12.2.1 to the extent that any Applicant discloses the approximate amount of any payment proposed in connection with the Letting Proposal in confidence to a broker or insurer in order to obtain any insurance premium quotations required for the purposes of and in compliance with any written requirement of the Secretary of State;
 - 12.2.2 to the extent that any Applicant discloses details of the Letting Proposal in confidence to any person with whom it is necessary that the Applicant negotiates or enters into any contract in order to achieve the Agreed Purpose; and
 - 12.2.3 to the extent agreed in writing by the Secretary of State.

13. **CHANGE OF CONTROL / CIRCUMSTANCES**

- 13.1 The Applicants acknowledge that the Secretary of State relies on the Applicant Information at each stage during the Franchise Letting Process (including information concerning the members and structure of any consortia).
- 13.2 If, at any time during the Franchise Letting Process, there are any proposed or actual changes to such information (including any Change of Ownership), the Applicant must advise the Secretary of State as soon as practicable and in writing of any such changes.
- 13.3 The Secretary of State reserves the right to revisit the selection and/or evaluation of the Applicants and/or the award of a Passport, or a Temporary Visa, to the Applicants and/or eject the Applicants (or any Applicant) from the Franchise Letting Process as a result of any such changes. The Secretary of State will be the final arbiter in such matters.

14. **NON-SOLICITATION**

- 14.1 No Applicant will before the date 6 months after the Announcement Date without the prior written consent of the Secretary of State solicit or endeavour to entice away any person employed or otherwise engaged by the Secretary of State or the Existing Franchisee other than pursuant to a response to a bona fide public advertisement of an employment vacancy.
- 14.2 No Applicant will before the date 6 months after the Announcement Date attempt to contact or interview or solicit information from any employee of the Secretary of State without the express written consent of the Secretary of State (which may be refused, or given generally or specifically).
- 14.3 No Applicant will before the date 6 months after the Announcement Date without the prior written consent of HS2 Ltd solicit or endeavour to entice away any person employed or otherwise engaged by HS2 Ltd other than pursuant to a response to a bona fide public advertisement of an employment vacancy.
- 14.4 No Applicant will before the date 6 months after the Announcement Date attempt to contact or interview or solicit information from any employee of HS2 Ltd without the express written consent of HS2 Ltd (which may be refused, or given generally or specifically).

15. **REMEDIES**

15.1 The Applicants undertake to immediately notify the Secretary of State in writing as soon as possible after becoming aware of any breach (or suspected breach) of this Deed or any breach (or suspected breach) of confidence in relation to the Confidential Information by an Applicant or any person to whom Confidential Information has been disclosed by an Applicant (including any Permitted Party).

15.2 The Applicants acknowledge and agree that:

15.2.1 damages alone would not be an adequate remedy for any breach by an Applicant of the relevant provisions of this Deed;

15.2.2 any Beneficiary shall be entitled to the remedies of injunction and specific performance and other equitable relief for any threatened or actual breach of the relevant provisions of this Deed; and

15.2.3 no proof of special damages shall be necessary for the enforcement of this Deed.

15.3 Each of the Applicants jointly and severally indemnifies the Secretary of State, HS2 Ltd and each other Beneficiary for any loss he suffers in connection with, or arising out of, the following:

15.3.1 the Secretary of State, HS2 Ltd or other Beneficiary is found by a court to be liable for breach of any of his legal obligations in relation to the Franchise Letting Process; and/or

15.3.2 the Secretary of State, HS2 Ltd or other Beneficiary abandons the Franchise Letting Process so as to avoid a breach or likely breach of any of his legal obligations in relation the Franchise Letting Process,

in each case, to the extent that such breach is attributable to any of the Applicants.

15.4 The Secretary of State may, in his sole discretion, in the event of any material breach of this Deed by an Applicant:

15.4.1 cancel, suspend or attach conditions to the Applicants' Passport;

15.4.2 eject the Applicants (or any Applicant) from the Franchise Letting Process; and/or

15.4.3 where the Franchise Letting Process has been concluded with the result that the Applicants have been successful and the Proposed Operator is to be the franchisee for the Franchise, revoke such selection and (if applicable) terminate the franchise agreement.

15.5 The Applicants acknowledge and agree that a material breach of this Deed shall have occurred in the event of any breach of their obligations under such clauses that impose a material obligation, which shall include clause 2 (*General Conduct*) clause 3 (*Warranty*), clause 4 (*Confidentiality*), clause 5 (*Use of Confidential Information*), clause 6 (*Publicity*), clause 11 (*Prohibited Gifts*) and clause 12 (*Anti Collusion*).

15.6 The rights and remedies of the Secretary of State, HS2 Ltd and each Beneficiary in connection with this Deed, and in connection with all other agreements between the Secretary of State, HS2 Ltd or Beneficiary and the Applicants or any Applicant, are cumulative and are not exclusive of, and may be exercised without prejudice to, any other rights or remedies provided in this Deed, under those other agreements, by law, statute, equity or otherwise.

16. LIABILITY AND BENEFIT OF UNDERTAKINGS

16.1 The undertakings, acknowledgements, warranties and representations (whether or not expressed or described as such) made or given by the Applicants in this Deed may be enforced against any Applicant, or all Applicants or any number of them, at the sole discretion of, and by, the Secretary of State, HS2 Ltd or other Beneficiary.

16.2 In the event that an Applicant discloses Secretary of State Information in accordance with clause 4.1.2 the Applicants shall be liable for the acts and omissions of the recipient party as if they were acts and omissions of an Applicant.

17. NO COLLATERAL CONTRACT

17.1 The Parties agree that save as expressly provided in this Deed no contract or legal obligation shall result from any disclosure of information or other communication by the Secretary of State, HS2 Ltd or other Beneficiary in connection with the Franchise Letting Process, including the issue of any pre-qualification document or invitation to tender, or from the reliance of any person on any information so disclosed or any such communication.

17.2 The Applicants further acknowledge and agree that no disclosure of information or other communication by the Secretary of State, HS2 Ltd or other Beneficiary in connection with the Franchise Letting Process will constitute an offer or an acceptance by or on behalf of any Beneficiary. The only contracts between the Parties or between any Beneficiary and any Associated Entity which may come into existence pursuant to the Franchise Letting Process (other than this Deed) are a duly executed franchise agreement entered into between the Proposed Operator and the Secretary of State (on the face of which it is apparent that such agreement is intended by all parties thereto to be a franchise agreement for the purposes of the Railways Act 1993), and associated agreements entered into between the Proposed Operator and/or any other Applicant or Applicants and the Secretary of State, where the Applicants have been successful in the Franchise Letting Process with the result that the Proposed Operator is the franchisee for the Franchise.

17.3 The Secretary of State reserves the right to cancel, amend or vary the Franchise Letting Process, including any envisaged stage and any document issued pursuant to it, at any point with no liability on his part.

17.4 In particular, the Secretary of State is not liable for any costs (whether incurred by an Applicant or an Associated Entity) resulting from any amendment or cancellation of, or delay to, the Franchise Letting Process, nor for any costs (whether incurred by an Applicant or an Associated Entity) resulting from an Applicant expressing an interest in the Franchise Letting Process, responding to the Franchise specific questionnaire, or negotiating or tendering for the Franchise (including any third party costs or expenses howsoever arising).

18. NO AGENCY

The Applicants warrant and represent to the Secretary of State that each Applicant is acting as a principal on its own account and not as agent or broker for any other person(s) and that the Applicants will be responsible for their costs incurred in connection with the Letting Proposal or the Franchise Letting Process.

19. ENTIRE AGREEMENT

This Deed constitutes the entire understanding between the Parties in relation to the subject matter hereof and none of the Beneficiaries accepts any responsibility or liability (other than in respect of fraud or fraudulent misrepresentation) for, or makes any representation or warranty (express or implied) as to, the accuracy, reasonableness or completeness of any Secretary of

State Information or any oral or other communication in connection with the Secretary of State Information, the Letting Proposal or the Franchise Letting Process.

20. WAIVER AND INVALIDITY

No failure or delay by any Party or by HS2 Ltd or any other Beneficiary in exercising any right, power or privilege under this Deed shall constitute a waiver thereof nor shall any single or partial exercise thereof preclude further exercise thereof or the exercise of any other right, power or privilege hereunder or otherwise.

21. ASSIGNMENT

No Applicant shall be entitled to assign or sub-contract any of its rights or obligations under this Deed.

22. THIRD PARTY RIGHTS

22.1 Subject to clauses 22.2 and 22.3, no person who is not a Party to this Deed shall be entitled to any benefit under or to enforce any term of this Deed, under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

22.2 Each and every obligation of the Applicants under this Deed is owed to:

22.2.1 the Secretary of State;

22.2.2 HS2 Ltd; and

22.2.3 each other Beneficiary,

each of whom may enforce the terms of this Deed and references to the Secretary of State in the context of the Applicants' obligations shall be construed accordingly (whether or not HS2 Ltd or that other Beneficiary is expressly referred to in any relevant clause) .

22.3 Each and every limit or exclusion of liability of the Secretary of State under this Deed (including clauses 8.2, 8.4, 17.3 and 17.4) may be relied on by:

22.3.1 the Secretary of State;

22.3.2 HS2 Ltd; and

22.3.3 each other Beneficiary,

each of whom may rely on the terms of such limit or exclusion in any action arising out of or in connection with this Deed and references to the Secretary of State in the context of a limit or exclusion of liability shall be construed accordingly (whether or not HS2 Ltd or that other Beneficiary is expressly referred to in any relevant clause).

22.4 The Parties may rescind or vary this Deed without the consent of the other Beneficiaries.

23. PARTIAL INVALIDITY

If any provision of this Deed is held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, in any jurisdiction in relation to any Party, such provision or part shall to that extent be deemed not to form part of this Deed but the legality, validity and enforceability of the remainder of this Deed, and the legality, validity and enforceability of this Deed in relation to any other Party or in any other jurisdiction, shall not be affected.

24. **JOINT AND SEVERAL LIABILITY AND FURTHER APPLICANTS**

- 24.1 Where there is more than one Applicant, each Applicant shall be jointly and severally liable for the performance of obligations conferred on the Applicants under this Deed.
- 24.2 Where this Deed refers to the "**Applicants**" or to an "**Applicant**" both such expressions shall be construed as including all Further Applicants.
- 24.3 A Further Applicant shall be jointly and severally liable for the performance of all other Applicants as if it had entered into this Deed on the same date as the other Applicants.
- 24.4 All Applicants (including each Further Applicant) shall be deemed to have entered into this Deed on the date on which the first Applicant entered into it.

25. **PROPOSED OPERATOR**

- 25.1 If the Proposed Operator does not exist on the date on which the first Applicant entered into this Deed, and is incorporated later during the Franchise Letting Process, the Applicants shall ensure that the Proposed Operator enters into this Deed immediately on such incorporation.

26. **FURTHER STEPS**

- 26.1 The Applicants shall ensure that where this Deed requires them to give any warranty or undertaking in respect of a person to whom Confidential Information is disclosed (including in clauses 4.1, 5.2 and 9.1), the Applicants shall:
- 26.1.1 procure that the relevant person acts in a manner that is consistent with the relevant obligation; and
- 26.1.2 ensure that each such person agrees to be bound by, and fully complies with, equivalent obligations that are identical in effect to the relevant obligations of the Applicants under this Deed.
- 26.2 The Applicants will take such further steps as may be requested by the Secretary of State to ensure this Deed takes full legal effect.

27. **GOVERNING LAW AND JURISDICTION**

This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of England and Wales and the Parties hereby irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

28. **COUNTERPARTS**

This Deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original but all the counterparts shall together constitute the one agreement.

This Deed is executed as a deed and delivered on the date stated at the beginning of this Deed.

The corporate seal of **the
Secretary of State for
Transport**



IS HEREUNTO
AFFIXED:

Authenticated by
authority of the Secretary
of State for Transport:

NOTE TO APPLICANTS: Please use a copy of this execution page for each Applicant. If the relevant Applicant is a UK company, please use the execution block at the top of the page. If the relevant Applicant is not a UK company, please use the execution space below the line below.

EXECUTED AS A DEED

for and on behalf of :

[insert Applicant's name] by:

(1) DIRECTOR

}

(2) DIRECTOR/
SECRETARY

}

Note to Applicants: This document is a Deed. Where the Applicant is a UK company, it must be executed by two representatives of the Applicant – one Director, and a second person who is either a Director or the Company Secretary. You should not modify this execution block without written permission from the Secretary of State.

FOR AN APPLICANT WHICH IS NOT A UK COMPANY:

[Insert Applicant's name]

EXECUTED AS A DEED:

Note to Applicants: Execution formalities vary between jurisdictions and types of legal entity. You should seek legal advice on the words and procedure necessary for the relevant Applicant to execute a Deed under English law, and execute the Deed in the space above, as appropriate. The Secretary of State reserves the right to ask any Applicant to provide a legal opinion in a form acceptable to the Secretary of State confirming that this Deed has been validly executed by any Applicant.

SCHEDULE 1

Definitions and Interpretation

In this Deed:

- 1 **"Account Request Form"** means the form set out in Appendix A submitted in accordance with Schedule 4;
- 2 **"Agreed Purpose"** has the meaning set out in Recital (h).
- 3 **"Alternative Applicant"** means any entity or person, other than an Applicant, participating in the Franchise Letting Process (whether individually or as part of a consortium) with a view to being selected to operate the Franchise and any entity or person submitting or proposing to submit alternative proposals for the letting of the Franchise or the transfer to it of the Franchise, or shares in a franchisee or a franchise operator;
- 4 **"Alternative Associated Entity"** means, in respect of any Alternative Applicant, its Controllers, any entity or person Controlled by an Alternative Applicant, and any entity or person other than an Alternative Applicant which is Controlled by any of the Alternative Applicant's Controllers from time to time;
- 5 **"Announcement Date"** means the date on which the Secretary of State publicly announces the identity of the franchisee selected for the Franchise pursuant to the Franchise Letting Process;
- 6 **"Applicant"** means each entity or person named in Schedule 2 and means each such entity or person at all times from the date of this Deed whatever step in the Franchise Letting Process that entity or person is participating in (and **"Applicants"** means all such entities and persons);
- 7 **"Applicant Information"** means all information of whatsoever nature whether oral, written or in any other form disclosed or required to be disclosed by the Applicants to the Secretary of State as part of or for the purposes of the Letting Proposal or the Franchise Letting Process, provided always that information originating from the Secretary of State, HS2 Ltd or other Beneficiary shall not constitute Applicant Information;
- 8 **"Associated Entity"** means, in respect of any Applicant, its Controllers, any entity or person Controlled by an Applicant, and any entity or person other than an Applicant which is Controlled by any of the Applicant's Controllers from time to time;
- 9 **"Authorised AWARD User"** means any person(s) that the Applicants wish to have access to AWARD who is duly authorised in accordance with Schedule 3 to have access to AWARD and whose authorisation has not been rescinded by the Secretary of State under clause 7.7 or otherwise;
- 10 **"Authorised Data Site User"** means any person(s) that the Applicants wish to have access to the Data Site who is duly authorised in accordance with Schedule 4 (Data Site Authorisation Process) to have access to the Data Site and whose authorisation has not been rescinded by the Secretary of State under clause 7.7 or otherwise;
- 11 **"Authorised User"** means an Authorised AWARD User and/or an Authorised Data Site User (as appropriate);
- 12 **"AWARD"** has the meaning set out in Recital (i);
- 13 **"AWARD Authorisation Process"** has the meaning given to it in clause 7.4.1;

- 14 “**AWARD Information**” means information at any time deposited or contained in AWARD;
- 15 “**AWARD User Account Details**” means the details provided to an Authorised AWARD User to allow them to securely access AWARD;
- 16 “**Beneficiaries**” means the Crown, the Secretary of State for Transport, HM Treasury, HS2 Ltd and their respective representatives;
- 17 “**Change of Ownership**” means: (a) any person acquiring or ceasing to have any legal, beneficial or equitable interest (whether directly or indirectly) in an Applicant (including control over the exercise of voting rights conferred on those shares, control over the right to appoint or remove directors and rights to dividends); or (b) where the Proposed Operator is not yet incorporated (and is not, therefore, an Applicant), any change in the proposed legal, beneficial or equitable interests (whether direct or indirect) in respect of the Proposed Operator;
- 18 “**Confidential Information**” means all information which is either Secretary of State Information or Applicant Information (or both);
- 19 “**Connected Person**” means any:
- 19.1 Associated Entity;
- 19.2 representative of or spokesperson for any Applicant or any Associated Entity; or
- 19.3 any other person who the Secretary of State reasonably considers represents or speaks for or in the interests of any Applicant or any Associated Entity;
- 20 “**Control**” means the power of a person or other entity (“C”) to secure that the affairs of a person or other entity are conducted in accordance with C's wishes. In relation to a body corporate Control may be secured by means of the holding of shares or the possession of voting power in relation to that or any other body corporate, or as a result of any powers conferred by the articles of association or other document regulating that or any other body corporate. Control shall include Control held indirectly as well as directly, negative Control (exercised by veto rights), and joint Control (where there is one or more other persons or entities in addition to C which also exercise Control, or C together with any other person or entity exercises Control) (and “**Controlled by**” shall be construed accordingly);
- 21 “**Controller**” means any person or entity who has Control;
- 22 “**Data Site**” has the meaning set out in Recital (i);
- 23 “**Data Site Authorisation Process**” has the meaning given to it in clause 7.4.2;
- 24 “**Data Site Information**” means information at any time deposited or contained in the Data Site;
- 25 “**Data Site User Account Details**” means the details provided to an Authorised Data Site User to allow them to securely access the Data Site;
- 26 “**Existing Franchise**” means the passenger rail franchise (or equivalent, where the relevant passenger rail services are being operated by the Secretary of State in accordance with Section 30 of the Railways Act 1993) operated by the Existing Franchisee, as operated at the date of this Deed pursuant to the Existing Franchise Agreement;
- 27 “**Existing Franchise Agreement**” means the franchise agreement made on 18 June 2014 between the Secretary of State for Transport and (1) Virgin Rail Group Limited; and (2) West Coast Trains Limited;

- 28 **“Existing Franchisee”** means West Coast Trains Limited and any successor operator which may be appointed, from time to time until the conclusion of the Franchise Letting Process, to operate the Existing Franchise (whether appointed by a direct award pursuant to Article 5(6) of Regulation (EC) No 1370/2007 or otherwise);
- 29 **“Folder Structure”** means the indexed virtual folder structure on the Data Site;
- 30 **“Franchise”** has the meaning set out in Recital (a);
- 31 **“Franchise Letting Process”** means the procedure (as varied from time to time) adopted by the Secretary of State for the selection of a franchisee for the Franchise, including discussions between the Secretary of State or HS2 Ltd with any person interested in (or considering) tendering for the Franchise, submission of any expression of interest, a response to the Franchise specific questionnaire, tenders and best and final offers (if required), and the negotiation and finalisation of a new franchise agreement and any documents to be entered into under or in relation to the new franchise agreement;
- 32 **“Franchise Letting Process Information”** means information about the Franchise Letting Process or the process for the letting of passenger rail franchises generally or any details relating to the status of any negotiations or other discussions between the Secretary of State or HS2 Ltd and the Applicants or any Alternative Applicant;
- 33 **“Franchise Start Date”** means the date of commencement of the operation of passenger rail services for the Franchise pursuant to any franchise agreement entered into at the conclusion of the Franchise Letting Process;
- 34 **“Further Applicant”** means:
- 34.1 a person that:
- a) is a Temporary Visa Partner of the Applicants; and
- b) has entered into this Deed at a later date than the other Applicants; and
- 34.2 the Proposed Operator if it is required to enter into this Deed pursuant to clause 25;
- 35 **HS2** has the meaning set out in Recital (c);
- 36 **HS2 Ltd** means High Speed Two (HS2) Limited, a company registered under the laws of England and Wales (with company number 06791686) and having its registered office at 2 Snowhill, Queensway, Birmingham B4 6GA, and any successor, and its representatives;
- 37 **Indicative Rolling Stock Specification** means the draft specification for rolling stock developed by the Secretary of State for use in the Franchise Letting Process as may be amended and updated from time to time by the Secretary of State prior to its publication as part of the invitation to tender documents;
- 38 **“Intellectual Property”** means all copyrights (including rights in computer software), patents, design rights, database rights, rights in undisclosed or confidential information (such as know-how, trade secrets and inventions (whether or not patentable)) and all other intellectual property or similar rights of whatever nature (whether registered or not and including applications to register or rights to apply for registration);
- 39 **“Letting Proposal”** means the proposal for the Franchise submitted or to be submitted by the Applicants to the Secretary of State as part of the Franchise Letting Process including any expression of interest, response to the Franchise specific questionnaire, tender submission or best and final offer;
- 40 **“Network Rail”** means Network Rail Infrastructure Limited and any successor;

- 41 **Notified Rolling Stock Consultee**" means any person or entity, including any person or entity that leases or proposes to lease rolling stock for use on the UK rail network, notified in writing by the Secretary of State to the Applicants from time to time, to whom the Indicative Rolling Stock Specification has been disclosed by the Secretary of State, and who has entered into a non-disclosure agreement in relation to the same with the Secretary of State;
- 42 **Other Rolling Stock Consultee**" means any person or entity that is an actual or prospective rolling stock manufacturer, owner or investor, and/or leases or proposes to lease rolling stock for use on the UK rail network, other than a Notified Rolling Stock Consultee;
- 43 **"Parties"** means the Secretary of State on the one side and the Applicants together on the other side (each side being a **"Party"**);
- 44 **"Passport"** has the meaning set out in Recital (d);
- 45 **"Passport System"** has the meaning set out in Recital (d);
- 46 **"Permitted Parties"** means the representatives of an Applicant, an Associated Entity, or the representatives of an Associated Entity and any provider or potential provider of finance (and their representatives) to the Applicants or any Associated Entity in connection with the Letting Proposal (and each a **"Permitted Party"**);
- 47 **"Personal Data"** has the same meaning as in the Data Protection Act 1998 and includes Sensitive Personal Data as defined therein;
- 48 **"Personal Data Legislation"** means the Data Protection Act 1998 and any guidance issued from time to time by the Information Commissioner's Office and all other legislation relating to the protection and use of personal information (including the Privacy and Electronic Communications (EC Directive) Regulations 2003);
- 49 **"Proposed Operator"** means the single purpose entity (which may exist on the date on which the first Applicant entered into this Deed, or may be incorporated later during the Franchise Letting Process), in which the Applicants have (or will have) an interest, that the Applicants propose will be the franchisee for the Franchise if the Applicants are successful in the Franchise Letting Process;
- 50 **"RSSB"** means the Rail Safety and Standards Board and any successor;
- 51 **"Secretary of State Information"** means:
- 51.1 AWARD Information;
- 51.2 Data Site Information;
- 51.3 Franchise Letting Process Information; and
- 51.4 all other information of whatsoever nature whether oral, written or in any other form disclosed by (or on behalf of) the Secretary of State or HS2 Ltd to the Applicants for the purposes of or pursuant to the Franchise Letting Process (including, for the avoidance of doubt, the Indicative Rolling Stock Specification);
- 52 **"Temporary Visa"** has the meaning set out in Recital (e);
- 53 **"Temporary Visa Partner"** means any person that does not hold the Passport but is introduced in an application for a Temporary Visa and that the other Applicants propose will participate jointly with them in the Franchise Letting Process (to the extent described in the application for the Temporary Visa), with a view to that person making a contribution to the Proposed Operator's performance of the relevant passenger rail franchise where the Applicants have been successful in the Franchise Letting Process with the result that the Proposed Operator is the franchisee for the Franchise;

- 54 “**Third Party**” means any person who is not a Party;
- 55 “**Unauthorised Person**” means any person who is not an Authorised User;
- 56 “**User Account Details**” means the details provided to an Authorised User to allow them to securely access the Data Site and/or AWARD;
- 57 reference to the **disclosure** of information includes any communication or making available of information and includes both direct and indirect disclosure;
- 58 reference to the **disclosure of information, or provision of access**, by or to the Secretary of State, HS2 Ltd, any Beneficiary, the Applicants or any Associated Entity includes disclosure, or provision of access, by or to their respective representatives;
- 59 reference to the **representatives** of any person includes the officers, directors, employees, advisers and agents of that person (including Authorised Users);
- 60 reference to **persons** includes legal and natural persons;
- 61 reference to any enactment is to that enactment as amended, supplemented, re-enacted or replaced from time to time;
- 62 references to clauses, schedules and recitals are to clauses of and schedules and recitals to this Deed;
- 63 references to appendices are references to appendices hereto and the appendices shall be deemed to be incorporated herein;
- 64 reference to any gender includes any other;
- 65 reference to writing includes email;
- 66 terms defined in the Railways Act 1993 have the meanings attributed to them in that Act when used in this Deed, except as otherwise defined in this Deed;
- 67 the words **other, includes, including, for example** and **in particular** do not limit the generality of any preceding words and are to be construed without limitation;
- 68 the singular includes the plural and vice versa;
- 69 references to **Applicants** are to be read as references to **the Applicant** (and all connected and related words read accordingly) where there is only one Applicant;
- 70 the notes to Applicants are for the reference of Applicants while completing the Deed and shall have no contractual effect; and
- 71 the headings contained in this Deed shall not affect its construction or interpretation.

SCHEDULE 2

The Applicants

- (1) [Insert name of Applicant 1], a [company] [incorporated] [established] in [insert country of registration or establishment], whose [registered office] [principal place of business] is at [insert registered address or principal place of business] [and whose registered number is [insert registered number]]; and
- (2) [Insert name of Applicant 2], a [company] [incorporated] [established] in [insert country of registration or establishment], whose [registered office][principal place of business] is at [insert registered address or principal place of business] [and whose registered number is [insert registered number]]; and

NOTES TO APPLICANTS:

This Deed should be executed by the following (each an **Applicant**):

- (i) the entities or persons which will submit the Letting Proposal including, where the Letting Proposal will be submitted by a joint venture or consortium (whether incorporated or unincorporated), each member of the joint venture or consortium (i.e. all of the entities and persons holding the Passport and (if applicable) all the entities and persons covered by the Temporary Visa);
- (ii) each of the Guarantor(s) (as that term is defined in the Franchise EoI and Franchise PPD); and
- (iii) if the Proposed Operator is already incorporated, that entity.

Applicants should complete this section by replacing the text in square brackets in each paragraph with the Applicants' details. If there is one Applicant, please complete paragraph (1) and delete or cross through paragraph (2). If there are more than two Applicants, please repeat paragraph (2) as many times as necessary.

If an Applicant is not a company, please replace the word 'company' with a description of the Applicant's legal form.

If an Applicant is signing as a Further Applicant (as defined in Schedule 1) such Applicants should include the Further Applicant's details in addition to the details of all of the other Applicants (including any Further Applicant that has previously signed this Deed).

SCHEDULE 3

AWARD Authorisation Process

1. Should an Applicant wish to be granted access to AWARD for the purpose of the Franchise Letting Process, the Applicant must follow any instructions provided by the Secretary of State from time to time for this purpose.
2. The Secretary of State will review any request by an Applicant for access to AWARD and, subject to the Secretary of State's rights under clause 7.7, will authorise the opening of a personal user account and issue of AWARD User Account Details for AWARD for each Authorised AWARD User up to a maximum of twenty five (25) Authorised AWARD Users in aggregate for the Applicants. Each Authorised AWARD User will receive instructions on how to gain access to AWARD using the relevant User Account Details.
3. Only those persons whose details have been submitted to the Secretary of State and whose user accounts have been set up and notified will qualify as Authorised AWARD Users.
4. Authorised AWARD Users will be able to access AWARD twenty-four (24) hours a day, seven (7) days a week, subject to the Secretary of State's data site provider suspending its service for technical or maintenance reasons, or to update AWARD.

SCHEDULE 4

Data Site Authorisation Process

1. Should the Applicant wish to be granted access to the Data Site, the Applicant must return to the Secretary of State a completed Account Request Form (a copy of which is contained in Appendix A) by uploading it to AWARD. The Applicant may complete an Account Request Form for up to a maximum of twenty five (25) Authorised Data Site Users in aggregate for the Applicants. Further Account Request Forms may be submitted but the Secretary of State's prior consent must be obtained before any person applies for more than twenty five (25) Authorised Data Site Users to have access to the Data Site.
2. The Secretary of State will review any completed Account Request Form and, subject to the Secretary of State's rights under clause 7.7, will authorise the opening of a personal user account and issue of User Account Details for the Data Site for each Authorised Data Site User. If the Data Site is included within or accessed via AWARD, an Authorised User will be given User Account Details which allow him/her to access the Data Site within or via AWARD. Where an Authorised User already has personal user account details to securely access AWARD, then the Secretary of State will update the Authorised User's account to permit access to the Data Site and the AWARD personal user account details shall become the User Account Details for the purposes of this Deed. Each Authorised Data Site User will receive instructions on how to gain access to the Data Site using the relevant User Account Details.
3. Only those persons whose details have been submitted to the Secretary of State and whose user accounts have been set up and notified will qualify as Authorised Data Site Users.
4. Authorised Data Site Users will be able to access the Data Site twenty-four (24) hours a day, seven (7) days a week, subject to the Secretary of State's data site provider suspending its service for technical or maintenance reasons, or to update the Data Site.

APPENDIX A

DATA SITE USER ACCOUNT REQUEST FORM

APPLICANT: _____

First name	Surname	Organisation	Address	Telephone	Email